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

**CRIMINAL APPEAL NO. 41 OF 2026
WITH
CRIMINAL APPLICATION NO. 4387 OF 2025**

Arun Yashwant Medhe alias Doctor Baba
Age-52 years, Occu-Labour,
R/o. Gate, Tq. Raver,
Dist. Jalgaon

...APPELLANT
[Ori. Accused]

VERSUS

1. State of Maharashtra
through Savada Police Station,
Dist. Jalgaon

2. X. Y. Z.

...RESPONDENTS
[Ori. Complainant]

Mrs. Manjushri Narwade, Advocate for the appellant (appointed)
Mr. V. K. Kotecha, APP for the respondents/State
Mr. Shriniwas Kulkarni, Advocate for the respondent No. 2
(appointed)

CORAM : RAJNISH R. VYAS, J.

DATE : 07th MARCH, 2026

JUDGMENT :

1. The appeal is filed at the instance of original accused taking an exception to the judgment of conviction dated 03-04-2025 rendered by the Additional Sessions Judge, Bhusawal in Sessions Case No.27 of 2020 convicting the appellant for commission of offences punishable under Sections 376(2)(j) and 376(3) of the Indian Penal Code (would be referred as IPC) and Section 3 r/w

Section 4, Section 5(1) & (m) r/w Section 6 and Section 11(ii) r/w Section 12 of the Protection of Children From Sexual Offences Act, 2012(would be referred as an Act of 2012) and was directed to suffer rigorous imprisonment for twenty years and to pay fine of Rs.10,000/-, in default to suffer rigorous imprisonment for two months.

2. In view of section 42 of the Act of 2012, the trial court did not award any separate sentence for the commission of offences punishable under Sections 3 r/w Section 4, Section 5(1) & (m) r/w Section 6, and Section 11(ii) read with Section 12 of the Act of 2012. The appellant is acquitted of the commission of offences punishable under Section 12 of the Act of 2012.

3. Heard the learned Advocate for the appellant, learned Advocate for the victim and learned APP for the State.

4. In short, it is the case of the prosecution that on the day of the incident, i.e. 28-12-2019, when the victims of the crime were proceeding towards the house from the grocery shop, the accused called them inside the house, closed the door, played a video, sat the victim on the cot, and asked them to watch the video. Thereafter, committed sexual intercourse by removing the nicker of the victims.

5. The accused was referred to as Doctor Baba by the victims. This incident resulted in setting criminal law in motion and consequent registration of First Information Report No. 43/2019 dated 29-12-2019 with the respondent police station. The accused was arrested on 30-12-2019.

6. After registration of FIR and arrest of the accused, the victims were subjected to medical examination, a spot panchanama was prepared, and the clothes of both the victims were seized, the bedsheet from the spot of the incident. Incriminating material was forwarded for the Chemical Analysis. As the video was shown on a mobile device, it was seized and forwarded for forensic analysis. After completion of the investigation, charge-sheet No. 8/2020, dated 26-02-2020, was presented before the court.

7. The charge- below Exh. 25 dated 06-01-2024 was framed by the Additional Sessions Judge, Bhusawal, to which the accused did not plead guilty, prompting the prosecution to examine 9 witnesses.

8. The accused was thereafter questioned under Section 313 of the Cr. P. C., in which it was his specific case that he was a member of the Grampanchayat and President of the Dispute

Resolution Committee as well as the School Management and also was doing social work and he was likely to be elected to the post of Sarpanch from the Scheduled Caste category. One Sukhdeo, the grandfather of victim No. 2, was also a member of the Gram Panchayat, and other members of the family had occupied the post of Member of the Gram Panchayat. As other Members of the community had supported the accused for the post of Sarpanch and offered him the post, said Sukhdeo, developed ill will and, with the help of the victim No.1, lodged a false case to defame him. The accused neither entered into the witness box nor examined any witness. The trial court, on appreciation of the evidence on record, convicted the accused and, after hearing him on the point of sentence, awarded the sentence as stated above.

