

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.39 OF 2025

Baljit Raghuvir Pandat

...Appellant

Versus

The State of Maharashtra & Anr.

...Respondents

Ms. Seema Shukla, for the Appellant.

Mr. S. H. Yadav, APP, for the Respondent-State.

Ms. Priya P. Dalvi, appointed for Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATED: 27 JUNE 2025

JUDGMENT:

1. Heard Ms. Shukla, learned Counsel appearing for the Appellant, Mr. Yadav, learned APP, for the Respondent No.1-State and Ms. Dalvi, learned Counsel appointed to represent the interest of Respondent No.2.

2. By the present Criminal Appeal the challenge is to the legality and validity of the Judgment and Order dated 4th December 2024 passed by the learned Designated Judge under the Protection of Children from Sexual Offences Act, 2012 for Greater Bombay in POCSO Case No.335 of 2023. By the impugned Judgment and Order the Appellant i.e. Accused is convicted for the offence punishable under Sections 7 and 8 of the *Protection of Children from Sexual Offences Act, 2012* (“**POCSO Act**”) and sentenced to suffer imprisonment for 3 years

Digitally
signed by
ARJUN
VITTHAL
KUDHEKAR
Date:
2025.07.11
00:10:18
+0530

with a fine of Rs.10,000/- and in default to pay fine, Accused to suffer simple imprisonment for a period of 2 months. Accused was also convicted for the offence under Section 354 of the *Indian Penal Code, 1860* (“**IPC**”). However, no separate sentence was passed as the Accused is sentenced for the offence under Section 7 punishable under Section 8 of the POCSO Act which is the similar offence under special enactment. The Appellant was also convicted for the offence under Section 452 of the IPC and sentenced to suffer imprisonment for 2 years with a fine of Rs.5,000/-, in default to suffer simple imprisonment for the period of 1 month. The Appellant has been acquitted for the offence under Section 11(ii) punishable under Section 12 of the POCSO Act. It has been further directed that both substantive sentences shall run concurrently. As the Accused is in custody since 13th January 2023, set off has been directed to be given.

3. Ms. Shukla, learned Counsel for the Appellant submitted that the identity of the victim itself is not established, the age of the victim is not proved and as there is difference between the name, it is her submission that prosecution has failed to prove its case. To substantiate her submission, she has pointed out various factors. It is her main submission that the case against the Appellant is a false case and the Appellant has been falsely implicated in the offence. She submitted that the entire evidence is cooked up against the Accused. To substantiate

the same, she pointed out that, FIR (Exhibit P-10) registered on 13th January 2023 at 05:03 am. She also pointed out that the Medico-Legal Examination Report of Sexual Violence (Exhibit P-35), which shows that the date of arrival of the victim in the Hospital is on 13th January 2023 at 04:52 am and the examination was completed on 13th January 2023 at about 06:10 pm. She pointed out that the evidence on record shows that the mother of the victim was present in the Hospital and in spite of that in the spot *panchanama* (Exhibit P-34) it is mentioned that the mother of the victim pointed out the spot to the panchas at 06:10 am. She submitted that thus the victim and the mother of the victim are present at the same time at the Police Station and the Rajawadi Hospital and also at the spot of the incident. She therefore submitted that the evidence before the Court is not credible evidence and therefore it is not safe to convict the Accused on the basis of such evidence.

4. Ms. Seema Shukla, learned Counsel pointed out the evidence of PW-1 i.e. mother of the victim and PW-2 i.e. victim and submitted that the evidence of both these witnesses is not reliable. She pointed out various contradictions in their oral depositions. Learned Counsel also relied on the decision of the Supreme Court in ***Ganesh Bhavan Patel v. State of Maharashtra***¹ and submitted that the presumption of innocence in favour of the Accused and the right of the Accused to the benefit of any doubt are very important factors and the learned Trial Court has

1 AIR 1979 SUPREME COURT 135

ignored these aspects.

5. Ms. Shukla, learned Counsel further submitted that the evidence on record clearly shows that the Accused was not known to the PW-1 i.e. mother, PW-2 i.e. victim and in spite of that Test-Identification Parade (“TI Parade”) is not conducted. She therefore relied on the decision of the Supreme Court in *Mohanlal Gangaram Gehani v. State of Maharashtra*² and submitted that in the absence TI Parade the evidence of PW-1 and the PW-2 is of less value and could not be relied upon.

