



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.362 OF 2024
WITH
CRIMINAL APPLICATION NO.3152 OF 2025

Shaikh Musa Shaikh Baba,
Age: 45 years, Occu. Agri.,
R/o. Deogaon, Tal – Badnapur,
District – Jalna.

.... Appellant

VERSUS

1. The State of Maharashtra
(Through Badnapur Police Station,
Tq. Badnapur, Dist. Jalna.

2. XYZ

(The name and address of Respondent No.2 is given in Seal envelop)

..... Respondents

Appearance :

Mr. Samir S. Shaikh a/w Mr. Tousif S. Shaikh, Advocate for the Appellant.

Ms. M. L. Sangit, APP for Respondent No.1.

Mr. K. N. Shaikh, Advocate for Respondent No.2.

CORAM : NEERAJ P. DHOTE, J.

Reserved On : 11th December, 2025

Pronounced On : 16th December, 2025

JUDGMENT:

1. This Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') is directed against the Judgment and Order dated 28/08/2023, passed by the Extra Joint District Judge and the learned

Additional Sessions Judge (POCSO), Jalna, District Jalna (hereinafter referred to as 'the learned Trial Court'), in Special Case No.78/2020, convicting and sentencing the Appellant as follows :

- "(1) *Accused Shaik Musa S/o Shaikh Baba is hereby convicted under U/s 235(2) of Cr.P.C. for the offence punishable U/s 10 R/w 9, of the POCSO Act, and is sentenced to suffer rigorous imprisonment (R.I.) for Five (5) years & to pay fine of Rs.10,000/- (Rs. Ten Thousand only), and in default to pay a fine amount, to undergo simple imprisonment (S.I.) for Six (6) months; &*
- 2) *As such, the accused is hereby convicted under U/s 235(2) of Cr.P.C. for the offence punishable U/s 8 R/w 7 of the POCSO Act, and is sentenced to suffer rigorous imprisonment (R.I.) for Three (3) years & to pay fine of Rs.3,000/- (Rs.Three Thousand only), and in default to pay a fine amount, to undergo simple imprisonment (S.I.) for Three (3) months; &*
- (3) *As such, the accused is also convicted U/s 235(2) of Cr.P.C. for the offence punishable U/s 12 R/w 11 of the POCSO Act and is sentenced to suffer R.I. for One (1) year to pay fine of Rs.1000/- (Rs. One Thousand only) & in default to pay fine amount, to undergo S.I. for Two(2) months.*
- (4) *The aforesaid sentences to run concurrently.*
- (5)
- (6)
- (7)
- (8)
- (9)

2. The case of Prosecution as revealed from the Police Report is that, the victim was a minor daughter of the Informant. The Appellant is the relative and the neighbourer. Fifteen (15) days prior to lodging of the report, the victim came

weeping to the Informant and told her that, the Appellant touched her private part and gave his private part in her hand. The Informant told the incident to her family members; however, it was decided not to lodge the report with the Police. One day before lodging the report, the victim told the Informant that, the Appellant was calling her and was saying that, he will kill her. At that time, the Informant came out of the house and noticed that, the Appellant was calling the victim to his house by gestures. When the Informant questioned him, quarrel took place between them. Eventually, the victim's mother approached the Badnapur Police Station and lodged the report against the Appellant and Crime bearing No.91/2020 came to be registered for the offence punishable under Sections 354, 354-A(1)(i), 506 and 509 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and for the offence punishable under Sections 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act').

3. During the investigation, the Spot Panchnama was carried out. The statement of the victim came to be recorded. The statement of other witnesses were recorded. The

documents in respect of date of birth of the victim came to be collected. On completion of investigation, the Appellant came to be charge-sheeted for the above-referred Sections of IPC and POCSO.

4. On committal, the learned Trial Court framed the Charge against the Appellant below Exhibit – 10 for the offence punishable under Sections 354, 354-A(i) and 506 of IPC and for the offence punishable under Sections 8, 10 and 12 of the POCSO Act. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, Prosecution examined the following witnesses:

- (i) PW – 1 (Rashid Pathan), the Spot Panch;
- (ii) PW – 2, the victim's father;
- (iii) PW – 3, the victim's mother ;
- (iv) PW – 4, the victim ;
- (v) PW – 5 (Gajanan Jarwal), the Police Officer, who registered the Crime ;
- (vi) PW – 6 (Bhanudas Gaikwad), the Gram Sevak ;
- (vii) PW – 7 (Sudam Bhagwat), Investigating Officer;

4.1. In the evidence of the above-referred witnesses, the relevant documents are brought on record by the Prosecution. On submitting the evidence closure pursis by

the Prosecution, the learned Trial Court recorded the statement of the Appellant under Section 313(1)(b) of Cr.P.C. The Appellant denied the case and evidence of the Prosecution. On appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order.