9. Challenging the conviction and the sentence, Mrs Narwade, learned Advocate for the appellant, has submitted that the case of the prosecution is full of omissions and contradictions. The testimony of PW-1, PW-2 and PW-3 cannot be believed, as their versions are going in different directions. According to her medical evidence, also fails to support the prosecution's case and the prosecution did not examine independent witnesses, i.e., the grocery

shop owner and a lady who used to sit adjoining the house of the accused. She, therefore, prayed for acquittal.

10. Per contra, learned APP Mr Kotecha has submitted that the victims at the time of the incident were studying in the 2nd std. and there was no reason for false implication of the accused. According to him, there are no omissions or contradictions, and, to prove the same, a particular procedure is required to be followed, i.e., putting the omissions and contradictions to the Investigating Officer and pointing them out to the concerned witness, but the same has not been done. He submitted that the non-examination of the grocery shop owner and a lady would not go to the root of the matter.

11. Mr Kulkarni, learned Advocate for the victim, has contended that the case of the prosecution has a ring of truth and the testimony of both the victims inspires confidence. According to him, the moment prosecution proves foundational facts, presumption under Sections 29 and 30 of the Act of 2012 triggers and shifts the burden on the accused, which remained un-discharge. He thus prayed for the dismissal of the appeal.

12. I have considered the arguments advanced by the respective counsels for the parties, and gone through the record of the case.

13. Since the accused is convicted for the commission of offences punishable under the provisions of the Act of 2012, it will have to be seen whether the prosecution has proved that the victims were minors at the time of the incident. Section 2(1) (d) of the Act of 2012 defines 'minor' as a person below the age of eighteen years.

14. Thus, to answer the question regarding the age of the victim, testimony of PW-2 is required to be taken into consideration who is mother of the PW-1. PW-2 has deposed that the victim 'D' was her daughter and she was aged about seven years at the time of the incident and was studying in the 2nd standard. She has not deposed the date of birth. So far as the cross-examination by the defence is concerned, there is nowhere in the defence case that the victim-D was not studying in the 2nd std. or was not 7 years old.

15. Furthermore, PW-4-Gramsevak of the concerned Grampanchayat has stated that the date of birth of the victim was entered in their record, more particularly in the register, at Sr. No. 66. The entry was taken on 27-10-2012, and the date of birth of the

victim was 09-10-2012. He deposed that the extract of the register was correct which was marked as Exh.50. He further stated that birth certificate issued, bears his signature and consequently marked as Exh.51. This witness was subjected to cross-examination in which he has admitted that if child is born in the hospital, Asha worker or the concerned person from the hospital forwards the report, based on which, entry regarding date of birth is taken. Some relatives come on occasion and provide information regarding the date of birth. From the record register, the Asha worker disclosed the victim-D's name and date of birth. He submitted that the said entry was not taken in his presence, and there is every likelihood of a mistake being committed if incorrect information is provided. He further admitted that the column at Sr. No. 2, which speaks about Gender(In Exh. 50) initially, gender was recorded as male; thereafter, it was corrected to female. He denied the other suggestion.

16. Exh. 50 is an extract from the register that shows the child's name, the parents' names, the date of birth, the address where the parents resided, the hospital where the victim was born, and the name of the person who provided the information.

17. Exh. 51 bears the date as 27-10-2012, and the date of birth of Victim-D was 09-10-2012. It appears the information of birth

was provided within 20 days and certificate was issued on 04-02-2020. The birth certificate below Exh. 51 also shows the child's name, Gender, date of birth, place of birth, etc. If both these documents are considered, they reveal that the entry was made in 2012 and the offence in question was committed in 2019. Thus, it is very difficult to say that, when a child was born, within 20 days it would be decided that she would be used as a tool to lodge a false case, and accordingly, documents would be prepared. Thus, I conclude that the prosecution has proved that the victim-D's date of birth was 09-10-2012 and consequently, she was 6 years and 2 months at the time of the incident.

