



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1092 OF 2024

Rajendra Arunrao Salve
Age 40 years, Occu. : Nil,
R/o. Rohidas Chowk, Belwandi,
Taluka Shrigonda, District Ahmednagar.

... Appellant
[Orig. Accused]

Versus

1. The State of Maharashtra
Through Police Station Officer,
Shrigonda Police Station,
District Ahmednagar.

2. X Y Z

... Respondents

.....
Mr. Nitin V. Gaware, Patil h/f Mr. Z. H. Farooqui, Advocate for
Appellant.

Mrs. Saie S. Joshi, APP for Respondent No.1 State.

Ms. Pooja Apache, Advocate for Respondent No.2 (appointed)

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 18.04.2026

Pronounced on : 24.04.2026

JUDGMENT :

1. Correctness of judgment and order dated 25.09.2024 passed in
Special (POCSO) Case No. 165 of 2023 recording guilt for offence
under Sections 376(2)(f)(n), 354A of IPC and Section 5(m)(l)

punishable under Section 6 of the Protection of Children from Sexual Offences Act (POCSO Act) is under challenge at the instance of the convict.

BRIEF RESUME OF PROSECUTION STORY

2. Victim, who was studying in 4th standard and was barely 9 years of age, was summoned by accused, her class teacher, in his office in the recess time. He initially planted kiss on her lips and cheeks and after pulling down her undergarment, he inserted a finger in her private part. This happened twice/thrice before Diwali. She reported her distress to her aunt, who further reported it to police, resulting into registration of crime. On completion of investigation, accused was chargesheeted and tried by the Special Court, Ahmednagar, who accepted the case of prosecution and returned guilt for above offences. Hence, instant appeal.

SUBMISSIONS/ARGUMENTS

On behalf of the Appellant :

3. Learned counsel Mr. Gaware h/f Mr. Farooqui, would criticize the judgment and findings on the ground that prosecution utterly failed to prove its case beyond reasonable doubt and that narrative of prosecutrix does not inspire confidence. While elaborating his above

submissions, he first questioned the FIR on the ground of delay. He pointed out that, there are vague allegations, that too, by informant aunt, who has mere hearsay information. He pointed out that, specific date is neither reflected in the FIR, nor it is deposed by the victim and therefore, when there is failure to quote exact date of incident either in testimony or before the Magistrate, victim's version cannot be said to worthy of credence. He pointed out that it is merely stated in the FIR as well as in the testimony of victim that incident happened prior to Diwali but, according to him, 'exactly when' has not come on record.

4. Learned counsel further submitted that, informant herself has admitted in cross that there was no disclosure of any of the earlier episodes, i.e. prior to 30.11.2015. He would express surprise as to how prosecution failed to bring on record from the testimony of victim the exact dates of incidents. He pointed out that alleged occurrence is prior to Diwali and thereafter victim had visited her parents, spent time with them, but did not even report to them and rather came back and at the time of reopening of the school after vacation, it is alleged that, she gave information to her aunt. Consequently, he questions such narrative of prosecutrix.

5. His second attack is on alleged failure of prosecution to prove minority of the victim. On such count, he took this Court through the testimony of Headmistress PW3 and would submit that, what she has produced is mere extract of admission register and that, very source of date of birth reflected therein is admitted to be missing. He pointed out that, even there are doubtful documents on the point of presence of victim on alleged date of occurrence i.e. 30.11.2015 and on such count, he compared the material in Exhibit 36 and Exhibit 38. According to him, the same are contradictory, and thereby he questions the very occurrence alleged by the prosecution. He is very assertive that, from the school record it is emerging that victim was not present in the school on 30.11.2015 as the attendance register is blank.

In support of above arguments regarding failure to prove minority of victim, reliance is placed on the judgment of this Court in *Kachru Narhari Sarode v. State of Maharashtra and others* MANU/MH/3466/2026 and the decision of Hon'ble Apex Court in *Jarnail Singh v. State of Haryana* (2013) 7 SCC 263.

