



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 884 OF 2024

Sunil Santosh Bhagwat
Age 33 Years, Occu – Agril.
R/o. Deshmukh Nagar, Chopda,
Tq. Chopda, Dist. Jalgaon.

...APPELLANT

VERSUS

1. The State of Maharashtra,
(At the instance of Chopda City Police
Station Jalgaon)

2. XYZ

...RESPONDENTS

Mr. Abhaysinh K. Bhosle, Advocate for the Appellant.
Ms. M. N. Ghanekar, APP for Respondent – State.
Mr. Prasanna Dadpe, Advocate for Respondent No.2.

CORAM : RAJNISH R. VYAS, J.
DATE : FEBRUARY 10, 2026

JUDGMENT:

1. At the outset, it is informed that appointed counsel, Ms. Sayali Tekale, is on maternity leave. Mr. Prasanna Dadape, who is associated with the earlier counsel and has 12 years of practice, submits that he is ready with the matter. Since the accused is in jail, Mr. Prasanna Dadpe has been appointed to represent respondent No.2.

2. Heard Mr. Abhaysinh Bhosle, learned counsel for the appellant / accused; Ms. Ghanekar, learned APP for the State; and Mr.

Prasanna Dadpe, learned appointed counsel for the victim.

3. Challenge in this appeal is to the judgment of conviction dated 14th May 2024, passed by the District Judge-2 and Additional Sessions Judge, Amalner, by which the appellant – accused has been convicted for the commission of offence punishable under Sections 354, 354-A and 354-D of the Indian Penal Code, 1860 (hereinafter referred to as “IPC” for the sake of brevity), as well as Section 7, punishable under Section 8, and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the “Act of 2012” for the sake of brevity).

Rank of the accused	Name of accused	Date of Arrest	Date of released on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of section 428 of Cr.PC.
	Sunil Santosh Bhagwat	08.02.2023	04.03.2023	Sections 354, 354-A, 354-D of I.P.C. and Sec.7 r/w Sec.8 and Sec.11 r/w Sec.12 of POCSO Act	Convicted	Under Sec.8 of POCSO Act R.I. for 5 Years and fine of ₹ 50,000 and under Sec.12 of POCSO Act R.I. for 3 Years and fine of ₹ 25,000	08.02.2023 to 04.03.2023

4. In short, it is the case of the prosecution that the victim at

the relevant time was 14 years old and was studying in 08th standard of the school, where the present appellant was occupying the post of a teacher and teaching the language of Hindi. On 04th February 2023, the appellant kissed the victim on the lips and touched her breast (moved his hand on chest), and also did not allow her to leave the classroom.

5. The prosecution has also relied upon the telephonic conversation recorded on the mobile used by the victim to bring home the charge.

6. The aforesaid incident, narrated in brief, resulted in registration of the First Information Report dated 05th April 2023 at the instance of the victim.

7. During the course of the investigation, on 08th February 2023 at about 20:45 hours, the accused was arrested. Thereafter, the Investigating Officer, with a view to collect the material, seized the mobile phones used by the accused and the victim. A certificate under Section 65B of the Indian Evidence Act was also obtained. The Investigating Officer (PW-8) then collected the victim's school leaving certificate, the accused's appointment order, and the timetable and attendance sheet.

8. After completion of the investigation, the charge sheet bearing No.39 of 2023, dated 05th April 2023, was filed against the accused. At the relevant time, the accused was 53 years old.

9. The charge was framed against the accused below Exhibit 12 on 08th January 2024, to which he did not plead guilty, and therefore, the prosecution examined, in all, 9 witnesses. The prosecution also relied upon various documents duly exhibited, which were 28 in total.

Rank	Name	Nature of Evidence
PW-1	Victim	Victim
PW-2	Smt. Utpalvarna Jayprakash Aagle	Supervisor of Nutan Madhyamik School, Chunchale.
PW-3	Shaikh Asif Shaikh Musa	Panch witness.
PW-4	Mother of victim	Mother of victim.
PW-5	Uday Pralhad Mahajan	Teacher in AA School, Chahardi.
PW-6	Shubham Sunil Bhagwat	Son of accused.
PW-7	Ravindra Atmaram Sonawane	Headmaster of AA School, Chahardi.
PW-8	Ghanshyam Chandrakant Tambe	Investigating Officer.
PW-9	Makrand Bhalchandra Vidhwansa	Nodal Officer.

10. After recording of evidence, the accused was subjected to an inquiry under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.” for the sake of brevity). The stand

taken by the accused in 313 statement, more particularly in answer to Question No.72, was that he had been falsely implicated at the instance of Superintendent, Headmaster, and the office bearers of the management, as a dispute was going on between the accused and the aforesaid persons.

