



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

CRIMINAL APPEAL NO. 641 OF 2021

Anis Usman Sayyed
Age: 41 years, Occu.: Labour,
R/o Village Tadpimpalgaon,
Tq. Kannad, Dist. Aurangabad

..APPELLANT

VERSUS

1. State of Maharashtra

2. XYZ

..RESPONDENTS

....
Mr. R.A. Jaiswal, Advocate for appellant
Ms. U.S. Bhosle, A.P.P. for respondent no.1 – State
Mr. G.S. Shinde, Advocate for respondent no.2(appointed through Legal Aid)
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : 05th DECEMBER, 2024
PRONOUNCED ON : 22nd JANUARY, 2025**

JUDGMENT (PER : R.G. AVACHAT, J.)

1. The challenge in this appeal is to a judgment of conviction and order of consequential sentence passed by Special Judge (POCSO), Aurangabad ('trial Court') in Special Case, No. 89 of 2017. Vide the impugned judgment and order, the appellant has been convicted for various offences and consequently sentenced to various terms of imprisonment with fine. The material part of the impugned order of conviction and consequential sentence runs as under :-

"1) Accused Anis Usman Sayyed is hereby convicted u/s 235(2) Cr.P.C. for the offences punishable u/sec.376(2), 324 of IPC and u/sec.4, 6, 8 & 12 of the POCSO Act.

- 2) *For the offence punishable u/sec.376(2) (i) (f) of IPC, he shall suffer imprisonment for life, which shall mean imprisonment for the remainder of his natural life and shall pay a fine of Rs.10,000/-(Rupees Ten Thousand only), in default to suffers S.I. for 12 month.*
- 3) *For the offence punishable u/sec.324 of IPC, he shall undergo R.I. for three years and shall pay a fine of Rs.3,000/-(Rupees Three Thousand only), in default to suffer S.I. for there months.*
- 4) *For the offence punishable u/sec.4 of the POCSO Act, he shall suffer imprisonment for life which shall mean imprisonment for the remainder of his natural life and shall pay a fine of Rs.10,000/-(Rupees Ten Thousand only), in default to suffer S.I. for twelve months.*
- 5) *For the offence punishable u/sec. 6 of the POCSO Act, he shall suffer he shall suffer imprisonment for life which shall mean imprisonment for the remainder of his natural life and shall pay a fine of Rs.20,000/-(Rupees Twenty Thousand only), in default to suffer S.I. for twenty four months.*
- 6) *For the offence punishable u/sec.8 of the POCSO Act, he shall undergo R.I. for five years and shall pay a fine of Rs.10,000/-(Rupees Ten Thousand only), in default to suffer S.I. for twelve months.*
- 7) *For the offence punishable u/sec.12 of the POCSO Act, he shall undergo R.I. for three years and shall pay a fine of Rs.5,000/-(Rupees Five Thousand only), in default to suffer S.I. for six months.*
- 8) *The fine amount which would be deposited by the accused for offence punishable u/sec.6(1) of POCSO Act, Rs.20,000/- (Rupees Twenty Thousand only) shall be paid to P.W.1 victim vide Section 6(2) of POCSO Act.*
- 9) *The accused shall pay total fine amount of Rs.58,000/- (Rupees Fifty Eight Thousand only).*
- 10) *The accused shall undergo all the sentences of imprisonment concurrently.*
- 11) *The period of detention of accused in jail be given as set off vide sec.428 Cr.P.C.”*

2. In short, the case of the prosecution was that the victim ('A') is the daughter of the appellant. She was in third standard at the relevant time.

She was around eight years of age. On 09th March, 2017, the appellant took her out on his bicycle under the pretext of purchasing footwear for her. It was little past afternoon. On way, he took her to a secluded place in the field. He inserted his finger in her private part. Then he took her to his friend's house. Before going there, he purchased mutton for dinner. The friend's wife cooked the same. As it was late in the night and the appellant had consumed liquor, he stayed overnight at the house of his friend. The victim was with him. In the night, the friend and his wife left the house for harvesting cotton. The appellant during the night committed peno-vaginal, peno-anal and peno-oral sex with his daughter. In the morning, he came back to his house with the victim. He then left the house. The victim related her woes to her mother ('M'). The same was shared with her grand-parents. They immediately approached Deogaon Rangari Police Station.

3. The victim's mother lodged the First Information Report ('F.I.R.') (Exh.73). Crime vide C.R. No. 36 of 2017 was registered for the offences punishable under Sections 376(2)(f)(i), 324 and under Sections 3, 4, 7, 8 and 12 of Protection of Children from Sexual Offences Act ('POCSO Act'). The victim was subjected to the medical examination.

