

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.995 OF 2024
WITH
INTERIM APPLICATION NO.186 OF 2025
IN
CRIMINAL APPEAL NO.995 OF 2024**

Dnyaneshwar @ Don Vishnu Deshmukh Appellant

versus

The State of Maharashtra & Anr. Respondents

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- Mr. Ritesh Thobde a/w Mr. Darshan Singh Rajpurohit a/w Zubi Ansari & Mr. Changdev Shingade, Advocate for Appellant.
- Mr. Shaumil Deb, Advocate for Respondent No.2.
- Mr. Shreekant H. Yadav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th JULY, 2025

JUDGMENT :

1. The Appellant has challenged the Judgment and Order dated 20/01/2021 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.332/2017. By the impugned Judgment and Order, the Appellant was convicted as under;

- (i) The Appellant was convicted for commission of offence punishable u/s 4 of the Protection of

Children from Sexual Offences Act, 2012 and was sentenced to suffer rigorous imprisonment for 12 years and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer simple imprisonment for 3 months.

- (ii) He was also convicted for commission of offence punishable u/s 376 of the Indian Penal Code. But in view of section 42 of the Protection of Children from Sexual Offences Act, 2012, no separate sentence was imposed on him for that offence.
- (iii) He was convicted for commission of offence punishable u/s 354 of the Indian Penal Code and was sentenced to suffer simple imprisonment for 1 year and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer simple imprisonment for 1 month.
- (iv) All the substantive sentences were directed to run concurrently.
- (v) The Appellant was given set off u/s 428 of Cr.PC.

The Appellant was in custody since 26/11/2017 till today.

2. Heard Mr. Ritesh Thobde, learned counsel for the Appellant, Mr. Shaumil Deb, learned counsel for the Respondent No.2 and Mr. Shreekant H. Yadav, learned APP for the State.

3. The prosecution case is that the victim in this case was about 8 years of age when the incident took place in September 2017. Her date of birth was 10/09/2009. On 25/09/2017, she had gone to a public toilet, but she had requested her sister to accompany her because she was scared of the Appellant as he used to follow her. At the time of incident, the Appellant entered the ladies section of the public toilet and committed offence of outraging her modesty. She raised shouts. Her sister, who was nearby, came there. Looking at her sister, the Appellant ran away. Both the sisters came home. Her mother realized that something was wrong. She made enquiries with the victim. At that time, the victim narrated the incident that had taken place on 25/09/2017. She also informed that one month prior to that incident at the same public toilet, he had committed forcible sexual assault on her. The mother of the victim informed the

incident to her husband and brother. All of them went to the police station and lodged the FIR. The FIR was registered at Sadar Bazar Police Station vide the C.R.No.561/2017. The Appellant was arrested and the investigation was conducted. The victim was taken for medical examination. Statements of various witnesses were recorded and finally the charge-sheet was filed. The case was tried before the Sessions Judge as mentioned earlier. During the trial, the prosecution examined 5 witnesses, including the victim, her sister, her mother, the Police Officers and the Medical Officer.

4. The defence of the Appellant was specific. According to him, the mother of the victim had borrowed Rs.10,000/- from him. The Appellant's daughter was admitted to Civil Hospital. She was serious. Therefore, on 25/09/2017, he had gone to the house of the victim and had asked for his amount from her mother. But they had assaulted him. He then returned to Civil Hospital. Within 15 minutes he received a call from the maternal uncle of the victim. He called the Appellant near civil chowk. The victim's maternal uncle then forcibly brought him to the

police station. The Appellant came to know that the rape case was filed against him. According to him, he was falsely implicated to avoid payment of Rs.10,000/-.

5. The learned Judge disbelieved the defence raised by the Appellant. He relied on the evidence of the victim, her mother and the sister. Learned judge discussed the medical evidence and the absence of injury. But held that the ocular evidence was more reliable. He convicted and sentenced the Appellant.

6. The victim is the most important witness in this case. She was examined as PW.2. After putting initial questions to get her confidence, the learned Judge then recorded her evidence. She stated that on the date of incident, she had missed her school bus and she and her sister were at home. She wanted to go to the public washroom. She requested her sister to accompany her because she was feeling scared. PW.2 was asked as to what was the reason that she was scared. She answered that the Appellant used to follow her and therefore she was scared. According to her, he used to follow her whenever she

