

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 690 OF 2024

Santosh Bhimrao Wahatule,
Age : 44 years, Occ- Service,
R/o. Navnath Nagar, N-11,
HUDCO, Aurangabad.

...Appellant
[Orig. Accused]

Versus

1. The State of Maharashtra
2. XYZ.

...Respondents

.....

Mr. S. J. Salunke – Advocate for the Appellant
Mr. Bhagwat A. Shinde – APP for the State
Mr. K. P. Rodge – Advocate (appointed) for Respondent No. 2

.....

WITH

CRIMINAL APPLICATION NO. 3728 OF 2025

.....

CORAM : NEERAJ P DHOTE, J.

RESERVED ON : 10TH NOVEMBER, 2025

PRONOUNCED ON : 17TH NOVEMBER, 2025

JUDGMENT : -

1. This is an Appeal against Conviction under Section 374 of the Code of Criminal Procedure [in short 'Cr.PC.'] awarded by Special Judge (POCSO) & Additional Sessions Judge, Aurangabad, in Special (POCSO) Case No. 33/2019 by Judgment and Order dated 30.07.2024, convicting and sentencing the Appellant as under : -

“1) Accused Santosh Bhimrao Wahatule is hereby convicted under Section 235(2) of the Code of Criminal Procedure for the offence under Section 354 A of the Indian Penal Code and Section 7 punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and he is sentenced to suffer rigorous imprisonment for 04 (Four years) and also to pay fine of Rs. 10,000/- (Rs. Ten thousand only) in default to suffer simple imprisonment for 06 six months.

2) to 7)”

2. Heard the learned Advocate for the Appellant, the learned APP for the State and the learned Advocate for Respondent No. 2 – Victim. Perused the papers.

3. The Prosecution’s case, in brief as revealed from the Police Report, is as under : -

- (i) The Appellant was working as a Manager in Adarsh Nagari Patsanstha, Satara Parisar Branch. He knew the mother of the Victim and vice-versa. The Victim’s mother phoned the Appellant on 21.12.2018 in the afternoon around 12:30 pm, in connection with opening the Recurring Deposit [R.D.] account in the said Society. The Appellant came to the house of the Victim’s mother. The Victim was the child aged 16 years and residing with her mother and siblings. The Victim was asked by her mother to prepare Tea. As there was no milk in the house, the Victim’s mother went to bring Milk. After the Victim’s mother left home, the Appellant talked with the Victim and asked her to bring water and told her to sit beside him. The Appellant caught hold of Victim and tried to kiss her and pressed her chest. The Victim shouted and tried to rescue herself, upon which the Appellant told her to allow him to do the same and he will do the work of her mother. In the meanwhile, the Victim’s mother reached home and the Victim was rescued. The Victim informed her mother about the incident. The Appellant ran away by leaving his mobile

phone and key of his motorcycle in the house of the Victim. The incident was reported to Satara Police Station and Crime bearing No. 553 of 2018 came to be registered for offence punishable under Sections 354 of the Indian Penal Code [for short “IPC”] and offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 [hereinafter referred to as the ‘POCSO Act, 2012’]. The Victim was referred for medical examination. The investigation was done. The spot *panchanama* was carried out. The Appellant came to be arrested. The document in respect of the age of Victim came to be collected. The statement of witnesses came to be recorded and on completion of investigation, the Appellant came to be Charge-sheeted.

(ii) On committal, the learned Trial Court framed the Charge against the Appellant for the offence punishable under Section 354 of the IPC and Section 8 of the POCSO Act, below Exh. 13. The Appellant denied the Charge and claimed to be tried. To prove the Charge, the Prosecution examined the following witnesses.

- [i] PW1 – Rameshwar Motiram Gaikwad, the In-charge Headmaster of the School where the Victim was studying.
- [ii] PW2 – Victim.
- [iii] PW3 – Victim’s mother.
- [iv] PW4 – Manoj Ramsing Bahure, the Investigating Officer.

4. After the Prosecution filed Evidence Closure *Pursis*, the Statement of the Appellant came to be recorded under Section 313(1)

(b) of the Cr.PC. The Appellant denied the case and the evidence of the Prosecution. Thereafter, by the impugned Judgment and Order, the Appellant came to be convicted as above.

5. As the Conviction and the Sentence is for the offence under Section 7 punishable under Section 8 of the POCSO Act, the Prosecution is under obligation to prove that, the Victim was the 'Child' as referred to under Section 2(d) of the POCSO Act, which reads as under:-

*2(d) "**child**" means any person below the age of eighteen years.*

6. It is submitted by the learned Advocate for the Appellant that, the Prosecution failed to establish the date of birth and the age of the Victim and consequently failed to prove that, the Victim was the Child. The Mother's name in the Birth Certificate and the Admission Register was different and it was for the Prosecution to clear the ambiguity. The document in respect of the age and the date of birth of the Victim was suspicious. The evidence of PW3 nowhere show that, she submitted the Birth Certificate of the Victim to the School at the time of admission.

