



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION (REVN) NO. 26 OF 2023

APPLICANT :

Datta Digambar Ingle,
Aged about 36 years,
Occ : Agriculturist, R/o Bodkha,
Tq. Sangrampur, District Buldhana.

.... Original Appellant/Accused

VERSUS

RESPONDENTS :

1. The State of Maharashtra,
Through Tamgaon Police Station,
Tq. Sangrampur, District Buldhana.

... Prosecution

2.

Grandmother of Victim (minor)

In Crime No.202/2008
To, Natural Guardian (Father)
Tamgaon Police Station, Sangrampur,
Buldhana.

Informant

Shri Aniket Sawal, Advocate for applicant.
Shri N. R. Patil, APP for Non-applicant No.1.
Shri U. V. Chakravarti, Advocate (Appointed) for Non-applicant
No.2.

CORAM: RAJNISH R. VYAS, J.

DATE : 24/09/2025.

ORAL JUDGMENT :

1. The victim in the instant case is three years old girl,
who was subjected to unnatural act by the applicant. The applicant
was, therefore prosecuted for commission of offence punishable

under Section 377 of the Indian Penal Code and after considering the evidence and material on record, Judicial Magistrate, First Class, Sangrampur in Regular Criminal Case No.131/2009 convicted the applicant for the commission of offence punishable under Section 377 of the Indian Penal Code and directed him to undergo rigorous imprisonment for 3 years and to pay fine of Rs.15,000/-. The default sentence was also imposed upon the accused. Part of the fine amount was directed to be paid to the victim as a compensation.

2. Being aggrieved, the applicant preferred the appeal which also met the same fate. Now, the revisional jurisdiction is invoked by the applicant on the ground that there are perverse findings and evidence was not enough to support the charge.

3. I have heard Shri Aniket Sawal, learned counsel for the applicant, Shri N. R. Patil, learned APP for Non-applicant No.1 and Shri Chakravarti, learned counsel for Non-applicant No.2.

4. In order to bring home the charge, prosecution in all has examined 11 witnesses. The incident in question, according to the prosecution, occurred on 21/11/2008 at about 3.00 p.m. to 3.30 p.m. The applicant is the neighbour of the victim. The victim

was three years old. On that day, the grand-mother of victim who is PW-1 along with her husband were in the house. The parents of victim had been to the field to do their work. When the victim was playing near the door of house, the applicant asked her to come with him. The applicant then picked up the victim, went to his house, but after 15 minutes, PW-1 heard the noise of crying of victim and therefore, she asked her daughter by name Vandana to bring the victim to her house. It was noticed by PW-1 that there was blood on the legs of victim and on being enquired about the injury, victim took the name of applicant. Victim also pointed out towards her buttock and on an examination, grand-mother found blood oozing from her anus and vagina. She, therefore, went to the house of the applicant and inspected the spot which was shown to her by victim. She saw the blood stains on the spot. According to the case of prosecution, victim informed her grand-mother that the accused had put cotton ball in her mouth, due to which she vomited also.

5. The factual position of the spot was shown by PW-1 to Mahadev Awar, Bablya Nirmal and Dnyandeo Awar. This incident set criminal law in motion which resulted into registration of First Information Report at Exh.25. The victim, thereafter was

immediately referred for medical examination and her medical examination was done by PW-10 - Dr. Vaishali Bodhankar. Dr. Vaishali Bodhankar found two injuries on anus of victim which are reproduced as under :-

Injury No.1 : Anal sphincter tear at 6'o clock position.

Size : 6 mm (length) x 2 mm (depth)
anteroposteriorty edges irregular.

Blood oozing present on touch.
Age : within 06 hours.

Injury No.2 : Anal sphincter tear at 11'o clock position.

Size 2 mm (length) x 2 mm (depth)
anteroposteriory

Blood oozing present on touch
Age : within 06 hours.”

6. The said witness has further stated that the definite opinion about the penetration, cannot be given by her and she did not find any external injury except two injuries mentioned above. After incident, mother and father of the victim i.e. PW-2 and PW-4 visited the spot and thereafter, visited the victim in the hospital where she was examined. PW-3 is one Pandurang who was a panch witness to the spot. So far as PW-5, 6 and 7 are concerned, they have not supported the case of prosecution. PW-8 is the

person who carried out initial investigation. PW-9 is the Police Officer who after completion of investigation, filed charge sheet. It is necessary to mention here that PW-11 is a Medical Officer, who examined the applicant / accused on 24/11/2008 i.e. after three days of incident and two days of lodging of FIR.