18. This takes me to the issue of the date of birth of the second victim 'C' of the crime, i.e. PW-3, who has stated that at the time of the incident, she was in 2nd standard. She has not stated her age or date of birth. Further, it is not even the defence's case that she was not a minor at the time of the incident. But the fact remains that the court will have to conclude whether the victim was a minor based on the material produced on record. In this regard, it is necessary to look into the testimony of PW-5-Pradeep who was working on the post of Registrar of Death and Birth with Nagarpalika who stated that at the time of deposition he had brought the entry register which

shows that entry of date of birth of victim is at Sr. No.707 and entry is dated 18-02-2012 whereas date of birth is 16-02-2012. He produced the extract of the register below Exh. 55(1). A birth certificate was shown to him, which he stated was issued by the then Registrar Falak, whose signature he identified, and that the contents as correct, as per the information recorded in the entry register. The birth certificate is shown below as Exh. 56.

19. In the cross-examination by the defence of this witness, PW-5 submitted that based on the receipt of form No. 1 issued by the hospital, the entry of the date of birth is taken in the register. He admitted that there is no signature on Form No. 1. He also admitted that form No. 1 does not disclose the child's name, but stated that the child's name is mentioned in the entry register. He further admitted that the father of the victim had not submitted any application to that effect. He denied that the father of the victim had said that he had not given any application. He further showed his inability to tell who filled in the information in form No. 1. He also stated that he cannot confidently say whether the information noted in form No. 2 is true. Other suggestions he denied.

20. Thus, to prove the date of birth of victim-C, the prosecution has relied on the testimony of PW-5, Exh. 55(1), Exh.

55(2), and Exh. 56. Exh. 56 is the birth certificate, which shows the victim-C's date of birth as 16-02-2012. So, the extract register shows the victim's name, her parents' names, etc. Exh. 55(1), though, does not bear the name of the child; it bears the names of the father and mother. At this stage, it is necessary to mention here that the best evidence which is available for proving the age, in particular facts and circumstances of the case, would have been the testimony of the father or the parents. The prosecution has relied on documentary evidence and the officer who is in custody of those documents. Thus, the foundation of these documents is not proved by the prosecution. Thus, I conclude that the prosecution has not proved the date of birth of the victim-C and, consequently, it cannot be said that said victim-C was a minor at the time of the incident.

21. This takes me to another aspect of the case as to whether the offence of rape and aggravated penetrative assault is proved by the prosecution or not. As there are two victims in the crime, the first step is to address the testimony of the star witness, i.e., victim-D (PW-1).

22. PW-1 has deposed her date of birth and stated that she was studying in the 2nd standard and Victim-C was her friend. In the year 2019, at about 07.00, when she was proceeding towards the

shop along with her friend, i.e., the victim-C, the accused called from inside the house, and both of them went. The accused thereafter took the victim inside the house, latched the door, played video on the mobile, and sat the victim on the cot. The accused thereafter asked the victim to watch the video, which was obscene. Then accused removed the nicker of both of them and inserted his penis in the vagina of the victims. At that time, the accused had tied the mouths of the victims.

23. PW-1 further deposed that on the earlier occasion, the accused had also committed a similar act. She had disclosed the said fact to her Aunt, mother, father, and the police, which was written down. She stated that she had signed it. When the document was shown to her, she identified the signatures and the thumbprint of the mother of Victim-C and deposed that contents of it were true and correct. She was then shown a photograph of Doctor Baba/accused, which was given as Exh. 33. She stated that she had shown the spot of the incident to the police and was subjected to medical examination. Her mother's signature and thumb impression on form No. 34 were proved by her, which was the consent form for medical examination, which was given Exh. 34/ the form. She stated that her statement was recorded in court below Exh.35 which was statement

under Section 164 of the Cr. P. C. She identified her signature and stated that its contents are true and correct. She also stated that her clothes were seized and identified, i.e., a nicker, a full pant, and a top, which were Articles A to C. She also stated that she could identify the mobile phone if shown to her. It is necessary to note that the mobile in question could not be shown because it was forwarded for forensic examination. She was also shown the bedsheet that was kept on the cot at the time of the incident, which was at Article-D.

