

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 927 OF 2018****WITH****INTERIM APPLICATION NO. 390 OF 2020****WITH****INTERIM APPLICATION NO. 492 OF 2022****WITH****INTERIM APPLICATION NO. 3024 OF 2023****WITH****INTERIM APPLICATION NO. 4761 OF 2023****WITH****INTERIM APPLICATION NO. 3624 OF 2024**

Rakesh Baban Gohar,

Age 39 Years, Occupation – Service,

Residing at Room No.61, Opposite

B.M.C. Building No.19, Liberty Bakery,

Musa Killedar Street, Byculla, Mumbai-11.

(At present lodged at

Yerawada Central Prison, Pune.)

.....Appellant/Applicant

Vs.

1) The State Of Maharashtra,
(Through Tardeo Police Station, Mumbai),
Crime No.36 of 2015.

2) X.Y.Z.,
Age-17 Years, Occupation- Student,
Residing at Sinhagad Building, 2nd Floor,
Room No.204, A Wing, Mumbai Central,
Bellasis Bridge, Mumbai-34.

.....Respondents

Mr. Ajit Savagave, Advocate appointed by Legal Aid Committee for the Appellant/Applicant.

Mr. Amit A. Palkar APP for the Respondent-State.

None for Respondent No.2.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 29th SEPTEMBER, 2025.

JUDGMENT (Per- A.S.Gadkari, J.):

1) Appellant has impugned Judgment and Order dated 3rd October, 2017, passed by the learned Special Judge under POCSO Act, Greater Mumbai, in POCSO Special Case No.194 of 2015, convicting the Appellant under Sections 6, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, "*the POCSO Act*") and under Section 354 and 376 of the Indian Penal Code, (for short, "*IPC*") and is sentenced to suffer imprisonment for life under Section 6 of the POCSO Act, rigorous imprisonment for 7 years under Section 10 of the POCSO Act and rigorous imprisonment for 3 years under Section 12 of the POCSO Act.

As the Appellant is convicted under the provisions of the POCSO Act in maximum terms, separate sentence under Sections 354 and 376 of the IPC is not awarded by the trial Court, as per the provisions of Section 42 of the POCSO Act.

2) At the outset, it be noted here that, the victim herein is the real

daughter of the Appellant. The victim was a minor on the date of commission of the offence under the POCSO Act and therefore with a view to protect her identity and in consonance with the provisions of Section 228(A) of the IPC and Section 33(7) of the POCSO Act, the detailed narration of facts and other details thereby revealing identity of victim and her mother, are hereinafter avoided.

3) Heard Mr. Savagave, learned Advocate appointed by the Legal Aid Committee to represent the Appellant, Mr. Palkar, learned APP for the Respondent No.1-State. Perused entire record.

4) The First Information Report ("*FIR*") was lodged by the victim herself on 15th February, 2015 under Sections 354, 509 and 506 of the IPC and under Sections 10 and 12 of the POCSO Act, against the Appellant.

4.1) The said FIR was initially recorded by Mr. Dinkar Ilag (PW No.-9) then attached to Agripada Police Station, Mumbai as crime No.00/2015. After recording the FIR, the concerned Officer found that, the cause of action for lodging of the said crime was under the jurisdiction of Tardeo Police Station, Mumbai. Therefore it was transferred for further investigation to Tardeo Police Station, Mumbai.

4.2) At Tardeo Police Station, Smt. Surekha Dighe received the papers from Agripada Police Station of the present crime which was registered as crime No.36 of 2015. The investigation of the said crime was handed over to the Police Inspector Mr. Sangram Pache (PW No.10)

attached to Tardeo Police Station. During the course of investigation, PW No.10 realized that, the offence under Section 6 of the POCSO Act has also been made out.

4.3) It is the allegation against the Appellant that, the Appellant sexually assaulted his daughter, the victim (PW No.1) initially by showing her obscene pictures/clips from his mobile phone and secondly indulging into the acts as contemplated punishable under Sections 6, 10 and 12 of the POCSO Act. During the course of investigation, two mobile phones and memory cards were recovered at the instance of Appellant in presence of Mr. Raju I. Shaikh (PW No.4). The said mobile phones and memory cards were sent for Chemical Analysis to the Forensic Science Laboratory (FSL), which was carried out by Smt. Tanuja Survarao (PW No.7).