6. Learned Counsel also submitted that the prosecution has only examined interested witnesses i.e. PW-1 mother and PW-2 victim, although as per the prosecution case when the incident took place many persons had gathered there.

7. Learned Counsel submitted that the impugned Order of the learned Trial Court be quashed and set aside and the Appellant be acquitted.

8. On the other hand, Mr. Yadav, learned APP for the Respondent-State and Ms. Dalvi, learned Counsel appointed to represent the interest of the Respondent No.2 submitted that the contention raised by learned Counsel appearing for the Appellant that age of the victim is not proved is not correct. Both of them pointed out Birth Certificate (Exhibit P-11) and submitted that the date of birth of the victim is 6th February 2014. They also relied on the Government Gazette issued for the period of

² AIR 1982 SC 839

30th May to 5th June 2024 (Exhibit P-33), showing the earlier name of the victim and the present name of the victim. Both of them submitted the contention raised by the learned Counsel of the Appellant that the case is not believable as the victim and victim's mother are at the same time in the Police Station, in the Hospital and also at the spot of the incident, is not correct. It is submitted that all these places are very near to each other and therefore the said contradiction is not significant.

9. Insofar as the submission regarding not conducting TI Parade, it is submitted by Ms. Dalvi, learned Counsel that the Accused is not a stranger to the PW-1 mother and PW-2 victim as he is from the nearby locality. It is submitted that the evidence on record shows that the victim and the mother had earlier seen the Accused and therefore this is not a case where an unknown person has committed the offence and the victim and the witnesses i.e. PW-1 mother has seen the Accused only at the time of commission of offence. Mr. Yadav, learned APP submitted that as far as not conducting the TI Parade, there is one more justification as the Accused was caught red-handed on the spot and handed over to the Police and therefore it is not necessary to conduct the TI Parade.

10. Mr. Yadav, learned APP submitted that although many other persons were present when the incident took place, Investigating Officer has given explanation in his Cross-Examination that the huts in the said

locality have been demolished and therefore the other persons are not available.

11. Learned APP submitted that as per Section 30 of the POCSO Act, in any prosecution for any offence under the said Act which requires a culpable mental state on the part of the Accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the Accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. He also pointed out Sub-Section (2) of Section 30 which provides that for the purposes of the said Section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

12. Ms. Shukla, learned Counsel appearing for the Appellant, in-rejoinder, submitted that the Government Gazette on which the learned APP and learned Counsel appointed for Respondent No.2 have relied, has been issued for the period of 30th May to 5th June, 2024 i.e. after the registration of the FIR on 13th January 2023 and therefore the same is totally irrelevant. She therefore submitted that the Appeal be allowed.

13. Before considering the rival contentions, it is necessary to set out the prosecution case. The same is set out in Paragraph No.1 of the impugned Judgment, as follows :-

“01. During the night of the incident, the informant and her 10 years old daughter were sleeping in their hut. Her husband went for work and her son was outside. During the night, daughter of the victim suddenly woke up and called her and told that somebody is removing her knicker. Informant got up and switched on the electricity. She saw one boy in her house, who was the resident of Vidyavihar. He was trying to run away but, she caught him and slapped him. The people were gathered there. Then, she called the police, police came there and took that boy alongwith the police. She alongwith victim also went at police station. The informant has seen the accused at Vidyavihar sometimes and therefore, she knows him. Then, she lodged report with the police against the accused.”

14. To prove the prosecution case, the prosecution has examined following 5 witnesses:

- i.** PW-1 - Informant i.e. victim's mother
- ii.** PW-2 - victim
- iii.** PW-3 - Hanumant Sadashiv Virkar, PSI
- iv.** PW-4 - Sanjay Sopan Shinde, PSI
- v.** PW-5 - Dineshkumar Bharat Anande, API

It is necessary to discuss the evidence led by the prosecution.