24. This witness was subjected to cross-examination. During cross-examination, she stated that the police had recorded her statement and that she had read it and signed it. It was stated that she was studying at a girls' school, and that victim-D & another victim-C (i.e., PW-3) reside near the house. On that day, she was going to buy groceries, and her friend was with her. She admitted that there used to be a crowd near the accused's house, with one lady always sitting there, but on the day of the incident, she was not there. She admitted that a total of 4 persons reside in the accused's house. But on the day of the incident, the accused was alone. This witness has admitted that in the statement recorded under Section 164 below Exh. 35, she did not state that she was returning after taking groceries. She denied that the accused showed her any video. She

stated that she had disclosed to the police, while recording the statement, that the accused had shown a video to both the victims. She also admitted the fact that the accused had inserted his penis into her vagina. It took 5-6 minutes to walk to the Sawada Police Station, and she did not go anywhere else before visiting it. She visited the police station along with her parents. She stated that she had stated to the police that when the accused had inserted the penis in the vagina of the victim PW-3, she did not notice it. Other facts were denied. She admitted that the accused is a Social Worker and that, at the time of the incident, the father, mother, and maternal uncle resided in the house of PW-3. On the day the evidence was recorded, her grandfather had attended the police station twice. She admitted that the accused had called her and PW-3, and that one could notice an article kept in the accused's house while walking along the road. She stated that the accused had tied a handkerchief to her mouth in Exh. 35. Other suggestions regarding the amount taken by the mother of the PW-1 from the accused were denied. This witness could not recollect on which date the police had forwarded her to the hospital, which was situated in the village.

25. Thus, testimony of the aforesaid witnesses would reveal that the story was tried to be built by the defence that, since nobody

could notice, the article kept in the house of the accused from the road, had the incident happened, it could have been noticed by the person who was going to the road. Further, it was tried to be brought on record that one lady was always sitting adjacent to the house of the accused and, therefore, the possibility cannot be ruled out that said lady, if examined, would have thrown light on the defence case.

26. In this regard, it is necessary to mention here that the sentences in evidence cannot be read in isolation. According to the testimony, the accused had called the victims inside and thereafter latched the door. Not only this, the victims admitted that a lady used to sit adjacent to the accused's house, but on the day of the incident, she was not there. Thus, it is crystal clear that neither of the defences taken by the accused can stand. Even the plea taken that the mother of the victim/PW-1 had taken a hand loan, which she could not repay, was also not proved; the suggestion to that effect was also denied.

27. The question is not whether the defence has proved its case or not, but whether the prosecution has proved the case beyond a reasonable doubt or not. As already stated, the prosecution proved the one of victim's age to be 6 years and 2 months at the time of the incident. This witness has categorically stated that on the date of the

incident, the accused had called both the victims inside, showing the video of the scene, and thereafter removed the knickers of both the victims and inserted his penis in the vagina.

28. The learned advocate for the appellant contended that the story advanced is totally unconvincing and false, since the accused was 50 years old at the time of the incident, and the victim/PW-1 was 6 years and two months old only, there could have been grievous/serious injuries on the private part of the victim. But the same are found to be missing from the Medical Officer's testimony. She then invited my attention to the testimony of the PW-8.

29. She further contended that even the injuries on the person of PW-3 falsify the case of the prosecution. PW-3, who is a victim of crime, has deposed that PW-1 was her friend and that, at the relevant time, she was studying in the 2nd Std. She used to play with PW-1. So far as the incident is concerned, she had narrated it as PW-1 had. Therefore, a discussion of her testimony would be a repetition. The only additional fact was regarding the recording of her statement under Section 164 of the Cr. P. C., the contents of which, according to her, were true, it was below Exh. 41. Even the

clothes of the victim/PW-3 were shown to her, which were Articles E to F.

