



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 510 OF 2023
WITH CRIMINAL APPLICATION NO. 4536 OF 2025

Rama Kaman Dokhore
Age: 20 years, Occu.: Labourer,
R/o Kumbharwadi, Tq. Kalamnuri,
Dist. Hingoli

..APPELLANT

VERSUS

1. State of Maharashtra
Through Akhada Balapur Police Station,
Dist. Hingoli

2. X.Y.Z.

..RESPONDENTS

....
Mr. S.G. Bobade, Advocate for appellant
Mrs. M.N. Ghanekar, A.P.P. for respondent no.1 – State
Ms. Deepali Patil, Advocate for respondent no.2 (appointed)
....

CORAM : RAJNISH R. VYAS, J.
DATE : 09th FEBRUARY, 2026

ORAL JUDGMENT :

. Heard respective counsels at length.

2. This is an appeal against conviction preferred by the sole accused challenging the judgment dated 10th May, 2022 passed by the Additional Sessions Judge, Hingoli in Special Case (POCSO) No. 48 of 2020 convicting him for commission of offence punishable under Section 376(2)(i)(j) of the Indian Penal Code (hereinafter referred to as 'I.P.C.') and under Section 4 of

the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the Act of 2012'). The accused is sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 1,000/-, and to undergo a default sentence in respect of the offence punishable under Section 376(2)(i) (j) of the I.P.C. Similar punishment was also imposed for the commission of an offence punishable under Section 4 of the Act of 2012. Both sentences were ordered to run concurrently.

3. Criminal law was set in motion based on F.I.R. lodged at the instance of father of victim, which resulted into registration of Crime No. 275 of 2020 dated 31st July, 2020. Registration of F.I.R. resulted in the arrest of the accused on 01st August, 2020, and then the accused and the victim were subjected to medical examination. During the course of the investigation, the school register extract was seized, and the opinion of F.S.L. was obtained.

4. After completion of the investigation, a charge sheet was filed against the accused before the learned Special Court, which framed the charge against the accused below Exhibit 7 on 06th February, 2021, for the aforementioned offences, to which the accused did not plead guilty.

5. To bring home the charge, the prosecution examined eight witnesses. PW 1 is the panch witness to spot and seizure, PW 2 is the

informant, PW 3 is the victim, PW 4 is the Medical Officer, who examined the victim, PW 5 is the Headmaster, who was examined with a view to prove the date of birth and relevant document of the victim; PW 6 is the photographer, who took photographs of spot of the incident, PW 7 is the carrier of the samples and PW 8 is the Investigating Officer.

6. In short, it is the case of prosecution that on 31st July, 2020, the victim, who was below eight years of age, was dragged by the appellant to his house, and the appellant removed the pants of the victim and himself. He thereafter took her on lap and asked her to sleep. He inserted his penis and finger into her private part and pressed her mouth. Thereafter the victim was left outside the house and asked not to disclose the incident to mother. The victim ran away to the house. When the parents of the victim came home, they noticed the victim was crying, and her clothes were stained with blood. When they inquired, she narrated the aforesaid incident.

7. It is in this background, the accused was asked to face the trial. Learned counsel for the appellant has submitted that the prosecution has not proved the applicability of Section 2(d) of the Act of 2012, since neither PW 2 / father of victim nor PW 3 / victim has stated anything regarding date of birth in their testimony. He submitted that the date of birth which is revealed from the testimony of father of the victim is an improvement. To challenge

the date of birth, learned counsel for the appellant submitted that PW 5 / Headmaster, who was examined, was not a person who had taken the entry of the victim's date of birth in the school admission register. Therefore, his testimony is of no help. According to him, the discrepancies and the mention of different dates clearly indicate a cloud of doubt in the case against the accused. He further contented that the offences for which accused is convicted is not at all, proved and now convicting the accused under a different section would not be in the interest of Justice . Therefore, the benefit of the doubt be awarded to the appellant.

