



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

CRIMINAL APPEAL No.503/2024

Vijay Marotrao Gotmare, : **APPELLANT**
Age 37 years, Occu. Labour,
At Present R/o Varha, Tq. Tiosa, Dist.
Amravati

Vs.

The State of Maharashtra, through Police : **RESPONDENT**
Station Officer of Police Station Kurha, Tq.
Tiosa & District Amravati

Ms. Sapana Jadhav, Advocate for the appellant.
Ms. Sonia Thakur, APP for the respondent.

CORAM: NIVEDITA P. MEHTA, J.

Date of reserving the judgment : 23.09.2025

Date of pronouncing the judgment : 29.09.2025

JUDGMENT :

The appellant/accused has preferred the present appeal challenging the judgment and order dated 12th August, 2024 (hereinafter referred to as the "impugned judgment") passed by the learned Additional Sessions Judge, Amravati, in Special Case No.10 of 2021. By the impugned judgment, the learned Special Court convicted the appellant for the offences punishable under Sections 354-A(1)(i), 451 and 354-D of Indian Penal Code (hereinafter referred to as the "IPC"), as well as under Section 7 read with Section 8 and Section 11 read with Section 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter

referred to as the "POCSO Act"). In terms of Section 235(2) of the Code of Criminal Procedure, the appellant has been sentenced as follows:

To undergo rigorous imprisonment for a period of five (5) years and to pay a fine of Rs. 3,000/- for the offence punishable under Section 8 of the POCSO Act; in default of payment of fine, to suffer simple imprisonment for a period of three (3) months;

To undergo rigorous imprisonment for a period of three (3) years and to pay a fine of Rs. 2,000/- for the offence punishable under Section 12 of the POCSO Act; in default of payment of fine, imprisonment for a period of two (2) months.

It is further directed that both substantive sentences shall run concurrently.

2. The case of the prosecution is that the complainant, mother of the victim, lodged report with Kurha Police Station stating that she resides with her husband, minor daughter (aged approximately 9 years), son and mother-in-law. Both she and her husband are engaged in agricultural work and routinely leave for the fields at around 6:00 a.m., returning by approximately 3:00 p.m. During their absence, her mother-in-law, son, and the minor daughter remain at home.

3. It is alleged that on Wednesday, the 21st of October, 2020, which was four days prior to the festival of Dussehra, while the complainant and her husband were away working in the fields, an

incident occurred at their residence. Upon their return, the complainant's mother-in-law informed her that at about 11:00 a.m. to 12:00 noon, while she was in the kitchen preparing food, she heard the victim shout. Responding to the cries, she rushed towards the temple (Deoghar) situated within the premises and found the door closed from inside. Upon pushing the door open, she witnessed the appellant/accused holding the victim, who was attempting to free herself from his grasp. On being confronted by the mother-in-law, the accused fled from the spot, leaving the victim behind. Despite witnessing such an incident, the complainant did not immediately report the matter to the authorities, owing to concerns regarding the social reputation of the family.

Subsequently, on 10th November, 2020, at approximately 3:00 p.m., while the complainant was engaged in cleaning the house, her daughter approached her in a distressed and tearful condition. The victim narrated that while she was playing outside the house near the cattle shed, the appellant/accused came to the spot, caught hold of her, and that she managed to escape from his clutches. It was at this point that the complainant proceeded to lodge the report regarding the incidents, which has been marked as Exhibit 8.

4. Pursuant to an oral report lodged by the complainant, an offence came to be registered vide Crime No. 0173 of 2020 for the offences punishable under Sections 354 and 354-D of the Indian Penal

Code (IPC) and Sections 8 and 12 of the POCSO Act. The printed First Information Report (FIR) is placed on record as Exhibit 9.

5. During the course of investigation, the accused was arrested on 11th November, 2020. The Investigating Officer, accompanied by the victim, visited the scene of the incident and prepared a spot panchanama of the Deoghar (place of worship) and the cattle shed, in the presence of two panch witnesses. Both the victim and the accused were referred for medical examination. Statements of the victim, her mother, and her grandmother were recorded under Section 164 of the Code of Criminal Procedure, 1973. Upon completion of the investigation, a charge-sheet was filed before the competent Court.

6. Thereafter, the learned Special Judge framed the charge against the accused vide Exhibit 3, for the offences punishable under Sections 354-A(1)(i) and 354-D of IPC and Section 7 punishable under Section 8, as well as Section 11 punishable under Section 12 of the POCSO Act. The accused pleaded not guilty and claimed to be tried.

