



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 586 OF 2024

Rameshwar Vishnu Poul
Age: 28 years, Occu.: Labour,
R/o Digras Poul, Tq. Selu,
Dist. Parbhani

..APPELLANT

VERSUS

1. State of Maharashtra

2. X. Y. Z.

..RESPONDENTS

....
Mr. Mohit L. Deoda, Advocate a/w Mr. Pawan Salunke, Advocate for
appellant
Mrs. M.N. Ghanekar, A.P.P. for respondent no.1 – State
Ms. Ashwini Lomte, Advocate for respondent no.2
....

CORAM : RAJNISH R. VYAS, J.
DATE : 06th MARCH, 2026

ORAL JUDGMENT :

. Heard learned counsel for the appellant, learned A.P.P. and
learned counsel for the victim.

2. This appeal takes an exception to the judgment of conviction
rendered by the Additional Sessions Judge, Parbhani in Special Case (POCSO)
No. 35 of 2023 dated 20th December, 2023 by which the appellant is

convicted for commission of offence punishable under Section 354-A of the Indian Penal Code (hereinafter referred to as 'I.P.C.') and offence punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the Act of 2012'). The appellant was directed to suffer simple imprisonment for four years and to pay fine of Rs.2,000/-, in default simple imprisonment for two months was directed to undergo.

3. In short, it is the case of prosecution that the victim, who was minor at the time of incident, was called by the accused in his house under the pretext of giving a mobile charger to one person. The accused thereafter moved his hands over the stomach and on the breast of the victim.

4. This incident, which is narrated in brief, has resulted into setting the criminal law in motion by way of registration of F.I.R. No. 235 of 2020 with respondent police station on 18th September 2020 at about 20:59 hours. The appellant was arrested and subjected to medical examination. The spot panchnama was prepared and the statement of witnesses were recorded, so also the documents in order to prove the age of victim were also collected.

5. After completion of investigation, charge-sheet was filed against the accused. As the accused did not plead guilty to the charge which was framed against him on 21st March 2023 below Exhibit 8 by the Additional

Session Judge, Parbhani, the prosecution examined total seven witnesses. The accused was further enquired by putting necessary questions under Section 313 of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'). The defence of accused was of false implication and total denial. The additional written statement was filed below Exhibit 51 by the accused in order to support his defence of false implication, in which he stated that on 17th January, 2013 when he returned from the agricultural field, he was beaten mercilessly and he was implicated in a false case. The accused neither entered the witness box nor examined any other witness.

6. Learned trial Court, after considering the evidence on record, convicted the appellant as stated above and after following the mandate of Section 235 of Cr.P.C., sentenced him.

7. Learned counsel for the appellant challenging the judgment has contended that the age of victim was not proved by the prosecution. There is delay in lodging the F.I.R. The investigation was not done in fair and proper manner. The independent witnesses were not intentionally examined. He also pointed out variance in the of testimony of witnesses to the spot and the spot panchnama itself. He thus contended that the accusation was striking example of false implication.

8. Learned A.P.P. has contended that the age of victim is rightly proved. There is absolutely no delay in lodging the F.I.R. Investigation was fair and transparent. Discrepancy recorded in timing of spot panchnama did not go to the root of the matter.

9. Ms. Lomte, learned counsel appointed to represent Respondent No.2 / victim has contended that the testimony of mother and victim inspires confidence and nothing has been brought on record to show that it was a case of false implication. She further submitted that the accused was maternal uncle of victim, and therefore, considering the aim and object of the Act of 2012, the conviction is required to be upheld, so also the mandate of Sections 29 and 30 of the Act of 2012 is required to be honoured.

10. With the help of respective counsels, I have gone through the record of the case and have tested their respective arguments.

11. Since the accused was convicted for commission of offence punishable under the Act of 2012, it would have to be seen that whether the prosecution has proved that victim was minor i.e. below 18 years of age at the time of commission of offence. Section 2 (1) (d) of the Act of 2012 defines the minor as a person who is below 18 years of age.

12. The mother of victim, who was examined as PW 1, in her examination-in-chief has stated that at the time of incident, the victim was studying in 4th standard and she was born on 19th. She further stated her marriage was solemnised before 11 years.