6. Pointing to the evidence of prosecutrix, he would submit that her testimony is also vague on the point of date of occurrence. That she had also, in her testimony before the court, failed to specify the dates of occurrence and that she rather merely stated that incidents took place prior to Diwali and that too, twice/thrice. According to him, such vague deposition ought not to have been accepted by trial court as it was not inspiring confidence and was not of “sterling quality”. On this count he seeks reliance on the decision of the Hon’ble Apex Court in the case of ***Rai Sandeep alias Deepu v. State (NCT Of Delhi)*** (2012) 8 SCC 21 and in case of ***Tameezuddin alias Tammu v. State (NCT of Delhi)*** (2009) 15 SCC 566.

7. On the point of testimony of child witness and need of cautious approach while appreciating evidence of child witness, he seeks reliance on the decision of Hon’ble Apex Court in ***Panchhi and others v. State of U.P.*** (1998) 7 SCC 177 and the recent judgment in ***State of Madhya Pradesh v. Balveer Singh*** (2025) 8 SCC 545.

8. He would strenuously submit that, here, it has come in the very prosecution evidence, more particularly evidence of PW3 Headmistress that, there was no occurrence that day, nor it was reported to her. He pointed out that this witness as well as accused,

who are both Headmistress and teacher respectively, had lunch together i.e. in the recess and therefore, when nothing was reported or known to the superior and colleague of accused, reporting of the occurrence at a belated stage, according to him, renders the story of prosecution doubtful.

9. His further challenge is to the finding recorded by the trial court, more particularly regarding medical evidence. According to him, medical examiner PW4 has not noticed any injuries of violence nor there were any external injuries and rather, hymen was found to be intact and resultantly, he questions the findings and reasons recorded by the trial court while accepting the case of prosecution and recording guilt for offence under Sections 376(2)(f)(n) of IPC and Section 5(m)(l) and 6 of POCSO Act. According to him, there is no iota evidence about penetrative sexual assault, and on this count he seeks reliance on the decision of the Hon'ble Apex Court in the case of *P. Yuvaprakash v. State Represented by Inspector of Police* (2024) 17 SCC 684 ; 2023 SCC OnLine SC 846.

10. According to him, here, fatal part for prosecution is non availability of testimony of Investigating Officer. On this count he emphasized that defence is deprived of opportunity to question the

documentary evidence on the point of age and alleged minority of victim and thus, great prejudice has been caused to the accused on account of non examination of Investigating Officer.

11. To sum up, he raises serious doubt about case of prosecution to be proved beyond reasonable doubt which, according to him, is the fundamental principle of criminal jurisprudence and on this count he seeks reliance of the judgment of the Hon'ble Apex Court in the case of *Krishnegowda and others v. State of Karnataka By Arkalgud Police* (2017) 13 SCC 98. According to him, there are glaring inconsistencies on the point of occurrence as well as presence of victim on alleged date of occurrence in the school.

For above reasons, he urges to set aside the judgment and order of conviction and to allow the appeal.

On behalf of the Respondent i.e. State and victim :

12. In contrast, learned APP as well as learned counsel appointed for the victim would put up strong oppose to the above submissions by contending that case of prosecution is proved beyond reasonable doubt. According to them, here, there is breach of trust of the victim by appellant who is her teacher and who, under the garb of

educating, called the victim in his office and indulged in above acts. They would submit that, trust reposed on the teacher has been severely breached.

13. On the point of age, they would submit that admittedly victim was studying in 4th standard when the alleged incidents took place. That, her date of birth has come in her testimony as well as her statement under Section 164 Cr.P.C. They pointed out that, victim's testimony was recorded when she was in 12th standard. So, on the date of occurrence, she must be barely 9 to 10 years of age. Learned APP hastened to add that, apart from evidence of Headmistress of the school who carried original record, there is evidence of medical expert regarding age of the victim determined by dentist and radiologist and as such, it is her submission that, there is overwhelming and clinching evidence on the point of minority of the victim.