8. Per contra, learned A.P.P. submitted that the victim, who was below eight years of age at the relevant time, narrated the incident in detail before the Court. PW 4 / Medical Officer has, in fact, proved the injury caused to the victim, and therefore, considering the testimony of the victim and the medical officer, it can be said that the prosecution has proved the ingredients of the offences for which the appellant was tried. Ms. Patil, learned counsel for Respondent No.2, also supported the stand taken by the prosecution, contending that there is absolutely no case supporting the appellant and, therefore, the same is liable to be rejected.

9. I have given my thoughtful consideration to the arguments advanced, and I have also gone through the record of the case. Since the

appellant is convicted for the commission of an offence punishable under the Act of 2012, it is necessary to see whether the prosecution has proved that at the time of the incident, the victim was a 'child' or not. Section 2(d) of the Act of 2012 defines 'child' as any person below the age of eighteen years.

10. PW 2 / informant is the father of the victim, who, in his examination-in-chief, has stated that he has two sons and one daughter, i.e., the victim. The victim's date of birth is 02nd March, 2013. In cross-examination, he has stated that his marriage was performed approximately 12 to 13 years ago. He stated that he is not in a position to state the date of birth of his elder son. The second child is the victim. He was unable to state the third child's date of birth. He submitted that there is a two-year difference between his elder son and his second child. He deposed that his elder son was in 2nd or 3rd standard at the time of the incident. He further states that his third child at the time of the incident was in 1st standard. It was asked to him whether he had stated the victim's date of birth in his statement recorded under Section 164 of the Cr.P.C., to which he answered that he had stated it, but he did not know why it was not recorded in said statement.

11. The said omission was put to PW 8 / Investigating Officer, who has stated that PW 2 had not stated date of birth of victim. Since the omission has been proved, it cannot be said that the victim's date of birth was 02nd March, 2013.

12. There is one more witness, who was examined by the prosecution, i.e. PW 5 / Headmaster. PW 5, in his examination-in-chief, stated that from 28th May, 2018, he was working as Headmaster at Z.P. Primary School, and that the police issued a letter to provide Nirgam Utara of the victim. He brought the original register with him at the time of deposition. The police letter was marked Exhibit 32. The victim's admission serial number is 1404, and the date of admission in the first class is 26th June, 2019. According to this witness, the date of birth of victim was 02nd March, 2013. He stated that the Nirgam Utara was handed over to the police in accordance with the original record. It was marked at Exhibit 33. He produced on record photocopy of the original register. On perusal of the same, it is revealed that the document was verified on 04th March, 2022, by the Superintendent of District Court-1, Hingoli, and thereafter, the said part of the original register was marked as Exhibit 36.

13. He also stated that he has supplied Nirgam Utara of the accused, and a letter to that effect was issued by the police, which was proved below Exhibit 37. He submitted that the date of birth of the accused is 04th April, 2002. He took admission in the school for first standard.

14. This witness was subjected to cross-examination in which he admitted that he did not fill out the original register. The victim's date of birth

was obtained from the Aadhaar card. He admitted that the date of birth on the Aadhaar card may be incorrect. He stated that at the time of admission, he took only an Aadhaar card and did not take any other documents. The class teacher completed the admission, and therefore, he could not state who had signed the admission form. He further deposed that the details of the victim were entered in the original register by Sunil Rathod.

15. PW 8 / Investigating Officer has stated that he had given a letter to Gramsevak for providing the birth certificate of the victim, and he also enquired about the parents of the victim, who disclosed that the victim was born during sugarcane period. He further deposed that he obtained the Nirgam Utara and therefore made a thorough enquiry. He stated that he was not aware whether the date of birth of Nirgam Utara was taken based on the Aadhar Card.

16. It is in this background, the prosecution submits that the date of birth is duly proved. In this regard, it is necessary to mention here that the Hon'ble Apex Court in case of ***P. Yuvaprakash Vs. State Rep. by Inspector of Police*** reported in ***2024 (17) SCC 684***, more particularly paragraph nos.13 to 17, has observed as under:-

“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. If the aforesaid law laid down by the Apex Court is taken into consideration, it would be crystal clear that the date of birth of the victim is not proved by the prosecution in accordance with law. It is very surprising to note that the victim was not subjected to an ossification test. Also, the manner in which the documents are proved by PW 5 / Headmaster regarding the date of birth of the victim, I conclude that the prosecution has not proved that on the date of the incident, the victim was a 'child'.