30. In the cross-examination of PW 3 again, similar types of questions were put to her. The questions that were not put to PW-1 need to be discussed. PW 3 has admitted that the incident occurred on 31st December, and the police had enquired about it. She admitted that there is a statue of Dr Babasaheb Ambedkar near the accused's house, and that people used to sit near it. Thus, it is tried to be convinced that in the area where the offence had taken place, there was a thick locality and several persons were present. P W 3 had stated that the accused had tied the mouth of PW-1 with a handkerchief. She admitted in cross-examination that she had disclosed the act committed by the accused to her parents, and that her parents had taken her to the police station at approximately 08.00 a.m. She stated that, since the accused had latched the door from inside and the persons residing in the adjoining house had gone to work, the incident could not be narrated. She deposed that at the time of the incident, the accused was alone in the house. She denied other suggestions.

31. Since the counsel for the appellant has raised the ground that the testimony of PW-8- Dr Swapnisha, who had medically

examined the victims and the testimony of PW-6-Medical Officer, who has examined the accused, would destroy the case of the prosecution, it will have to be seen what that testimony reveals.

32. PW-8, who was the lady Medical Officer, has stated that she has received a letter from the police station for medical examination of two victims, which letter was shown to her and which bore her signature. The said letter was proved below Exh. 69. She, after taking the consent of the victim-C, also took the consent of the mother, proceeded for the medical examination. History was narrated by the mother of Victim-C, which was recorded, and upon medical examination, she found swelling on victim's external genital organ, i.e., labia majora. She collected the samples of blood, vaginal swab, nail clipping, pubic hair and urine of victim-C. The pregnancy test was negative. Her blood group was 'A' positive. Accordingly, she produced the medical certificate below Exh. 42, which she proved.

33. She also stated that even victim-D was examined by her with the consent of the victim and her mother, and on examination of victim-D, PW-8 found swelling on the external genital organ, i.e. labia majora. Thereafter, she collected samples of blood, vaginal swab, nail clipping, pubic hair and urine of Victim-D. The pregnancy test was negative. Her blood group was 'O' positive. Accordingly, she

issued the medical examination certificate for Victim-D, which is set out below as Exh. 34, and PW-8 proved it.

34. In the cross-examination, she admitted that she did not examine any minor victim before the examination of the victims in the present case. But stated that in the MBBS curriculum, she was not taught how to examine the girl. PW-8 volunteered that from 2015-2017 she worked as a Gynaecologist at the Civil Hospital and therefore had experience examining such types of females. She admitted that she had not examined the girls. She also stated that, as per the law, it is not allowed to take the consent of a minor girl. She stated that it may be correct if a minor girl is raped by a person aged 50 years or above, then the minor girl needs to be taken directly to the hospital as she can become unconscious. Also, after such an incident, there may be injuries to the vagina of the minor girl, and the hymen may be torn. She deposed in cross-examination that there may be several reasons for swelling in the body, and she did not state the colour of the swelling in the report. The other suggestions she denied, including the claim that she was depositing false information.

35. Learned Advocate for the appellant submitted to co-relate the testimony of the PW-8, the testimony of PW-6 Dr. Mahajan who had medically examined the accused based on letter issued by

the concerned police station below Exh.59, is also to be looked into. The medical examination report of the accused was proved by this witness below Exh.60, which states that on physical examination of the accused, he was found able for sexual intercourse. During cross-examination, he admitted that no injuries were visible on the accused's person.

36. Taking the help of the testimony of the Medical Officer as stated above, an attempt is made to bring the story on record that since both the victims had stated that the accused had inserted the penis into their vagina, there ought to have been injuries on the private part. Insistence of learned Advocate for the appellant that injuries are sine qua non for commission of offence of rape is also required to be considered.

37. At this juncture, it is necessary to mention here that PW-1 was only 6 years old, whereas PW-3 was studying in the 2nd Std. Their narration of the specific act of intercourse is not required to be read as it is. They have stated that the penis was inserted into the vagina. At this juncture, it is necessary to take into consideration that even the slightest penetration is also sufficient for constituting the offence of rape. Section 375 of the IPC, more particularly, *explanation-1 says that for this section, 'vagina' shall also include*

labia majora. Thus, in the aforesaid background, if the testimony of PW-8 is seen, she stated that after examination of both the victims, she found swelling on the external genital organ, i.e. *labia majora*. It is thus crystal clear that there was swelling. Thus, it can be said that the testimony of PW-1 & PW-3, if read in the light of the testimony of PW-8, would clearly reveal that the prosecution has proved that there was insertion of a penis into the vagina of the two victim girls.