4.4) The victim was thereafter medically examined by Dr. Chaitanya Kulkarni (PW No.6).

4.5) During the course of investigation, PW No.10 sent the victim for recording her statement under Section 164 of Cr.P.C. He also recorded statements of victim (PW No.1), the mother of victim i.e. the wife of Appellant (PW No.3), the aunt of victim (PW No.2), the maternal grandfather of victim (PW No.5), the Medical Officer (PW No.6) and Chemical Analyser (PW No.7). After receipt of necessary Chemical Analysis Reports from FSL and completion of investigation, he filed charge-sheet against the Appellant before the Special Court.

5) The learned Judge of the Special Court framed charge below Exh-4 against the Appellant under Sections 354 and 376 of the IPC read with Sections 6, 10 and 12 of the POCSO Act. The said charge was read over and explained to the Appellant in Hindi vernacular language, to which he pleaded not guilty and claimed to be tried.

5.1) The defence of the Appellant was of total denial and false implication. In response to question Nos.61 and 24 (sic 64), in his statement recorded under Section 313 of Cr.P.C. the Appellant stated that, the witnesses are deposing against him as he had imposed restrictions on his daughter. He did not want that, his daughter to pursue education and therefore his daughter was pressured by PW No.3 and PW No.5. He also used to restrain his wife from doing job and to go to her parents house, therefore she used to quarrel on that count also. Resultantly, the Appellant was impleaded in the said crime. He has further stated that, his father-in-law pressurized him to transfer his property in the name of his wife, therefore there used to be quarrels. PW No.3 and PW No.5 deliberately admitted his daughter to college. Appellant did not like his daughter going to college. Appellant owed Rs.40,000/- to his father-in-law. Appellant was unable to repay the said amount. He restrained his daughter for talking with third person. So to get rid of him, he has been implicated in this case.

6) After recording the evidence of prosecution witnesses and hearing the learned Advocates for the respective parties, the trial Court was

pleased to convict and sentenced the Appellant by the impugned Judgment and Order, as noted above.

7) Mr. Savagave, learned Advocate appearing for the Appellant submitted that, the defence adopted by the Appellant has not been properly considered by the trial Court. He submitted that, the instances narrated by the victim are totally vague in nature. That, there used to be frequent quarrels of the Appellant with his wife (PW No.3) and therefore she putforth the victim (PW No.1) and instigated her to lodge the present crime against him. He submitted that, PW No.5 i.e. the father in laws of Appellant is bound to narrate the version of the victim as PW No.1 and PW No.3, as they were interested in conviction of the Appellant.

7.1) Mr. Savagave, further submitted that, the memory card which was produced by the prosecution being Article No.3, cannot be accepted as a valuable piece of evidence because along with the said memory card, a Certificate under Section 65B of the Indian Evidence Act was not produced by the prosecution and therefore the said memory card losses its importance. He submitted that, the material prosecution witnesses are close relatives of the victim and therefore are bound to support the prosecution case. He submitted that, as per the evidence on record, the offences alleged against the Appellant may fall within the purview of Section 3(b) and 3(d) of the POCSO Act, but certainly not within the purview of Section 3(a) and 3(c) of the POCSO Act. He further submitted

that, the victim had attained the age of understanding on the date of first assault, however she did not disclose the said fact to her paternal grandmother or grand-father (PW No.5) immediately, which creates doubt about the genuineness of her statement. He submitted that, the said aspect has not been properly considered by the trial Court while convicting the Appellant and therefore the trial Court has committed a serious error in it.

7.2) He lastly submitted that, if this Court is not inclined to acquit the Appellant, taking into consideration the fact that as of today the Appellant has undergone more than 10 years of actual imprisonment, his sentence may be reduced to the period undergone by him. He therefore prayed that, present Appeal may be allowed.

8) Per contra, Mr. Palkar, learned APP appearing for the Respondent-State vehemently opposed the Appeal. He submitted that, the evidence of victim (PW No.1) is trustworthy and reliable. There is no exaggeration in her deposition. Evidence of PW No.1 with respect to the first instance of sexual assault in the year 2013 has been duly corroborated by her grand-father (PW No.5). He submitted that, there is no reason for the daughter to depose against her own biological father and her conduct as emerged from her evidence is natural. He submitted that, the prosecution has duly proved the charges against the Appellant and it is the reason, the trial Court has convicted the Appellant and imposed the said sentence. He submitted that, there are no merits in the Appeal and it may be dismissed.