5. It is submitted by the learned Advocate for the Appellant that, the terms between the family of the victim and the Appellant's family were strained. They were not on talking terms. One day prior the lodging of report by the Informant, the wife of Appellant had lodged the report against the family members of the victim, and therefore, as the counterblast, false report was lodged against the Appellant. The evidence on record in respect of the incident was vague as no specific date and time is forthcoming. The spot of incident was shown by the mother. The evidence of the victim show that, she was not the witness of sterling quality. There is inconsistency in the evidence of the victim's mother and victim's father. There was inordinate delay in lodging the report. The victim was subjected to tutoring and her evidence was tutored. The learned Trial Court committed an error in passing the impugned Judgment and Order by not considering the vital aspects of delay, enmity

between the parties, and possibility of tutoring the victim, and the Appeal be allowed.

6. It is submitted by the learned APP for Respondent No.1 – State that, the Prosecution proved that, the victim was a child. The delay in lodging the report was explained. The testimony of the material witnesses was consistent and corroborated by their previous statement. The suggestions of false implication are denied by the Prosecution witnesses. No fault can be found with the impugned Judgment and Order. The Appeal be dismissed.

7. It is submitted by the learned Advocate for Respondent No.2 – victim that, it was proved that, the victim was a child. All the witnesses supported the case of Prosecution. The testimony of the victim was clear, and nothing came in the cross-examination to show that, she was tutored. The testimony was consistent with her previous statement. The previous complaint before the report was between father-in-law of the victim and father of the victim. The presumption under Sections 29 and 30 of the POCSO Act comes into play. The defence was not proved. The sole testimony of the victim was sufficient and the Appeal be dismissed.

8. As regards the date of birth and the age of victim is concerned, the Prosecution is relying on the evidence of PW – 6 (Bhanudas Gaikwad). His evidence show that, he was a Gram Sevak since 1996 of Village - Devgaon. He was the custodian of birth and death register. As per the record of the Gram Panchayat, the date of birth of the victim was 14/07/2012. The Exhibit – 35 (birth certificate) was brought on record in the evidence of this witness. His evidence show that, on the basis of entry in the register of birth and death, he used to issue the certificate. He identified his signature and the contents of Exhibit – 35 (birth certificate). His evidence show that, the birth certificate was not collected by the Police. His cross-examination show that, the Exhibit – 35 (birth certificate) was issued on 13/03/2020 i.e. on the date of lodging the report. The evidence further show that, birth certificate was prepared at the request of the victim's father. However, his evidence that, the above-referred date of birth of the victim was registered in the record on 16/07/2012 remained unshaken. Therefore, there is no hesitation to observe that, through the evidence of this witness, the Prosecution proved the date of birth of the victim as 14/07/2012 as recorded in the Gram Panchayat. In addition to the above, the Informant, who is the

victim's mother, gave the date of birth of victim as 14/07/2012, which corroborate the date of birth of the victim mentioned in the Gram Panchayat record. With this evidence on record, the Prosecution has proved the date of birth of the victim. Undisputedly, the Crime was registered on 13/03/2020, as seen from the evidence on record. From this evidence on record, it is clearly established that, the victim was child at the relevant time, i.e. on the lodging of the report, which was in respect of previous incident.

9. What is clear from the evidence on record particularly of the victim's father, who is PW – 2, is that, the relations between his family and the Appellant were strained. Once the Appellant filed report in the Police Station against him, against his wife and against his father. It has further come in the evidence of this witness that, on 11/03/2020, i.e. two days prior to the registration of the Crime against the Appellant, the wife of the Appellant, namely, Bilqis filed report with the Badnapur Police Station in respect of quarrel. The Exhibit – 83 is a Non Cognizable Report (for short 'NC') by Shaikh Bilqis Shaikh Musa against the victim's father, victim's grandfather and victim's uncle. The endorsement on the said

Exhibit (Page No. 113 of the paper-book) show that, it was exhibited as per order on Exhibit – 80. From the evidence of the victim's father, coupled with the said NC, it is clear that, the relations between the family of the victim and the family of the Appellant were not cordial, and they were not on talking and visiting terms.