11. The accused neither entered the witness box nor examined any other witness. The Trial Court, after considering the evidence on record, convicted the appellant as stated above.

12. Since the accused has been convicted for the commission of various offences, it would be relevant to refer to the provisions that were taken into consideration by the Trial Court.

13. Section 354 of IPC, for which the accused is convicted, deals with assault or criminal force to a woman with the intent to outrage her modesty. The section provides that whoever assaults or uses criminal force against any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished. Criminal force is defined under Section 350 of IPC, which says that whoever intentionally uses force to any person, without that person's consent, in order to the committing of any

offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

14. Section 349 of IPC defines “force” and states that a person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other’s body, or with anything which that other is wearing or carrying, or with anything so situated that such contract affects that other’s sense of feeling.

15. The accused is also convicted for the commission of an offence punishable under Section 354-A of IPC, which deals with sexual harassment and prescribes the punishment for it. Sexual harassment would mean physical contact and advances involving unwelcome and explicit sexual overtures.

16. Section 354-D of IPC deals with stalking and provides that when any man follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear

indication of disinterest by such woman, or monitors the use by a woman of the internet, email or any other form of electronic communications, commits the offence of stalking.

17. Section 7 of the Act of 2012 speaks about sexual assault, which means touching of the vagina, penis, anus or breast of the child with sexual intent or doing any other act with sexual intent which involves physical contact without penetration.

18. Section 12 of the Act of 2012 for which the appellant is convicted, prescribes punishment for sexual harassment. Sexual harassment is defined under Section 11 of the Act, which provides under clause (iv) that a person is said to commit sexual harassment upon a child when such person with sexual intent repeatedly or constantly follows or watches or contracts a child either directly or through electronic, digital or any other means.

19. It is in this background the testimony of the victim and the other witnesses will have to be taken into consideration.

20. Learned counsel for the appellant, Mr. Bhosle, has submitted that the entire case put forwarded by the prosecution is not convincing, cogent and reliable. He further submitted that the manner

in which the investigation was carried out clearly reveals several lapses and intentional omissions to give favour to the management of the school, as well as the headmaster of the school where the victim was studying.

21. Mr. Bhosle contended that there was a delay in lodging the First Information Report and that the conversation on which the prosecution relied was not proved in accordance with the provisions of the Indian Evidence Act. According to him, the act or conduct of the victim of the crime in keeping mum and not informing anyone of the alleged sexual assault clearly shows that the guilt of the accused was not proved beyond a reasonable doubt. He further submitted that, even as per the deposition of the victim, she had memorized the complaint made to the police and thereafter gave a statement, which was recorded under Section 164 of the Cr.P.C.

22. He also submitted that the enmity was the only reason for the false implication, and that the documents produced on record, more particularly the attendance sheet showing the class taken by the appellant, would reveal that on the day of the alleged incident, the accused was taking classes. He therefore submits that he be acquitted.

23. Per contra, Ms. Ghanekar, learned APP, submitted that the victim, who was studying in the 8th standard, had narrated the incident in detail and that there was nothing to disbelieve the story advanced by the prosecution. She submitted that the defence taken by the accused was not based on any material and was merely a fragile defence. She further submitted that there is no fixed formula for determining whether a person would act in a particular manner in a specific incident. She submits that the victim's testimony must be considered because the victim was 14 years old and the accused was 53, and that the accused was the victim's teacher. She also submitted that the victim's age was not seriously disputed by the accused, neither before the Trial Court nor before this Court, and that the presumption provided under the Act of 2012 would therefore apply.

24. Learned counsel appointed for the victim has supported the stand taken by the learned prosecutor and has stated that, if the various dates are taken into consideration, it would reveal that the accused was pursuing the victim. He submitted that on 04th February 2023, the first incident occurred; thereafter, on 05th February 2023, without any reason, the accused visited the victim's house; and on 07th February 2023, the accused made a phone call to the victim. He

submitted that, in the aforesaid background, it can be said that the offences are duly proved.

25. The learned counsel for the accused, Mr. Bhosle, has also contended that the maximum sentence of five years imposed upon the accused is too harsh and is contrary to the sentencing policy. He submitted that reformation is one of the dominant factors to be considered in awarding the sentence. He therefore submits that, if the Court is not inclined to acquit the accused, the sentence may be reduced, as the accused has already served approximately 24 months of imprisonment.