13. The prosecution has examined PW 7 / Headmaster of the concerned Z.P. School in order to prove the date of birth of victim. PW 7 in his examination-in-chief has stated that the victim had taken admission in the school and admission number was 1808. He submitted that after receipt of letter from police below Exhibit 37, he supplied the admission extract of the victim girl. The victim took admission in third standard and prior to it she was studying in Z.P. Primary School from some other village. The admission form was filled by the victim while taking admission and the transfer certificate of earlier school was also given. The date of birth of victim was 19th July 2014 as per the record of school of which PW 7 was Headmaster and admission was taken on 27th June, 2022. This witness had also brought original admission register on a record and the admission extract register was proved below Exhibit 88. In cross-examination, PW 7 has stated that birth certificate is required for admission form and in absence of it an affidavit from the parents is obtained. He admitted that he did not take birth certificate and one teacher by name Kadam Sir had maintained the admission register. He denied the other suggestions.

14. PW 6 / Investigating Officer, so far as date of birth of victim is concerned, has deposed that he had given a letter to the school and requested for supplying admission register extract. The letter was below Exhibit P-37/PW-6. The extract of the admission register was below Exhibit P-38/PW- 6.

15. Except aforesaid three witnesses, there is nothing on a record to prove the date of birth of the victim. Therefore, the testimony has to be seen to test whether the date of birth of the victim was rightly proved or not.

16. Learned counsel for the appellant has relied on the judgment in case of *P. Yuvaprakash Vs. State Rep. By Inspector of Police, 2023 AIR SC 3525*, more particularly the following paragraphs -

“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 context of her or his being 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 that the Juvenile Justice Act requires consideration are 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, 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 Juvenile Justice Act clearly indicates that the date of birth certificate from the school, matriculation, or equivalent certificate by the concerned examination board has to be first preferred in the absence of which the birth certificate issued by the Corporation, Municipal Authority, or Panchayat. It is only thereafter, in the absence of such documents, that 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, Board or Court. In the present case, concededly, only a transfer certificate, and not a date of birth certificate, matriculation or equivalent certificate, was considered. Ex. C1, i.e., the school transfer certificate, showed the victim's date of birth 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 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 regarding 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 v. State of Uttar Pradesh and Ors.*, 2021 (12) SCR 502 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 Juvenile Justice Act, and held as follows:

20. Rule 12 of the Juvenile Justice Rules, 2007, deals with the procedure to be followed in the determination of age. The juvenility of a person in conflict with the law had to be decided *prima facie* based on physical appearance or documents, if available. But an inquiry into the determination of age by the Court or the Juvenile Justice 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 the determination was being made, benefit could be given to the child or juvenile by considering the age on the lower side within a margin of one year.

16. *Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94(2) of the Juvenile Justice Act, this Court held in Sanjeev Kumar Gupta v. The State of Uttar Pradesh and Ors., [2019] 9 SCR 735 that:*

Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 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 Bengal, [2012] 9 SCR 224, 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."

17. Perusal of the aforesaid judgment would reveal that the Hon'ble Apex Court has stated as to which document are required to be taken into consideration before determining the date of birth of the victim. He thus submitted that best document was not produced on record, and therefore, the benefit should be given to the accused.

18. At this juncture it is necessary to mention here that PW 1 / mother of victim has stated that the victim was born on 19th and she was 8 years old. The victim has not stated that date of birth neither she had uttered anything about the victim studying in a particular school. The birth certificate is also not produced on record. The testimony of PW 7 only shows that the relevant entries, recording name, place of birth, date of birth, name of parents were taken in Exhibit 38. The foundation of these entries were not proved by prosecution. The testimony of Investigating Officer, so far as question of the documents regarding date of birth is concerned would only show the procedure which he has followed. It cannot be said that the prosecution has proved date of birth of victim and consequently the fact that victim was minor at the time of commission of offence. Since the same is not proved, the conviction awarded under the provisions of Section 4 of the Act of 2012 and consequent punishment cannot be sustained.

19. The next question which falls for consideration is whether the prosecution has proved the commission of offence punishable under Section 354-A of I.P.C. Section 354-A of I.P.C. speaks about sexual harassment and prescribed punishment for the same. A man having a physical contact and advances involving unwelcome and explicit sexual overtures, is said to have committed the offence of sexual assault. The entire definition of sexual harassment is not discussed at length considering the issue involved in the present appeal.

