



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 289 OF 2024

Salman Sherkhan Pathan
Age: 21 years, Occu.: Labour,
R/o. Jai Bhavani Nagar, Andhaner,
Tq.Kannad, District Aurangabad.Appellant

Versus

1. The State of Maharashtra
2. X.Y.Z.Respondents

.....
Advocate for Appellant : Mr. Satej S. Jadhav
APP for Respondent no.1 : Mr.N.S.Tekale
Advocate for Respondent no.2 : Ms.Shilpa Awachar (appointed)

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 07 APRIL, 2026

PRONOUNCED ON : 16 APRIL, 2026

JUDGMENT :

1. Convict for offence under Sections 363, 376(2)(n) of the Indian Penal Code (IPC) and under Sections 4(1), 6, 8, and 12 of the Protection of Children from Sexual Offences Act (POCSO Act), challenges judgment and order of conviction dated 29-04-2023, passed by learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No.142 of 2017.

BRIEF FACTS OF THE CASE

2. In brief, case of prosecution in trial Court was that, in 2017,

PW1 victim was studying in 11th standard. That, PW2 father of victim reported Police on 17-04-2017 that his daughter, who had left the house to attend coaching classes, had not returned home and on due search, when she was not found, on his complaint, offence of kidnapping was registered against unknown person. On his supplementary statement dated 18-04-2017, accusations were made against present appellant that victim was removed from her parent's custody and guardianship and on enquiry, his daughter told that, on the pretext of performing marriage, accused had sexual intercourse with her twice/thrice. Making above accusation as a source, Kannad Police Station, who had initially registered Crime bearing No.82 of 2017, for offence under Section 363 of the IPC, added further offence under Sections 366A, 376 of the IPC and under Sections 4, 6, 8 and 12 of the POCSO Act.

Trial was conducted during which prosecution has adduced evidence of in all five witnesses and also relied on documentary evidence like panchanama, scientific report etc.

On appreciation of such evidence, vide judgment and order dated 29-04-2023, charges are held to be proved and as such order of conviction and sentence has passed as spelt out in the operative order. Now, exception is taken to the same by filing present appeal.

SUBMISSIONS

On behalf of appellant :

3. Mr.Satej Jadhav, learned counsel for appellant would open his argument by submitting that, here, there is serious dispute about age of the victim. According to him, there is no conclusive proof of the age of the victim so as to hold her as “child” within definition of the POCSO Act. He pointed out that, victim’s evidence is silent on exact date of birth or her age. That, there is solitary documentary piece of evidence in the form of school admission extract/leaving certificate. He pointed out that, date of admission is shown as 12-06-2006 whereas said document shows that victim left school on 14-06-2010. Further according to him, going by the date of occurrence, girl is shown to be of 16 years and 3 months old, but according to him, medical evidence of prosecution suggests her to be of 17 years of age.
4. It is his further submission that, admittedly, from the very tenor of the victim’s evidence and more particularly, the nature of answers given by her in cross-examination, it is apparent that there were love relations. That, victim admitted that she liked accused. He pointed out that, she had accompanied accused from the vicinity of Bus Stand by wearing a Burqa and has travelled to Aurangabad without raising any alarm. That, after being apprehended by Police, at the instance of

parents, she has developed a story of being taken away on the pretext of marriage. That, her version is improvised one.

5. He would further submit that, here, victim has merely deposed about accused maintaining physical relations with her. That, she has not stated that, it was against her wish or without her consent and as such according to him, there are reasons to hold that there being love relations, she was consenting party to whatever act she terms it. He pointed out that, medical evidence has ruled out use of force or to be any signs of use of force and on this count, he very emphatically submitted that here, examining Doctor is not witness before this Court and only medical examination papers are placed on record and by inviting attention of this Court to remark over the same, he pointed out that there are no signs of use of force and in absence of any further scientific evidence or base, mere opinion has been expressed that sexual intercourse cannot be ruled out.