14. On the point of occurrence, learned APP submits that, documentary evidence, more particularly attendance register extract, clearly shows that victim was present. Her name is reflected in the attendance sheet and moreover, accused, her class-teacher has also marked his presence on the said date and as such, she submits that, there is no reason to question the occurrence or the date on the

ground that there is no reliable evidence. She pointed out that, Headmistress PW3 has placed on record extract of admission register and she had also carried original register which, according to her, was verified in the very court. That, bonafide certificate is also placed on record. She would point out that incident had taken place in the recess and that merely because PW3 was present and she did not see any incident or any incident not to be reported to her, that would not mean that there was no occurrence at all. That, only when the child was alone, accused had called her in his office and had sexually molested her, which the child had not only categorically deposed before the court, but has also withstood the cross examination without flinching.

15. Advancing an argument that when the victim's evidence inspires confidence, there is no need for corroboration, both, learned APP as well as learned counsel appointed for the victim, still added that here, there is confirmation by medical evidence i.e. by the doctor who had occasion to examine the victim, and even medical papers to that extent confirm the occurrence of assault. For above reasons, they justify and support the judgment and order of conviction to be perfectly valid and legal and that it needs no interference.

BRIEF ACCOUNT OF THE DEPOSITIONS IN TRIAL COURT

16. In order to establish its case, prosecution has examined in all four witnesses. Their role and status as well as the sum and substance of their evidence can be summarized as under.

17. PW1 victim, who was examined in the question-answer form, answered that she had passed 12th standard i.e. on the date of recording of evidence dated 08.07.2024. After giving her date of birth as 31.01.2007, she testified that in the year 2015, she was in 4th standard and studying in Zilla Parishad Primary School. After quoting her favourite subject to be history, she named accused to be her class-teacher and then deposed that before Diwali vacation in the year 2015 accused called her alone in the office with slate and pencil and he used to take kiss of her lips, cheeks and also used to insert his fingers in her private part and rub his hands on her private part. According to her, accused committed same type of act three to four times before Diwali and she reported the incidents to her aunt and accompanied her grandfather as well as such aunt to police station where her aunt lodged report and that, then she to be referred for medical examination. She deposed that her statement was recorded in the court, which she identified to be at Exhibit 24, and stated that at

such time her parents, who were vegetable vendors, were residing at Surat and she resided with her uncle, aunt and grandparents. After the incident, her uncle obtained TC and got her admitted in other school. She identified accused in the court to be her class teacher.

While facing cross, she admitted that office and Headmaster's chamber are two different places and six to seven feet apart. She gave the timing of school as 10.00 a.m. to 05.00 p.m. She answered that at the time of incident, she had two/three friends. That, her grandfather used to drop her at school and pick up her from school. She answered that she had no discussion with grandfather about what happened in the whole day. In para 4, she answered that she stayed with her aunt and admitted not informing her parents any incident taking place in the school, nor she shared the incident with her friends in school. She answered that she had occasion to go to her parents in both, summer and Diwali vacation, and while in 4th standard, she had been to her parents, but she did not tell the incident to them. She answered that, she does not remember for how many days she stayed with them and does not remember after returning from parents' place, whether after seven to eight days school reopened after vacation. She also answered that she does not remember the date when school began after Diwali vacation when she was in 4th standard. She answered that before

Diwali, she used to go to school regularly and even stay at home if there was any problem. She answered that, she does not remember whether before Diwali vacation there was any dispute between accused and other teachers. In para 5 she answered that, at the time of incident, 1st and 3rd standard and 2nd standard and 4th standard were jointly sitting. She is unable to state strength of staff members in the school and unable to remember in November 2015 and December 2015 for how many days she attended the school. Giving the timing of lunch recess as 1.30 p.m. she answered that she used to take lunch with her friends and after recess, classes began at 2.00 p.m. She is unable to state exact date when the alleged incident is committed by accused with her. She admitted that, she did not tell about it to anyone. She stated that her statement was recorded in the court while her grandfather accompanied her. She answered that at that time, court had asked her whether she was willing to give statement and he has written in her statement as “No”, but she volunteered that she had said “Yes”. She answered that, her statement was read over and that time she had not taken objection after reading question no.9. She denied being tutored by grandfather, police or aunt. She admitted that, she had not stated dates of incidents happened with her to the police or to the court. In para 6, she answered that she does not remember whether on 30.11.2015 she was present in the school for

whole day, and that all students gathered together and shared their experience during Diwali vacation. Rest is all denial.

