



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1004 OF 2024
WITH
CRIMINAL APPLICATION NO. 2850 OF 2025

Satish Dilip Khandagale (Khandale)
Age 33 years, Occ. Agriculture
R/o. Lakha, Tq. Kaij
District Beed

...Appellant

Versus

1. The State of Maharashtra
Through Kaij Police Station
Tq. Kaij, District Beed

2. XYZ – Victim

...Respondents

Advocate for Appellant : Ms. Ashwini A. Lomte
APP for Respondents: Mr. P.P. Dawalkar
Advocate for Respondents : Ms. Rani Bharuka-Bora

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 2nd SEPTEMBER, 2025.

ORAL JUDGMENT:-

1. This appeal is preferred against the judgment and order of conviction dated 08.11.2024 passed by the learned Special Judge, Kaij, in Special case No. 11 of 2023, thereby convicting and sentencing the appellant, as per the charge given below:-

Sr.No.	Conviction	Sentence
1	Section 363 of I.P.C.	R.I. for one year and fine of Rs.5000/-
2	Section 366-A of I.P.C.	R.I. for five years and fine of Rs.5000/-
3	Section 4 of POCSO Act	R.I. for Ten years and fine of Rs.5000/-
4	Section 6 of POCSO Act	R.I. for Twenty years and fine of Rs.50,000/-

All sentences are directed to run concurrently. It is further directed the the fine amount of Rs.50,000/- be paid to the victim for her rehabilitation.

2. Heard learned advocates for the respective parties. Learned advocate for the appellant submitted that the fine amount is deposited.

3. **Admit.** On admission, learned advocates for respective parties waive service of notice. By consent of the parties, the matter is taken up for final disposal forthwith.

The prosecution case, in brief, is as under:-

4. The father of the victim had lodged a report alleging that the victim is his 17 years old daughter at the time of incident. The appellant is the son of his sister, who is married. The appellant

eloped with his daughter and committed sexual intercourse at the side of river at village Lakha. For that he was talking with her sweetly and also gave proposal of marriage to her. The incident took place 14 months prior to lodging of the report. He also fled away with the victim girl on 14.01.2018. According to the victim, the accused pulled her hairs and took her on motor cycle forcibly. He also threatened her not to shout and thereafter committed rape on her in the house of the maternal aunt of victim. Such sexual intercourse continued for some days. Thereafter both of them were residing in the house of a Deepak Waghmare for 2 to 2½ months. Their sexual intercourse continued and thereafter the report was lodged.

5. Learned advocate for the appellant pointed out the grounds raised in the appeal and submitted that the victim was more than 18 years old. Her age is not proved properly. Learned advocate pointed out Exh.51 i.e. the school leaving certificate of the victim, which shows her date of birth as 18.2.2000. She also pointed out the statement of father of the victim, in which he has admitted that on the date of incident, the marriage of his elder daughter Sarika was performed and she is elder daughter and the victim is second daughter. Sarika was more than 18 years old and therefore, her marriage was performed. He further admitted that both these daughters are twins and the marriage of first daughter was already

performed, prior to one year of the incident in question. Learned advocate for the appellant further pointed out the deposition of P.W.5 in which he has admitted that he cannot tell on what basis entry on document Exh.51 regarding birth date is made. Learned advocate for the appellant further submitted that at the time of incident, the victim was more than 18 years old and therefore, original Birth Register is either in the office of the Municipal Council or in the Village Panchayat is not filed which is a public document having evidentiary value. He submitted that there is no such presumptive value of the document Exh.51 i.e. school leaving certificate. It is lastly prayed to acquit the appellant by setting aside the impugned judgment and order.

6. Learned A.P.P. for the State and learned advocate for respondent No.2 strongly opposed the appeal and submitted that in the impugned judgment, more particularly in paras 19 and 20 the learned Special Judge has rightly concluded that the age of the victim is not disputed, which is proved as per document at Exh.51. The evidence of P.Ws. 2, 3 and 5 is sufficient to conclude that the Exh.50 proved and as per Exh.51 the victim was 17 years old at the time of incident. It is therefore, prayed to dismiss the appeal as the presumption under Sections 29 and 30 of the POCSO Act attracts and it is not rebutted.

7. Perused the impugned judgment as well as the depositions of witnesses and the birth certificate of the victim girl. For proving the age of the victim, it is not established by the prosecution that the birth date of the victim girl is not registered either with the Municipal Council or Village Panchayat. It is also not established by the prosecution that on what basis such birth i.e. school leaving certificate at Exh.51 was effected at the time of admission of the victim girl in the school. The date of admission is 12.6.2006. However, in absence of evidence of birth certificate, the presumption under Section 79 of Indian Evidence Act cannot attract to the Exh.51 to establish the age of the victim girl that she was below 18 years of age at the time of incident.

8. In the deposition of the informant-father of the victim he had admitted and clarified that the victim girl and alongwith another daughter are his twins. At the time of marriage of first daughter i.e. one of the twins of victim girl, she was 18 years of age and the marriage was performed one year prior to the incident. Further, P.W.5, the Principal of the School who proved the Exh.51 also admitted that he cannot say on what basis the birth date is mentioned in the said school leaving certificate. How and on what basis it is entered is not known to him. If the source of that information is a

public document i.e. birth certificate issued by the Village Panchayat or Municipal Council, then Exh.51 would have been relied upon. This aspect was not considered by the trial court. If the age of the victim is not proved that she was below 18 years, the POCSO Act cannot be applied. The presumption under section 29 and 30 of the POCSO Act cannot be made applicable.

9. The victim in her deposition, particularly during cross examination admitted that she had given her statement before the police because of pressure of her parents. In the statement of victim girl she has not stated that the appellant committed sexual intercourse forcibly against her will. On the contrary, at the time of those incidents, she had not made any hue and cry and also not opposed to the said act of rape. Thus, essential ingredients of section 376(2)(n) of I.P.C. are not proved. The same is case regarding offences punishable under Sections 363, 366-A of I.P.C.. For attracting those sections, essential ingredients of offences under the aforesaid sections i.e. force is not proved. Thus, the essential ingredients of Sections 363, 366-A, 376(2)(N) of I.P.C. and Under sections 4 and 6 of the POCSO Act are not established against the appellant. The admissions of the informant in his cross examination were not considered properly by the learned trial court while concluding that victim is child and below the age of 18 years. The

learned trial court erred in this regard and wrongly held in para Nos. 19 and 20 that age of the victim is not disputed on the part of defence. Hence, interference is warranted in the impugned judgment. Therefore, the impugned judgment and award deserves to be quashed and set aside. Hence, the following order:-

O R D E R

- I Criminal appeal is allowed.
 - II. The judgment and order of conviction dated 8.11.2024 passed by the learned Special Judge, Kaij, in Special case No. 11 of 2023, is quashed and set aside.
 - III. The appellant accused is hereby acquitted of all the charges. The appellant accused shall be set free forthwith if not required in connection with any other case.
 - IV. The fine amount, with accrued interest, if any, be paid to the victim within six weeks from today.
10. Since Ms. Rani Bharuka-Bora, learned advocate is appointed to prosecute the cause of respondent No.2, her fees be paid as per the schedule of fees maintained by the High Court Legal

Services, Sub-Committee, Aurangabad.

11. In view of the disposal of this appeal, nothing survives for consideration in criminal application No. 2850 of 2025 and the same stands disposed of.

(SANJAY A. DESHMUKH, J.)

rlj/