9) Though the prosecution has examined in all 10 witnesses in support of its case, according to us the evidence of, victim (PW No.1); wife of Appellant and mother of victim (PW No.3); maternal grand-father (PW No.5) and Dr. Chaitanya Kulkarni (PW No.6) who medically examined the victim, is of most importance.

10) PW No.1 in her deposition has stated that, since she was 3 years of age, she used to reside with her maternal grand-mother (Nani), maternal grand-father (Nana) and maternal uncle (Mama). Her mother used to keep her at the place of her Nani, as the house of her mother and father was very small and the area where it was situated was not good. Her expenses were borne by her father.

10.1) PW No.1 has stated that, first instance had occurred in the year 2013 at the house of her Nana. Her father came to her Nana's house and made her to sit on his lap and started showing her obscene films on his mobile. Since the victim noticed that the films were obscene, she gave mobile in the hand of Appellant and got down from his lap. At that time, the victim was aged about 16 years. She has deposed that, whenever her father used to come to meet her, he tried to show her obscene pictures. Once, when she refused to see the obscene picture, the Appellant threw his mobile on floor, due to which the mobile phone was broken. Appellant thereafter brought new mobile handset and tried to show her obscene films. When the victim refused to see it, the Appellant used to threaten her that he

would stop her study, school, tuition everything and kill her mother. In the year 2014, one month prior to Diwali festival, when the victim was alone at home, the Appellant tried to show her obscene films. Then, he forcibly tried to remove her clothes and pressed her breast. He also used to take her breast in his mouth and suck it. Appellant thereafter made her sit on chair, with her legs apart and inserted his finger in her private part. He used to lick her private part. If the victim did not allow it, the Appellant used to beat her and threatened her that the Appellant would kill her mother, divorce her and throw acid on her face. That, whenever the Appellant came to her, he tried to show her obscene films from his mobile.

10.2) Once the Appellant told the victim to accompany him to go to Shirdi to complete the “Mannat” as the victim secured good marks in 10th standard. Appellant also told the victim that, after going to Shirdi, he will do sinful act (‘gandha kam’) with her and therefore the victim refused to accompany him alone. She told the Appellant that, if her brother and mother comes, she will accompany him to go to Shirdi. Appellant threaten the victim, beat her mother causing injury to her ear-drum. In the said assault, the right hand ring finger of PW No.3 i.e. the mother of victim got severely injured.

10.3) PW No.1 has further deposed that, once the Appellant asked the victim to accompany her downstairs for having snacks. He told her that, he would take her to one place to do the sinful act. Once the

Appellant also told the victim to touch his penis to her vagina. Appellant used to ask the victim to take his penis in her mouth. Appellant also tried to take video of nude body of the victim.

10.4) In the month of February, 2015, when harassment and assault of the Appellant was unbearable to the victim, she informed her mother (PW No.-3) about the acts of the Appellant. Her mother therefore had discussed the matter with respected persons of the Society. The persons from the Society assaulted the Appellant.

10.5) The victim and her mother thereafter approached Agripada Police Station, where her statement was recorded. The victim was also examined by the Medical Officer (PW No.6). The victim has identified mobile phone of the Appellant which is marked as Article-1. The statement of victim recorded under Section 164 of Cr.PC. is on record at Exh-11.

10.6) In her cross-examination, various suggestions were given to the victim, which are in consonance with the defence putforth by the Appellant in his statement recorded under Section 313 of Cr.PC.. However nothing beneficial or fruitful to the Appellant has been extracted in the elaborate cross-examination conducted by him.

11) Ms. Devki Reddy, PW No.2 is the maternal aunt of the victim. This witness has deposed that, on 13th February, 2015, her sister (PW No.3) came to her parents house and told them that, the Appellant told the victim not to attend the college on the next day as there was Valentine Day. At

that time, the victim (PW No.1) informed her that, since last 3 years her father was sexually harassing her. Upon insistence by the persons present at the said place, the victim confided with them and told PW No.2 the ordeals faced by her. The various facts deposed by the victim in her testimony are duly corroborated by this witness.

