

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

CR. APPEAL NO. 302 OF 2024

Mohammad Mustafa Matiulla Khan }
Age-44 years, }
R/at Shramik Nagar, Galli No.2, Behind }
Salamiya Hotel, Near Al Hadis Masjid, }
Juhu Galli, Andheri (W), Mumbai }
(At present in Aurangabad Central Prison) }
} **Appellant**

NILAM
SANTOSH
KAMBLE

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V/s.

1. The State Of Maharashtra }
}
2. Victim 'X' }
R/at Madina Masjid, Near Jamat Khana, }
Andheri (W), Mumbai. } **Respondents**

Ms.Ilsa Shaikh, for the Appellant.
Mr.C.D. Mali, APP, for Respondent No.1 -State.
Mr.Amol Laxman Dhumal, for Respondent No.2.

CORAM : R.M. JOSHI, J.

DATE : 16th DECEMBER 2025

ORAL JUDGMENT :

. This Appeal is directed against judgment and order dated 2nd February 2023 passed in POCSO Special Case No.99 of 2017 whereby the Appellant/Accused is convicted for the

offences punishable under Section 376(2)(n), 323, 509, 506(II) and sentenced to suffer 7 years and to pay fine of Rs.1,000/- each and in default simple imprisonment for 10 and 2 days each.

2. The facts which led to the filing of the present Appeal can be narrated in brief as under:-

The prosecution case proceeds on the basis of First Information Report ('FIR' for short) lodged by the Informant, who is a relative of the victim. It is stated there in that the victim visited the house of the Informant on 16th December 2016 making grievance in respect of she being beaten by her father (Accused). On 19th December 2016 she again came back to the house of the Informant making further grievance that she was sexually abused by her father for last two years. On the basis of the said information crime was registered with D.N. Nagar Police Station. The said crime was investigated into. The Investigating Officer recorded statement of the victim so also her statement was recorded under Section 164 of the Cr.P.C. before the Magistrate. The victim was sent for medical

examination. Statements of the other witnesses were recorded and on conclusion of the Investigation charge-sheet came to be filed before the Court.

3. Charge was framed against the Accused at Exhibit-18. He denied the charges. The prosecution examined in all nine witnesses to bring home guilt of the Accused which are as under:-

Witness	Name	Exhibit No.
PW-1	Hasina Gulam Ahmed Shaikh (Complainant)	Exh. 25
PW-2	Minor Victim	Exh. 28
PW-3	Humanaz Yunus Sayyed	Exh. 31
PW-4	Jamaluddin Mohammad Shaikh	Exh. 32
PW-5	Ashok Jotiram Borate	Exh. 39
PW-6	Shyamal Prakash Pawar	Exh. 43
PW-7	Dr. Shivkumar R. Kalle	Exh. 44
PW-8	Dr. Chitra Champavat	Exh. 48
PW-9	Balvant Venkat Deshmukh	Exh. 54

4. Incriminating evidence was put to the Accused. He examined his wife Raziya Mohammad (D.W-1) at Exhibit-64

as a defence witness. The learned Trial Court found the evidence led by the prosecution sufficient to prove the guilt of the Accused beyond the shadow of reasonable doubt and convicted the Accused and sentenced him to suffer imprisonment as mentioned herein above.

5. The learned counsel for the Appellant submits that, though it is a settled position of law that sole testimony of the victim is sufficient to convict the Accused without seeking any further corroboration, such testimony must inspire confidence of the Court. It is her submission that here in this case the evidence on record indicate that the victim had grievance against her father for beating her. She further drew attention of the Court to the evidence of the Informant as well as the FIR, which indicates that on 16th December 2016 when the victim came to the house of Informant, she made grievance about was being beaten by her father. On 19th December 2016 she came back to the Informant and told her about she being sexually abused for last two years. It is her submission that from the cross-examination of the victim it is clear that the victim was

not staying for last two years along with her father and as she was staying with her grandmother at her native place. It is contended that unless the testimony of the victim is unimpeachable, it would be unsafe to based conviction upon the same. Attention of the Court is also drawn to the history given to the Medical Officer which is inconsistent to the FIR. Finally it is argued that the medical evidence also does not prove the guilt of the Accused as medical officer has admitted that rupture of hymen is possible for many different reasons other than the sexual intercourse. She placed reliance on judgment of the Hon'ble Supreme Court in case of *State (GNCT of Delhi) V/s. Vipin @ Lalla¹ and Rai Sandeep V/s. State (NCT of Delhi with Hari Singh V/s. State (NCT of Delhi)²*.

6. The learned APP and learned counsel for Respondent No.2 supported the impugned judgment and order essentially on the ground that in case of a sexual assault on a minor, her testimony deserves due consideration and

¹ Criminal Appeal No.94 of 2025 dated 7th January 2025

² (2012) 8 SCC 21

according to them the evidence of the victim is consistent and hence requires acceptance. It is argued that there is no dispute made by the defence about the victim being minor and her date of birth is 24th November 2002. It is further argued that evidence of victims gets support to the testimony of PW-1. It is submitted that the cross-examination conducted of the victim in fact indicates the admissions of the Accused in commission of crime in question. In this regard reference is also made to the cross-examination of the defence witness who admits alleged incident having occurred when the victim was 13 years of the age. It is therefore submitted that having regard to the serious nature of crime wherein the Accused is father of the victim has sexually abused her, it may not be a fit case for causing interference in the impugned judgment and order.

