



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

CRIMINAL APPEAL NO. 220 OF 2026

. Bhanudas Ganpati Natkar
Age: 57 years, Occu.: Labour,
R/o. : Aasangaon, Tq.Partur,
District Jalna. (At present in Jail) ..Appellant

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station Ashti, Tq.Partur,
District Jalna.

2. X.Y.Z. ..Respondents

.....
Advocate for Appellant : Mr. Sunil P Koli
APP for Respondent no.1 : Mr.V.M.Jaware
Advocate for Respondent no.2 : Ms.Neha Udawant h/f.
Mr.S.J. Salunke

.....
CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 29 APRIL, 2026
PRONOUNCED ON : 05 MAY, 2026**

JUDGMENT :

1. Convict (original accused no.2) for offence under Sections 376(3), 506 (Part-I) of the Indian Penal Code (IPC) and under Sections 4 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act), hereby challenges judgment and order dated 16-10-2024 passed by learned Special Judge, Jalna in Special Case No.210 of 2023.

CASE OF PROSECUTION IN BRIEF

2. In short, case of prosecution is that, victim, daughter of informant, aged 13 years, who was studying in 8th Standard, was taken initially by accused no.2 to house of accused no.1 where after closing the door, accused no.1 had sexual intercourse with her.

After some time on the same day, accused no.2 i.e. present appellant also visited house of the victim and he, by issuing threats, forced victim to come to water filter room and there, after disrobing her, he too had sexual intercourse with victim.

At around 05:00 p.m., victim reported her father on phone, who reached home and thereafter, he took victim to Police Station and law was set into motion resulting into registration of crime bearing No.220 of 2023 for offence under Sections 376, 376(1), 376DA, 354 of the IPC and under Sections 4, 6, 8 and 12 of the POCSO Act.

PW7 Bhagwat Kadam, PSI, who was entrusted with investigation, carried out the same and on completion of investigation, chargesheeted both accused, who were tried vide Special Case No.210 of 2023, during which prosecution has adduced evidence of in all seven witnesses, which was duly appreciated and analyzed by the learned trial Court alongwith documentary evidence

and by judgment and order dated 16-10-2024, both accused came to be convicted for charges under Sections 376(3) and 506 (Part-I) of the IPC and under Sections 4 and 12 of the POCSO Act.

Feeling aggrieved by this judgment and order of conviction, appellant/original accused no.2 has preferred instant appeal on various grounds raised in appeal memo.

SUBMISSIONS

On behalf of appellant :

3. Learned counsel for appellant/original accused no.2 would submit that there is false implication. According to him, there is no convincing evidence on the point of age of victim. He also questions the veracity of testimony of victim by pointing out that, there was no convincing evidence about victim been taken to water filter room and then ravished. He submitted that, allegations are of gagging, taking and dragging the victim to the spot, but the article used for gagging is not recovered and moreover, there are no injuries on the person of victim in spite of claiming to be dragged.

4. Learned counsel took this Court through testimony of PW1 informant father and would submit that, he has mere hearsay

information. That, there was political rivalry in the village and in such backdrop, he falsely implicated the accused. It is further submitted that, there is no convincing independent evidence on the point of occurrence and moreover, there is no supportive or corroborative medical evidence. On this count, he took this Court through evidence of PW6 Dr.Vaishali Pandit, Medical Officer at exh.53 and more particularly, answer given in cross-examination that 'no final opinion has been rendered'. Thus, according to him, there is no convincing, conclusive proof of sexual assault.

5. He next submitted that, statement of victim before the Court is contrary to her statement under Section 164 of the Code of Criminal Procedure and therefore, she cannot be said to be a witness of sterling quality. According to him, when foundational facts of the case are not proved, it was not open for learned trial Court to invoke presumption under Section 29 of the POCSO Act. Therefore, by seeking reliance on the following judgments, he prays for interference at the hands of this Court by allowing the appeal.

- (a) *Judgment of Hon'ble Apex Court in the case of Mohan Ambadas Meshram v. State of Maharashtra, through Police Station, Chandrapur, 2018 SCC OnLine Bom 1436.*
- (b) *Judgment of Hon'ble Apex Court in the case of Kali Ram v.*

State of Himachal Pradesh, (1973) 2 SCC 808.

- (c) *Judgment of this Court in case of Gautam Chandrakant Khairnar v. State of Maharashtra, (2022) ALLMR(Cri) 2585.*
- (d) *Judgment of this Court in case of Balu v. State of Maharashtra, (2023) 2 BomCR (Cri.) 835.*

On behalf of Respondent no.1/State and Respondent no.2/Victim :

6. In contrast, learned APP for respondent no.1 as well as learned counsel for respondent no.2/victim both supported the judgment of conviction. They pointed out that, there is conclusive proof about victim to be a 'minor' as her birth certificate is on record. Secondly, as regards to occurrence is concerned, they both submit that testimony of prosecutrix itself is inspiring confidence and the same was relied by the learned trial Court.