11.1) In her cross-examination, PW No.2 has admitted the fact that, the Appellant is a short tempered person. That, PW No.3 used to discuss with her and her parents about the disputes between PW No.3 and the Appellant. That, many a times PW No.2 and her parents tried to give understanding to the Appellant. She has admitted the fact that, the Appellant was against the education of victim.

12) The mother (PW No.3) of the victim has deposed that, since the victim was aged about 3 years, she was residing at her mother's house. That, on 13th February, 2015, she asked her daughter (PW No.1) not to go to college on 14th February, 2015, otherwise the Appellant would feel bad and he would quarrel with her. At that time, the victim told her in presence of her sister (PW No.2) that, since the year 2013, the Appellant was doing bad acts with her. That, he used to show her obscene films on mobile. Appellant used to make her naked and used to take her nude photographs on his mobile. When the victim refused to see the mobile, the Appellant throw it and broke it. The Appellant used to press her breast. Appellant

also indulged into other sexual harassment as contemplated under Section 3 (d) of the POCSO Act. Upon a question to the victim as to why she did not tell these facts to her earlier, the victim told PW No.3 that, her father had threatened her that he would not allow the victim to study further and will give divorce to her mother. Appellant also threaten victim that, he would kill her and also throw acid on the victim and her mother. It is the reason, the victim did not tell those facts to her immediately. That, after hearing the said facts from the victim, she immediately approached the Agripada Police Station and lodged report on 14th February, 2015.

12.1) In her detailed cross-examination, PW No.3 has admitted the fact that, the Appellant is a short tempered person. He gets angry on trivial matters. That, there used to be quarrels with herself and Appellant. Appellant was not willing to allow their daughter (victim) to continue her education. She has admitted the fact that, she herself, her parents and the victim were wishing to continue with the eduction of the victim. PW No.3 has admitted that, till 13th February, 2015, whenever she visited her parents house, she did not feel anything unusual or doubtful. That, her daughter was comfortable and used to mix up with her parents family.

13) PW No.5 is the maternal grand-father of the victim. This witness has corroborated the version of victim pertaining to the incident which had taken place in the year 2013. This witness has deposed that,

one day he returned back from his walk and saw that Appellant had made the victim to sit on his lap (thighs). He got angry with Appellant and asked him as to why he made his young daughter sit on his lap. Appellant told PW No.5 that, the victim is his daughter and he was fondling her. However, PW No.5 told Appellant that, this was not the way to love a young daughter.

13.1) In his cross-examination, nothing beneficial to the Appellant has been brought on record.

14) Dr. Chaitanya Kulkarni (PW No.6), was then attached to Nair Hospital and was performing his duty as a Forensic Science Expert. He has conducted medical examination of the victim. This witness has deposed that, on being asked to the victim as to whether she was subjected to penetrative sexual intercourse by the Appellant or any other person, the victim told him that, no such incidence occurred. The victim has narrated all the facts which she has deposed in her testimony and told to her mother. On examination, PW No.6 found that, there were no injuries on the person of the victim. On local examination, no injuries were found and the hymen was intact. He did not preserve any samples, as there was no history of vaginal sexual intercourse. PW No.6 gave his opinion that, there was no evidence of recent or old penetrative vaginal sexual intercourse and no evidence of old or fresh injuries over the body including the private parts.

The Medical Examination Report submitted by this witness is at Exh-22. This witness has opined that, in this case digital penetration i.e. fingering cannot be ruled out. He stated that, reasons for absence of injuries in case of fingering may be if the patient is of pediatric age group, elasticity of genitals including hymen and deeply situated hymen in case of small age group.

15) At this stage, a useful reference can be made to the decision of the Supreme Court in the case of *Vadivelu Thevar vs. The State of Madras reported in AIR 1957 S.C. 614*, wherein the Hon'ble Supreme Court has enumerated three categories of witnesses namely, (i) wholly reliable (ii) wholly unreliable (iii) neither wholly reliable nor wholly unreliable.

