



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

**CRIMINAL APPEAL NO. 239 OF 2024
WITH
CRIMINAL APPLICATION NO. 3488 OF 2025
IN APEAL/239/2024**

Dhondiram @ Kailas Jagannath Shinde,
Age. 49 years, Occu. Nil,
R/o. Yesgaon, Tq. Kopargaon,
Dist. Ahmednagar.

...Appellant

Versus

1. The State of Maharashtra,
Through Police Inspector,
Kopargaon Police Station, Tq. Kopargaon,
Dist. Ahmednagar.

2. XYZ

...Respondents

...

Advocate for Appellant : Mr. Prathmesh R.M. Borde along with
Mr. Chapalgaonkar Shailesh S.

APP for Respondent No. 1 : Ms. A.S. Deshmukh

Advocate for Respondent No. 2 : Mr. Shendurnikar Pushkar S.

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**CORAM : RAJNISH R. VYAS, J.
DATE : 06TH FEBRUARY, 2026**

ORAL JUDGMENT :

1. Heard learned counsel Mr Prathmesh Borde, along with
learned counsel Mr Shailesh Chapalgaonkar, for the appellant. Learned
APP, Ms Deshmukh, for respondent no. 1 – State. Learned counsel Mr
Pushkar Shendurnikar, for the victim.

2. Challenge in this appeal is at the instance of the sole accused to the judgment dated 07.03.2024, passed in Special Case No. 140/2018, by Judge, Special Court, Kopergaon, by which the accused was convicted for commission of offence punishable under Section 354A of the Indian Penal Code (herein after would be referred to as 'the IPC' for the sake of brevity) and Section 8 of the Protection of Children from Sexual Offences Act (herein after would be referred to as 'the Act of 2012' for the sake of brevity). The appellant was directed to undergo rigorous imprisonment for five years and to pay a fine of Rs. 50,000/-. The fine amount was then directed to be disbursed in favour of the victim towards compensation under Section 357(1) of the Code of Criminal Procedure.

3. As the accused is convicted for the commission of an offence punishable under the provisions of the Act of 2012, it will have to determine whether, as per the provisions of Section 2 (d) of the Act of 2012, the victim was a child at the time of the incident.

4. In this regard, it is necessary to take into consideration the testimony of P.W. 1 – father of the victim, who had stated in his deposition that ten years ago, he had found the victim in one thorny bush. He looked after her and brought her up in his caste, giving her the name of her father. He stated that at the time of the incident, the victim was

attending 5th grade at a particular primary school.

5. P.W. 3 is the victim of a crime who, in her examination-in-chief, had stated that her date of birth was 15.07.2007, and at the time of the incident, she was studying in 5th standard in Zilla Parishad, Primary School.

6. P.W. 2 is the Headmistress of Zilla Parishad, Primary School, who deposed that since 05.08.2013, the victim was taking education at the school and as per the school record, the date of birth of the victim was 15.07.2007. Exhibit 19 below was the bona fide certificate, and she identified its contents and her signature.

7. In examination-in-chief, the extract of the school register showing the date of birth, names of parents of the victim, the caste, religion, and other information was produced, and the same was marked at exhibit 22. Exhibit 22 shows that the victim's date of birth is 15.07.2007.

8. In cross-examination, P.W. 2 had admitted that exhibits 19 and 22 were not in her handwriting, and she was unaware as to on what basis exhibits 19 and 22 were prepared.

9. P.W. 6 is the Investigating Officer, who had carried out part of the investigation and had stated that he had given a letter to the Principal, Zilla Parishad School, requesting to provide a bona fide certificate. The said letter is shown below as Exhibit P45/PW6. He deposed that he received the bona fide certificate set out in Exhibit 19.

10. P.W. 7 was also the Investigating Officer, who stated that he collected copies of the Aadhaar Card, the Election Card of the informant, and the Aadhaar Card of the victim. He deposed that the content had been proved and, accordingly, those documents were marked. P50/PW7 was the Aadhaar Card of the victim, P51/PW7 was the Aadhaar Card of the victim's father, and P52/PW7 was the Election Card of the victim's father.

11. It is based on the aforesaid testimony and the documentary evidence that the prosecution has contended that the age of the child was proved beyond a reasonable doubt. Ms Deshmukh, learned APP, submitted that, because the defence did not challenge the date of birth during cross-examination, it logically followed that the date was not seriously disputed.

12. Mr Shendurnikar submitted that since the victim was found in the bush ten years ago, it can be logically inferred that it was the child

who was found. He further submitted that, admittedly, not only the father of the victim but also the victim had stated in their testimony that at the relevant time, the victim was studying in 5th standard, and this fact was denied by the defence in the cross-examination. He submitted that if the documents produced on record, i.e., a bona fide certificate, an extract of the school register, the Aadhar Card of the victim, the Election Card and the Aadhar of the father of the victim, it will clearly point out that the date of birth of the victim was 15.07.2007.