7. It is submitted by the learned APP and the learned Advocate for Respondent No. 2 that, by examining PW1, the Prosecution has proved the date of birth and consequently the age of the Victim.

Moreover, the Mother of the Victim deposed of date of birth of the Victim. There was no suggestion in the cross-examination in respect of difference in the name of Mother in the above referred documents i.e. Birth Certificate and the School Register. There was sufficient evidence on record to establish that the Victim was a child.

8. To prove the date of birth and the age of the Victim, the Prosecution examined the In-charge Headmaster of Radhakrushna Primary School, as PW1. His evidence show that, the school was running standards 1st to 7th and while admitting the student in their school in the 1st std., the Application was required to be supported with birth proof. The admission is given to the student on completion of six (6) years of age. His evidence show that, he brought the original record from the school in respect of the Victim. The Victim's date of birth in the school record was recorded as 27.01.2002. While admitting the Victim in the school, her parents / guardians had given admission application form along with Birth Certificate issued by St. Ans Hospital. The copy of admission application form and the copy of Birth Certificate are brought on record in the evidence of this witness as Exh. 23 and Article 'A', respectively. He denied the suggestion that the admission application was false/fake. Writing 'Babu after father's name in different ink' will not be sufficient to discard his evidence in respect of the date of birth which was on the basis of contemporaneous school record. Though he

was not an In-charge Headmaster of the School at the time of admitting the Victim, it will not affect the evidence which was based on the record maintained by the School. The evidence of this witness clearly established that the date of birth of the Victim was 27.01.2002 and it was recorded on the basis of Birth Certificate.

9. True that the Victim in her evidence deposed that her date of birth was 27.02.2002, which is different than the date of birth recorded in the school record in terms of month. However, that will not affect the evidence of PW1 as the evidence of Victim in respect of her own date of birth would be hearsay in nature.

10. The other evidence in respect of date of birth of the Victim is that, of the Victim's mother, who is examined as PW3. She deposed that, the date of birth of the Victim was 27.01.2002, which is in consonance with the date of Birth of the Victim recorded in the School record. The date of birth of the Victim is not challenged by the defence in the cross-examination. As regards the submission of the learned Advocate for the Appellant that the Mother's name mentioned in the Birth Certificate and the school admission form was different than the name of PW3, there is no challenge to the said aspect by the defence in the cross-examination in any manner.

11. The above discussed evidence on record show that, the Prosecution proved the date of birth of the Victim and consequently her age as required under the law. The incident is of the year 2018. This show that, in the year 2018, the Victim was more than 16 years but, below 18 years, and thus it is established that at the time of incident the Victim was a 'Child'.

12. It is submitted by the learned Advocate for the Appellant that, the evidence of the Victim was suspicious. Though the evidence on record show the Police Station was very near to the house of the Victim, there was delay of sixteen (16) hours in reporting the incident to the Police and there is no plausible explanation for delay by the Prosecution. The evidence on record show that, the Victim's Mother was habituated in lodging false reports. Though the Sister of Victim was at home, she was not examined by the Prosecution. The medical evidence cannot be related to the incident. The defence put forth in the cross-examination was probable. The evidence on record do not establish the Charge. The Appellant was entitled for acquittal.

13. It is submitted by the learned APP and the learned Advocate for Respondent No. 2/Victim that, the evidence on record established the Crime by the Appellant. The Spot *Panchanama* and the Medical

Certificate was admitted by the defence before the learned Trial Court. The medical evidence show injury on the Victim. The learned Trial Court has properly appreciated the evidence on record and no interference is called for.

14. The evidence of Victim, who is examined as PW2, show that the incident took place in the year 2018. On the day of incident, in between 12:00 pm to 12:30 pm, she was at home. The Appellant was known to her mother and he came to their residence. The Appellant was the employee of Adarsha Nagari Sahakari Bank. The Appellant had come to their house to fill up the form for loan for her Mother. At that time her Mother and Sister were present. After the Appellant arrived, her Mother asked her to prepare Tea. As there was no milk, her Mother went to bring the milk. At that time the Appellant came near her, pressed her chest and asked for kiss and said that he will provide IT form to her Mother for loan and demanded sexual favours. She raised hue and cry. Her mother came home. The Appellant ran away by leaving his phone and Motorbike. On the next day, they went to the Police Station. She was sent for medical examination. The Report lodged by her was brought on record at Exh. 27 and the FIR format at Exh. 28.

15. The evidence of PW3 i.e. Victim's Mother show that, she

was residing with her Son and two Daughters. She was having her account in Adarsh Bank and she wanted to open Recurring Deposit [RD] account. The Appellant was the Manager of that Bank. The Appellant came to her house for the purpose of opening the RD account. She offered water to him and went to bring milk. She returned home after ten (10) minutes. She found that the Victim was crying. The Victim took her to the bedroom and narrated the incident to her. She inquired with the Appellant about the same. The Appellant asked her to forgive him. She and the Victim beat the Appellant and he ran away. The neighbouring boys also beat the Appellant. The Appellant left his mobile and the bike. They went to the Police Station. Before going to the Police station, the Bank employees asked them not to approach the Police Station and they talked with each other for some hours and thereafter, they went to the Police Station and lodged Report.