26. Ms. Ghanekar, learned APP, and Mr. Dadpe, on the contrary, have stated that there is absolutely no merit in the appeal filed by the accused, and that neither the conviction nor the sentence warrants interference. They submitted that it is not a thumb rule that, in every case, the reformatory theory must be adopted; rather, the concept is that of just punishment. Since the accused was a teacher and the victim was a minor, the maximum punishment must be awarded.

27. I have gone through the record of the case and have also given thoughtful consideration to the arguments advanced by the

respective counsel.

28. As the conviction of the accused is under the provisions of the Act of 2012, it is necessary to determine whether the victim was a child as defined under Section 2(d) of the Act of 2012. A child is defined as a person below eighteen years on the date of the incident.

29. In this regard, it is necessary to mention here that the age of the child was not seriously disputed either before the Trial Court or before this Court. Despite this, it is necessary to consider the testimony of the mother of the victim, who was examined as PW-4 by the prosecution. PW-4, in her evidence, has stated that the victim's date of birth was 15th March 2009 and, at the relevant time, the victim was studying in the 8th standard. The incident occurred on 07th February 2023.

30. If the cross-examination of this witness is considered, it becomes crystal clear that absolutely no suggestion was given to the witness challenging the date of birth. Moreover, PW-5, the class teacher of the victim, stated that in 2023, the accused used to teach Hindi in the 8th standard, and that the victim was an 8th standard student. He further stated that the victim's date of birth was 15th

March 2009, for which he relied on the daily attendance sheet.

31. The prosecution has also brought on record the leaving certificate from the headmaster of the school, i.e., PW-7. PW-7, in his examination, stated that he had brought the original record from the school and, after verifying it, stated that the victim's date of birth was 15th March 2009. The record produced by him included the accused's appointment order at Exhibit 35, the attendance sheet, the timetable below Exhibit 38, and the leaving certificate below Exhibit 40. Exhibit 40 is the School Leaving Certificate, which shows the name of the victim of the crime, as well as the name of the victim's mother and her date of birth.

32. In this background, it can be said that the prosecution has proved the date of birth of the victim as 15th March 2009, and as such, the victim was 13 Years, 10 Months, and 23 Days old on the date of the incident, i.e., 07th February 2023.

33. Further discussion will now examine whether the prosecution has proved the incident on 04th February 2023, the telephonic conversation, and the accused's visit to the victim's house.

34. Coming to the first incident dated 04th February 2023, it is

necessary to consider the testimony of PW-1, the victim, who deposed that at the relevant time she was residing with her parents, grandmother, and brother, and was studying in the 8th standard, her date of birth being 15th March 2009. Mr. Uday was the class teacher, and a WhatsApp group was formed to provide study material. She gave her parents' phone numbers and said those two numbers had been added to the WhatsApp group.

35. PW-1 further stated that the accused used to teach the Hindi subject, and on the eve of festival of Sankranti, she had called the accused to extend her wishes. She then mentioned accused's phone number. The victim, PW-1, stated that at that time the accused had asked her to maintain a personal relationship with him, upon which she immediately disconnected the phone.

36. PW-1 stated in her examination-in-chief that on 04th February 2023, at about 07.00 a.m., she had been to the school, and at about 10:30 in the morning, there was class on the Hindi subject. She stated that the teacher requested that the children be taken to play, and therefore, along with the teacher, the students went to the playground.

37. PW-1 stated that, as she was feeling thirsty, she came to the classroom for drinking water, at which time the accused came along with a register in the classroom. The accused then took the names of a few students and inquired whether those students were from a particular village, to which the victim replied in the negative. At that time the accused caught hold of the victim forcibly, and thereafter kissed her lips and touched her breast (moved his hand on breast). The victim then shouted and went to one Ravindra.

38. Thereafter, on 5th February 2023, the accused visited the victim's house, which was a Sunday and thus a holiday for the school. At that time, the victim and her grandmother were at home, while other family members had gone to work in the agricultural field. Thereafter, the tea was offered, and the accused went home.

39. PW-1 deposed that on 07th February 2023, at about 07.15 in the evening, the accused called on the mobile of the victim's mother. At that time, he enquired as to when the victim would meet him and uttered the following words: “केव्हा भेटशिल, खालचे पण काम होत नाही व वरचे पण काम होत नाही.” The victim further deposed that, while the conversation was going on, her father arrived, and she disconnected the phone, due to fear.

40. As the conversation got recorded, the father of the victim heard it and, on the second day, visited the school. According to the victim, her father then narrated the incident to the headmaster and another teacher and also asked them to listen the conversation recorded in the phone. Thereafter, she went to the police station and lodged the report. The complaint she proved was below Exhibit 16.