13. At this stage, it is necessary to mention here that the father of the victim had not at all deposed on what the prima facie age or physical characteristics of the victim were when she was found. Thus, the date of birth was purely an assumption. The documents produced by the prosecution, i.e., a bona fide certificate, an extract of the school register, and an Aadhaar Card, show that the victim's date of birth was 15.07.2007. Still, the fact remains that there was absolutely no foundation for recording the said date of birth. At this juncture, it is necessary to take into consideration the law laid down by the Hon'ble Apex Court in the case of **P. Yuva Prakash Versus State, Represented by Inspector of Police, 2024 Volume 17 SSC 684**. More particularly nos. 13 to 17 :

“13. It is evident from the conjoint reading of the

above provisions that wherever the dispute with respect to the age of a person arises in the case of a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the [Juvenile Justice Act](#) requires consideration is that the concerned court has to determine the age by considering the following documents:

“(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.

14. [Section 94 \(2\)\(iii\)](#) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and

it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. In a recent decision, in [Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors.](#)³ this court outlined the procedure to be followed in cases where age

determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in pari materia) with [Section 94](#) of the JJ Act, and held as follows:

“20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year.”

16. Speaking about provisions of the [Juvenile](#)

Justice Act, especially the various options in Section 94 (2) of the JJ Act, this court held in . 4 that:

“Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2) (i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

17. In Abuzar Hossain @ Gulam Hossain v State of

West Bengal5, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.”

14. Thus keeping in mind the law laid down by the Apex Court, it would be crystal clear that none of the documents were produced by the prosecution to prove the date of birth of the victim. Surprisingly, even ossification test was also not conducted. Since the provisions of the 2012 Act are strict, consequently, the burden of proof necessitates a somewhat higher standard to prove the date of birth of the victim. As the prosecution has not proved the date of birth of the victim, I come to conclusion that conviction under the Act of 2012, cannot be maintained.

15. This comes to next contention of the learned counsel for the appellant that even conviction awarded under provisions of Section 354 A of the IPC, is not based on proper appreciation of evidence. Section 354 A of the IPC, prescribed punishment for sexual harassment. Section 354 says that a man committing any of the following act i.e. physical contact and advances involving unwelcome and explicit sexual overtures; or a demand or request for sexual favours; or showing pornography against

the will of a woman; or making sexually coloured remarks, shall be guilty of the offence of sexual harassment, is said to have committed an offence under Section 354 A of the IPC. In order to test the contention of the appellant regarding applicability of Section 354 A, it is necessary to consider the testimony of P.W. 3 – victim of the crime.

16. P.W. 3 victim of the crime had stated that at the relevant time, she was studying in 5th standard and after the school, she went to Mangal Karyalay as wanted to meet her aunt. As her aunt was not present there, the accused came there, he caught her, took her to the room where mattresses were being kept and, thereafter, removed her dress.

17. P.W. 3 had also deposed that thereafter, the appellant pressed her chest and kissed on her cheek and embraced her. He then asked the victim that she should sleep with him. Victim, thereafter, shouted however, nobody was there. The victim pushed him and ran away. She deposed that the smell of liquor was coming from the mouth of the accused. She deposed that she took her clothes, ran away, and wore them outside the room. On the way, she met a man to whom she informed that the accused had misbehaved with her. She further stated that thereafter, she went to her friend's house, where she met her brother, but did not tell him anything. She stated that, as she was afraid that the accused would

beat her, she did not disclose the incident to her parents.

18. After two to three days of the incident, the accused met the victim when the victim was going to school, and at which time he also asked the victim not to disclose anyone else, or he would harm her. According to her, she remained nervous and, therefore, P.W. 4, her teacher, asked her about the reason, and at that time, P.W. 3 disclosed that the appellant had misbehaved with her.

19. Victim/ PW 3 further deposed that her teacher, P.W. 4, asked her to keep quiet and concentrate on her studies. Thereafter, the father of the victim came to repair the water tap, at which time P.W. 4 – the teacher - disclosed the incident to the victim's father. The victim stated that her statement was recorded under Section 164 of the Code of Criminal Procedure. It was marked at exhibit 24.

20. PW3 was subjected to cross-examination, during which she admitted that after school hours, she used to walk from the school compound to her room in the said hall. She also admitted that her father used to work in the said hall, and that the distance between the place where she resided in the hall and the room where the mattresses were stored was about 15 to 20 feet. She stated that when she went to the

appellant to ask about the aunt, the appellant came from behind and embraced her, catching her. She further deposed that at that time she raised a hue and cry and requested the accused to leave her. She denied the aforesaid suggestions.