20. Thus, at this stage it is necessary to take into consideration the testimony of PW 2 / victim of crime. Testimony of PW 2 would show that she had stated that the accused was standing when she was coming from school. Accused requested her to hand over the charger to one person. Accused then under the pretext of giving charger to one person, called her inside the room, closed the door, moved his hand over her breast. The victim thereafter ran towards her mother. She showed the house of accused to her mother. She alleged that the mother then assaulted the accused and other persons took the accused to the police station. In cross-examination she admitted that the accused was her maternal uncle and she knows mother of accused by name Laxmibai.

21. Perusal of the cross-examination would reveal that there is absolutely no effective cross-examination to this witness.

22. PW 1 is mother of the victim, who deposed that the victim was 8 years old and studying in 4th standard and marriage of PW 1 was performed prior to 11 years. She stated that on 17th January 2023 at about 4:00 p.m. her daughter came home from the school and told that the accused asked her to give the charger to one person. On further enquiry by PW 1, the victim / PW 2 informed her that the victim went inside the house of accused, at which time phone of the accused fell down from the pocket of the accused. The accused moved his hand over the stomach, so also the breast of victim. PW 1 thereafter gave a phone call to her brother and thereafter PW 1 and her mother slapped the accused. The statement / complaint was shown to her. Signature on which was identified by her which was below Exhibit P-13/PW-1. She also stated that her statement was recorded under Section 164 of Cr.P.C. which was below Exhibit P-14/P-1.

23. This witness was cross-examined by the defence in which an attempt was made to bring on record that the spot of incident was surrounded by many houses and was situated in a thick locality. She also admitted that the accused and his mother Lakshmibai used to do labour work and go to the field for that purpose. He admitted that both the accused work from 10:00 a.m. to 6:00 p.m. She admitted that on the day of incident itself she informed about the incident to the Sarpanch, Police Patil, Kotwali at 4:30 p.m. on phone and approximately at 06:00 report was lodged with police station, at which time victim was with her.

24. She also admitted that the school hours of the victim was from 10:00 a.m. to 4:00 p.m. and victim had few friends. She also stated that the accused was addicted to alcohol and on that day he returned from the field at about 5:30 p.m. and he received Rs. 1,000/-. PW 1 also admitted in testimony that accused and his mother used to go to work by putting lock to the house. She also admitted that PW 1 and her mother had beaten the accused by means of slaps and fist blows. She admitted that the accused was beaten mercilessly and was left presuming dead. She further admitted that she had put her signature on the report and the accused was brought to the police station when he was in injured condition. She also admitted that she was apprehending that the accused would lodge case against them. The other suggestions given to this witness were denied.

25. At this stage it is necessary to mention here that in cross-examination a document i.e. letter dated 18th January 2023 was brought to her notice which was below Exhibit 17/PW 1. Challenging the testimony of PW 1 and PW 2, learned counsel for the appellant submitted that in fact if the spot of incident is perused, it would reveal that it was situated in a thick locality and therefore possibility cannot be ruled out that the incident might have been seen by many persons. According to him, in respect of the aforesaid fact, the Investigating Officer did not record the statement of the independent witnesses, who could have shown the real side of the subject. He

further submitted that the accused was in fact beaten mercilessly and it is due to fear of lodging of complaint by accused against the mother of victim, a false report was lodged against his client. He further submitted that Exhibit 35, which is the communication issued by the Police Sub-Inspector to the Medical Officer, if perused it would reveal that the accused had sustained injuries, and therefore, it was forwarded to the Medical Officer. According to him, non explanation of injuries in proper manner by the prosecution will go to the root of the matter.

26. So far as other limb of argument of learned counsel for the appellant is concerned, he has contended that though the victim was forwarded for medical examination by way of communication below Exhibit 17 which was issued by the Police Sub-Inspector to the Medical Officer, the victim was not medically examined. He therefore submitted that non examination of victim also goes to the root of the matter and cumulative effect of all these lacuna clearly show that foundation of the case is destroyed.