7. It is further pointed out that, there are witnesses, who had seen victim and accused no.2 proceedings to and returning from spot of incidence and as such, it is their submission that there is corroboration to the evidence of victim.

8. It is pointed out that, here, there was examination of victim by Medical Officer and merely because no final opinion has been rendered, it is their submission that sole testimony of victim can

safely be relied here and that was correctly done by learned trial Court by accepting case of prosecution. For all above reasons, for want of merits, it is prayed that appeal be dismissed.

BRIEF ACCOUNT OF EVIDENCE IN TRIAL COURT

9. **PW1** who is father of victim, at exh.47 gave evidence that, victim, his eldest daughter is 13 years of age and studying in 8th Standard. That, on 23-07-2023, while he was at Parbhani, he received a phone call from his victim daughter asking his whereabouts and suggesting to come home soon. Accordingly, he reached home at 6:00 p.m. and there his wife told him the incident that both accused had wrong relations with victim and then he took victim to Police Station and lodged complaint, which he identified as exh.P-1 and his statement under Section 164 is at exh.P-2.

While under **cross-examination** omissions are brought in his complaint to the extent that victim was alone at home while second daughter was playing outside; about victim to be crying when he came; that, he telephoned his wife and asked about her whereabouts; that, wife told him about the incident that both accused had wrong relations with the victim; that, when he asked victim, she did not tell

him anything as she was scared of him.

In further cross-examination, he denied his daughter having cell phone; Gram Panchayat elections were held few days prior to the incident and he admitted that, he had started construction of his house at the time of incident. Rest is all denial except that Panchayat Samiti had taken bore well and denied that there was quarrel with son of accused no.2 on such count.

10. **PW2** victim deposed at exh.48 about she studying in 8th Standard. That, incident took place on 23-07-2023 while she to be alone at home and her mother and grandmother had gone to field, while her sister was playing outside the house. According to her, at around 04:00 p.m. accused persons came, accused no.2 gagged her mouth, tied her legs and dragged her to a nearby house. That, they had taken her to a room, which was to the rear side of house. That, accused no.2 latched the door from outside and kept waiting outside while accused no.1 got undressed her and he penetrated his urinating organ in her urinating organ. That, somebody peeped from window and as the door from backside was open, she ran. She stated that, accused also gave her Rs.200/- but she refused. That, he threatened her of consequences, if she does not accept the money

and further threatened to not to disclose incident to parents or else he would kill her. That, when she went into front room, she saw a gap to the door and so she managed to push the door and came out of the house.

11. It has further come in her testimony that, when she went home, accused no.2 came and told her that he has seen everything and if she does not go to the water filter, he would inform everything to her father and so she went with the pot to the water filter. That, there, accused no.2 asked her to take water from inside the water filter shed and when she went inside, he latched the door, came near her, removed her clothes of which she gave description and that, accused also removed his pant and inserted his urinating organ in her urinating organ. She also deposed that granddaughter of accused Kharat also came there, but she was driven away. That, after the incident, she wore the clothes and went out of the water filter shed and came back to the house. After reaching home, she went to neighbour's house, and took neighbour's cell phone and called her father who came home and took her to the Police Station.

While under **cross-examination** at the hands of accused no.2, she answered that in statement before the Court, she has stated that

her mother and grandmother had gone to field and father had been to Parbhani. She is unable to state whether land of Samarth Ramdas Swami Trust to be adjoining to their land and she denied that there was any quarrel between her father and accused no.2 but she admitted that accused no.1 is from her brotherhood. In paragraph 18, she admitted that accused no.2 live in slum area, she knew him by face, the water filter to be having tin shade and it to be near the school and cards been given to swipe and get water. She admitted there to be temples near the shed. In paragraph 19, she flatly denied that she told Police whatever was taught by his father. She identified accused no.2 before the court.

12. **PW3** neighbour of informant deposed that on 23-07-2023, victim had come to their house to use cellphone to make call to her father and she heard victim telling her father to come immediately and she to be in frightened condition. Witness deposed that victim told her that Balu Tailor had taken her to his room, removed her clothes, and touched his urinating organ to her urinating organ, she also told that Bhanu had told her that he had seen what Balu had done with her and he wanted to do the same and they both are from her village.

Nothing adverse is brought in her **cross-examination** by learned counsel for accused no.2 except that in her entire statement, name of Bhanudas in not written.

13. **PW4** who is resident of same vicinity deposed that, while this witness was proceeding towards the wire fencing near the water filter shed for drying clothes on the fencing wire, this witness saw victim coming out of the shed of the water filter and also saw Bhanudas coming out of the shed and this witness asking him whether there was no water to the tap outside the shed and he replying it to be not working. This witness stated about not noticing anything.

In **cross-examination** witness admitted about using spectacles for reading but was not wearing it when witness saw victim.

14. **PW5** Solanke is pancha to spot panchanama exh.P-1/P-5 and pancha to panchanama of seizure of clothes of accused persons as well as victim.