6. He would further submit that, here, clothes of victim and accused are said to be seized, but according to him, there is variance in the exhibits of the clothes, which are seized and sent by Investigating Officer to Chemical Analyzer (CA) and the reasons and analysis issued by Laboratory. He pointed out that, Articles of

undergarments of both accused and victim are numbered differently and it does not tally with the description of Articles received by CA. He pointed out that, though semen is detected on Article 7, as per Investigating Officer's own communication, it is undergarment of accused and therefore, there is nothing unusual in finding semen stains over it. On above count also, he questions credibility and veracity of the scientific evidence.

7. Lastly, he submitted that, here, victim has merely deposed about physical relations without categorically stating that there was sexual intercourse. That, for attracting offence of rape, penetration is *sine qua non*. According to him, there was no evidence to show that there was aggravated sexual attack so as attract rigors of Section 6 of POCSO Act. Above ambiguous term used by victim creates doubt about very charge of Sections 4 and 6 and the POCSO Act for which conviction is recorded. Thus, according to him, there is no penetrative sexual assault and medical expert merely expressed possibility of sexual intercourse and as it is not proved beyond reasonable doubt, he seeks indulgence of this Court.

On behalf of Respondent No.1/State and Respondent No.2/victim:

8. Learned APP and learned counsel for respondent no.2, who

would support the judgment and order of conviction, submitted that prosecution has indeed proved before trial Court that victim was below 18 years of age. That, there is overwhelming evidence on age of victim. That, victim has herself deposed that after taking the victim from Bus Stand to a room, there was forceful intercourse with her not once but twice. According to them, in view of proved age of victim, her consent is immaterial. That, here, Section 5(l) of the POCSO Act was clearly attracted. That, medical evidence finds support from CA report.

Learned APP has specifically pointed out that, before the learned trial Court, no issue about age or minority of the victim was raised, rather extract of school admission register gathered by Investigating Officer has been admitted by defence and as such, it is his submission that now it is not open for accused to raise issue about age of victim. Therefore, while justifying the order of conviction, he prays to dismiss the appeal for want of merits.

BRIEF ACCOUNT OF EVIDENCE IN TRIAL COURT

9. **PW1** Victim deposed at exh.17 that, she took education upto 12th Standard in educational institution named by her in testimony. According to her, in 2017, while she was in 11th Standard, she was

attending coaching classes at Kannad and that she knew accused, who was resident of Bhavani Nagar, Andhaner and she identified him in the Court. According to her, one day, he met her and induced her for marriage. On 16-04-2017, when she had come to attend coaching classes at Kannad, accused met her at S.T.Stand and he took her to Baba Petrol Pump at Aurangabad and from there, they went to Ranjangaon where he took her in a room in the building and he had forceful physical relations with her. He locked her in the room and returned to Kannad. On next night, he again came there and had forceful sexual intercourse. Police of Kannad Police Station came there, her statement was recorded and then she was referred for medical examination.

While under **cross-examination** she is unable to state whether she reported date of birth in her statement to Police. She admitted that she wore Burqa when she came to Aurangabad. She admitted that she met accused previously and there were talks between them during which accused said that he wanted to marry her. She is unable to state whether there was marriage proposal or about he giving any threats. She admitted wearing Burqa. She is unable to state whether she was loving accused or not and whether he liked her and whether he accordingly gave marriage proposal to her. She

categorically denied that she was willing to marry him. She answered that she did not inform her parents about proposal of accused to marry her. In paragraph 4 of cross-examination, she denied that accused caught her hand and pulled her at Bus Stand but stated that he caught her hand and took her to Bus Stand. She was unable to remember telling anybody about accused taking her forcefully. She unable to give details of exact building in which accused took her and that they did not meet other residents of that building. She also denied meeting persons whose names were suggested by defence counsel. She is unable to remember when exactly there were physical relations with her. She admitted that when accused went to Kannad, she was alone in the room. She is unable to give distance between Baba Petrol Pump to said room. She admitted about not reporting to residents of the building about forceful sexual relations with her. In cross-examination again she stated that accused had physical relations with her twice. Rest is all denial.