7. During the trial, the prosecution examined eight witnesses, Archana Gajanan Wankhade (PW.1) Complainant at Exhibit 7; Santoshsingh Pritamsingh Gil (PW.2) - Panch witness - at Exhibit 12; Babytai Manoharrao Wankhade (PW.3) - Grandmother of the victim - at Exhibit 17; Victim (PW.4) - at Exhibit 22; Dr. Bhagwat Keshav Yeul (PW.5)

Medical Officer who examined the victim and accused at Exhibit 35; Pratibha Krushnarao Atram (P.W.6) Sub-Registrar, Municipal Corporation, Amravati at Exhibit 41; Anita Rambhor Nikhar (P.W.7) - Head Constable at Exhibit 45; Sanjay Madhukarrao Wankhade (P.W.8) Investigating Officer - at Exhibit 48.

In defence, the appellant/accused examined two witnesses, namely: Tushar Babanrao Wadhonkar (D.W.1) - at Exhibit 54 and Ramdas Sadashiv Neware (D.W.2) - at Exhibit 59.

8. Upon closure of the prosecution's evidence, the accused was examined under Section 313 of the Code of Criminal Procedure, wherein he denied all incriminating circumstances put to him and stated that he has been falsely implicated in the present case.

9. The learned Special Judge, upon a comprehensive appreciation of the evidence on record by judgment and order dated 12th August, 2024 convicted the appellant for the offences charged and sentenced him accordingly, as mentioned above. The learned trial Court observed that the prosecution had successfully established the foundational facts of the case, including the time, place, and manner in which the incident occurred. The testimonies of Archana Gajanan Wankhade (P.W.1), the complainant, and Babytai Manoharrao Wankhade (P.W.3), the grandmother of the victim, were found to be credible and

consistent, and fully corroborated the victim's version on all material aspects.

10. The Trial Court further held that, since the foundational facts were duly established, the presumption under Section 29 of the POCSO Act stood attracted. Although the defence examined two witnesses, it failed to discharge the burden of rebutting the said statutory presumption. The plea taken by the appellant/accused, that he was on duty at his workplace at the relevant time, was not supported by any documentary evidence and was thus disbelieved by the trial court.

11. The learned Special Judge also took note of the provision under Section 42 of the POCSO Act, which mandates that where an act constitutes an offence punishable under both the POCSO Act and the Indian Penal Code, the offender shall be liable for punishment which is greater in degree. Accordingly, the Court convicted and sentenced the appellant/accused under Sections 8 and 12 of the POCSO Act and refrained from imposing separate sentences for the offences under Sections 354-A(1)(i), 354-D, and 451 of the Indian Penal Code.

Being aggrieved by the aforesaid judgment and order of conviction and sentence, the appellant has preferred the present appeal.

12. Heard Ms. Sapana Jadhav, learned counsel for the appellant, and Ms. Sonia Thakur, learned Additional Public Prosecutor for the respondent/State.

13. Learned counsel for the appellant submitted that the prosecution's case is riddled with material inconsistencies and contradictions, which goes to the root of the matter and render the prosecution's version doubtful. It was contended that the first incident allegedly took place on 21st October, 2020, as narrated by the grandmother of the victim, wherein it is alleged that the appellant caught hold of the victim from behind and used criminal force. However, despite the seriousness of the allegation, no report was lodged with the police at that time. The delay in lodging the report raises serious doubts about the credibility of the prosecution's case.

14. It was further submitted that the second incident is alleged to have occurred on 10th November, 2020, around 3:00 p.m., during the Diwali festival. On this occasion also, it is alleged that the appellant caught hold of the victim from behind, and that the victim somehow managed to free herself. The learned counsel argued that there are several glaring inconsistencies and contradictions between the depositions of P.W.1 Archana Gajanan Wankhade (mother of the victim) and P.W.3 Babytai Manoharrao Wankhade (grandmother of the victim), which were not properly appreciated by the learned Special Court.

15. Attention was also drawn to the spot panchanama prepared by the Investigating Officer, which indicates that the location where the alleged incident took place is an open area accessible to the public. Despite this, the prosecution failed to examine any independent witnesses who may have seen or heard the incident, thereby weakening the prosecution's version.

16. It was further contended that the testimony of the grandmother (P.W.3) is highly doubtful, as her conduct does not align with the natural course of human behavior. If she had indeed witnessed such an act, it would be expected that she would raise an alarm and immediately lodge a police complaint. However, even after informing the victim's parents on the same day, no report was lodged, which further casts a shadow of doubt on the veracity of the allegations.

