



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL No. 282/2025.

XYZ Crime No.415/2019
through Police Station Officer,
Police Station, Wadi, District
Nagpur.

... APPELLANT.

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station, Wadi, District Nagpur.

2.Viraj @ Kittu s/o Nagesh Ghodki,
Aged about 41 years, Occupation
Private Service, resident of Wadi Naka
No.10, Adiwasi Society, Amravati
Road, Wadi, Nagpur.

... RESPONDENTS.

Mr. C.F. Bhagwani, Advocate for the Appellant.
Mr.B.M. Lonare, A.P.P. for Respondent No.1.
Mr.Y. Bage, Advocate for Respondent No.2.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 05, 2025.

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ORAL JUDGMENT :

Heard learned Counsel for the appellant, learned A.P.P. for respondent no.1 and learned Counsel for respondent no.2.

2. This appeal is filed under Section 413 of the Bhartiya Nagrik Suraksha Sanhita, 2023 read with Section 372 of the Criminal Procedure Code raising a challenge to the judgment and order of acquittal passed by the Sessions Judge, Nagpur on 16.03.2023 in Special POCSO Case No.163/2020, whereby the respondent no.2/accused is acquitted of the offence punishable under Section 354-A of the Indian Penal Code read with Sections 7,8,9[k][l][m][n][p] and 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act” for short).

3. The prosecution case in short is that on 14.11.2019 the informant/victim lodged a complaint with the Wadi Police Station, Nagpur alleging that she was staying at Subhash Nagar, Nagpur since last one month along with her family which consisted of her mother

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and father. Her brother was working with an IT Company. It is the case of informant that when she was 6-7 years of age, the accused, who happens to son of her maternal uncle (cousin brother), used to commit obscene acts with her whenever she used to visit Nagpur during vacations. The accused used to call her on one or the other pretext and take her to a room on the upper floor, make her lie on the bed and used to kiss her without taking out her clothes, which made her feel insecure. The accused had threatened her not to tell anything to anyone, and that since the victim was not having the age of understanding, she did not tell about the same to anyone.

In October, 2015 when the victim had been to her maternal uncle's house at Nagpur, the accused was doing some work on Computer and she was sitting beside him, at that time accused caught hold of her hands, gagged her mouth with one hand and touched her chest with another hand. Somehow the victim rescued herself, but, she did not disclose the incident to anyone at that point of time. At a later point of time, she narrated the incident to her mother, and went to the police station with her and lodged the complaint

which was registered as Crime No.415/2019 dated 14.11.2019. Police carried out the investigation, filed charge sheet before the competent Special Court, where the accused pleaded not guilty and claimed to be tried. The learned Sessions Court vide judgment and order dated 16.03.2023 acquitted the accused of the aforesaid charges. Hence, this appeal.

4. The learned Counsel appearing for the appellant/victim submits that the trial Court has failed to take into consideration the evidence of the victim in its true perspective, as the victim has in clear terms stated that when she was aged 6-7 years residing at Aurangabad, at that time she used to visit the house of the accused, who used to reside at Nagpur during vacations. Accused is son of her maternal uncle, who used to take her to the house, used to kiss her at neck and face. The learned Counsel further submits that the victim has further deposed that the accused threatened her not to disclose the said fact to anybody. In the year 2015 when the victim went to the house of the accused, at that time he was working on computer, and taking advantage of the fact that the victim was alone, accused pulled her, Rgd.

gagged her mouth and touched her chest. After many failed attempts she rescued herself from the accused. This incident was narrated by the victim for the first time in the year 2019 to her mother and brother, and thereafter, they went to police station, lodged complaint (Exh.18), and accordingly first information report was registered (Exh.19). Further her statement was recorded in the Court, which is at Exh.20. The learned Counsel, therefore, submits that in unequivocal terms the victim has narrated the incident, however, the trial Court has given much emphasis to the fact that the first information report was lodged after a huge delay. He further submits that so far as the matters relating to women and children are concerned, the Court ought not to have given much importance to the delay part. No doubt the first incident is alleged to have been taken place when the victim was 6-7 years old, and at that time the provisions of POCSO Act were not there as the said provisions came into force in the year 2012 and the first incident had taken place in the year 2007, therefore, the Act would not be applicable, however, in respect of the incident which had occurred in the year 2015, certainly

the same would invite the provisions of POCSO Act. The defence taken by the accused that due to property dispute the first information report was registered, would not hold any water for the reason, that a woman would not intentionally put her character and reputation in significant danger by levelling false accusation. He therefore, submits that the trial Court has erred in acquitting the accused and prays to allow the appeal by quashing the judgment and order impugned.

5. On the other hand, the learned Counsel appearing for the respondent/accused submits that there is a huge delay of 4 years in lodging the complaint. After attaining the age of majority the victim has filed the first information report in respect of the incident which had occurred in the year 2015, which is by way of an after thought so as to invoke the provisions of POCSO Act. He further submits that the evidence of victim does not inspire confidence, as in cross-examination, she has admitted that the accused got married on 26.11.2015, and she attended his marriage. The dispute between them arose when the family of the victim shifted to Nagpur and wanted to stay in the house of grandfather of the accused, which was

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objected by the accused and his father. He further submits that P.W.2 who is mother of the victim has specifically stated that they were residing in Aurangabad till 2013 and from 2013 to 2019 they were residing at Wadi and after 2019, they came to reside at Subhash Nagar, Nagpur, therefore, the learned Counsel submits that the defence which was raised is a probable defence, which can be gathered from the evidence of P.W.2. He further submits that even P.W.5, who is brother of the victim, has admitted that he was working in Kerala and the victim informed him about the incident, however, on returning from Kerala after two months of the disclosure of the incident, the first information report was lodged. Meaning thereby, he submits that had it been a fact that victim disclosed such a heinous act to his brother, the brother would not have waited for 2 months to come from Kerala for lodging the report and therefore, the evidence of these witnesses do not inspire confidence. Lastly he submitted that there is no merit in the appeal, and the same requires to be dismissed.