27. At this stage it is necessary to mention here that so far as contention of false implication is concerned, that is not at all convincing. The accused was beaten after the incident, and therefore, lodging of false case on that pretext will not arise. The incident had occurred first and thereafter the accused was beaten and then the incident culminated in lodging of F.I.R.

Whether the accused was beaten or not cannot be decided in this proceeding. The defence could have taken appropriate steps in that regard.

28. It is further necessary to mention here that the victim has categorically stated that under the garb of giving charger, she was taken in the house and at that time accused, who was her maternal uncle, put his hands on her stomach and breast. The said version of victim inspires confidence. Had the victim and family members really wanted to falsely implicate the accused, they would have infected the story and have exercised exaggerated version. The testimony of the victim, so also her mother inspires confidence. Just because the victim is not medically examined, it would not affect the case of prosecution, since the incident is not pertaining to causing any injury to the victim. The incident is only regarding touching the stomach and breast, and therefore, there was no question of having any injury on the person on the victim. It is further necessary to mention here that there was absolutely no reason for the accused to call victim inside the house for giving the charger and same, could have been handed over without even calling the victim inside the house.

29. So far as contention that the spot was surrounded by houses and was situated in a thick locality, and therefore, the Investigating Officer ought to have recorded the statement of independent witnesses, is also required to

be tested in the background that it is for the prosecution to build its own story on the material available. Just because the independent witnesses are not available, the same would not affect the case of the prosecution. In the case of sexual harassment, offence is committed within four walls, and therefore, availability of the independent witnesses is remote a dream.

30. Learned counsel for the appellant then invited my attention to the testimony of PW 3 and PW 4. PW 3 is Mohan Poul and PW 4 is Yogesh Poul. Both of them, according to learned A.P.P. are independent witnesses. PW 3 has stated that he knows the accused as well as the victim and the incident had taken place on 17th January 2023 at 4:30 p.m. at which time he along with Yogesh and Vikas were sitting outside the library of the village and the victim was proceeding towards her house crying. The victim then returned along with her mother and went to the house of the accused.

31. PW 3 deposed that mother of victim then enquired from the accused regarding the incident and while doing so, was trying to enter the house of the accused. When PW 3 enquired, the incident was narrated to him. Thereafter PW 3 took the victim and mother to the police station where his statement was also recorded. PW 3 has stated that earlier to the said incident, 2 to 3 offences of similar nature were registered against the accused. He submitted that his statement was recorded in Selu Court, which was below Exhibit 22.

32. In cross-examination, an attempt was made to show that if one sits outside the library, he could notice what has happened in the house of the accused. It was also tried to be brought on record that near to the house of the accused, a temple as well as a vehicle stop is also situated and if commotion is made near the house of accused, it can be heard near library. By way of aforesaid defence, again a contention was advanced that presence of PW 3 and 4 is doubtful, so also the incident in question. Had the incident really occurred and since the victim has raised shouts, PW 3 and 4 would have immediately rushed to the spot.

33. According to learned counsel for the appellant, since that has not been done, story of prosecution becomes doubtful. An omission was also put to this witness regarding earlier 2 to 3 cases lodged against the accused which was of similar nature. The other suggestions were denied by this witness.

34. One more story was tried to be built up by the defence that father of the victim, so also the mother were not on good terms, and therefore, the question of father narrating the incident to the witnesses does not arise.

35. Challenging the testimony of PW 4, the defence has raised the similar grounds as for challenging the testimony of PW 3. PW 4 was also one of the persons who was sitting outside the village library and saw the victim

crying and proceeding towards the house and returning with her mother. In fact PW 3 and 4 were examined by the prosecution to prove the post incident conduct of the accused as well as the victim and the victim's mother. As far as cross-examination of PW 4 is concerned, similar attempt is made to show that the house of the accused was situated in a thick locality. Further an attempt was made to show that at the relevant time PW 4 was not present on the spot since he was a milkman and used to visit various places for collection of milk.

36. At this stage it is necessary to mention here that the testimony of PW 3 and 4 is regarding the facts which had taken place after the incident. The presence of PW 3 and 4 cannot be doubted since they have categorically stated that they were sitting outside the village library and saw victim girl crying and proceeding towards her house. Just because PW 4 was a milkman and used to visit various places for collection of milk, it cannot be inferred that he was not present at the spot on the day of incident. General statement in that regard, cannot weaken the specific case of prosecution. Even otherwise, nothing has been brought on record to show that this witness is an interested witness or planted by prosecution.