18. Prosecution has adduced evidence of victim's aunt as PW2 at Exhibit 29 wherein she deposed that her niece who was residing with them, in 2015 was 9 years old and studying in Zilla Parishad Primary School and her parents used to come to meet occasionally. In para 2 of chief she deposed that on 30.11.2015 her father-in-law dropped the victim in school and in the evening he brought her back after which she became fresh, played for some time and when she was asked to study, that time victim started crying. She claims to have asked the reason of crying and victim allegedly told her that her sir Raju Arun Salve called her in the office in lunch break at about 1.30 to 2.00 p.m. He called her near him, took kiss of her cheek and rubbed her private part and inserted finger in it. She also further told that such type of incident had taken place with her two/three times prior to Diwali and that, victim told that she does not want to go to that school. Accordingly witness deposed that she informed her in-laws and on next day they went to police station and she lodged report which she identified at Exhibit 30.

While under cross, she answered that prior to 30.11.2015 victim was regularly attending school but she had never said that she does not want to go to school. To further question, she stated that her relation with victim are like daughter and mother. She admitted that, before 30.11.2015 victim had not raised any complaint. In para 4 she admitted that in Diwali vacation, victim stayed with her for some days, went to her parents and resided there for some days. After Diwali vacation, victim was regularly going to school. She answered that whatever incident was told to her by victim, she did not share with anybody. Rest of the cross is not material except that, since 3rd, victim was going to another school.

19. On the point of age, prosecution had adduced evidence of PW3 Headmistress who at Exhibit 32 deposed that, she joined school as Assistant Teacher in 2008 and became Headmistress in 2011. Said school had two teachers. The school had classes up to 4th standard and they used to take 1st and 3rd standard together in one classroom and 2nd and 4th standard in another classroom. According to her, out of the two teachers, the senior was looking after the charge of Headmaster. She testified that accused joined school as Assistant Teacher in 17.07.2014. That, victim was studying in their school since

1st standard. That, victim was admitted in the school on 19.06.2012 and in the year 2015 she was studying in 4th standard. She deposed about carrying original admission register. She identified entry of the victim at Sr. No.48 and as per school record, her date of birth to be 31.01.2007. That, victim's grandfather, demanded bonafide certificate of victim from her school. She also deposed about carrying original application and that, bonafide certificate was issued as per record of admission register and its contents to be true and correct and as such it was marked as Exhibit 33. That, entry in the admission register and on the xerox copy of the page, on comparison, to be as per original, and therefore she tendered Exhibit 34 and there is noting by the court that original register is returned to the witness. She further deposed that she gave true copy of attendance register of teachers since June 2015 to December 2015 and also carried original attendance register, and answered that on 30.11.2015 accused was present in the school as per school record, which she claims to have verified and she placed true copy at Exhibit 35. She stated that she had also brought attendance register of 4th standard of the year 2015 and placed true copy of the register of the month of November 2015 which was marked at Exhibit 36. She further deposed that on 30.11.2015 victim was present in the school. Diwali vacation in 2015 was from 05.11.2015 to 24.11.2015 and accused to be class-teacher of 4th

standard in 2015. Then she deposed about visit of Shrigonda police accompanied by Gramsevak and preparing panchanama Exhibit 37.

Above witness is subjected to extensive cross, wherein she stated that she was present in the school on the whole day of 30.11.2015 and she and accused had lunch together. She answered that on 30.11.2015 she had not left her office. She admitted that on 02.12.2015 during visit of police for spot panchanama, she had told police that no incident had taken place in her presence. She answered that victim has not made any complaint to her about any incident with her on 30.11.2015. She denied that office remains closed as and when she goes to teach in the class. She admitted that on 30.11.2015 it is noted in the admission register that five students were present and one student was absent. In case of presence of student, 'P' is mentioned and in case of absence 'A' is mentioned. She answered that, she has handed over true copies of attendance register of students of 4th standard since June 2015 to December 2015 and that true copy is as per original which is marked at Exhibit 38. She admits that there is difference between attendance register Exhibit 36 and Exhibit 38 regarding attendance of victim. She admitted that, on 30.11.2015 'A' is not mentioned in front of student who were absent and in Exhibit 38 for the month of November 2015 presentee of