17. Learned counsel also submitted that the second incident, as narrated by the prosecution witnesses, does not, in any event, attract the essential ingredients of the offence alleged, particularly in the absence of any specific overt act demonstrating sexual intent on the part of the appellant. It was argued that mere physical contact, without any accompanying sexual intent, cannot attract the provisions under the relevant sections. In support of her submissions, the learned counsel placed reliance on the judgments as under :- Criminal Appeal No. 1098 of 2024 (Nirmal Premkumar and another Vs. State represented by Inspector

of Police) and Criminal Appeal No. 67 of 2021 (Pravin Ruprao Harde Vs. State of Maharashtra through Police Station Officer, Morshi Police Station, Dist. Amravati).

18. Per contra, the learned Additional Public Prosecutor supported the judgment and order passed by the learned Special Judge, contending that the findings recorded by the trial Court are based on due appreciation of the evidence on record and do not warrant interference.

19. It was submitted that there is no reason for the complainant, who is the mother of the victim, or her grandmother, to falsely implicate the appellant or to subject the minor child to unnecessary trauma and risk her reputation and future. The relationship between the parties and the age of the victim, which was 9 years, are not in dispute. The age of the victim has been duly proved by the prosecution through the birth certificate (Exhibit 43), which has been established on record through the testimony of PW.6 Pratibha Krushnarao Atram, a competent witness.

20. The learned Additional Public Prosecutor further submitted that the defence examined two witnesses in an attempt to establish the existence of enmity between the complainant's family and the appellant, and also to claim that the appellant was on duty at the time of the incident. However, these claims have not been sufficiently established to discredit the consistent version of the prosecution witnesses.

21. With regard to the inconsistencies pointed out by the learned counsel for the appellant, it was argued by the learned public prosecutor that the appellant has miserably failed to cross-examine the witnesses on the point of the omission and contradiction. Nothing has been brought by the appellant to disbelieve the consistent version of the prosecution witnesses with regard to the incident in question. Minor omissions and contradictions are natural and expected in testimonies of witnesses, especially in cases involving child victims, and do not necessarily discredit the core of the prosecution's case. She further submitted that the absence of physical injuries or medical evidence cannot be conclusive in determining whether an offence under the POCSO Act has occurred, particularly when the allegation pertains to the accused holding the victim from behind. The sexual assault, in the present case, need not necessarily result in visible injury for the offence to be established under the Act.

22. The learned Additional Public Prosecutor emphasized that the act of the accused was witnessed by the grandmother of the victim during the first incident on 21st October, 2020, which lends credibility to the subsequent incident as narrated by the victim herself. The presence of two consistent narratives of similar conduct within a short span of time strengthens the prosecution's case, particularly in light of the child's age and vulnerability. It was also submitted that Section 29 of the POCSO Act, provides for a presumption of guilt against the accused once the foundational facts constituting the offence are established. Therefore,

once the prosecution has discharged its initial burden by leading prima facie evidence in support of the charges, the burden shifts upon the accused to rebut the same.

23. I have considered the arguments canvassed by the respective parties and also the testimonies of prosecution witnesses as well as defence witnesses which is enumerated as under:

PW.1, the mother of the victim, deposed that on 21.10.2020 she returned from her work at 03:00 pm, that time her mother-in-law told her that while she was preparing food, she heard the victim shout. She went towards the deoghar (place of worship) and opened the door and saw that the accused had caught the victim's hand and the victim was trying to escape. After seeing the grandmother, the accused ran away. Due to fear in their minds about defamation of the victim no report was lodged against the accused. On 10.11.2020, the accused again dared to commit the same act with victim girl in the cattle-shed following which a report was lodged against the accused.

24. The appellant, during the cross-examination of PW.1 failed to bring out anything to the contrary. Suggestions were put to the prosecution witness but the same was denied by her. Nothing was brought out which led to disbelief of PW.1's version.

25. PW.3, the grandmother of the victim, deposed about the incident which took place in the month of October, 2020 in her house. The victim was present with her in the house and she was asked to lighten the lamp in the deoghar (place of worship). She deposed that she heard the shout of the victim and when she went near the worship place she saw the accused using criminal force to the victim. She categorically deposed that she saw the accused. When the victim's parents returned home, she narrated the incident to them. She also deposed that they did not lodge the report with the police. She further deposed that after 15 days when the victim went to cattle-shed for throwing waste water she returned home crying. Victim informed her that accused had used criminal force upon her in cattle-shed. The grandmother then again narrated the said incident to the victim's parents. Thereafter the mother of the victim lodged a report in police station against the accused. She stated that the police recorded her statement and thereafter the learned trial Court recorded her statement.

During cross-examination, the counsel for the accused failed to bring out any omission or contradiction with the testimony of PW.3. Except suggestions that there was quarrel between her son, Gajanan and the accused, nothing more was brought on record. The entire evidence of PW.3 remained unshaken so far as the incident in question is concerned.

