2026:BHC-AUG:53104

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 CRIMINAL APPEAL NO. 237 OF 2016

Vijay S/o. Chhabunath Veer
Age: 19 years, Occu.: Labour,
R/o.: Dhangarwada, Paithan,
Tq.Paithan, District Aurangabad. ….Appellant
(Original Accused)

Versus

The State of Maharashtra …..Respondent

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Ms. Shilpa D. Magre, Advocate for Appellant (Appointed).
Mrs.Chaitali Chaudhari Kutti, APP for Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 29-10-2026
Pronounced on : 30-10-2026

JUDGMENT :

1. Instant appeal takes exception to judgment and order dated 14-03-2016 passed by learned Additional Sessions Judge, Aurangabad, in Sessions Case No.122 of 2013 convicting appellant for offence under Section 4 read with 3(a) and Section 6 read with 5(j)(ii) of the Protection of Children from Sexual Offences Act (POCSO) Act, 2012.

BRIEF FACTS OF THE PROSECUTION CASE

2. Brief facts giving rise to present appeal are that, victim, a minor, got acquainted with accused, a neighbour. It is the case of

prosecution that, accused took her to Nag-Gath and expressed his willingness to marry victim if she allows him to maintain physical relations with her. On assurance of marriage, accused maintained sexual relations with victim and also impregnated her, however, in spite of repeated request for marriage, he refused to marry and therefore, accompanied by her mother, victim approached Police thereby setting law into motion resulting into registration of Crime bearing No.14 of 2013 for offence under Sections 376, 506 of the Indian Penal Code (IPC) and under Sections 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which was duly investigated and on gathering sufficient evidence, accused came to be chargesheeted and tried vide above sessions case. Learned trial Court accepted the case of prosecution and convicted the appellant as stated above. Precisely said judgment and order is now subject matter of the appeal.

SUBMISSIONS

On behalf of Appellant :

3. Learned counsel for the appellant would point out that, prosecution has miserably failed to prove its case as well charges beyond reasonable doubt. She would point out that, here, very minority of the victim has itself not proved beyond reasonable doubt.

On this count, learned counsel took this Court through the birth certificate at Art-'B' and she would point out that, the name of father provided by victim herself as well as the name of husband supplied by mother of victim is "Arun", but in the said birth certificate, there is no reference of name of father of victim as "Arun" and rather name of father of victim is shown as "Ramesh". Thus, she points out that, so called birth certificate is manufactured and bogus. She would point out that, learned trial Court has also rightly held that the said document is doubtful on the point of age. Resultantly she submits that, prosecution has failed to discharge initial burden of proving victim to be a "minor" at the time of incident. She also pointed out that, in the very cross-examination, victim herself has candidly admitted that, at the time of lodging complaint, she was above 17 years of age. Learned counsel pointed out that, even very mother of victim has failed to support prosecution case, but has in cross admitted that, there is no record of birth certificate and for such reason also, she questions prosecution case as well as credibility of evidence.

4. Further, taking this Court through the testimony of victim herself at Exhibit 18, more particularly cross-examination, it is pointed out that, love affairs and love relations are admitted. That,

there were consensual relations, but merely because there was refusal to marry on account of caste differences, there is implication. On above both counts, she questions the story of prosecution as well as impugned judgment and prays to allow the appeal by setting aside the impugned judgment and order.

On behalf of State :

5. In answer to above, learned APP would support the judgment and order of conviction. She would submit that, victim was barely 16 years and some months old. That, there is birth certificate Art."B" issued by Local Body i.e. Brihanmumbai Mahanagarpalika and therefore, it is her submission that, prosecution has infact proved the minority of the victim.

6. As regards to offence is concerned, learned APP pointed out that, victim being a minor, though she has admitted in cross-examination about some love relations, she would submit that her consent is of no significance once victim is below 16 years of age. Learned APP pointed out that, accused had maintained physical relations repeatedly on fake promise of marriage and made victim pregnant, to that extent victim has deposed in her evidence. That appellant misused the trust and exploited the victim and therefore,

learned trial Court committed no error whatsoever in convicting the accused and for want of merits she prays to dismiss the appeal.

On the point of age of victim :

7. After considering above rival contentions and on going through evidence on record, and more particularly in view of the charge, as usual, it is incumbent upon prosecution to prove at the outset that victim was a "minor" on the date of incident.