15. PW-1 i.e. mother of the victim in her deposition stated that on 12th January 2023 at about 11 pm her daughter was sleeping and thereafter in the night suddenly the daughter woke up and told the mother that somebody is removing her underpants (knicker). Immediately, the mother switched on electricity and saw one boy in the house. PW-1 has stated that she knows the said boy as said boy is the

resident of Vidyavihar. At that time, he was trying to run away and people had gathered there and she caught the boy. Then the Police took that boy in custody. She along with her daughter went to the Police Station. She has further stated that her father was doing labour work at Vidyavihar and at that time she had seen the Accused at Vidyavihar. She has further stated that her daughter is aged only 10 years and the Birth Certificate of the daughter has been produced at Exhibit P-11. She has stated that the contents of the FIR are correct and FIR has been exhibited at P-10. She has stated that one AAA was the biological father of the daughter i.e. victim. However, he passed away and in Birth Certificate his name is mentioned as father. She has stated that BBB is her second husband. She has also identified her thumb impression given on the consent form of the Medico-Legal Examination Report of Sexual Violence (Exhibit P-12). She also identified her thumb impression put on her statement (Exhibit P-13) and also the statement of her daughter and her thumb impression put on the same (Exhibit P-14). She has been cross examined extensively. In the cross examination she has stated that her house is a hut. There is no door to the said hut and entrance is closed by chadar. She has stated that she performed second marriage when her daughter was of 2 years old and her first husband passed away due to COVID-19. In the further cross-examination she has stated that she was residing at Vidyavihar and after

the death of her mother she left Vidyavihar. It has been further stated that her father was working at Vidyavihar Railway Station for about 7 to 8 years. She has denied that a false Birth Certificate has been produced.

16. The Medico-Legal Examination Report of Sexual Violence (Exhibit P-35) which is an admitted document shows that on 13th January 2023 at 04:52 am the victim has arrived at the Hospital. Her examination was commenced at 05:45 am. At 05:50 am consent was taken of the guardian i.e. of the PW-1 mother. In the history given by the victim, it is stated that PW-1 mother had narrated the history and stated that her daughter was sleeping in the hut and at around 01:00 am her daughter was shouting that someone was removing her pant and then PW-1 mother woke up, switched on the light and as unknown person was seen, she slapped him. In Column 24 of the Medico-Legal Examination Report of Sexual Violence (Exhibit-35), it is stated that date and time of completion of examination is 13/01/2023 at 06:10 am.

17. PW-2 i.e. victim in her deposition has stated that her mother used to collect garbage and father was doing catering work. Her brother was doing work of cleaning drainage. She has stated that at about 12:00 in the night she went to sleep and thereafter found that someone was removing her underpants and therefore she woke up her mother. Then her mother switched on electricity and saw a person wearing a white T-

shirt and a black pant and the mother slapped him. The said person fell down. Immediately the mother made call on 100 number and Police came there and took that person. She has also stated that Police also took the victim and her mother to the Police Station. She has stated that Police sent her at Hospital along with her mother and thereafter also in the Court and there she has narrated the incident. She has stated that if she sees the Accused she would identify that person. In the cross-examination various questions were asked to her regarding omissions in the statement recorded before the Police. She has stated in the cross-examination that it is correct to say that she has not identified the person who was wearing a white T-shirt. She was asked certain questions about her first father and first surname. She has stated that she does not have Aadhaar Card also does not have School Identity Card. The Accused on V.C. was shown to the victim and she identified the Accused.

18. PW-3 is PSI Hanumant Sadashiv Virkar. He has stated that he has received call from Control Room about fighting and that one person was caught and therefore they went there and found that PW-1 was present along with the daughter and one boy was also there. PW-1 informed the Police that said boy removed underpants of her daughter aged 8 years old only and therefore the informant caught that boy. He has stated that he took that boy, complainant and girl to the Police Station and the boy

was handed over to the API Anande.

19. Learned Counsel for the Appellant pointed out the cross-examination of said witness, wherein he has stated that the incident has taken place on 23rd January 2023, whereas the incident has taken place on 13th January 2023. However, the same is merely a typographical mistake as in the examination-in-chief he has stated that his duty hours on 12th January 2023 were between 08:00 pm to 09:00 am next day.

20. PW-3 during cross-examination further stated that he has not made any entry in station diary about his duty. He has stated that the spot of incident is at the distance of 5 to 10 minutes from the spot, where he was present with Mobile Van No.3. He has admitted that he has not prepared *panchanama* on the spot to show that he has caught Accused on the spot. Certain other questions were put to him in the cross-examination.