student is not mentioned. She admitted that, attendance at Exhibit 38 was not handed over to police at the time of spot panchanama. She answered that victim was absent in school since 26 November to 29 November. She answered that in original register percentage of attendance is mentioned but it is not so mentioned in Exhibit 36. That in Exhibit 38, percentage of attendance of student is not mentioned and she volunteered that percentage is to be written by class-teacher. Admitting that there is difference in original register Exhibit 36 and 38, she volunteered that variance is only to the extent of percentage of attendance of students. She answered that from Exhibit 38 one cannot say whether victim was present on the day or not. Witness admits that in the admission register, source of date of birth is not mentioned. Thereafter witness volunteered that they used to maintain separate record of birth issued by Gram Panchayat which she was not carrying that day. She admits that entries in the register of 2012 do not bear her signature. She denied that, she falsely gave the date of birth of victim as 31.01.2007.

20. PW4 is the doctor, who at Exhibit 41 deposed that while she was attached to Civil Hospital as Medical Officer, on 02.12.2015 victim was brought for medical examination. He accordingly conducted it at 4.30 p.m. and after examining the patient, she further

referred her to respective departments. She deposed that victim gave history of insertion of finger in private part. Perineum and near place where Urine is passed before Diwali twice and on Monday 30.11.2015 and 01.12.2015. History also narrated that, he kissed her lips. No history of removal of clothes and just pulling down pant inserted finger by Raju Arunrao Salve in his office. Expert did not notice external injury on chest, breast, abdomen, neck, back, thigh and other parts. She further testified about referring the patient to gynecologist, dentist, psychiatrist and radiologist. She deposed that in gynecology Department, Doctor Bangar examined her who gave report that libia majora and minora are developing, hymen intact, no bleeding, there is no sexual contact. Dentist gave age of victim as 9 to 10 years. Psychiatrist gave report that current status is normal and radiologist gave age as 8 to 10 years. After receiving reports from concerned department, witness issued certificate Exhibit 42.

Only cross of above witness is on the point of giving referral paper, not obtaining signature of victim or uncle below the history, but she denied that she falsely deposed about history given by the victim. She answered that victim is physically examined by Dr. Bangar.

ANALYSIS AND CONCLUSION

21. There being charge and conviction for offence under Section 5(m)(l) punishable under Section 6 of POCSO Act, it is incumbent upon the courts as well as prosecution to ascertain whether prosecution has succeeded in demonstrating that victim was child, i.e. below 18 years of age. Here, there is serious contest on this issue of age by appellant as well as respondent State. Resultantly, available evidence on this point is put to careful scrutiny.

22. Victim in the opening lines of her chief has first narrated her date of birth as 31.01.2007. According to her, in 2015 she was in 4th standard. As regards to she to be studying in 4th standard, there is no serious challenge in the cross of victim, as even questions are directed by asking her that, whether while in 4th standard she had gone to her parent's place during Diwali vacation. Therefore, such manner of cross denotes that there is no serious dispute about victim to be studying in 4th standard.

23. The second witness on the point of age is PW3 Headmistress and she has deposed that, victim was studying in their school since 1st standard and being admitted in their school on 19.06.2012. Going by

such date of admission in 1st standard and taking into account the date of birth given by victim as 31.01.2007, it is clear that while in 1st standard she had almost attained age six years which is an approved age for securing admission in 1st standard. This witness PW3 has carried original admission register to the court and after comparison, its extract are tendered by her on record. Based on entries marked in such original register, she has stated date of birth of victim as 31.01.2007 which is in tune with the date of birth quoted by victim. Merely because PW3 answered in cross that source of date of birth is not noted in the admission register, it would not be sufficient to disbelieve the prosecution story that victim was minor.