16. The Victim deposed of the acts committed by the Appellant with her. The Victim's evidence remained unshaken in the cross-examination in respect of the incident. The omission to the extent that the Accused asked for kiss by itself will not be sufficient to discard the testimony of the Victim as there is no inconsistency in respect of the other sexual acts deposed by the Victim against the Appellant. She identified the Appellant before the learned Trial Court. The Injury Certificate at Exh. 30 is admitted by the defence before the learned Trial

Court. The said Injury Certificate shows the name of Victim as the injured person and the date of the examination was 21.12.2018. The Certificate show 'Blunt Trauma' on the chest and the age of the injury was within 24 hours, and under the column – Type of probable weapon used, it is mentioned, 'Hard and Blunt'. This injury corroborate the testimony of the Victim that the Appellant pressed her chest. The evidence of the Victim and her mother is consistent on material aspects. The evidence of Victim's Mother has explained the delay in lodging the FIR, as she deposed that the bank employees had tried to convince her not to lodge the Report. Moreover, the evidence of PW4 – Investigating Officer show that, on the Report lodged by the Victim, Crime No. 553 of 2018 came to be registered, which was marked to him for investigation and he conducted the Spot *Panchanama*. The spot *Panchanama* is at Exh. 24, which was admitted by the defence before the learned Trial Court. The Spot *Panchanama* show that, one black coloured Samsung Phone of the Appellant was seized from the house of the Victim. This fortifies the presence of the Appellant in the house of the Victim.

17. The evidence of the Victim show that her Mother had lodged Report against two persons, namely, Laxman Nawale and Shriram Uttamrao Nawale, however, Mother of Victim denied that she lodged Report against persons by name Laxman Nawale and Shriram Uttamrao Nawale. It has come in the evidence of Investigating Officer

that, 5 to 6 Non-cognizable Reports and offences were registered with Satara Police Station against Victim's Mother and others. There is nothing to show as to under what Sections the said offences were registered against the Victim's Mother. The evidence of Victim show that the Appellant lodged Report against her Mother, Prashant Satpute and Nilesh Bhagyawant with Satara Police Station. The Victim's Mother also deposed that the Appellant lodged Report against her and others for extortion. It has come in the evidence of Investigating Officer that the said report lodged by the Appellant against the Victim's Mother was after the registration of the present Crime. This lends corroboration to the evidence of the Victim's mother that, after the incident, when the Appellant fled, he was beaten by her and neighbouring boys. The suggestion that the report by the Appellant against the Victim's mother and other two persons was for snatching of Rs. 10,000/- and his mobile phone, was denied. The report lodged by the Appellant against the Victim's mother and two others clearly appears to be counterblast.

18. The above discussed evidence available on record remain unshaken in the cross-examination. The defence of the Appellant is that of denial and false implication. Nothing has come in the evidence that the Victim and her mother were having any reason to falsely implicate the Appellant. The corroborative evidence in the nature of Injury Certificate and the Spot *Panchanama* lend support to the testimony of

the Victim. The Victim's evidence clearly makes out essential ingredients for the offence punishable under Section 354A of the IPC i.e. sexual harassment, and Section 7 of the POCSO Act which is in respect of sexual assault. Both these Sections read as under: -

S. 354A. Sexual harassment and punishment for sexual harassment-

(1) A man committing any of the following acts -

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or*
- (ii) a demand or request for sexual favours; or*
- (iii) showing pornography against the will of a woman; or*
- (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.*

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

7. Sexual assault. — *Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.*

19. In alternate submission was made by the learned Advocate for the Appellant was that, minimum sentence be awarded to the Appellant. The Victim was above the age of 16 years. The Appellant's age at the time of offence, as seen from the Charge-sheet, was 38 years. There is nothing to show that the Appellant was having criminal

antecedents for the similar offences. Considering all the aspects of the matter, the nature of the acts and the nature of the offence, sentence of imprisonment for three (3) years, with fine imposed by the learned Trial Court, would meet the ends of justice. Accordingly, the sentence of imprisonment awarded by the learned Trial Court is modified. Hence, I pass the following order: -

ORDER

- [i] The Criminal Appeal is partly allowed.
- [ii] The Conviction of the Appellant for the offence punishable under Section 354A of the IPC and Section 8 of the POCSO Act, awarded by the learned Trial Court by the impugned Judgment and Order, is maintained.
- [iii] The sentence of Rigorous Imprisonment for four (4) years awarded by the learned Trial Court is modified to three (3) years.
- [iv] The fine amount and the default sentence is maintained.
- [v] The other operative order of the impugned Judgment is maintained.
- [vi] The R&P be sent back to the Trial Court.
- [vii] The Appeal stands disposed off.
- [viii] Pending Criminal Application stands disposed off.

[NEERAJ P. DHOTE]
JUDGE

SG Punde