38. So far as the medical examination of the accused is concerned, the Doctor has stated that no injuries were found on the body of the accused and therefore defence contains that same disproves the case of prosecution. it is necessary to state that it was not even the case of the prosecution that the act was performed with full force. The act was against the will and consent of the victims. The force used is also not at all relevant, since it is already stated that the slightest penetration would invite the punishment under Section 376 of the IPC. Even the consent of minor is no consent in the eyes of law.

39. In the aforesaid background, it will have to be said that there is nothing in the testimony of PW-1, PW-3 and PW-8 to arrive at conclusions that the testimony is neither cogent nor reliable. In fact, I would say that the witnesses' testimony is of sterling quality and therefore corroboration is not required.

40. The contention of the learned Advocate for the appellant that there are omissions regarding the fact that “when the act was committed, the victims were coming after purchasing or going for the purchase of groceries”, suffice it to say that minor omissions would not go to the root of the matter. Even otherwise, there is a specific procedure for proving omissions and contradictions that has not been followed.

41. The contention of the learned Advocate for the accused that according to the testimony of PW-3, the offence was committed on 31st December and therefore, it destroys the case of the prosecution since the prosecution has come with a specific case that the incident had occurred on 28-12-219. PW-3's testimony shows that the incident occurred on 31st December. But at this juncture, the entire testimony of the victims will have to be looked into. The answers to the previous questions, extracted during cross-examination, would also play an important role. Before answering that the incident had taken place on 31st December, the question was put to this witness, to which she replied that she was not aware of the name of the woman residing adjacent to the house of the accused. Thereafter, PW-3 admitted that many people used to gather near the accused's house. Thereafter, the victim stated that the

incident occurred on 31st December. Thus, at this juncture, it is necessary to consider that the victim, PW-3, was studying in the 2nd standard at the relevant time. Parrot-like testimony is not expected from the witness, to say the least, from a witness who is not of the intellectual capacity of an educated / grown up man. Just because she has stated that the incident took place on 31st December, it does not help the prosecution. What is required to be seen is the overall testimony of witnesses.

42. PW-2 is the mother of the victim-D, who has stated that the victim was 7 years old at the time of the incident, and she had narrated the act committed by the accused to her. She also stated that since her husband had gone to another village, she narrated the incident to her husband on the second day. Thereafter, they lodged the complaint at the police station, and the report is lodged below Exh. 37. She also stated that a spot panchanama was drawn, the victim's clothes were seized, and the victim's statement was recorded under Section 164 of the Cr. P. C. So also, her statement. She identified her statement recorded under Section 164 of the Cr. P. C., which was marked Exh. 38. She stated that she had given consent for the medical examination of the victim. She identified the seizure panchanama of the clothes of the victim below Exh. 39.

43. In the cross-examination, she admitted that she was illiterate and that the police had written down what she had stated. She was shown Exh. 37, which she identified as the same, and she stated that she had put thumb impression on it. The suggestion that the thumb impression on Exh. 37 was not hers and was denied. She stated that she is not in a position to say the exact timing of the incident. Witness then volunteered that the incident had taken place in the evening. She admitted that five members reside in her house, and that there is only a grocery shop in the said village, which opens at 10 a.m. and closes at 07.00 in the evening, and is a 10-minute walk from her house. The suggestion that she and her husband used to go to the accused for a handloan was denied, as was the suggestion that the grandfather of PW-3 and the accused had enmical terms. She admitted that when the victim had informed her about the incident, her husband was out of the station. She also admitted that, along with her husband, daughter, and the parents of PW-3, she had been to the house of the police patil the next day of the incident, at about 09.00 to 09.30 am. She admitted that the victim was taken to the Government Hospital at about 10.30 in the morning. The other suggestions were denied.