24. It is tried to be submitted that, in view of judgment of Hon'ble Apex Court more particularly in the case of *P. Yuvaprakash* (supra), it was necessary for prosecution to show the exact source of information of date of birth reflected in the school register. Argument is also advanced that no detailed inquiry is conducted by court and secondly, child was not referred before Medical Board for ascertainment of age. In the above referred judgment, hierarchy of documents while determining age is given, i.e. (i) matriculation or equivalent certificate if available, **and in absence thereof**, (ii) date of birth certificate from school (other than play school) **first attended** and in

absence thereof; (iii) birth certificate issued by corporation/municipal authority or **panchayat and only in absence thereof**, it is directed that there has to be (iv) medical opinion which is sought from duly constituted Medical Board which shall declare the age of child/juvenile.

25. In the light of above discussion, in the considered opinion of this Court, firstly, here there is extract of original admission register of the first school attended by the victim. Witness PW3 had volunteered that school has also maintained record of birth certificate issued by Panchayat, though it was not carried in the court. Therefore, at least required of document as held in above judgment of ***P. Yuvaprakash*** about date of birth appearing in the first school attended is available from prosecution side. Under such circumstances, there was no need for court to conduct further detailed inquiry or refer the matter to Medical Board, as is tried to be submitted.

Further, PW3 while facing cross in paragraph 5, after admitting that source of date of birth of victim is not mentioned, she volunteered that they used to maintain separate record of birth certificate issued by Gram Panchayat, and further on being

questioned, stated that, that day she had not brought it and thereafter she denied that she cannot state whether date of birth of victim is correct or not. Thus, this witness has deposed before the court, that too in the cross, that school maintained birth certificate even issued by Gram Panchayat. Therefore, even requirement as spelt out in the judgment of *P. Yuvaprakash* regarding birth certificate issued by Gram Panchayat is available with the school authorities.

Here, further even medical expert PW4 has testified before the court about referring the child to dentist as well as radiologist and she has quoted the age reported by them, i.e. 9 to 10 years as per dentist and 8 to 10 years as per radiologist.

Consequently, it is the considered opinion of this Court, there is abundant material on the point of age which is worthy of credence. Therefore, by all means, prosecution has indeed demonstrated that victim was a child within the meaning of Section 2(d) of POCSO Act.

26. As regards to second ground of FIR to be delayed and vague, admittedly here, FIR is by aunt of victim. It has come in the testimony of this witness as well as victim that, victim was put up with informant aunt and her parents were at Surat. PW2 informant has

categorically stated that on 30.11.2015, grandfather of victim took her to school, dropped her there and even brought her home after the school. PW3 has also in cross flatly denied about she falsely deposing that on 30.11.2015 victim was present in the school.

27. It is tried to be submitted that victim has not given date of actual occurrence dated 30.11.2015, but PW2, her aunt has stated that when she had asked victim to study, while weeping victim narrated the incident with her and further also stated that it had happened twice/thrice before Diwali. Immediately on receiving such information, PW2 has approached police. Obviously, only on learning about the incident from the victim, aunt has set law into motion, that too immediately. It needs to be noted that, victim was in 4th standard when the incident took place. The incident had happened in the school timing while she was in school. It also needs to be noted that when informant asked victim to study, that time her memories about the occurrence in school during the day must have revived and she had accordingly narrated the incident to her aunt. Therefore, there is nothing unusual in failure of victim to not to report the instances prior to Diwali or on the said date. Even otherwise, it is fairly settled position that, in cases of such nature, delay cannot be given overdue importance.

28. As regards to submissions that, FIR and testimony of victim to be vague, in the considered opinion of this Court, it is not so. Victim has categorically deposed about accused calling her in the office while she was alone with the slate and pencil and committing the above referred acts with her. It is further pertinent to note that testimony of victim is recorded in 2024 i.e. when she had completed 12th standard, and therefore it would be unreasonable and absurd to expect her to give specific dates of the incidents which had taken place while she was in 4th standard. For above reasons, neither evidence of prosecutrix can be said to be vague nor it can be said to be delayed reporting and to raise doubt about it.