10. **PW2** Informant/father of victim deposed at exh.20 about his daughter leaving house to attend coaching classes at 06:45 a.m. on 16-04-2017 but not returning, hence, enquiry and search being done and then he lodging report exh.22. He stated that on 18-04-2017,

his daughter was found at Datta Nagar in Ranjangaon and his daughter was brought by Police. He deposed that, he made enquiry with his daughter, who told that she was induced by accused to perform marriage and also informed about sexual physical relations twice/ thrice.

While under **cross-examination**, he admitted that he did not give date of birth of his daughter to the police. He also answered that his daughter never informed that boy was demanding for marriage. He answered that, when his daughter and accused were found that time he learnt that accused was from Mohammedan community.

PW3 Walmik Shirsat is pancha to spot panchanama, but he did not support prosecution.

PW4 Rajnikant Sonwane is another pancha to the panchanama of house at exh.29

PW5 Sunil Jagannath Pawar is the Investigating Officer, who deposed about steps being taken during entire investigation till chargesheeting accused.

ANALYSIS

11. It is pertinent to note that, here, shockingly neither prosecution nor learned trial Judge took care to not to disclose the name and

identity of the victim. Both were expected to redact the identity of the victim, which they apparently have failed. Surprisingly, inspite of repeated guidelines, the same are not adhered to.

12. On going by nature of charges and the provisions of the POCSO Act being invoked, as usual the fundamental duty of prosecution is to prove the minority of the victim. It is the foremost duty of Special Court conducting trial to get ascertained that prosecution has proved victim to be below 18 years of the age. Therefore, even in appeal, more particularly, in view of objection raised on the point of minority of the victim, it is necessary to see whether victim is proved to be a “child” as provided and defined under the POCSO Act.

Here, it is pertinent to note that, during trial, accused has admitted document of extract of school admission register and it is marked as exh.39. In this school extract, which is gathered by Investigating Officer regarding which he has deposed in his examination-in-chief about collecting Pravesh Nirgam Registrar extract, date of birth of victim is shown as 22-12-2000. Victim, who deposed at exh.17 has also given her age in her examination-in-chief as 22-12-2000. Mere failure of father to give date of birth in the FIR for offence under Section 363 of the IPC, will not wipe out or create

doubt about above document. By admitting document at exh.39, in the considered opinion of this Court, accused has forfeited his right to again question the age of victim, when he has on his own accord admitted the said document.

The Hon'ble Apex Court in the case of ***Shyam Narayan Ram v. State of U.P. and Anr. Etc.***, 2024 INSC 800, while deciding SLP (Cri.) Nos.16282-16284 of 2023, after reproducing Section 294 of the Cr.P.C., has observed in para 15 as under :

“A bare reading of aforesaid provision, in particular, sub-section (3) provides that where genuineness of any document is not disputed, such document may be read in the evidence in an enquiry, trial or other proceedings under this Court without proof of signature of the signature of the person to whom it purports to be signed. That is to say that if authors of such document does not enter the witness box to prove their signature, the said documents could still be read in evidence. Further, under the proviso the Court has the jurisdiction in its discretion to require such signature to be proved. In the present case, the document filed by investigating agency were all public documents duly signed by public servant in their respective capacities either as Investigating Officer or doctor conducting autopsy or other police officers preparing e memo of recoveries etc. As such the Trial Court had rightly relied upon the same and exhibited them in view of specific repeated stand taken by defence in admitting the genuineness of the said documents. In so far as Police papers which have been signed by the private persons like informant, the same have been duly proved.”

Further in paragraph nos.18, 19 and 20, the Hon'ble Apex

Court, by taking recourse to its own previous judgments, has observed as under:

“18. Coming back to the applicability of section 294 CrPC, reference may be had to the following judgments of this Court in the case of Sonu alias Amar vs. State of Haryana, (2017) 8 SCC 570 wherein this Court had held in para 30 as follows:

“30. Section 294 of the Cr.PC. 1973 provides a procedure for filing documents in a Court by the prosecution or the accused. The documents have to be included in a list and the other side shall be given an opportunity to admit or deny the genuineness of each document. In case the genuineness is not disputed, such document shall be read in evidence without formal proof in accordance with the Evidence Act.”