went to the washroom. She further stated that she told everything to her sister, who told her to go ahead. The Appellant was following her. She went inside the ladies washroom. The Appellant followed her there. The Appellant then hugged her. She screamed. Her sister heard her shouts and came there. The Appellant ran away as he saw the victim's sister. Then they came back home. She was frightened. Her mother asked her why she was looking frightened. She narrated the incident to her mother. She had added that in the past also the Appellant had followed her to the washroom. At that time, he had inserted his private parts in her private parts and had told her not to tell about it to anybody. He had threatened that he would kill her if she told about that to anybody. She had pains in her private part. But she did not tell anybody. At that time, when she had shouted, allegedly one person had come to rescue her. She was asked as to when that incident had happened. She answered that those were the days of Laxmi. The learned Judge has written that the witness wanted to say that it was during Gauri Ganpati days. Her mother then called the victim's maternal uncle and lodged the complaint. The police recorded her statement in the hospital.

In the cross-examination she stated that the house of the Appellant was situated after a few houses from her house. She denied the suggestion that Appellant's family used to quarrel with her family. She denied the suggestion that her mother had borrowed money from the Appellant. The Appellant was having Eggs snacks stall. She admitted that the public toilet was always crowded but denied that the people used to go there to wash clothes. She was suggested that no such incident of rape had taken place. She denied that suggestion. Then she was asked certain questions with reference to her statement recorded in the Court.

7. P.W.1 is the mother of P.W.2. She has deposed that the date of birth of the P.W.2 was 10/09/2009. She produced the birth certificate at Ex.19. She deposed that on 25/09/2017, when she returned home at 02.15 p.m. from her tailoring class, at that time, her daughters were in the house in school uniform. She found that the victim was frightened. She asked her about it. After much pursuation, she narrated the incident as she had

deposed before the Court. On further questions asked by the mother by taking her in confidence she narrated the incident that had taken place about one month prior to that when the Appellant had committed rape on her. P.W.1 then called her husband and brother. They went to the police station and lodged their FIR. Initially, they had gone to Gurunanak Police Chowky. Then they went to Sadar Bazar Police Station. Therefore, the complaint was lodged on the next date i.e. 26/09/2017 at 05.54 p.m. vide the C.R.No.561/2017. It is produced on record at Ex.20. Her FIR substantially corroborates her version. P.W.1's statement was also recorded u/s 164 of Cr.P.C. It was produced on record at Ex.21.

In her cross-examination she stated that it was a densely populated area and the public toilets were separate for men and women. They were opposite each other. There used to be crowd in both the toilets. She further stated that if someone talks in one toilet it can be heard in the adjoining houses. The house of the Appellant and her house was separated by 2 to 3 houses. She admitted that they had arranged one programme

for her elder daughter and she denied the suggestion that she had spent Rs.20,000/- for that programme, out of which she had borrowed Rs.10,000/- from the Appellant. But she admitted that the programme was arranged by borrowing money. She denied the suggestion that the Appellant's family always used to abuse her. She also denied the suggestion that the Appellant was demanding money back from her. She denied the suggestion that because of the strained relationship, she had lodged this false FIR against the Appellant. She further deposed that when they went to the hospital, P.W.2 was admitted to the hospital for two days as indoor patient. The birth certificate is produced on record at Ex.19.

8. P.W.3 is the sister of the victim. She has deposed that on 25/09/2017, they had missed their school bus. They were in the house. P.W.2 wanted to go to washroom, but she was scared. She informed this witness that she was scared of the Appellant as he used to follow her whenever she went to the washroom. After that, the P.W.2 went to the washroom. P.W.3 followed her and was hiding herself. She heard the scream of the victim. She

went there. She saw that the Appellant was getting physical with the victim. He had held her, but when he saw P.W.3, he ran away. After some time, their mother came home. Initially, they did not tell her anything, but then the victim told her about the present incident and about the past incident as well. She identified the Appellant on the video conferencing.

In the cross-examination, she could not explain as to why her police statement did not mention that the Appellant had caught the victim's hand and that she was screaming. She also could not assign any reason as to why her statement did not mention that the victim had told their mother that the Appellant was doing dirty things. In the further cross-examination she stated that on the day of incident and at the place of the incident, there was nobody except she and her sister. She did not feel like telling this incident to other persons. She denied the suggestion that the false case is lodged because her mother had borrowed money from the Appellant, which they did not want to repay.

9. P.W.4 PSI Kaladagi, had conducted the investigation. She deposed about the steps taken in the investigation. She had conducted the Spot Panchanama. The photographs of the site were taken. Sketch was prepared. The Appellant was arrested vide the arrest Panchanama Ex.15. The clothes of the victim and Appellant were seized. On 29/09/2017, she recorded the victim's statement. She obtained her birth certificate. The articles were sent to FSL, Pune. She arranged for recording statements of the witnesses u/s 164 of Cr.P.C. She obtained medical papers regarding the victim and the accused and after completion of the investigation, filed the charge-sheet.