18. This takes me to the conviction of the appellant for the commission of an offence punishable under Section 376(2)(i)(j) of the I.P.C. Section 376 of the I.P.C. prescribes punishment for rape. If the definition of 'rape' defined under Section 375 of the I.P.C. is perused, it would reveal that rape means penetration of penis or insertion of any object or a part of body, not being the penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person.

19. So far as Section 376(2)(i) of the I.P.C. is concerned, it is necessary to mention here that clause (i) was omitted by the Act 22 of 2018 with effect from 21st April, 2018. Since, in the case in hand, the offence was committed on 31st July, 2020, and clause (i) was omitted in 2018, more particularly on 21st April, 2018, the trial Court ought not to have convicted the appellant for the commission of an offence punishable under Section 376(2)(i) of the I.P.C.

20. So far as conviction under Section 376(2)(j) of the I.P.C. is concerned, the said clause speaks about the commission of rape on a woman incapable of giving consent. To see whether the prosecution has proved the ingredients of the offence punishable under Section 376(2)(j) of the I.P.C., it is necessary to test the testimony of PW 3 / victim. It will also have to be seen whether if charge under section 376(2)(j) is not made out, whether the accused can be convicted for other offence, without their being charge to that effect, when guilt of accused is proved under Section 375 of the I.P.C.

21. PW 3 / victim has stated in her examination-in-chief that at the relevant time she was studying in 3rd standard; however, she was unable to state the name of the school. She stated that she resides with her mother and father and also identified the accused. She has also disclosed the accused's name. She stated that she was playing and was dragged into the house. The

accused used to graze the cattle. He removed his pants as well as her pants. The accused then took her on her lap and asked her to sleep. He inserted his penis and also his finger, and gagged her mouth. The accused then dropped her outside the house and asked her not to disclose the incident to her mother, else he would see her.

22. The victim deposed that thereafter he ran away. The victim then went to her mother while crying. At that time, her pants were stained with blood. When her mother enquired with her, she removed her pants and showed her. The victim thereafter showed the house owned by the appellant. She deposed that the police had made the necessary enquiries and had taken her to Kalamnuri Court. She stated that at the relevant time, she was wearing a blue-and-white frock. She could not tell the colour of her pants. She stated that along with her parents, she went to the hospital.

23. PW 3 was subjected to cross-examination, in which she stated that her parents came to the house when it was dusk. She stated that she was playing alone and nobody was there at the time of the incident. She stated that she was wearing a red frock at the time of deposition. She admitted that she has been residing with her parents since the incident. She also stated that she remembers the fact that was disclosed to her. She denied that her parents had told her what to depose in the Court. She deposed that she had stated

that a penis and a finger were inserted, as well as the fact that the blood was oozing. She also stated that when her mother asked, she removed her pants. She further deposed that the appellant had asked not to disclose the incident to the mother. She stated that she could not give any reason why those statements were not included in the police statement. She has denied the fact that she was deposing falsely.

24. At this stage, Mr. Bobade, learned counsel for the appellant, contended that the omission pointed out in cross-examination goes to the root of the matter. Suffice it to say, those omissions are not put to the Investigating Officer, and therefore, are not proved. He further contended that the testimony of victim does not inspire confidence and therefore should not be acted upon. According to him even charge, is not proved by the prosecution as it is not even the case of the prosecution that victim was incapable of giving consent.

25. PW 2 is the father of the victim, who, in his testimony, has stated that the incident occurred on 31st July, 2020, when he, along with his wife, had gone to Kurtali for work and had returned at 05:00 p.m. after the work. At that time, the victim was crying, and blood was oozing from her leg. They enquired from the victim, who removed her pants and showed her private part from which the blood was oozing. On enquiry, she disclosed the accused's

name. PW 2 then asked her to show the accused's house, which the victim showed. The victim then narrated to PW 2 that she was playing ,the accused arrived, grabbed her hand, and carried her inside the house. He then pressed her mouth and bolted from inside. The accused then removed her pants by taking her on his lap. The victim stated that an object was inserted into her private part. PW 2 stated that the victim narrated to him that she was suffering from pain and her mouth was pressed by the accused. The accused, after some time, inserted his finger in her private part and thereafter he freed the victim.