41. She stated that her statement was recorded in the Court. The statement recorded in the Court is under Section 164 of code of criminal procedure, set out below as Exhibit 17. She further stated that she had signed the statement below Exhibit 17. She identified the accused in the Court.

42. When the testimony of this witness was recorded, the audio clip was played in the Court, and the conversation was recorded in detail in examination in chief, which is evident from paragraph No.7 of the testimony.

43. This witness was cross-examined, in which she admitted that there was a staff room for the lady teacher just adjacent to class 8th A and a Veranda outside her classroom. By cross-examining this witness on the point of spot, an attempt was made to convince the

Court that the incident could have been seen by anyone outside. She further admitted that her parents' telephone number was provided because, as her father was working in the field, her mother's phone number would be helpful.

44. She deposed that on 04th February 2023, in the morning, there was a history class during which attendance was taken. There were 22 girls and 16 boys, and none was absent. Various questions were put to her regarding the subjects taught by different teachers, and an attempt was made to suggest that, at the time the incident allegedly occurred, the accused was in fact teaching a Subject in class.

45. In cross-examination, she further stated that the accused was known to her since he was teaching the 8th standard. She stated that she recognized the accused because he used to teach Hindi. She denied the suggestion that the incident alleged to have taken place on 04th February 2023 had, in fact, not occurred.

46. She stated that she did not narrate the incident to anybody till the lodging of the FIR. She further admitted that from 04th till 08th February, she was living a normal life. In her depositions, she admitted that it was correct to say that whenever the accused called

her, she would disconnect the phone. She also admitted that there was an auto-recording facility on the mobile phone.

47. She further stated that she had not asked her father to listen to the conversation, but that he had heard it on his own. She stated that she was not aware whether her father had come on 08th February 2023 and that, when he entered the headmaster's cabin, the teacher, headmaster, her father, and her uncle were present. She submitted that her statement at the police station was recorded by a lady Police Officer.

48. She denied the suggestion that she had given her statement in the Court after going through her complaint and volunteered that she memorized the complaint and thereafter gave a statement. She admitted that her voice samples were not taken. She further admitted that on 09th February 2023, she did not attend the classes.

49. The testimony of the aforesaid witness proves the following facts.

- i) The accused was teaching the Hindi subject.
- ii) The accused used to call her telephonically.

- iii) On the day of the incident, i.e., 04th February 2023, the accused had kissed her lips, touched her breast, and caught hold of her.
- iv) The accused visited the house of the victim on 07th February 2023.
- v) The accused had asked her to maintain a personal relationship with him, and therefore, the phone was immediately disconnected.
- vi) On 07th February 2023, at about 07:15 p.m., a call was made by the accused to the mobile phone of the victim's mother, at which time the accused uttered the following words “केव्हा भेटशिल, खालचे पण काम होत नाही व वरचे पण काम होत नाही.”
- vii) At that time, the father of the victim arrived, and therefore, the victim disconnected the mobile phone due to fear.

50. In cross-examination, the victim was asked whether it is true to say that the accused used to call her and that she used to disconnect the phone, to which the victim responded in the affirmative (paragraph No.15 of cross-examination).

51. The aforesaid testimony of the victim would clearly reveal that the accused had, on several occasions, called the victim; therefore, it can be said that the accused had followed her and contacted her to foster personal interaction repeatedly, despite a clear indication of disinterest by the victim.

52. This is sufficient to attract the ingredients of the offence under Section 354-D of IPC, which aspect has been duly considered by the Trial Court, and the conviction has been rightly awarded. The act of the accused in kissing the lips of the victim clearly shows that the offence under Section 354-A of IPC is also made out, since the accused had physical contact and made advances involving unwelcome and explicit sexual overtures. The language used by the accused, which is reproduced (supra), establishes the guilt of the accused under Section 354-A of IPC.

53. The conviction awarded to the accused under Section 354 of IPC is also based on proper appreciation of the evidence, since the accused used criminal force on the victim intending to outrage her modesty. The accused had caught hold of her, kissed her lips, and touched her breast, which clearly amounts to the commission of an

offence under Section 354 of IPC.

54. So far as the conviction awarded under Section 7, punishable under Section 8 of the Act of 2012, is concerned, the accused, with sexual intent, had touched the breast of the child and was therefore rightly punished under Section 8 of the Act of 2012.

55. Coming to Section 12 of the Act of 2012, which provides punishment for sexual harassment, the evidence clearly shows that the victim with a sexual intent, repeatedly and constantly followed the child with a sexual intent and therefore, even the conviction awarded under Section 12 of the Act of 2012 cannot be faulted with. Further, the defence of false implication at the behest of the management of the school, the headmaster, and the supervisor is a fragile defence and is not based on any material; therefore, it cannot be taken into consideration. The testimony of the child inspires confidence and has a ring of truth in it.

