

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.193 OF 2025

Munna Mithu Chauhan	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Mr. Pravin Naik i/by Ms. Kalyani Kabra, Advocate for Applicant.
Ms. S.D. Shinde, APP for the State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 12th June 2025

JUDGMENT:

1. Heard Mr. Pravin Naik, learned Counsel for the Applicant and Ms. Shinde, learned APP for the State of Maharashtra.

2. By the present Criminal Revision Application, challenge is to the Order dated 29th August 2024 passed by the learned Special Judge under POCSO Act, Sessions Court, Borivali Division, Dindoshi, Goregaon, Mumbai in Miscellaneous Application Exhibit-120 in POCSO Special Case No. 495 of 2019. By the said Application, the Applicant i.e. Accused has sought prayers seeking issuance of summons to the father, grandfather and grandmother of the victim for recording their testimonies as defence witnesses. By the impugned Order, the said Application has been dismissed.

3. It is the submission of the learned Counsel for the Applicant that the Charge in the matter has been altered and therefore, right has accrued to the accused to call the witnesses for examining them. It is the submission that as the victim was 7 years old, the Charge was required to be framed under Section 376-AB of the Indian Penal Code, 1860 ("IPC") and not under Section 376(2) (i) of the IPC and altered Charge came to be framed against the Accused on 6th February 2023, for the offence punishable under Sections 376 AB of the IPC and therefore, it is necessary that the father, grandfather and grandmother of the victim be allowed to be examined for recording testimonies as defence witnesses. It is the main submission that although the statements of these witnesses are incorporated in the Charge-sheet, they have not been purposely examined by the prosecution.

4. On the other hand, learned APP strongly opposed interference in the impugned Order. It is her submission that the alteration of Charge has nothing to do with recording of said witnesses. She submitted that as these witnesses are not material witnesses and therefore they have not been examined. She submitted that the prosecution has examined the Informant i.e.

mother of victim, victim and aunt of victim, who are material witnesses, who were knowing about the incident in question. She submitted that as far as father of the victim is concerned, he was not aware about the said incident and the said incident was informed to him by the mother of the victim, who has been examined. She submitted that as far as grandmother is concerned, she has been informed about the incident by the victim and the victim has been examined. She submitted that the grandfather was not the important witness and therefore, his statement was not recorded by the Police

5. The main contention raised by the learned Counsel for the Applicant that in view of alteration of the charge, he is entitled to examine the father, grandmother and grandfather of the victim as defence witnesses.

6. The impugned Order states that earlier the Charge was framed under Section 376(2)(i) of the IPC and as the victim was only 7 years old, the Charge was then altered to Section 376 AB of the IPC.

7. In view of the contention raised, learned Counsel for the Applicant, it is necessary to set out Section 376(2)(i) of IPC, under which earlier charge was framed.

“**[376. Punishment for rape.—**(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which 384[shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].

(2) **Whoever,—**

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman, 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, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.**"

(Emphasis added)

8. As noted herein above, the Charge was altered to Section

376 AB of IPC, which reads as under:-

"376-AB. Punishment for rape on woman under twelve years of age.-- Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to

imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this Section shall be paid to the victim.”

(Emphasis added)

9. Thus, it is clear that under Section 376(2)(i) of IPC, the Charge is with respect to a person committing rape on a woman incapable of giving consent. As far as Section 376-AB of IPC is concerned, the Charge is concerning punishment for rape on woman under 12 years of age. Admittedly, age of the victim was 7 years when the incident took place and therefore the charge was altered.

10. Thus, it is very clear that the reason given in the said Application bearing Exhibit-120 about the alteration of charge has nothing to do with issuing summons to the father, grandmother and grandfather of the victim.

11. The other contention raised is that the father of the victim and grandmother of the victim has not been deliberately examined

by the prosecution, although, their statements are incorporated in the Charge-sheet. However, learned APP is right in contending that the father of the victim and the grandmother of the victim has no personal knowledge about the incident in question as father of the victim came to know about the incident from the mother of the victim and grandmother has been informed about the incident by the victim. Ms. Shinde, learned APP submitted that the material witnesses have been examined.

12. Ms. Shinde, learned APP points out Section 35 of the Protection of Children from Sexual Offences Act, 2012 (“**POCSO Act**”), wherein it is specified that the trial under the provisions of said Act has to be completed expeditiously. It is her submission that from that angle, the material witnesses have been examined and as the father and grandmother were not knowing about the incident in question, they have not been examined.

13. Learned Counsel appearing for the Applicant relied on a judgment of the Supreme Court in the case of **Sundar Lal Vs. State of Uttar Pradesh & Anr**¹. The facts of said case are totally different and the said decision has no application to the present case.

¹ SLP (Cri.) No.10756 of 2023

14. The learned Trial Court has observed that the list of witnesses, which is now sought to be given by the Advocate for the Accused had not been submitted at the stage of entering upon defence on behalf of accused, subsequent to the evidence for the prosecution having been recorded. It has been recorded that in fact accused had filed an application bearing Exhibit-67 for issuing summons to the witnesses for defence and had thereafter examined 5 witnesses till 26th April 2022. On 29th April 2022, the Advocate for the Accused had filed pursis bearing Exhibit-82 closing his evidence. Thus, the Trial Court has recorded that the Accused has fully availed an opportunity to lead the evidence on his behalf. In fact, the learned Trial Court has recorded that the accused is now seeking to examine the said witnesses after almost 1½ years of examining initial defence witness.

15. Thus, in the facts and circumstances of this case, no interference in the impugned Order is warranted.

16. Accordingly, Criminal Revision Application is dismissed, however, with no order as to costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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