29. It is also the submission of learned counsel that penetrative sexual assault is not proved and on this count, he takes support of testimony of medical expert PW4 who stated that there were no external injuries on the person of victim. Again, it is to be borne in mind that here, there are allegations of rubbing over private part and insertion of finger in private part. Therefore, there cannot be any injury with such acts. Here, alleged incident is of 30.11.2015 and examination is done on 02.12.2025 and therefore, it is possible that PW4 may not have noticed anything abnormal. However, this

independent witness has also stated about receiving history of insertion of finger in private part. Therefore, mere absence of visible injuries is no good ground to discard the prosecution story about commission of offence of penetrative and aggravated penetrative sexual assault. Here, act done by accused falls in the Section 3(b) of POCSO Act and being teacher, Section 5(f) as well as Section 5(l)(m) get aggravated. Further, law is also settled that, there is no need for corroboration to the sole testimony of prosecutrix, more particularly when it inspires confidence. It would be profitable to reproduce settled legal position as spelt out by the Hon'ble Apex court in the case of State of *Himachal Pradesh v. Manga Singh* (2019) 16 SCC 759, wherein, in paragraphs 10 and 11 following observations are made :

“10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basis infirmity

and the “probabilities factor” does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.”

Consequently, merely because there are no visible injuries or marks or medical report to be negative, itself is no good ground to acquit the accused.

30. The last limb of the argument which remains for consideration is on the point of failure to examine the Investigating Officer. Learned counsel for the appellant would submit that, appellant/accused has been deprived of opportunity to question the Investigating Officer on the point of investigation over age of the victim.

Admittedly, legal position is fairly settled that non-examination of Investigating Officer is not always fatal. To this extent, law is dealt and decided in numerous judgments, like *S. K. Rashid and Others v. State of Bihar* MANU/BH/0173/1986, *Bahadur Naik v. State of Bihar* MANU/SC/0405/2000, *Raj Kishore Jha v. State of Bihar and others* MANU/SC/0783/2003, *Baldev Singh v. State of Haryana* MANU/SC/1268/2015 and recently in the case of *Munna Lal v. State*

of Uttar Pradesh 2023 LiveLaw (SC) 60. Only and only if it is demonstrated that material omissions and contradictions are not got proved through Investigating Officer, it can be said to be fatal. But, this further depends on facts of each case.

Here, no omissions or contradictions are brought in the evidence of any of the prosecution witnesses. More particularly, here, there is plausible reason for non-examination of Investigating Officer, as case papers show that at Exhibit 43, APP tendered pursis that Investigating Officer R. D. Mantode is no more and his death certificate was placed on record. Police Constable Zunjar was reported to be suffering from paralysis and as such, unable to appear in the court. Likewise, API Wangade did not respond to the WhatsApp message. Here, thus, main Investigating Officer who conducted investigation was not available on account of his demise and therefore, failure on the part of prosecution to examine him cannot be termed as fatal when there is other cogent, convincing and reliable evidence. Even otherwise, on the point of age, relevant evidence of school authority, i.e. Headmistress, is available for appreciation.

31. To sum up, here, prosecution has indeed substantiated and proved that PW1 was victim of rape and sexual assault at the hands of

her own teacher who was expected to act as her guardian. He has breached the trust reposed on him by the victim by attending his call and he has ravished her. Prosecution has indeed proved her to be minor and a child below 18 years of age at the time of incident. Her testimony cannot be said to be not of sterling quality. Rather, her story inspires confidence and even needs no corroboration though it is available here in this case.

32. Visited the citations relied by learned counsel, which are on settled legal propositions of which there is no dispute. Perused the impugned judgment. The view taken by learned trial court is the possible view that could emerge even on re-appreciation. There being no error, illegality or perversity in the impugned judgment, the same needs to be kept intact. Hence, following order :

ORDER

- I. The criminal appeal is hereby dismissed.
- II. Fees of the counsel appointed to represent respondent no.2 be paid by the High Court Legal Services Sub-Committee, Aurangabad as per Rules.

[ABHAY S. WAGHWASE, J.]