*19. Further, in the case of **Shamsher Singh Verma vs. State of Haryana**, (2016) 15 SCC 485, this Court held in para 14 as under:*

“14..... It is not necessary for the court to obtain admission or denial on a document under sub-section (1) to Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/ report with which same is filed, is sufficient compliance of Section 294 CrPC. Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence.”

*20. Also, this Court in the case of **Akhtar vs. State of Uttaranchal**, (2009) 13 SCC 722, has held in para 21 as under:*

"21. It has been argued that non-examination of the concerned medical officers is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports and the post-mortem examination reports before the trial court. So the genuineness and authenticity of the documents stands proved and shall be treated as valid evidence under Section 294 of the CrPC. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-section (3) of Section 294 CrPC. Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined."

Applying the same analogy, when defence has admitted genuineness of Pravesh Nirgam Extract wherein date of birth of victim is reflected, in the considered opinion of this Court, learned trial court has committed no error whatsoever in taking the same document into account while ascertaining the date of birth of victim.

13. As regards to offences under Sections 363 and 376(2) of the IPC as well as offence under Sections 4(1), 6, 8, 12 of the POCSO Act is concerned, when once it is proved that victim was a "minor", her removal to any other place without the consent of guardian would gravitate the offence of kidnapping.

14. Again for ascertaining whether offence under 363 and 376(2) of the IPC as well as offence under Sections 4(1), 6, 8, 12 the POCSO Act, are committed, one has to fall back on evidence of victim and medical evidence. Here, victim has stated that, after taking her to a room in a building, accused had forceful sexual relations. She deposed that, before accused went to Kannad, he had locked her in a room and during his second visit in night on next day, he had forceful sexual relations with her. The moment minor victim testifies about forceful act, rigors of rape and the provisions of the POCSO Act get attracted. Even if there is consent or no resistance, victim to be proved as a “minor”, the same is not of much significance.

15. Learned counsel for appellant was very critical in questioning the prosecution case by submitting that, there is no evidence about penetrative sex, which is *sine qua non* and on such count, he deploys the phrase used by victim “physical relations”. He tried to submit that, such term is not suggestive of sexual intercourse. Above submission has no substance. Such phrase is usually used to denote that there was sexual intercourse and it has no other meaning. Sometimes victim refrains from using direct words like having sex, or committing rape by describing the nature of act. Hence, above ground also has no force.

16. As regards to submission that, there were love relations and that victim had willingly accompanied accused, in the considered opinion of this Court, merely accepting once love does not mean that there is consent for any other act of physical relations. There being admission of love does not automatically mean that victim has consent even for sexual relationship. Here, it is pertinent to note that victim has specifically deposed that there was forceful sexual relations and therefore, it cannot be said to be a consensual act.

17. As regards to controversy tried to be raised about mix up of undergarments of accused and victim, which is on the face of seizure memo and the CA's report, cannot be given undue importance, more particularly, when there is testimony of victim about forceful sexual relations, which are worthy of credence.

18. It is fairly settled position that there is no rule of law that testimony of victim cannot be acted upon without corroboration of material particulars. Even in absence of medical evidence or evidence about no injury or signs of force, still charges can be said to be proved if the testimony of the victim inspires confidence. Law to this extent has been expounded and settled in numerous judgments and few could be named as under:

- (a) *State of Maharashtra v. Chandrapraksh Kewalchand Jain*, AIR 1990 SC 658;
- (b) *State of U.P. v. Pappu alias Yunus and another*, AIR 2005 SC 1248,
- (c) *State of Punjab v. Gurmit Singh and others*, AIR 1996 SC 1393
- (d) *Vijay @ Chinee v. State of Madhya Pradesh*, (2010) 8 SCC 191.

Here, as stated above, victim has deposed about forceful sexual intercourse not once but twice.

19. For above reasons, on complete re-appreciation of evidence, it cannot be said that there is error on the part of learned trial Court in accepting the case of prosecution as proved. No case being made out on merits, appeal deserves to be dismissed. Accordingly, following order is passed :

ORDER

(I) Criminal Appeal stands dismissed.

(II) Fees of the learned counsel appointed for respondent no.2 is to be paid through the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

(ABHAY S. WAGHWASE)
JUDGE