37. The contention that the spot of incident can be noticed from the library as well as the shouts can be heard if it is raised from the house of the accused, is without any substance. According to the case of the victim, the

incident had occurred inside the house of accused. If the spot panchnama, below Exhibit-28/PW-5 is perused, it would reveal that it was in the last room of the house, where the crime was committed.

38. The further contention that father of the victim was not residing with the mother of victim, and therefore, it creates doubt regarding father narrating the incident to the witnesses, is also not very convincing as I could not see just because the parents are on enimical terms, one of the parents will not narrate the incident regarding atrocities committed on a the child.

39. Learned counsel for the appellant has contended that spot panchnama drawn is an striking example planting false documents. He submitted that PW 5 was the panch to the spot panchnama, who in his testimony has categorically stated that they along with others left from the police station at about 12:30 whereas the spot panchnama below Exhibit 28 would clearly reveal that it started on 12:25 and ended on 13:25. He thus submitted that the said aspect goes to the root of matter and therefore, the said document may not be believed or relied upon. At this juncture it is necessary to mention here that the spot panchnama is not only tried to be proved by PW 5, but also through the testimony of PW 6 i.e. the Investigating Officer, who in his examination-in-chief has categorically stated that it was the complainant, who had shown the spot of incident and before that a letter

was issued to the office of Panchayat Samiti, Selu for providing two government panchas. The letter dated 18th January 2023 was proved by the said witness below exhibit P-32/PW-6. In compliance with the aforesaid letter, two witnesses were sent i.e. PW 5 / Amol and one Mohammad Kalim. This witness had stated that the spot panchnama below Exhibit 23 was prepared from 12:25 to 13:25. If cross-examination of this witness i.e. PW 6 / Investigating Officer is seen, it would reveal that the suggestion was given that he had not been to the spot of incident and prepared the spot panchnama at police station. The Investigating Officer had admitted that while preparing spot panchnama, though it was necessary to take anti clockwise photograph of the spot of incident, that was not done. So far as the timing of spot panchnama is concerned, that was not challenged by the defence by way of cross-examination of this witness.

40. So far as timing of sport panchnama, which has come in the testimony of PW 5 is concerned, it can be said that it is minor mistake and will not go to the root of the matter. The testimony of PW 6 / Investigating Officer is crystal clear that spot panchnama was prepared from 12:25 to 13:25. Few minutes gap would not go to the root of the matter. It is not expected from the witness that he would give parrot like testimony. The question is whether the testimony shows the element of truth or not. Since the testimony of PW 5 and 6 and mother of victim showing the spot of

incident, shows ring of truth, I come to the conclusion that the spot panchnama was also rightly proved by the prosecution.

41. In that view of the matter, I come to the conclusion that the prosecution has proved the case beyond reasonable doubt. So far as conviction under Section 354-A of I.P.C. is concerned, the accused was the maternal uncle of the victim and the trust which the victim has reposed on the accused is breached, by him by committing the atrocity. The physical contact with sexual intent clearly makes out the case under Section 354-A of the IPC. In that view of the matter, following order is passed -

ORDER

- (I) Appeal is partly allowed.
- (II) The judgment in Special Case No. 35 of 2023 delivered by the Additional Sessions Judge, Parbhani dated 20th December 2023 convicting the appellant for commission of offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 is set aside.
- (III) The accused is acquitted of commission of offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012.
- (IV) The judgment in Special Case No. 35 of 2023 passed by the Additional Session Judge, Parbhani dated 20th December 2023 convicting the appellant for commission of offence

punishable under Section 354-A of the I.P.C. and payment of fine is maintained.

- (V) The appellant is directed to undergo the sentence of simple imprisonment of 3 years and pay fine of Rs. 3000/-, in default of payment of fine is directed to suffer simple imprisonment for two months.
- (VI) The fees of Ms. Ashwini Lomte, learned counsel appointed to represent Respondent No.2 / victim be paid by the High Court Legal Services Sub-committee, Aurangabad as per the rules.

(RAJNISH R. VYAS, J.)

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