7. Considering the evidence of PW-1, PW-10 and PW-11, it can be said that prosecution has proved crime beyond reasonable doubt and therefore, the findings given by both the Courts cannot be interfered.

8. It is pertinent to mention here that the victim is a minor girl of three years old only. She sustained injuries which is clear from the report and testimony given by PW-10. During the course of investigation, her inner undergarments were also seized and also were forwarded for medical examination. The Chemical Analyzer's report is produced on record below Exh.49 which clearly states that Exh.42 is nicker stained with Blood Group-B. Exh.42 is nicker wrapped in a paper label. Nicker was of the victim. Blood Group-B was of the victim. Thus, the aforesaid fact corroborates that the victim had sustained injury and therefore, the blood was found on the undergarments. The testimony of PW-

1 grand-mother clearly shows that it was the accused who picked up the victim, took her inside the house and committed the unnatural act.

9. Though the learned counsel for the applicant has stated that no definite opinion has been given by the Medical Officer regarding penetration, I am of the view that opinion given by the Doctor is not a gospel truth. The surrounding circumstance and corroborative piece of evidence is required to be seen. There is absolutely no reason for grand-mother to narrate a false story regarding unnatural sex, just because according to the applicant, there is rivalry between the applicant and the family of the victim. The contention advanced by the counsel is, thus not acceptable. The counsel for the applicant has also stated that no injury was found on the person of accused. At this stage, it is necessary to clarify that the accused was subjected to medical examination after two days of lodging of First Information Report and 3 days after the date of incident. The question whether the act committed resulted into causing injury on the person of the accused, could have been decided, had there been specific stand taken by the accused in cross-examination. The cross-examination of the witnesses by the accused shows that it was not made with a

view to seriously challenge the testimony of the witnesses who supported the case of the prosecution.

10. So far as contention that spot is not proved, it is required to be stated that though panch witness has turned hostile, the spot is duly proved by the Investigating Officer. In cross-examination, nothing has been brought on record to show that the Investigating Officer was on enimical terms of the applicant / accused. Even clothes of victim were forwarded for forensic examination. Nicker of victim was found to be stained with blood Group "B", which is of victim (Exh.49).

11. The Courts have rightly considered the evidence and had awarded sentence of 3 years. While convicting the applicant for commission of offence punishable under Section 377 of the Indian Penal Code, I could not find any perversity in the findings given by the Trial Court as well as the Appellate Court.

12. Considering the scope of revision, I am therefore, not inclined to interfere with the Judgments impugned. At this stage, the counsel for the applicant has relied upon the Judgment delivered by the High Court of Delhi, in the case of Kamal Vrs.

State, reported in (2021) 4 High Court Cases (Del) 309, more particularly in Para 51, which is reproduced below :-

“51. Therefore, in our opinion, “carnal intercourse against the order of nature” appearing in Section 377 must have the following ingredients :

i] It must have to do with flesh and sensuality, namely, it must be carnal;

ii] There must be intercourse between individuals, without restricting it only to human-to-human intercourse; and

iii] It must involve penetration other than penile vaginal penetration, since by the very nature, intent and purpose of Section 377, it must refer to an unnatural act, such as “penile-anal penetration”, “digital penetration” or “object penetration”.

13. No doubt that the High Court has lucidly dealt with the aspect of carnal intercourse against the order of nature appearing in Section 377 of the Indian Penal Code, but the facts in the present case are totally different.

14. Contention of applicant that since there is no definite opinion given by the Medical Officer regarding penetration, offence under Section 377 of the Indian Penal Code is not made out, is not correct. As already stated corroborative piece of evidence clearly establishes that there was penetrative intercourse. So far as the Judgment delivered in the case of Pruthiviraj

Jayantibhai Vanol Vrs. Dinesh Dayabhai Vala and others, reported in (2022) 18 SCC 683 Para No.17 is concerned, ratio of same is not applicable to instant case, which is reproduced as under :-

“17. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW 2 and PW 10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that Muddamal No.5 was a simple iron rod without noticing the evidence that it had a sharp turn edge.”

15. It only says that where there is gross contradiction between the medical evidence and the oral evidence and the medical evidence makes ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. Here, by way of cross-examination, nothing has been pointed out that medical evidence falsifies the ocular testimony.

16. A minor girl of 3 years was subjected to unnatural intercourse. No previous enmity is brought on record. Absolutely, no defence is taken or explanation given while answering the queries under Section 313 of the Code of Criminal Procedure.

17. In the aforesaid background, application being devoid of merit, is liable to be dismissed.

18. Accordingly, the application is dismissed.

[RAJNISH R. VYAS, J.]

Choulwar