21. P.W. 4 – The teacher, in her testimony, stated that the victim was studying in 5th standard and that on 19.03.2018, at about 01:30 p.m., she received a phone call. The person who made the call disclosed that he was speaking from Child Line, Ahmednagar. He enquired whether P.W. 4 was a class teacher of 5th standard in a school. He also enquired by taking the name of the victim as to whether she was taking education in a class, and further, whether the victim was subjected to sexual harassment. P.W. 4 told that she was not aware of anything. On 20.03.2018, according to P.W. 4, school started in the morning, and she went to the Gram Panchayat office to meet the victim's parents, but she could not meet them as they were not present.

22. On 21.03.2018, according to P.W. 4, at 09:30 a.m., she called the victim and asked her what had happened and also asked why the victim was keeping silent and nervous. The victim said that the appellant had misbehaved with her. P.W. 4 then immediately went to the Grampanchayat and called the victim's father at the school, disclosing to

him the phone call she had received from the Child Line. She then called the victim and asked her about the incident, during which the victim stated that 15 days ago, after school, she had gone to Mangal Karyalaya to see her aunt, but her aunt was not there. She disclosed that the appellant came there, caught her hand, took her to a room, disrobed her, pressed her chest and kissed her on the cheek. She also disclosed that the appellant embraced her. She further stated that a month ago, a similar type of incident occurred, but the victim was unable to disclose the date.

23. In cross-examination, P.W. 4 had admitted that the water tap in the school was never damaged and she did not make any application to the Grampanchayat. She admitted that on 21.03.2018, she did not call the victim or the father. She denied the other suggestions but admitted that there were two political groups in the village, and that the accused was overseeing the administration of the Mangal Karyalay.

24. P.W. 1 is the father of the victim who had stated that ten years ago, he had found the victim in thorny bushes and, thereafter, he looked after her. He stated that on 25.03.2018, he went to Primary School to repair the water tap, at which time, P.W. 4 met him and she disclosed that the appellant had caught the victim and harassed her. The incident was then narrated by the victim, as discussed earlier. P.W. 1 further stated that

the next day after the incident, she disclosed it to P.W. 4 and the victim's mother. He further deposed that one Mahesh Suryawanshi and Shahid Shaikh came to him, who were from the Child Line, Ahmednagar, and accordingly, a First Information Report was lodged, which was at exhibit 15. He handed over the caste certificate (exhibit 16) to the police, and his statement was recorded under Section 164 of the Code of Criminal Procedure (exhibit 17).

25. In cross-examination, P.W. 1 had stated that he was unable to state the date and day of the incident. He said that on 21.03.2018, P.W. 4 did not meet him at Yeola village. He admitted that he had not disclosed to any government offices that he had found the victim. He also admitted that while taking the caste certificate of the victim, he did not disclose to the government offices that he found the victim. He further stated that, before the incident, except for P.W. 4, he had not disclosed to Talathi or Gramsewak that he had found the victim. He admitted that the accused used to look after the said hall and the brother of P.W. 1, by name Sonu, used to assist the accused. He also admitted that the accused used to handle the financial transactions of the said hall. He admitted that the accused was on visiting terms at his house, and that he also frequently visited the accused.

26. P.W. 1 had admitted, during his cross-examination on 25.03.2018, that he went to P.W. 4 at 11:30 a.m. There were four water taps at the school, of which one was not working. He stated that he repaired the water tap in the school. He further stated that P.W. 4 met him when he was repairing the water tap. At that time, he was alone. He stated that on his own had not made phone call to Child Line people and they had come there own. Nothing fruitful was brought on record by way of cross-examination so as to disbelieve the version of the victim of the crime.

27. P.W. 5 is one Mahesh Suraywanshi who stated that he was working with the Child Line. On 19.03.2018, he received a phone call from an unknown number and it was informed that there was an attempt to molest a child at the village who was taking education in 5th standard. The person who made a phone call had not disclosed her identity. P.W. 5 then advised the said women to lodge report at the police station but the said women disclosed that the relatives of the victim were frightened. Thereafter, the call got disconnected.

28. P.W. 5 had stated that in order to ascertain the truth, he and his colleague went the said village and, thereafter, information was gathered regarding family of the victim. They then met the family of

victim and enquired with the parents and told that the incident was proved. P.W. 5 then advised them to file the case but the parents of the victim were frightened and told that the person who had committed the crime was reputed person and he would beat them and would not allow them to reside in village.

29. The parents then told P.W. 5 that they would think for two days and, thereafter, take decision. After two days on 26.03.2018, P.W. 5 received a phone call from father of victim and he had shown his willingness to lodge the FIR and, therefore, they went to police station Kopargaon, and lodged the report. At which time, colleague of P.W. 5 by name of Shahid Shaikh was also present. He deposed that statement was recorded under Section 164 of the Code of Criminal Procedure. It was marked as exhibit 30.

