



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 442 OF 2025

XYZ
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Appellant : Mr. N. N. Bhagwat
APP for Respondents-State : Mr. S. J. Salgare
Advocate for Respondents No. 2 and 3 : Mr. P. P. More

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**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.**

Dated : August 25, 2025

ORDER :-

1. By this appeal under Section 373 of Code of Criminal Procedure (CrPC) read with Section 413 of Bharitya Nagarik Suraksha Sanhita (BNSS), the victim / appellant has challenged the judgment and order of acquittal passed by the learned Extra Joint District Judge and Additional Sessions Judge (POCSO), Jalna in Special Case No. 290 of 2021. Both the accused were charged under Section 363 read with 34 of Indian Penal Code (IPC) and Section 376(n) of IPC and under Sections 3, 6 read with 5(1) and 16 read with 17 of the Protection of Children From Sexual Offences (POCSO) Act .

2. It is the case of the prosecution that PW1 / mother of the victim lodged the FIR alleging that victim was studying in 9th standard at DNV school at their village Dahiphal Khandare, Tq. Mantha, Dist. Jalna. On 17.08.2021 at about 1 pm, when the informant / PW1 returned to home from her job, her daughter did not return from the school even after school time. Upon inquiry, victim's friend told that at about 10.25 am, Rahul / accused No. 1 who said to be victim's relative and his friend Vitthal / accused No. 2 both near came to school and called the victim for taking tea and the victim went alongwith them on his motorcycle and she did not return to school. Since the victim could not be found after taking search, FIR was lodged by PW1 / mother and offence under Section 363 of IPC was registered against both the accused persons. On 28.08.2021, victim's statement was recorded who came alongwith PW1 / mother to the Police Station. She has stated that both the accused persons took her on motorcycle first to Sindhkhed Raja and then accused No. 1 took her to Pune and Mumbai. During this period from 22.08.2021 to 27.08.2021, Rahul / accused No. 1 maintained physical relations with her by giving her promise of marriage.

3. Prosecution has examined 7 (seven) witnesses in

support of its case and the Trial Court has acquitted the accused persons. Hence, the appeal.

4. Heard learned Advocate for the appellant, learned AGP for the State and learned Advocate for the respondents No. 2 and 3. / accused.

5. Learned Advocate for the appellant strenuously submits that though the age of the victim was proved, the Trial Court has erroneously held that prosecution has failed to prove the age. He submits that there is sufficient medical evidence on record to convict the accused No. 1 under Section 376 of IPC and under the POCSO Act. This aspect is not properly appreciated by the Trial Court.

6. Learned Advocate for the accused on the other hand supported the impugned judgment and order of acquittal.

7. Learned APP submits that prosecution has proved the fact that the victim was minor at the relevant time.

8. Perused the record. On perusal of the record, it appears

that the prosecution to prove the fact that the victim was minor at the relevant time, has relied on the evidence of PW1 - mother and PW7 - Headmistress. On going through the evidence, it is clear that there is discrepancy in the evidence of PW1 and PW7 in respect of as to who give the information about the date of birth of the victim at the time of her admission in the school. The Trial Court, therefore, has rightly given benefit of doubt to the accused and has observed that prosecution has failed to prove that at that relevant time, victim was minor.

9. Prosecution also relied on the Radiological Bone Age Assessment Report (Exh. 36) of the victim which shows that the age of victim was between 15 to 16 years. It is well settled that there is always error of margin of 2 years in the determination of age by ossification test and the benefit of the same needs to be given to the accused. The victim, therefore, appears to be at the age of discretion.

10. The medical evidence in respect of alleged commission of rape is also doubtful. In the evidence, Medical Officer has stated that there was no sign of any recent sexual intercourse. Therefore, the prosecution has failed to prove the charge under of commission

of rape and sexual assault against the accused. The Trial Court has rightly appreciated the evidence on record and has acquitted the accused by a well reasoned order. There is no illegality or perversity in the findings recorded by the Trial Court. This is not a fit case to interfere in the impugned judgment and order of acquittal. The appeal is, therefore, dismissed.

(SANDIPKUMAR C. MORE, J.) (NITIN B. SURYAWANSHI, J.)

Omkar Joshi