26. PW 2 further deposed that then they met the brother of the accused and enquired about the accused, who showed his unawareness. The accused was not found in the village; therefore, at 07:30 p.m., they went to the police station to lodge a report. The complaint was proved by this witness at Exhibit 18. On 17th August, 2020, his statement under Section 164 of the Cr.P.C. was also recorded, as shown below in Exhibit 19. PW 2 deposed that at the relevant time, the victim was wearing a blue frock and light blue pants. He identified the clothes shown to him, as well as the accused in the Court.

27. In cross-examination, PW 2 has stated that he did not state the date of birth of the victim to the police, and he used to go for work where it was available. He stated that he could not state the date of his marriage. He

stated that whenever he went out for work, he asked the neighbours to look after the children and, if required, serve them food. He stated that at the time of the incident, he was using the mobile phone, but it was out of order. He admitted that there were several houses by a particular surname in the village. He denied the fact that the accused family was not on good terms with his family. He admitted that from the road, it's clear visible what is happening inside the house. He stated that the incident had occurred before he reached the house, i.e., between 04:30 and 04:45 p.m. He stated that the distance between his village and Akhada Balapur is 8 km, and that one Police Officer, Hundekar, took his report. He denied the suggestion that, due to a dispute with the accused, a false report was filed.

28. PW 4 is the Medical Officer, who in the testimony has stated that she was working at Akahad Balapur Rural Hospital from 21st September, 2017. Based on the letter dated 31st July, 2020, issued by the Police Constable (Exhibit 24 below), after obtaining the victim's mother's consent, examined the victim. She started the medical examination at 08:10 p.m., at which time the victim was crying. The victim was not ready to state anything. Her mother stated, on enquiry, that the victim's parents were not at home at about 04:00 p.m. One boy forcefully removed the pants of the victim and tried to have sexual contact with the victim.

29. PW 4 stated that the victim had not attended menarche, and she was not menstruating at the time of examination. The victim was not pregnant. General examination of the victim was irritable due to pain in the private part. The victim was 3 ft. tall and weighed 22 kg. There were blood stains on the pants. The frock was intact. The medical officer also deposed that there was evidence of a blood stain on her left thigh. There was no evidence of foreign material. The victim's gait was slightly bent due to pain.

30. In examination-in-chief, she has deposed that the abdomen was soft. Non tender. The uterus was not palpable. There was no injury to the body. Local examination - pubic hairs were absent, Labia majora oedema present. The labia minora was red, and the clitoris. Fourchette and Interoitus redness visualised. Very small vagina. With minimal blood in it. The victim was examined after 6 to 7 hours of the incident. No other injuries to the genitals and anus. Evidence of injuries suggestive of application of force, as the vagina was showing minimal bleeding, suggesting of application of force. The injuries were within 24 hours. Overall findings were consistent with sexual intercourse/assault; the final opinion was kept pending till receipt of FSL reports. A tiny hymen injury was present at the 6 O'clock position. Edges were swollen. Bleeding was minimal. Oedema was present—tears at 6 O'clock. There was no perineal tear. The urethra was normal. PS examination not done. Anus was normal. The oral cavity was normal. She had taken the

sample of vaginal swab from discharge. The blood sample was collected in EDTA and a plain bulb. Urine was collected. Nails were collected. A pregnancy test was not done. She then proved the medical examination report below Exhibit 25 and, after receipt of the FSL report, gave the final opinion below Exhibit 26.

31. She stated that, as there was swelling and redness in the private part, evidence of minimal blood from the private part, the patient's gait had changed due to local pain. She stated that the possibility of sexual assault could not be excluded. She stated that the injury was possible due to forceful sexual assault, and due to assault, bleeding is also possible.