21. PW-4 - Sanjay Sopan Shinde is a Police Havaladar, attached to Tilak Nagar Police Station. He has stated that he was on his duty on 12th January 2023 since 09:00 pm upto 10:00 am on the next day. At about 01:30 am, while he was on duty at Natraj Restaurant and Bar, he has received phone call of Sangita Kedari, stating that one person had entered in her house and he removed underpants of her daughter and she had caught that person. Therefore, he called Mobile Van No.3 Shri Virkar Saheb (PW-3) and informed him about the incident. Then Virkar

Saheb went to the spot and brought that person and informant at Police Station. He reached to the Police Station at about 05:00 am and at that time he came to know that Crime No.40/23 was registered against the Appellant. The victim was 9 years old. The Accused is produced on V.C. and he has identified the Accused. He has been cross-examined but nothing relevant has come on record.

22. PW-5 - Dineshkumar Bharat Anande, is API attached to Tilak Nagar Police Station. He has stated in the examination-in-chief that at about 01:30 am, Mobile Van brought one woman, her daughter and Accused at Police Station. Said woman has complained that the Accused entered in her hut and tried to remove underpants of her daughter, who is aged 9 years. The people gathered assaulted the Accused and therefore he was sent for medical treatment. He has recorded statement of the complainant in presence of lady police officer. The said complaint (Exhibit P-10) is the same. He has stated that after examination of the Accused the Accused was arrested. He has also narrated about the investigation. He stated that he prepared the spot *panchanama* and Panchas signed in his presence and he has identified the signature of Panchas. The spot *panchanama* has been exhibited as Exhibit P-34. He has been cross examined extensively. He has stated in the cross-examination that the incident had taken place at about 01:15 am. The complainant has made a phone call to the Police on mobile phone. He

admitted that he has not collected the electricity bill of the hut to show that there was electricity. He admitted that the name mentioned by the victim and her name on the Birth Certificate are different and that he has not collected any documentary evidence about the second marriage of the complainant. He has admitted that he has not enquired with the neighbours about the incident and that as the other huts were demolished, he could not find any neighbour for recording statement. He has stated that the spot of the incident is at a distance of about 10 minutes from Rajawadi Hospital by vehicle and by walking distance of 20 minutes. He has admitted that he prepared spot *panchanama* in between 06:10 am to 06:55 am on 13th January 2023. He has stated that it is not correct to say that after medical examination, he has recorded the complaint. He has admitted that there was no TI Parade of the Accused. He has stated that the information of the incident was received at 05:03 am and that the statement of the informant was recorded after 02:00 am and about one hour was required for that. He has stated that the statement of the victim under Section 164 of CrPC was recorded on 3rd February 2023.

23. Thus, if the above evidence on record is analyzed, then it is clear that as far as the incident in question i.e. when the victim was sleeping, somebody has entered the hut and he was removing the underpants of the victim, there is no contradiction between the evidence of PW-1 i.e.

mother of the victim and PW-2 i.e. victim. Both of them are also consistent that the mother of the victim i.e. PW-1 immediately switched on electricity, saw the Accused, caught him and slapped the Accused and called the Police by dialing 100 telephone number. The evidence on record also shows that immediately Police came there and Police found that PW-1 mother, victim and the Accused at the spot. It is also well established that the Police took the victim, her mother and the Accused to the Police Station.

24. Although, there is extensive cross-examination of PW-1 and PW-2, however as far as this material incident is concerned, there is nothing on record to discredit the evidence with respect to this material evidence.

25. Insofar as various contradictions on which, learned Counsel for the Appellant has relied namely that PW-1 has not stated in her statement before Police that she was collecting garbage and that she returned to the house at 06:00 pm and that she went for work at 10:00 am and that her husband was doing labour work of the caterers, etc., are not of much significance.

26. Learned Counsel for the Appellant has also raised the contention that the age of the victim is not established. However, perusal of the record shows that Birth Certificate of the victim issued by the Government of Maharashtra, Health Department, Municipal

Corporation of Greater Mumbai, is produced which is exhibited as Exhibit P-11. The said Birth Certificate shows that the date of birth of the victim is 06/02/2014. Thus, it is clear that the victim was about 8 years and 11 months at the time of the incident.

27. The PW-1, PW-2 as also PW-5 have been cross examined extensively on the issue regarding difference in name of the victim as shown in the Birth Certificate as well as her name mentioned in the FIR and also in various statements. However, the evidence on record clearly gives the explanation that the first husband of PW-1 has passed away in COVID-19 and the mother has re-married and therefore there is difference between the father's name and surname of the victim. Nothing has been brought on record to contradict the said evidence. The Government Gazette for the period of 30/05/2024 to 05/06/2024 (Exhibit P-33), clearly shows that the said change in the name has been notified in the Government Gazette. The same has been done after the registration of FIR on 13th January 2023. However, the other evidence on record clearly establishes that the mother has re-married after the death of her first husband and therefore there is change in the name of the father and surname of the victim. The said Government Gazette is corroborative evidence and therefore there is also no substance in the said contention.