On the point of age of victim, prosecution seems to be relied heavily on the evidence of **PW9** Laxman Deorao Mhaske, Head Master of Shrinath High School, Paithan, where victim studied. He deposed in his evidence at Exhibit 64 that as per school record, date of birth of victim is 02-02-1994 and he placed on record School Leaving Certificate at Exhibit 66. Here, PW2 mother of victim merely stated that, at the time of incident, her daughter was 16 years old. While under cross-examination, mother of victim has admitted that date of birth of victim is not noted down anywhere.

As regards to documentary evidence is concerned, there is birth certificate Art-"B" issued by Brihanmumbai Mahanagarpalika and School Leaving Certificate at Exhibit 66.

In view of Judgment of Hon'ble Apex Court in the case of ***P.Yuvaprakash v. State Represented by Inspector of Police****, 2023 INSC*

676, it is now well settled that, School Leaving Certificate is not conclusive proof on the point of age. Though, there is birth certificate collected by PW8 Investigating Officer from Brihanmumbai Mahanagarpalika, which is issued on 16-09-1997, as pointed out, victim's father's name is shown as “Ramesh”, however, on comparing it with testimony of PW1 victim as well as her mother PW2, they both have deposed before the Court quoting name of one “Arun” as father of victim. Therefore, there is total mismatch between father’s name as deposed by witnesses and the one which is appearing in birth certificate issued by Brihanmumbai Mahanagarpalika. Indeed, there is doubt over credibility of said documents and learned trial Court, in its judgment, more particularly in paragraph 30, has categorically observed that, documents of birth create reasonable doubt and are not worthy of credence. Therefore, here, as pointed out by learned counsel for appellant, there is indeed weak or no conclusive evidence on the point of minority of victim.

Offence under the POCSO Act :

8. As regards to offence under the provisions of POCSO Act is concerned, one has to fall back on the evidence of **PW1** victim and the same is visited, which is at Exhibit 18. In her testimony, she has stated that, accused was her neighbour and she and accused together

used to go to Nag-Ghat. According to her, prior to lodging report, she and accused together went to Nag-Ghat and she used to wonder with him as well as talk with each other. That, accused told her that he was ready to marry her if she allowed him to have sexual relations with her. Then she states that thereafter, accused had sexual relations with her. From her such testimony, it is clear that there is no resistance from her and rather it suggests a consensual act.

Victim further deposed that, she became pregnant and therefore, her family members took her to house of accused and asked him to marry with her, but accused refused. Again as pointed out only after refusal to marry with her because of castes differences, she states that she and her mother went to Police Station and lodged report Exhibit 19. Therefore, here, PW1 victim's testimony itself does not show that there was any forcible sexual relations. Once it is found that victim was not proved to be a "minor", then coupled with the above aspects of there to be no resistance, the said acts, which resulted into seven months pregnancy without any prior complaint, assume dimension of consent. Resultantly, evidence on the point of commission of offence under Sections 4 and 6 of the POCSO Act also does not get gravitated.

9. Though there is evidence of PW2 mother of victim, as stated,

she has not supported prosecution. Though Medical Officer, Carrier and Panchas are examined, in the light of above said failure of prosecution to prove very “minority” of the victim and there being apparently consensual sexual relations, charges failed.

10. Perused the impugned judgment and order. The learned trial Court has failed to consider and appreciate prosecution case in above discussed backdrop and therefore, interference in the impugned judgment and order is called for. Accordingly, following order is passed :

ORDER

I. The appeal is allowed.

II. The conviction awarded to the appellant Vijay S/o. Chhabunath Veer by learned Additional Sessions Judge, Aurangabad in Sessions Case No.122 of 2013, under Section 4 read with 3(a) and under Section 6 read with 5(j)(ii) of the Protection of Children from Sexual Offences Act, on 14-03-2016, stands quashed and set aside.

III. The appellant stands acquitted of the offence punishable under Section 4 read with 3(a) and under Section 6 read with 5(j)(ii) of the Protection of Children from Sexual Offences Act

IV. The bail bonds of the appellant stand cancelled.

V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

VII. Fees of the learned counsel appointed to represent appellant, which is to be paid by the High Court Legal Services Sub-Committee, Aurangabad, is quantified at Rs.10,000/-.

[ABHAY S. WAGHWASE, J.]

SPT