32. PW 4 was subjected to cross-examination, in which she stated that her qualification is M.B.B.S. and Diploma in Clinical Pathology, and she was not a specialist in obstetrics. She submitted that, till the date, i.e., 05th February, 2022, she had examined five victims, and therefore, she admitted that she is not an expert in that field. She further admitted that the victim had not given a history of the incident, and that the thumb impression below the consent column was not obtained. She submitted that in Column No. 12, the date and time of the examination are mentioned as 31.07.2020 at 10:40 p.m. She admitted that, though rough notes were prepared, they were destroyed and therefore not handed over to the police. She further admitted that most

females may or may not have a hymen, and based on hymen examination, it cannot confirm or deny sexual abuse.

33. She volunteered that a hymen rupture is associated with bleeding, swelling, and pain, which can confirm sexual abuse. She admitted that a tear in the hymen can occur from cycling, swimming, physical activity, or inserting something. She also stated that children may insert fingers due to itching and irritation of the vagina. She admitted that any amount of force or pressure can cause a hymen to tear, and that, while inserting a finger, excessive force can lead to maximum bleeding. She also admitted that if the finger is inserted forcefully, minor scratches or cuts around the private part may occur. She had collected the samples from the vagina by swabbing after informing the victim.

34. She admitted that Exhibit 25 does not mention details of the sealing samples, nor does it mention the seizure of the victim's clothes. She admitted that the clothes were sealed, and every item was handed over to the police. She also admitted that the nurse prepared the patient's entry, which includes primary information. She denied that she was deposing falsely.

35. At this juncture, it is necessary to mention here that the victim has categorically stated that on the date of the incident, the victim was dragged inside the house and the accused had taken her on his lap and inserted his

private part as well as his finger in her private part/ vagina of victim . If cross-examination of the victim is perused, it would reveal that there is absolutely no cross-examination so far as the aforesaid aspect is concerned. PW 2 / father of the victim has also deposed on the same lines, and the medical evidence also inspires confidence in the case advanced by the prosecution.

36. PW 4 / Medical Officer also categorically stated that she has found a supportive case of prosecution. Because she has not handed over rough notes of the medical examination to the Investigating Officer, it will not cause any prejudice to the accused. The testimony of the victim, the victim's father, and the Medical Officer inspires confidence.

37. It is further necessary to mention that the FSL report is also available on record. If those reports are taken into consideration, particularly Exhibit 64, they would reveal that the vaginal swab in a phial/labelled was collected and forwarded for examination and report, and the analysis below Exhibit 64 shows that the blood detected on Exhibit 3 was human. Thus, the fact reveals that, though the victim was not having a menstrual cycle, blood was found. Though the Medical Officer has deposed that the injury/tearing of the hymen may be possible due to swelling, cycling, etc., but in the cross-examination of the victim, it would reveal that no suggestion was given to the victim in that regard. In the absence of a stand taken by the defence, inference cannot be drawn.

38. Further, coming to the motive regarding false implication, absolutely no defence has been taken by the accused, despite saying that he was falsely implicated. A suggestion given to the father that, due to a dispute with the accused, a false report was lodged, is a futile defence, since the nature of dispute is not brought on record. Further, when the accused was examined under Section 313 of Cr.P.C , he did not put forward his defence of false implication on basis of any material. Mere denial is not enough to disbelieve the theory advanced by the prosecution.

39. As far as contention that charge under section 376 (2)(j) is not made out since there is nothing on record to show that the victim was incapable of giving consent, the accused may be right in saying so, but the prosecution has rightly proved that offence of rape has been committed as the act was against her will and without her consent. Now question is whether prejudice will be caused to the accused if he is convicted for commission of offence punishable under section 376(1) of the I.P.C. instead of Section 376(2)(j) of the I.P.C.

40. In this regard observation of Apex Court in case of ***Sushil Kumar Tiwari Vs. Hare Ram Sah & Ors., AIR 2025 SC 4828***, more particularly paragraph no.27 is as under :-