28. Although, learned Counsel for the Appellant has not raised any

contention regarding one contradiction in the cross-examination of PW-1 that her first husband passed away due to COVID-19 and thereafter she married another person and at that time the victim was only of 2 years. In fact, the victim was at that time about 6 years old. The same appears to be a typographical mistake.

29. As far as the contention that the Accused is an unknown person to the PW-1 informant and PW-2 victim and therefore unless TI Parade is carried out the said evidence has no value, the same is required to be examined on the basis of evidence on record. It is true that as per the settled legal position and as pointed out by the learned Counsel for the Appellant by relying on the decision in the case of *Mohanlal Gehani* (supra) that if the Accused was not known to the witness before the incident and was identified for the first time in the Court, in the absence of a TI Parade, then the evidence of such witness is valueless and could not be relied upon. However, in the present case, the examination-in-chief of PW-1 i.e. mother of the victim as also in her cross-examination clearly shows that PW-1 was in fact originally residing at Vidyavihar and after the death of her mother she left Vidyavihar. Her father was working at Vidyavihar Railway Station for about 6 to 8 years and her evidence clearly shows that Accused was known to her by face as he was also a resident of Vidyavihar and she had seen Accused at Vidyavihar.

30. Ms. Dalvi, learned Counsel for Respondent No.2 is right in pointing out that there is difference between an unknown person who was seen at the time of the incident and a person who is not known by name but the witness has seen that person earlier on several occasions. She is right in contending that merely because the PW-1 was not knowing the Accused by name, however, as she has seen Accused on earlier several occasions and therefore it cannot be said that the Accused is an unknown person to her. Ms. Dalvi, learned Counsel is right in contending that therefore, the reliance by learned Counsel for the Appellant on the decision of *Mohanlal Gehani* (supra) is not relevant in the facts and circumstances.

31. Another submissions raised by learned Counsel for the Appellant is that the evidence on record shows that at the same time PW-1 and PW-2 are present at Police Station, Rajawadi Hospital and at the spot of the incident. However, the evidence on record shows that all these places are at a distance of about 10 minutes away from each other. FIR (Exhibit P-10) shows that it has been recorded on 13th January 2023 at 05:03 am and the incident took place from 01:05 am to 02:00 am on 13th January 2023. The Medico-Legal Examination Report of Sexual Violence records the victim has arrived in the Hospital on 13th January 2023 at 04:52 am, however, the date and time of commencement of examination is 13th January 2023 at 05:45 am and thereafter on 13th

January 2023 at 05:50 am the consent was taken of PW-1 i.e. mother of the victim and the mother has put her thumb impression on the said form. It is significant to note that in the Medico-Legal Examination Report of Sexual Violence (Exhibit P-35) the date of incident being reported was mentioned as 13th January 2023 at 05:03 am at Tilak Nagar Police Station. The Medico-Legal Examination was completed on 13th January 2023 at 06:10 am. The spot *panchanama* (Exhibit P-34) shows that it was conducted on 13th January 2023 at about 06:10 am to 06:55 am. It is clear that there is some overlapping of the timings.

32. However, this is a case where, in the incident in question the Appellant removed underpants of the victim. The Medico-Legal Examination Report of Sexual Violence Report shows that extensive examination is not carried out with respect to most of the clauses it is stated that not applicable / not collected. In fact, thus the Medico-Legal Examination has completed within short time from 05:45 am to 06:10 am. It is clear that, Tilak Nagar Police Station, Rajawadi Hospital and the spot of the incident are at a distance of about 10 minutes from each other. Thus, the above contradictions, if any, are not of much significance. This is a case where the Accused has been caught on the spot when he was committing the offence.

33. Thus, there is no substance in the Criminal Appeal and the same is dismissed.

34. This Court places on record its appreciation for the assistance rendered by Ms. Shukla, learned Counsel for the Appellant, Mr. Yadav, learned APP for the Respondent-State and Ms. Dalvi, learned Counsel appointed to represent the interest of the Respondent No.2.

[MADHAV J. JAMDAR, J.]