44. At this stage, it is necessary to mention here that the story was tried to be brought by the defence that since there was one grocery shop which opens at 10 o'clock and closes at 07.00 in the evening, the prosecution's case that the victim was returning from the grocery shop in the evening is totally false and fabricated. It is necessary to mention that the victim did not even go to that particular shop to purchase groceries. It may be the case that, for the PW-2, there was only one shop in the said village. But if the testimony of PW-1 is perused, she has stated that she was proceeding towards the shop. Whether it was a grocery shop or not, i.e., not stated by the PW-1.

45. So far as the defense taken regarding the false implication is concerned, suffice it to say that though it is presume that there was a political rivalry between PW-3's grand father and accused, it is difficult to say that grand father, in peculiar facts and circumstances of the case, would make a grand child as a tool for falsely implicating the the accused. even otherwise, the present case there are two victims of the crime. Therefore, the defence taken by the accused is fragile and not convincing. The issue of political rivalry could have been brought on record by the defence through the examination of a witness, but the same has not been done.

46. At this stage, it is necessary to mention here that since the appellant/accused is convicted for the commission of offences under Sections 3 r/w Section 4 and Section 5 (l)(m) of the Act of 2012, the presumption under Section 29 also triggers. Section 29 of the Act of 2012 clearly states that *where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3,5, 7 & 9 of the Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.* Neither by way of cross-examination nor by answering the question under Section 313 of the Cr. P. C., the accused, has rebutted the presumption. As already stated, since the PW-1, PW-2 and PW-3 have proved the foundational facts regarding the aggravated penetrative assault, the presumption under Section 29 is required to be invoked. In that view of the matter, I conclude that the prosecution has proved the case beyond a reasonable doubt.

47. The testimony of the investigating officer, PW-9, also shows that during the investigation, he arrested the accused and prepared the arrest panchanama, Exh. 81, and searched the accused, during which a mobile was found. Said panchanama was proved below Exh. 82, seized the mobile phone and was given Article K; it

was deposited in the Muddemal room, and a receipt was taken, which is below Exh. 83. He also forwarded the said mobile under the letter below Exh. 84 to the forensic laboratory and Exh. 85, i.e., the report of the forensic laboratory. He also deposed about the steps he has taken while carrying out the investigation, recording the statement under Section 164 of Cr. P. C.

48. So far as cross-examination of these witnesses is concerned, nothing has been brought on record. At this stage, it is necessary to mention here that Exh. 91 is the letter issued by the Investigating Officer to the Forensic Laboratory, Panchawati, Nashik, in which queries were raised. Exh. 92 is the report of the Regional Science Forensic Laboratory, in which it is stated that the blood group of victim-D was 'O' and neither blood nor tissue matter is detected on Exh. (2). No hair found in Exh.3. No semen is detected on Exh.4. So far as victim/PW-3 is concerned, Exh.93 is a report issued by the Laboratory which shows the blood group of said victim was 'A' and neither blood nor tissue matter is detected on Exh. 2. No hair found in Exh. 3. No semen is detected on Exh.4.

49. Exh. 94 is the report submitted by the Forensic Laboratory, which shows that Exh. 4 is haemolysed, hence unsuitable for grouping. Neither blood nor semen is detected on Exh. 1 and 2.

Neither blood nor tissue matter is detected on Exh. 3. Exh. 2 is unsuitable for sex determination.

50. It is necessary to mention here that though the report of the forensic laboratory is not in favour of prosecution, the fact remains that oral testimony clearly supports the case of the prosecution and corroborates the documentary evidence, so also the medical examination report. Thus, I conclude that there is a ring of truth in the case advanced by the prosecution. The trial court rightly appreciated the evidence on record, and there is absolutely no reason for interference in the present appeal. Hence, the following order is passed:

ORDER

a] The appeal stands dismissed.

b] In view of the dismissal of the appeal, pending applications, if any, stand dismissed.

51. At this stage, it is necessary to mention here that the learned Advocate for the appellant and the learned Advocate for the victims, both appointed counsels, without seeking any adjournment, were ready with the matter and have done their best to protect the

interests of their clients. The Legal Aid Sub-Committee, Aurangabad, is hereby directed to quantify their fees in accordance with the rules.

[RAJNISH R. VYAS, J.]

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