10. The victim's mother, who lodged the report with the Police, is examined as PW – 3. Her evidence show that, she approached the Police and lodged the report below Exhibit – 22. Undisputedly, she is not the eyewitness to the incident fifteen (15) days prior to lodging the report. According to her, on 12th day at about 10:00 a.m., while she was preparing the meal and the victim was playing outside the house, the victim told her that, the Appellant was calling her and further informed that, the Appellant threatened her to cut down and when she came out of her house, she saw the Appellant making indecent gestures towards the victim. She further deposed that, when she questioned the Appellant, he abused her and after arrival of her husband i.e. PW – 2, she informed about the same to him. However, the evidence of PW – 2 (father of victim) do not show as to what was the incident which took

place for second time. He just deposed that, after knowing the incident for second time, the report was lodged. Therefore, it is clear that, the testimony of the Informant in respect of 12th day incident, there was no corroboration from PW – 2. Further, she denied that, on 11th, the wife of Appellant filed report against her family members. This show that, the testimony of this PW – 3 (Informant) cannot be accepted as it is. When the father of the victim admitted about lodging of report by the Appellant's wife against his family members, which was corroborated by Exhibit – 83 (NC), the Informant denies about the same. This go to show that, the Informant cannot be categorized as a truthful witness, and her testimony is required to be considered with great care, caution, and corroboration.

11. The star witness of the Prosecution is the victim, who is examined as PW – 4. Though the note of the learned Trial Court above her testimony show that, some preliminary questions were put to her to ascertain whether she understood the importance of oath, those questions are not reflected. The victim deposed that, the Appellant used to put his hand on her private part and when she used to object, the Appellant used to threaten her. According to her, the incident occurred fifteen (15) days prior to its disclosure to the Police. Her evidence in

cross-examination show that, the incident of touching her private part occurred once. Her further evidence show that, the Appellant was residing with his family members. The incident of indecent behaviour occurred two (02) to three (03) times. It is needless to state that, the testimony of the child is required to be considered with great care and caution, as the child is prone to tutoring. The evidence of the victim show that, her mother accompanied her to the Police Station and was present with her and her father was outside. The Informant's evidence show that, two (02) to three (03) days after filing the report, the victim was taken to the Police Station by her and her husband. The evidence of PW - 7 (Investigating Officer) show that, the victim was brought to the Police Station on the next day of registration of the Crime with her parents and her statement was recorded in presence of her mother. From this evidence on record, the possibility of tutoring the victim cannot be ruled out. The suggestion is given in cross-examination to the victim that, she deposed falsely or had tutored by her parents. This possibility cannot be ruled out more so in view of sour relations between both the sides.

12. Undisputedly, there is fifteen (15) days delay in lodging the report to the Police. As per the victim's mother, to

avoid disrepute to the family, they did not lodge the report. However, strangely, immediately after the wife of the Appellant lodged the Non-Cognizable Report (Exhibit – 83) against the Informant's husband, father-in-law and brother-in-law, the report is lodged by the Informant against the Appellant. This aspect of the matter assumes importance and makes one to see the case of Prosecution with doubt. Further, there is inconsistency in the evidence of PW – 1 (Panch Witness) and PW – 7 (Investigating Officer) in respect of the Spot Panchnama. According to the Panch Witness, the spot was shown by the victim, whereas the evidence of the Investigating Officer show that, the spot was shown by the victim's mother and not by the victim. Considering the enmity between the family of the victim and the family of the Appellant, inordinate delay in lodging the report with the Police and evidence indicating possibility of tutoring the child, the Prosecution's case is required to be seen with doubt and it is not possible to maintain the conviction and sentence on the evidence available on record. There cannot be any dispute that, the victim's testimony can form the sole basis for proving the Charge, provided the same is of sterling quality and free of any doubt in respect of tutoring. It is not so in the case at hand. Both the

sides were at loggerheads. The lodging of complaint by the Appellant's wife against the husband, father-in-law and brother-in-law of the Informant preceded the lodging of report against the Appellant.

13. The learned Advocate for the Appellant tenders across the bar the certified copies from the School where the victim was studying to show that, in the month of February and March – 2020, the victim attended the School on all days and so the presence of victim in the house of Appellant is not possible. The same documents were not the part and parcel of the evidence recorded before the learned Trial Court. Just tendering the same across the bar at this stage is of no help.

14. In view of the above discussion, the impugned Judgment and Order convicting and sentencing the Appellant requires interference. Hence, the following order:

ORDER

[I] The Appeal is allowed.

[II] The conviction and sentence recorded by the learned Trial Court against the Appellant, in Special Case No.78/2020 by the Judgment and Order dated 28/08/2023, is hereby quashed and set aside.

[III] The Appellant is acquitted for the offences for which he was charged and convicted by the learned Trial Court by the impugned Judgment and Order.

[IV] The Appellant is behind the bars. He be released forthwith if not required in any other offence.

[V] The fine amount paid by the Appellant pursuant to the impugned Judgment and Order be refunded to him.

[VI] The Muddemal Articles be dealt with as per the operative order of the impugned Judgment.

[VII] The Record and Proceedings be sent back to the learned Trial Court.

[VIII] Appeal stands disposed off accordingly.

[IX] In view of disposal of Appeal, Criminal Application No.3152/2025 stands disposed.

[NEERAJ P. DHOTE, J.]

Sameer/December -2025