4. During investigation, the appellant was arrested. Clothes on the person of both, the appellant and the victim were seized. Their blood samples were obtained. Besides simen and vaginal samples, etc. all the seized articles were sent to R.F.S.L., Aurangabad. Reports thereof were

received. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, the charge-sheet was filed against the appellant.

5. The trial Court framed the charge (Exh.12). The appellant pleaded not guilty. His defence was of false implication.

6. To bring home the charge, prosecution examined nine witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial Court convicted the appellant as stated above.

7. Learned counsel for the appellant would submit that the case was based on sole testimony of a child witness. The child was prone to tutoring. All was not well between the appellant and his wife and his in-laws. Possibility of the victim giving false evidence at their behest cannot be ruled out. Learned counsel initially urged for allowing the appeal in toto. In the alternative, he urged for reduction of sentence to minimum term of imprisonment provided for the relevant offences for which the appellant has been convicted.

8. Learned A.P.P. for State and learned counsel appointed through Legal Aid to represent Respondent No.2 – victim would, on the other hand, submit that it is a heinous offence. The one, who ought to have guarded the victim, made her prey of his lust. He breached all canons of morality and

humanity as well. Both of them took us through the evidence on record to contend the offence was duly proved. According to them, the appellant has been rightly convicted and sentenced as well. They urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence on record. Let us now advert thereto and appreciate the same.

10. The fact that the appellant is the biological father of the victim is not in dispute. The victim was in 3rd standard in the month of March 2017. She was then of eight years of age is also not in dispute. The victim was eleven years of age when her evidence was recorded. The trial Court, after having interacted with her, found her to be competent witness. The victim testified that she was residing alongwith the appellant (her father), mother and either siblings at village Denala. On 09th March, 2017, little past afternoon, the appellant took her out on his bicycle under the pretext of purchasing footwear for her. On way, he stopped the bicycle near a field. He inserted his finger in her private part. Then he took her to one house. A man and a woman were there. Before going there, he purchased mutton for dinner. The women cooked the same. They stayed there overnight. In the night, the man and woman left the house for harvesting cotton. The appellant during the night committed peno-vaginal, peno-anal and peno-oral sex with her. In the morning, they came back to their house. After the appellant went away, the victim related her woes to her mother (M).

11. We have perused the cross-examination of the victim. It was suggested that the appellant took her on bicycle. She was riding pillion at the material time. It was further suggested that the road by which they went was rough. It was further suggested that due to the same she received various jerks. This question goes a long way to indicate the appellant to have taken the victim with him on the given day. This suggestion was given to make out a case for reason for tearing hymen of the victim. On perusal of rest of the cross-examination we did not find anything to infer her to have been tutored or any reason to have axe to grind against her own biological father.

12. PW 2 – 'M' (mother of the victim) testified on the lines of the evidence of victim. She testified that the appellant brought the victim back home by 08:00 in the morning on the following day. He then went out. The victim then shared with her mother her ordeal. She related everything which has been testified by the victim in her testimony and referred to hereinabove. Nothing fruitful could be elicited through the cross-examination of this witness.

13. The evidence of victim is reinforced by the evidence of PW 7 - Rekha, wife of the appellant's friend – Sunil. She testified that the appellant alongwith his daughter (victim) had been to her residence in the evening on the fateful day. He had phoned his friend before coming to her residence. The appellant had brought mutton. She cooked the same. All of them took

dinner. The appellant had consumed alcohol. As his mouth was reeked, she asked the appellant not to go to his residence as it was late in the night. The appellant, therefore, stayed there overnight. She alongwith her husband left the house for plucking cotton balls (harvesting) in the field.

14. This evidence indicates that the appellant alongwith the victim stayed overnight at the residence of PW 7 - Rekha. The appellant committed heinous acts with his daughter. He even assaulted her with rolling pin and slaps as well when she shouted.

15. Medical examination of the appellant indicates him to be potent. The medical examination report of the victim has also been duly proved by the evidence of PW 5 – Dr. Megha. She testified to have medically screened the victim. The victim gave her history. The medical examination report is at Exhibit 41. The witness testified consonant with the medical report.

16. Perusal of the screening report of the victim indicates her to have given the medical officer history consonant with her case. The medical report reads thus :-

Labia Majora	Normal
Labia Minora	Evidence of laceration on left side of labia minora
Forchette and introitus	Edematous, redness, no bleeding
External urethral meatus	Normal
Hymen (only if relevant)	Fresh torn, edematous, swollen tender
Anus and Rectum	Anterior anal sphincter torn, no bleeding

In her opinion, there were signs of recent forceful penetration of vagina and annus. Sexual intercourse could not be ruled out.