7. At the outset, this Court would like to take note of the judgment of the Hon'ble Supreme Court in case of *Nirmal Premkumar* (Supra) wherein the sterling quality of the evidence of witness is explained and in such case no corroboration needed. It also gives instances where the

corroboration would be sought by the Court. It would be relevant to take note of paragraph Nos.11 to 15 of the judgment which reads thus :

11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

12. In *Ganesan v. State* (2020) 10 SCC 573, this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in **Rai Sandeep v. State (NCT of Delhi) (2012) 8 SCC 21**. The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:

"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement

and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(underlining ours, for emphasis)

14. In **Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130**, this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant.”

15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.

Keeping in mind the afore-stated observations of the Hon'ble Supreme Court it would be necessary to take note of the evidence which is brought on record by the prosecution before the Trial Court.

8. The FIR has been lodged by PW-1 who claims that on 16th December 2016 the victim had been to their house making grievance about she being beaten by the father. At that time no grievance was made by her about she being sexually abused by the father. On 19th December 2016 when she again reaches to the house of Informant/PW-1 she makes grievance about the sexual abuses by the father for last two years. In this backdrop, if the evidence of victim is considered, she claims that the incident had occurred for a period of two years prior to the lodging of the FIR so also such incident used to take place in the gap of two to three days repeatedly. She specifically claims in her evidence before the Court that on 20th December 2016 there was an incident of sexual intercourse being committed by the Accused with her. Similarly, such incident is also claimed to have occurred on 19th December 2016. The

history given to the Medical Officer however indicates that she never claims that on 16th December 2016 any incident of sexual intercourse has occurred with her. Similarly, she claims that on 17th December 2016 last incident of intercourse occurred as stated by the Medical Officer in her testimony at Exhibit-48. It is pertinent to note that, victim has not disclosed to the Informant about occurrence of such incident on 17th December 2016. She claims mainly that since last 2 years she was being sexually abused by the father.

9. Insofar as the Medical evidence is concerned, the Medical Officer states that there was no evidence of any fresh external medical injury. If it is the case of the victim that on 19th December 2016 she was sexually assaulted and on the same day a medical examination was conducted, finding of fresh external injuries is quit possible. The Medical Officer states that he found her hymen tear towards 7 o'clock position. However in the cross-examination it is accepted by the Medical Officer that hymen can be ruptured due to so many reason.

10. The victim when claimed that for last two years to

the filing of the FIR she was sexually abused that too in the gap of two to three days repeatedly, there has to be some evidence to indicate so. On the contrary her admission in the cross-examination shows that she was staying with her grandmother at Native place in Uttar Pradesh prior to one year of the occurrence of the incident. The learned APP has sought to placed reliance on the cross-examination of the victim which indicates that one incident has occurred at native place wherein she was sexually abused by her father. There is however no specific case sought to be made in FIR. The tenor of FIR indicates that the incidents of sexual intercourse took place in the room when she was staying with Accused, step mother and step brothers. Thus the statement which is practically in nature of voluntary statement cannot be treated as admission of guilt by Accused.

11. Needless to say that even in the cases for the offences under the POCSO Act, the burden would rest upon the prosecution to prove the guilt of the Accused beyond shadow of reasonable doubt. It is only after the prosecution

proves the fundamental facts, the burden would shift upon the Accused to rebut the presumption under Section 29 of the Act

12. Herein this case as rightly pointed out by the learned counsel for the Appellant that from the evidence on record it is practically impossible that the victim could have been sexually abused in a room admeasuring 10 x 10 sq.ft wherein apart from Accused and victim, his second wife and four sons were also staying.

13. At this stage, it would be relevant to take note of the fact as to whether there is any material evidence on record to indicate any reason for the victim to falsely implicate the Accused in this crime. The victim admits that she being subjected to physical assault by the Accused and there is support to her contention with the testimony of the PW-1 so also medical evidence on record. Even though this Court finds that the testimony of the victim with regard to the allegations against her father of sexual intercourse is not believable, since the maxim falsus in uno, falsus in omnibus has no Application to the India law, this Court finds that the evidence of the victim

with regard to she being abused and physically assaulted by the Accused deserves to be accepted.

14. The testimony of victim insofar as the offences punishable under POCSO Act so also Section 376(2)(n) of IPC being not free from doubt and as a possibility of the implication of even the father by the daughter exists, this Court finds it unsafe to confirm the conviction recorded by the Trial Court against the Accused. The conviction recorded for the offences punishable under Section 323, 506 of IPC, however deserves confirmation. Having regard to the fact that the Appellant has spent 8 years behind the bar, he be released forthwith, if not required in any other crime.

15. The Appeal is partly allowed.

16. All pending Applications are disposed of.

(R.M. JOSHI, J.)