26. The statement of PW.3, as recorded by the police and her statement under section 164 of CrPC recorded by the learned trial court fully corroborates with the version of the victim and her mother.

27. PW.4, the victim, deposed that on the date of the incident she was at home with her grandmother. Her parents had left for their work. Her grandmother asked her to lighten the lamp in the deoghar (place of worship). After that she closed the door. Accused came in her house, lifted her near the *ghodasi*, where the beds are kept. He kissed her and asked her to remove her pants. The victim shouted, and upon hearing the same, victim's grandmother came in and shouted on the accused. The victim stated that when her mother returned home, her grandmother narrated the incident to her.

On 10.11.2020, when the victim had gone to the cattle-shed, the accused again caught hold of her. The victim rescued herself and returned home where she narrated the incident to her mother.

28. During her cross-examination, she denied the suggestions put forth by the counsel for the accused. Nothing could be brought on record by the appellant to disbelief the testimony of the victim. She consistently stuck to her version that the accused had committed the offence.

29. PW.2, the panch witness, supported the prosecution by proving the spot panchanama (Exh.13), which was conducted in the

presence of the victim and her parents. He stood firm in cross-examination and denied any fabrication. PW.5, the Medical Officer, stated that upon examination of the victim on 11.11.2022, no external injuries were found. PW.6, the Birth Registrar produced the extract of the birth register and birth certificate (Exhs. 42 & 43) confirming that the date of birth of the victim is 15.12.2011. The authenticity of this record was not seriously challenged by the defence, and it stands proved that the victim was a minor aged approximately 8 years and 10 months at the time of the incidents. PW.7, the lady constable, confirmed that the victim's statement was recorded in her presence without pressure or coercion, and PW.8, the Investigating Officer, described the sequence of the investigation, including recording of statements, preparation of panchanama, and filing of the charge-sheet. No procedural lapses were brought on record by the defence.

30. Upon comprehensive evaluation of the oral and documentary evidence brought on record by the prosecution as well as the defence, this Court finds that the learned trial court has recorded a cogent and justifiable finding and rightly convicted the appellant for the offences for which he was charged.

31. I have considered the entire material which was placed on record including the record and proceedings. The evidence of PW.1 and PW.3 fully corroborates with the version of the victim, (PW.4). The

counsel for the accused has failed to point out any contra material from the version of the prosecution's witnesses. All the suggestions put forth by the counsel for the accused were specifically denied by the prosecution witnesses. It is a settled position of law that in the case of the evidence of a victim of sexual assault corroboration is not necessary. The Hon'ble Apex Court in State of ***Punjab v. Gurmit Singh & Ors. reported in 2014 SCC Online SC 529*** has held that in the case of the evidence of a victim of sexual assault corroboration is not necessary. The victim's evidence is more reliable than of an injured witness as she is not an accomplice. The court further held in the same judgment as under :

"In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.

.....

The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury."

32. I have also considered the judgments relied upon by the learned Counsel for the appellant in support of the case. The judgments relied upon by the learned Counsel for the appellant does not support the case of the appellant. The facts involved in the present case do not squarely apply to the decisions relied upon by the appellant.

33. Section 386 of the Cr.P.C. contemplates powers of the appellate Court. Section 386 (b)(iii) of the Cr.P.C. empowers the appellate Court to alter the nature and extent of the sentence, but not so as to enhance the same. In exercise of the power as conferred above under the relevant provision of Cr.P.C., I maintain the judgment passed by the learned trial Court. Looking to the mitigating circumstances that the accused is a labourer and has undergone incarceration for more than one (1) year, I proceed to alter the sentence accordingly awarded by the learned trial Court. The sentence imposed by the learned trial Court under Section 7 r/w Section 8 i.e., to undergo rigorous imprisonment for a period of five (5) years and to pay a fine of Rs. 3,000/- for the offence punishable under Section 8 of the POCSO Act; in default of payment of fine, to suffer simple imprisonment for a period of three (3) months; is hereby modified. The appellant is sentenced to suffer rigorous imprisonment for a period of 3 years. Rest of the conditions, i.e. fine of Rs. 3,000/- and in default of payment of fine, to suffer simple imprisonment for a period of three (3) months, is maintained. The punishment imposed by the learned trial court under Section 12 of the POCSO Act is maintained. Both the sentences shall run concurrently.

The period already undergone by the accused during investigation, trial, or appeal period, if any, shall be set off in terms of Section 428 of the Code of Criminal Procedure.

The appeal is partly allowed in terms of the above.

(NIVEDITA P. MEHTA, J.)

SK Nair / MP Deshpande