In the cross-examination, she stated that she herself had made enquiries with the Doctor when the victim was taken to the hospital for treatment. She admitted that the victim was not having any pain in the stomach at that time. She denied the suggestion that a false charge-sheet was filed.

10. P.W.5 Dr. Sathe was the Medical Officer, who had examined the victim. She deposed that the victim was brought

to Civil Hospital on 26/09/2017. Her mother narrated the history. The victim disclosed the history of forcible sexual assault on her by the Appellant one month back. During examination, she did not find any injury. The hymen was intact. She opined that the possibility of sexual assault cannot be ruled out. However, the final opinion was kept reserved till arrival of C.A. report. The medical papers were produced on record at Ex.30.

In the cross-examination she admitted that the hymen was intact. She further admitted that in case of penetration, the hymen can be torn and in case of a girl aged about 9 years, there would be swelling on the private part and injuries to her private parts, if rape is committed. She admitted that at the time of medical examination, no sign of rape was found on local examination.

11. The medical examination papers are produced on record Ex.30. They support the evidence given by the P.W.5.

This in short is the evidence led by the prosecution.

12. Learned counsel for the Appellant made the following submissions :

P.W.2 is not a trustworthy and reliable witness. Her evidence is not free from doubt. She has not given details of date and time when the alleged incident of rape had taken place. The incident dated 25/09/2017 is also not proved beyond reasonable doubt. The evidence shows that the alleged incident had taken place in a public toilet, which was always crowded and therefore it was not possible that the Appellant could have committed this Act without any other person noticing it. He submitted that the conduct of the victim is also not natural. If the incident of rape had taken place one month prior to the incident dated 25/09/2017, she would have, immediately or at least during the period of one month, told her mother about the serious incident which had occurred with her. He submitted that the medical evidence, in fact, supports the case of the defence that no such incident had taken place. There were absolutely no signs of injuries. The hymen was intact. There is no

corroborative piece of evidence in this case at all. He submitted that the evidence shows that if anybody shouts or makes noise in the toilet it can be heard in the adjoining houses. Therefore, the first incident could not have taken place. There is a reference to one unknown person who had rescued the victim at that time. But no such witness was examined by the prosecution.

13. Learned counsel for the Respondent No.2 and the learned APP submitted that there is no reason to disbelieve the evidence led by the prosecution and in particular the evidence of the victim herself. She was barely 8 years old when the incident had taken place. She could not have falsely implicated the Appellant. She had described the major incident of rape in sufficient details. She could not have described it in more details considering her tender age. There is no reason to disbelieve the narration given by her. The second incident is sufficiently corroborated by the evidence of her sister. Her conduct of not telling the first incident to anybody is also not unnatural because she was threatened by the Appellant. He submitted that though the medical evidence does not show any injuries, the Medical

Officer i.e. P.W.5 had opined that the possibility of sexual assault could not be ruled out. They submitted that as per the definition given u/s 375 of the Indian Penal Code, even a small penetration would constitute the offence of rape and in that case there would not be tear to the hymen.

14. They submitted that the first incident had taken place, one month prior to the medical examination; therefore there would not be any signs of any injuries to the private parts. They submitted that the evidence of the victim is supported by her mother and sister.

15. I have considered these submissions. As far as the incident dated 25/09/2017 is concerned, it is described by P.W.2 i.e. the victim herself and it is sufficiently corroborated in all material particulars by her sisters i.e. P.W.3. Their evidence is consistent. Both of them had described that P.W.2 was under fear to go to washroom alone and the reason was that the Appellant used to follow her. P.W.3 had accompanied the P.W.2. As soon as P.W.2 had shouted, P.W.3 had rushed there. She had seen the

Appellant forcing himself on the victim. Looking at P.W.3, he ran away. Both the sisters returned home. The incident was told to her mother. The events thereafter are narrated by P.W.1, the first informant. Her evidence is thus supporting the evidence of P.W.2 and P.W.3 from that point onwards. Their evidence is again consistent. There was no scope to concoct a false story or attempt by P.W.2 to make a false statement. Considering her tender age of hardly 8 years; it is difficult to believe that the P.W.2 could describe the first incident of rape. In spite of her tender age, she had narrated the incident in sufficient details. The defence of the Appellant that he was falsely implicated because of money dispute is not supported by any cogent evidence. That remains in the form of suggestion and the answer given by the Appellant in his examination u/s 313 of Cr.P.C. There is no further evidence to show that, in fact, there was some money transaction because of which their relations were strained.