6. Upon hearing the learned Counsel for the respective parties and after going through the evidence placed on record it

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appears that admittedly the first information report was registered after attaining majority by the victim. It is also an admitted position that the two incidents which are narrated by the victim, the first incident is when she was 6-7 years of age, wherein she has alleged that the accused used to call her for one or the other reason to his house and used to take her in a room, make her lie on bed and used to kiss her without taking out clothes. Victim felt insecure, however, he threatened her not to disclose the fact to anybody. It is her case that as she was not of the age of understanding, she did not disclose the incident to anybody. So far as the second incident is concerned, it is of the year 2015, wherein it was alleged that when victim went to her maternal uncle's home at Nagpur, at that time the accused was doing some work on computer, victim was sitting beside him, finding her alone, he caught hold of her, gagged her mouth with one hand and with another hand touched her chest. She bit at the hands of the accused and accordingly released herself from his clutches. However, even this incident of the year 2015 which was not disclosed by the victim at the relevant point of time. It is for the first time on

14.11.2019, she has lodged the report for the incident which took place in the year 2015, so also stating earlier incident. Admittedly POCSO Act came into force on 14.11.2012, therefore, the initial part of the allegations which took place in the year 2007 cannot be taken into consideration for invoking the provisions under POCSO Act. However, so far as the incident which took place in the year 2015 is concerned, the provisions can be applied, and accordingly the trial Court has framed charge for the offence punishable under Sections 354-A of the Indian Penal Code and under Sections 7,8, 9[k][l][m][n][p] and Section 10 of POCSO Act.

7. In order to prove its case, the prosecution has examined P.W.1 who is victim, P.W.2 is mother, P.W.3 – Police Hawaldar attached to Police Station, Wadi, P.W.4 is the Investigating Officer and P.W.5 is brother of the victim. Even the accused has examined his father as D.W.1. After recording the evidence, the trial Court has acquitted the accused from the aforesaid charges.

8. Perusal of the evidence shows that admittedly the victim

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after attaining the age of majority has lodged the first information report. So far as the incident of 2015 is concerned, the victim has deposed about outraging her modesty/molestation at the hands of the accused. She in the cross examination has admitted that when the accused got married on 26.11.2015, she has attended the marriage. Not only that she has also taken photographs along with the accused in the marriage. She further admits that she has felicitated the accused at the time of his marriage. If the date of incident is considered i.e. October, 2015, in the next month itself the accused got married i.e. on 26.11.2015. The time gap is very short, therefore, the evidence of the victim that the incident had taken place in the month of October 2015 and she had attended marriage in the month of November, 2015 appears to be improbable. Had it been the case that such incident had taken place in the month of October, 2015 she would have not attended the marriage ceremony, which took place on 26.11.2015. The allegation is particularly in respect of outraging the modesty as in the evidence of the victim she has stated that the accused has touched her chest, however, nowhere she has stated that

she has made any hue and cry, nor it has come on record that she was threatened by the accused about disclosure of the incident.

9. As the first information report was lodged in the year 2019 for the incident of the year 2015, at least the prosecution ought to have come up with some plausible explanation. No doubt if some reasonable period would have been there, one can understand, but, the report is lodged after four years thereby invoking the provisions of the POCSO Act. Further the evidence of brother of the victim goes to show that the victim had disclosed to him both the incidents, however, as he was working in Kerala at relevant time and on returning from Kerala after two months, the report was lodged, is an unnatural conduct and therefore, reliance cannot be placed on such testimony.

10. The accused has come up with a defence that the family of the victim wanted to reside in the house of his grandfather, however, the father of accused has objected to it. This fact has surfaced in the evidence of mother of the victim (PW 2), wherein she has specifically stated that in the year 2019 they came to stay at Subhash Nagar,

Nagpur. Therefore the accused has successfully come with a defence that in order to stay at their house, the first information report was lodged/registered invoking provisions of POCSO Act and also Section 354-A of the Indian Penal Code. It would be further important to note that though the incident took place in the year 2015, the first information report was registered in the year 2019. The delay is huge. It was least expected from the prosecution that some explanation ought to have been placed on record from the side of victim or mother, however, no explanation is coming forward, so as to accept the version of the victim. It is a matter of record that the incident took place in the year 2015, whereas the first information report was registered in the year 2019, can be said to be an afterthought act.

11. From all the above facts, the prosecution has utterly failed to establish the case either under the provisions of POCSO Act or under Section 354-A of the Indian Penal Code. Further the charges framed under the respective provisions are not made out. There is no evidence to come to a conclusion that there is atleast some case against the accused. Therefore, the trial Court has rightly appreciated the

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evidence on record, and has recorded a finding that the accused is not guilty of the offence. Hence, for aforesaid reasons, there is no merit in the appeal, the same is dismissed.

JUDGE