15.1) In paragraph Nos.12 and 14 above, we have at greater extent reproduced the evidence of PW Nos.1 and 3 for its better appreciation. It is in view of the submissions advanced by the learned Advocate for the Appellant that, the trial Court has not considered it in its proper perspective. After minutely scrutinizing the evidence of PW No.1, according to us, it is wholly reliable as enumerated by the Supreme Court in the case of *Vadivelu Thevar (Supra)*.

15.2) PW No.6 has duly corroborated with the version of PW No.1. According to us, the evidence of PW No.1 is wholly reliable, however the act committed by the Appellant would fall within the purview of Section

3(b) and (d) and certainly not within the purview of Section 3(a) and (c) of the POCSO Act. There are sufficient reasons to believe in the defence putforth by the Appellant that, he used to quarrel with his wife, as he was opposing the further education of his daughter, the victim (PW No.1) and his wife (PW No.3) were having grudge in their mind against him. However according to us, the testimony of the victim cannot be brushed aside mechanically on this count alone. There was and is no reason for the victim to make such serious allegations against her own biological father. The evidence on record is absolutely silent about it. Nothing is brought on record by the defence to disbelieve the testimony of the prosecutrix, victim (PW No.1) and it is the reason, we have stated in the forgoing paragraphs that the said witness is wholly reliable.

The crime in question was committed between the period from the year 2013 till February, 2015 and therefore the amendment to Section 6 of the POCSO Act, which came into effect on 16th August, 2019, will not come in the fray. The unamended Section 6 of the POCSO Act will have application to the case in hand.

16) Prior to the amendment of year 2019, Section 6 was as under:-

“6. Punishment for aggravated penetrative sexual assault.-

Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be

less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”

16.1) As per the pre-amended Section, the minimum sentence prescribed was not less than 10 years but which may extend to imprisonment for life and also with fine.

17) It be noted here that, the memory card, in which the Appellant had stored the obscene and/or video clips of the victim was recovered in presence of the Panch witness (PW No.4). The said memory card is marked as Article-3. The said memory card could not be opened on the computer of the Court and therefore the data therein was transcribed in the Compact Disk and it was thereafter played on the computer of the Court. It is an admitted fact on record that, while producing the said memory card and/or its transcribed data on the Compact Disk, the prosecution did not produce on record the Certificate as contemplated under Section 65-B (4) of the Indian Evidence Act and therefore the said piece of evidence losses its legal sanctity and the said piece of evidence has to be kept aside from consideration.

18) After taking into consideration the entire evidence available on record, we are of the opinion that the prosecution has proved the offence under Sections 6, 10 and 12 of the POCSO Act read with Sections 354 and 376 of the IPC against the Appellant. The trial Court has not committed

any error while appreciating the evidence on record and convicting the Appellant under the said provisions of law.

18.1) However, after having overall view of the case, we are of the considered opinion that, the sentence imposed upon the Appellant of life imprisonment is disproportionate and too harsh and it needs to be reduced. Appellant as of today has undergone 10 years, 6 months and 15 days of actual imprisonment and 13 years, 2 months and 14 days of imprisonment including remissions. In our view this is sufficient punishment for his crime and therefore we reduce the sentence after altering the sentence of imprisonment for life to the imprisonment already undergone by him till uploading of the present Judgment on the Official Website of the High Court of Bombay.

19) Hence, the following Order:-

- a) The conviction of Appellant under Sections 6, 10 and 12 of the POCSO Act and under Sections 354 and 376 of the IPC is confirmed. However, the sentence of imprisonment for life is commuted to the period of sentence i.e. the period of imprisonment already undergone by him and will continue till the uploading of the present Judgment on the official website of the High Court of Bombay.
- b) Appeal is partly allowed in the aforesaid terms.

19.1) In view of disposal of Appeal, Interim Application Nos.390 of 2020, 492 of 2022, 3024 of 2023, 4761 of 2023 and 3624 of 2024, do not survive and are accordingly disposed off.

20) Before parting with the Judgment, we place on record our appreciation for the efforts put in by Mr. Savagave, learned Advocate appointed by the High Court Legal Services Committee, Mumbai for espousing the cause of Appellant. He was thoroughly prepared with the Appeal and rendered proper assistance to the Court in arriving at the aforesaid conclusion.

(**RANJITSINHA RAJA BHONSALE J.**)

(**A.S. GADKARI, J.**)

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