16. As far as the medical evidence is concerned, while it is true that there was no tear to the hymen, however the definition

u/s 375 of the Indian Penal Code mentions that even a small penetration would constitute the offence of rape. To that extent, the victim has sufficiently given the details of the incident. Apart from that though there were no other injuries, it is to be noted that the medical examination was conducted after about one month from the date of incident and therefore absence of injuries, does not mean that the incident had not taken place. Therefore, the main consideration is whether the victim's evidence is reliable or not. After carefully perusing her evidence I do not find any infirmity in her evidence particularly considering her tender age. She had given clear answers. They did not appear to be result of any tutoring. Importantly, there is absolutely no doubt about the second incident, which is corroborated by her sister P.W.3. In that case, the very fact that the victim was scared to go to the public toilet alone, supports the victim's version that she was scared to go there because the Appellant was following her and it would also mean that she was scared because of the first incident which had taken place with her. All these factual aspects corroborate each other. There is strong material evidence against the present Appellant, which

is proved by the prosecution beyond reasonable doubt. The learned Judge has rightly considered the ocular evidence in comparison to medical evidence. He has rightly believed the evidence of the victim. P.W.1's mother has also explained as to why the FIR was lodged on the next date. She had explained that she decided to lodge the FIR only after her husband and brother came home at around 09.30 p.m. They went to police chowky and then went to the police station and then the FIR was lodged.

17. Considering this discussion, I am of the opinion that the prosecution has proved its case beyond reasonable doubt.

18. The next question would be about the sentence imposed on the Appellant. In this case, though the conviction is recorded u/s 4 r/w 3 of POCSO, in which the sentence of 12 years rigorous imprisonment is imposed, in fact since the age of the victim was below 12 years, the learned Judge should have framed the charges u/s 6 r/w 5 of the POCSO. However, those specific charges were not framed. The minimum sentence

provided u/s 6 in the year 2017 was 10 years. U/s 4 the minimum sentence provided in the year 2017 was 7 years and u/s 376(2)(i) of the IPC sentence which could be imposed was 10 years. Section 376(2)(i) was in respect of the rape on a woman under 16 years of age. The maximum sentence could extend to imprisonment for life.

19. In this case, the sentence imposed on the Appellant is for 12 years rigorous imprisonment. The learned counsel for the Appellant submitted that the Appellant is in custody since 26/09/2017. He has a family consisting of two minor sons. He submitted that some leniency be shown to the Appellant.

20. Learned APP and learned counsel for the Respondent No.2 opposed these submissions for showing leniency concerning sentence imposed on the Appellant.

21. I have considered these submissions. As rightly submitted by the learned counsel for the Appellant, he is continuously in custody since 26/09/2017. It has been almost 8

years since he was arrested. He was not released even during the spread of pandemic. There are no allegations that his conduct in the prison is not good.

22. Considering these aspects, I am inclined to reduce the sentence to some extent. However, it cannot be reduced to less than the minimum sentence which was 10 years rigorous imprisonment at the time of commission of offence.

23. Hence, the following order :

ORDER

- (i) The Appeal is partly allowed.
- (ii) The order of conviction of the Appellant dated 20/01/2021 passed by learned Additional Sessions Judge, Solapur, in Sessions Case No.332/2017, u/s 376 of the Indian Penal Code and u/s 4 of the Protection of Children from Sexual Offences Act, 2012 is maintained. However, for the offence u/s 4 of the Protection of Children from Sexual Offences Act, 2012, the

sentence is modified to rigorous imprisonment for 10 years instead of 12 years. The fine of Rs.5,000/- and in default sentence of 3 months are maintained.

- (iii) No separate sentence u/s 376 of the Indian Penal Code was imposed. There is no reason to impose a separate sentence in view of minimum sentence provided u/s 376(2)(i) of the Indian Penal Code, is already imposed by this modified order.
- (iv) The Appellant's conviction and sentence of one year simple imprisonment and fine of Rs.1,000/- and 'in default' sentence of simple imprisonment for one month for the offence punishable u/s 354 of the Indian Penal Code is maintained.
- (v) The substantive sentences are directed to run concurrently.
- (vi) The Appellant shall be given set off u/s 428 of Cr.PC.
- (vii) The rest of the clauses from the Trial Court's order which are not in conflict with this operative part are maintained as they are.

(viii) The Appeal is disposed of in the aforesaid terms.

(ix) With disposal of the Appeal, the connected application is also disposed of.

(SARANG V. KOTWAL, J.)