“27. Ordinarily, in a criminal trial, the stage of charge is sandwiched between the stages of investigation and trial. It is the

gateway to trial and prior to this stage, the stages of registration of FIR, filing of chargesheet and arguments on charge occur. During all these stages, the accused has a right to be informed, and is informed, about the allegations against him and the chargesheet finally culminates the entire case of the prosecution and makes it clearly known to the accused persons the colour and content of the allegations. Thus, on receipt of the chargesheet, the Respondent Nos. 1 and 2 were conscious of the allegations. Merely for non-statement of the correct date in the formal charge, it could not be said that the accused persons have been robbed of a fair trial or that failure of justice has been occasioned. Throughout the trial, there was no confusion regarding the date or time frame of the commission of the offence. Had there been so, the error in charge could have been suitably corrected under Section 216 Cr.P.C. However, the error in question did not have the effect of misleading the Respondent Nos. 1 and 2 in any manner during the trial. Section 215 Cr.P.C., which finds place in the chapter of Charge and deals with the effect of errors, also provides that no error in the framing of charge shall be regarded as material, unless it has the effect of misleading the accused and results into failure of justice. In this matter, there is no explanation as to how the Respondent Nos. 1 and 2 were misled by the charge or had suffered any failure of justice. During their statements under Section 313 Cr.P.C. and defence evidence as well, the allegations were fully addressed by the Respondent Nos. 1 and 2 without any confusion with respect to the time-frame of offence. The time frame alleged by the victim was well known to the Respondent Nos. 1 and 2 and there was no occasion for any confusion on that count, let aside any failure of justice. The decision relied upon by

the Respondent Nos. 1 and 2, rendered by this Court in Soundarajan v. State (Represented by the Inspector of Police, Vigilance Anti-Corruption, Dindigul) (2023) 16 SCC 141, is of no consequence in the present matter. Ironically, in the said decision, the contention regarding failure of justice due to defective framing of charge was turned down by the Court. Despite finding that non-statement of correct date in the charge had rendered the charge as defective, the Court went on to hold that it had not occasioned any failure of justice.”

In the aforesaid background it is crystal clear that there is nothing on record to come to conclusion that any prejudice is caused to the accused. The accused throughout the trial, was aware of the fact that the case against the accused was that of non -consensual sexual intercourse. Further, it is not even the case of the accused that it was a consensual physical intercourse or was out of willingness.

41. Mr. Bobade, learned counsel for the appellant, further invited my attention to Section 360 of Cr.P.C. and has submitted that since the accused is young he should be released by taking recourse to said provision. Suffice it to say that the offence is against a woman who was subjected to forceful sexual intercourse. Not only the private part, i.e., the penis, but also the finger was inserted in the private part of the victim. Considering the aforesaid fact, Section 360 of Cr.P.C. would not be applicable.

42. Mr. Bobade further contended that the subsequent conduct of the appellant, which showed that he was in the village only, clearly shows that he had no intention to commit the offence. He further stated that during the accused's medical examination, nothing was found. The law in this regard is very clear, just because the injuries were not found on the person of the victim, it does not mean that the crime was not committed. The subsequent conduct of the accused is also of no importance, since the testimony of the victim is cogent and reliable.

43. The holistic reading of the testimony of PW 2/ father of the victim, PW 3 / victim, PW 4 / Medical officer and PW 8 / Investigating Officer shows that there is a ring of truth in the case advanced by the prosecution. In that view of the matter, I am of the opinion that the prosecution has not proved the guilt of the appellant for the commission of an offence punishable under Section 376(2)(j) (i) of the I.P.C., so also under Section 4 of the Act of 2012, but has proved guilt under Section 375 of Indian penal code, as act was against will and without her consent, which is punishable 376(1) of the I.P.C.. Accordingly, the following order is passed:-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Conviction of the appellant awarded vide judgment dated 10th May, 2022 by the Additional Sessions Judge, Hingoli in

Special Case (POCSO) No. 48 of 2020 for commission of offence punishable under Section 376(2)(j)(i) of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 is set aside. He stands acquitted therefor.

- (III) So far as conviction of the appellant under section 376(2)(j) of the Indian Penal Code is concerned, same is altered to conviction under section 376(1) of Indian penal code, and he is directed to suffer rigorous imprisonment for 10 years and fine of Rs.10000/-. In default of payment of fine amount, the accused shall undergo simple imprisonment for six months.
- (IV) Criminal applications pending, if any, stands disposed of.
- (V) Ms. Deepali Patil, learned counsel appointed to represent Respondent No.2 / victim, has argued the matter with able assistance. Her fees are quantified at Rs. 10,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(RAJNISH R. VYAS, J.)

SSD