30. In cross-examination, he admitted that he wrote down the complaints which they received and investigats and meeting is also arranged in that respect. He admitted that whenever complaint is received such phone call is recorded and it was played in the meeting. He further stated that the call center was aware of the phone number where from the calls were received. But he stated that he was unable to state the time when the call was received. He stated that police did not ask him about

the time. P.W. 5 also deposed that on 24.03.2018, when he went to the village along with his colleague, parents of the victim as well as the grand parents were present, at which time, his colleague was a counselor. The other suggestions he denied.

31. Challenging the testimony of victim, P.W. 4 / teacher, and PW5/Child Line officer, learned counsel for the accused submitted that the entire case advanced by the prosecution, was false. There was unexplained delay and two different stories are coming from the witnesses examined by the prosecution. He submitted that if the P.W. 4 – teacher was aware of the incident, she would have been expected to lodge a report immediately. The incident was also narrated to mother of the victim who did not disclose the said fact to the police authorities. Even father had taken much time to lodge the First Information Report.

32. He, therefore, submitted that there is absolute failure on the part of P.W. 5, who was working with the Child Line, to perform his duty as he could have very well inform to the police telephonically. He submitted that the delay in lodging the FIR speaks for itself, and the benefit of it be given to the accused. He submitted that the testimony advanced by the child is not at all believable and her testimony will have to be appreciated with great care and caution. Accordingly to him, no

steps were taken by the Court to ascertain whether the child was intelligent enough to depose before the Court. He submitted that the prosecution has not proved the case beyond reasonable doubt and, therefore, appellant be acquitted.

33. Per contra, Ms. Deshmukh, contended that there is absolutely no inconsistency and if the testimony of the victim, father, the teacher, and the representative from Child Line is considered in the proper perspective, it reveals that the prosecution correctly proved the ingredients of the registered offence.

34. Ms Shendurnikar supports the contention of the learned APP regarding dismissal of the appeal and contends that there is nothing to disbelieve in the version of the child and, therefore, the judgment of conviction may not be disturbed.

35. At this stage, it is necessary to mention here that though the prosecution has not proved the age of the child, it does not mean that the other part of the story advanced by the prosecution is also required to be disbelieved.

36. P.W. 3 in her evidence had categorically stated that on the day of the incident, the accused had caught hold of her, kissed her,

embraced her, removed her clothes, and the victim then resisted and ran away from the spot of the incident. Nothing has been brought on record by way of cross-examination or by answering the questions put under Section 313 of the Code of Criminal Procedure, or by examining the defence witness, that the version of P.W. 3 is not cogent and reliable. The victim's testimony inspires confidence ; just because there is a delay in lodging the FIR, and when delay is explained . The version of prosecution cannot be thrown out.

37. Typically, incidents of this nature are not reported to the police promptly; even family members are often kept in the dark out of fear of social stigma. It is a well-established principle that **falsus in uno, falsus in omnibus** is not recognised in Indian law. Therefore, even if there are minor improvements in the story advanced by the father of the victim and P.W. 4, they will not help the defence. Nothing has been brought on record to attempt to show that there was any reason for the victim to falsely implicate the accused.

38. If the testimony of P.W. 1, P.W. 3, P.W. 4, and P.W. 5 is considered holistically, it is clear that there is a ring of truth in the case advanced by the prosecution. In that view of the matter, I conclude that the prosecution has proved the offence punishable under Section 354 A of

the IPC, though it has not proved the commission of the offence under Section 8 of the Act of 2012. As the conviction under the Act of 2012 is disturbed, what remains is the conviction and sentence under Section 354A, which prescribes a punishment of a term which may extend to three years. Accordingly, the following order is passed :

ORDER

- i. Criminal Appeal is partly allowed.
- ii. The judgment passed by the Special Judge, Kopergaon, dated 07.03.2024, in Special Case No. 140/2018, so far as convicting the appellant for the commission of an offence under Section 8 of the Protection of Children from Sexual Offences Act, is set aside.
- iii. The accused is acquitted of the commission of an offence under Section 8 of the Protection of Children from Sexual Offences Act.
- iv. Other part of the judgment, including conviction of the appellant for commission of offence punishable under Section 354 A of the Indian Penal Code, is maintained, so

also sentence awarded for it.

iv. Mr Shendurnikar, who was appointed by the Court for the victim, has, in a very able manner, assisted the Court and has brought to my notice several provisions to put forward his contention that, in fact, the appeal is meritless. His fees are quantified at Rs. 10,000/- (Rupees ten thousand).

v. Pending Criminal Application shall stand disposed of.

(RAJNISH R. VYAS, J.)

SPC