56. Not only this, PW-4, who is the mother of the victim, narrated the post-incident facts by stating that on 07th February 2023, at about 07:00 to 07:15 evening, the victim was talking on the mobile phone, and the mother thought that it was a conversation with a friend

and therefore ignored it. When the husband of PW-4 entered, the victim became frightened and disconnected the phone, at which time the husband of PW-4, i.e., the victim's father, took the phone from the victim.

57. Thereafter, in the presence of PW-4 and her mother-in-law, the father of the victim heard the conversation between the victim and the accused. The victim was then questioned and narrated the incident that occurred on 04th February 2023. In cross-examination, nothing was brought on record to disbelieve the version advanced either by the mother of the victim or by the victim herself.

58. PW-7, the headmaster, stated that the telephonic conversation was played in his chamber and that he could recognize the voice as that of the accused. PW-2, who was working as a superintendent in the school, also stated that she had heard the conversation between the accused and the victim when it was played in the chamber of the headmaster, and that she recognized the voice of both the victim and the accused.

59. The conversation recorded on the mobile phone was tried to be proved by the prosecution by relying upon a certificate issued

under Section 65-B(4) of the Indian Evidence Act, below Exhibit 51. PW-7 himself issued the said certificate. The Investigating Officer, PW-8, stated that the conversation from the mobile phone was then transferred to a 16 GB pen drive, which was subsequently produced in Court, where the conversation was heard and played by the Trial Court.

60. At this juncture, the learned APP and the counsel for the victim have stated that the conversation would also be a piece of evidence, which the prosecution has rightly proved to establish the guilt of the accused.

61. Admittedly, the voice samples of the victim and the accused were not collected. Further, the mobile phones used by the victim and the accused, which were seized under Section 165 of Cr.P.C., were not forwarded for forensic examination. The accused has disputed his voice.

62. It is a fundamental principle of criminal law that the prosecution is required to prove the guilt of the accused beyond a reasonable doubt. Nothing prevented the Investigating Agency from conducting a forensic examination of the seized mobile phones. The

call details, as reflected in PW-9, between the appellant and the victim, at the most establish that a call was made from a particular number to another, and do not prove the conversation itself.

63. There is absolutely no corroborative piece of evidence, since the transcript of the conversation was neither prepared nor proved by the prosecution. Thus, the best evidence was not produced on record. In that view of the matter, I conclude that the conversation recorded was not proved by the prosecution beyond a reasonable doubt.

64. PW-6, who is the son of the accused, stated that though the SIM card was in his name, the number was used by his father, i.e., the accused. PW-6 was not seriously cross-examined; therefore, it can be said that the accused used the mobile number. PW-9 clearly shows that the accused made several phone calls to the victim at the accused's instance.

65. At this stage, the learned counsel for the appellant submits that, if clause 3 of the operative part of the judgment is perused, it would reveal that the sentences are ordered to run consecutively and not concurrently.

66. In this regard, it is necessary to mention here that Section 42 of the Act of 2012 provides that if the offender is found guilty of the offences liable to punishment under the Act of 2012 of the Indian Penal Code, then the punishment, which is of a greater degree, is required to be awarded. Since the higher degree of punishment would mean a sentence of five years, by taking recourse to Section 42 of the Act of 2012, it is observed that the accused will have to be awarded the sentence of five years.

67. It is further necessary to mention here that the sentence imposed upon the accused were directed to run concurrently and not consecutively.

68. A request of the learned counsel for the appellant that the sentence be reduced also cannot be considered, for the simple reason that the accused was a teacher and the victim was a child. A person who is required to act as a guiding light has, in fact, created darkness in the life of the student/victim. Therefore, I am of the view that no interference is required in the findings recorded by the Trial Court. In the aforesaid background, the appeal is liable to be dismissed.

69. Accordingly, the following order is passed.

ORDER

- A) The judgment dated 14th May 2024, passed in Special Case No.14 of 2023 by the District Judge-2 and Additional Sessions Judge, Amalner, is hereby maintained.
- B) The sentence imposed upon the accused shall be five years, in the light of Section 42 of the Act of 2012, and the sentences shall run concurrently and not consecutively.
- C) The appeal is disposed of in the above terms.

70. At this stage, it is necessary to state that Mr. Prasanna Dadpe has ably assisted the Court and has also drawn my attention to the various pieces of evidence. His fees are quantified at ₹ 10,000/-.

(RAJNISH R. VYAS, J.)