17. In our opinion, the aforesaid evidence make out the offence/s against the appellant beyond reasonable doubt. The question is about quantum of sentence.

18. We are informed that a person convicted for offence of rape is not granted (not entitled) furlough. Meaning thereby, the appellant would be completing 10 years of imprisonment, without being out of jail for a single day. While the offence was committed, the same was punishable with rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life and shall also be liable to fine.

19. The record indicates that the appellant did not have means to pay the fine. The fine remained unpaid.

20. In case of ***Mallan @ Rajan Kani Vs. State of Kerala, Special Leave to Appeal (Cri.) No. 7003 of 2024***, the appellant therein was convicted for the offence punishable under Section 376 of the I.P.C. and sentenced to life imprisonment with fine of Rs.2 lakhs. The appellant therein was step father of the victim. He had raped the victim more than once. The Apex Court, therefore, did not interfere with the order of conviction. The

appellant therein was 40 years of age and had already undergone 8 years of sentence. His financial condition was such that he would not be able to pay the fine amount. Considering these facts and circumstances, the Apex Court reduced the quantum of sentence to 10 years, retaining the fine amount, but reducing the default sentence from 2 years to 1 year.

21. In case of ***Adu Ram Vs. Mukna & Ors., (2005) 10 SCC 597***, it has been observed thus :-

“Criminal Trial – Sentence – Proportionality – sentence should be commensurate with gravity of offence – Relevant factors to be taken into account while determining proper sentence – Held, no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment – Due consideration should be given to facts and circumstances of case, having regard to various factors including nature of offence and manner in which it was executed or committed, motive for the crime, conduct of accused and all other attendant circumstances – Aggravating and mitigating factors should be delicately balanced – Discretion in determination of quantum of punishment is required to be exercised judiciously and judicially.”

22. In case of Bavo alias Manubhai Ambalal Thakore Vs. State of Gujarat, AIR 2012 SC 979, 10 years R.I. was imposed for an offence of rape on a 7 year old girl. True, the appellant therein was 18-19 years of age at the relevant time.

23. The Division Bench of this Court in case of Pradip @ Golu Suresh Dandge Vs. State of Maharashtra, Criminal Appeal No. 419 of 2019, Dt. 02/12/2022, has observed :-

“24. Since the punishment prescribed for the offence punishable under Section 376(2)(i) of the Indian Penal Code is greater in degree than the punishment prescribed for the offence punishable under Sections 4 and 10 of the POCSO Act, the accused is to be sentenced for the offence punishable under Section 376(2)(i) of the Indian Penal Code. As observed above, at the relevant time the offence under Section 376(2)(i) was punishable with rigorous imprisonment for a term which shall not be less than 10 years, but, which may extend to imprisonment for life, which shall mean imprisonment for remainder of that persons natural life and shall also be liable to fine. The Section has put a minimum rider of imprisonment for 10 years, which may extend further. The Legislature purposefully left the judicial discretion to the Court to award punishment with a rider of minimum sentence. The purpose behind leaving discretion with the Court is to mould the sentence in accordance with the prevailing circumstances befitting to the crime and all other relevant factors.”

24. Considering the background of the appellant and keeping on mind the observations made in the aforesaid authorities, we are of the opinion that rigorous imprisonment for 14 years would meet the ends of justice. In this view of the matter, we partly allow the appeal in terms of following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Conviction of the appellant for the offences punishable under Sections 376(2)(i)(f) of the Indian Penal Code vide judgment and order dated 23rd March, 2021 passed by the Special Court (POCSO), Aurangabad in Special Case, No. 89 of 2017 is maintained. However, the sentence of life imprisonment for life till his natural death is reduced to rigorous imprisonment for fourteen (14) years. The quantum of amount of fine to stand unaltered. In default of payment of fine, the appellant shall undergo simple imprisonment for one (01) month.

(III) Conviction of the appellant for the offences punishable under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 vide the impugned judgment and order is maintained. However, quantum of sentence imposed against the appellant for those offences stands withdrawn, as no separate sentence is required.

(IV) Rest of the terms of the impugned order to stand unaltered.

(V) Fees of Mr. Ganesh A. Shinde, learned counsel appointed through Legal Aid to represent Respondent No.2 – victim, is quantified to Rs.10,000/- (Rupees Ten Thousand).

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)