15. **PW6** Dr.Vaishali Pandit is the Medical Officer, who deposed that on 24-07-2023 while on duty, she examined victim, who was brought

by her mother and noting history that both accused attempted forcible sexual intercourse by giving verbal threats. That, she did not find any injury marks on the body. She noticed that her hymen opening to be small and therefore, could not take vaginal swab. She deposed about suggesting X-Ray for ossification test.

While under **cross-examination** she admitted that she had not mentioned findings in clause no.22 and not given final opinion till date.

16. **PW7** Bhagwat Kadam is the Investigating Officer, who testified about steps taken by him during investigation till filing chargesheet.

ANALYSIS

17. Here, though two accused were chargesheeted on above charge, only accused no.2 Bhanudas has preferred instant appeal as he is held guilty for offence under Sections 376(3) and 506 (Part-I) of the IPC and under Sections 4 and 12 of the POCSO Act.

18. Prosecution case precisely is that, accused no.2 initially had gagged mouth and dragged victim to house of accused no.1 and in the room to the rear-side of house, accused no.1 had penetrative

sexual intercourse with her. While act at the instance of accused no.1 was in progress, it is the case of prosecution that, accused no.2/ present appellant Bhanudas initially kept watch outside the door, but later on peeped through the window and after the victim went home, in the afternoon, he visited her house and informed her about what he saw and further threatened her to allow him to do the same and summoned her to the water filter shed and there, after undressing her, he penetrated his male organ in her female organ.

19. In the backdrop of above prosecution story, obviously evidence of victim being crucial needs to be appreciated.

20. Though there is no serious challenge to the minority of the victim, it is bounden duty of prosecution as well as Court to ascertain whether victim is proved to be a 'minor' below 18 years of age.

PW1 Father of victim at exh.47 gave age of his daughter as 14 years and she to be studying in 8th standard. PW2 Victim in her evidence at exh.48 also deposed about studying in 8th Standard. Here, there is birth certificate of victim gathered by PW7 Investigating Officer and it is at exh.68. Apparently, such certificate is issued by Gram Panchayat and is in the format prescribed by the

Health Department, Government of Maharashtra. In said certificate, date of birth of victim is noted as 26-04-2010. Consequently, though from father and victim, learned APP has not elicited date of birth, in the light of availability of exh.68, there is no hesitation in holding that on the date of incident, victim was a 'minor'.

21. Having put issue of minority to rest, it is to be further seen whether offence under Sections 376, 506 (Part-I) and under Sections 4 and 12 of the POCSO Act is at all made out against present appellant.

On this issue, one has to again fall back on the testimony of PW2 victim and her testimony is already reproduced in aforesaid paragraph nos.8 and 9.

22. Now, here, appeal being only by accused no.2 Bhanudas, only testimony related to him is required to be re-appreciated. Thereupon, it is emerging that, as regards to present appellant is concerned, role attributed to him is that, he initially gagged victim and dragged her to the house of accused no.1 and while accused no.1 was in the house i.e. in the rear room and committing sexual assault on victim, this accused no.2 has allegedly closed the door, latched it and kept watch and he also seems to have peeped through the

window and when victim went home, she speaks of accused no.2 coming to her house and initially telling her about seeing what accused no.1 did to her and threatened her to come to the water filter shed and when she came with the vessel, she deposed that, he closed the door of shed, pulled down the pant worn by victim and allegedly inserted his urinating organ in her urinating organ. Her such testimony has remained intact in spite of facing lengthy cross-examination. She has even given description of clothes on her person at such time. Infact, there is no serious challenge to the above testimony in the cross-examination.

23. Here, there is testimony of PW3 immediate neighbour lending support to the testimony of victim as this witness had occasion to lend her phone to victim to enable her to call her father. PW1 father has also deposed about receiving a phone call from victim while he was at Parbhani. This witness has also stated about hearing from victim about accused no.1 taking victim to his room, removing her pant, nicker and touching her urinating organ by his urinating organ and about accused no.2 also doing the same with her. In the considered opinion of this court, victim, shortly after the incident, had approached this witness and after narrating her the incident, she

also called up her father. Considering the same, doctrine of *res gestae* can be invoked as she has learnt about the events immediately after it was over. Victim had made statement which is contemporaneous with the events and as such the same can definitely be taken aid of.

24. As regards to objection and ground raised in this appeal that there is no final medical opinion, law is fairly settled that when testimony of victim inspires confidence, there is no need for corroboration from medical expert, which is mere expert's opinion. Moreover, PW6 Medical Officer had stated about victim being brought for examination and noting the history. The Hon'ble Apex Court in the case of ***Dola @ Dolagobinda Pradhan and Another v. State of Odisha, (2018) 18 SCC 695***, has enumerated and summarized the principles as to when sole testimony of prosecutrix can be relied for convicting accused. In paragraph 6, the Hon'ble Apex Court has observed as "*It is well-settled that version of prosecutrix is believed, basic truth in her evidence is ascertainable and if it is found to be credible and consistent, the same would form the basis of conviction. Corroboration is not a sine qua non for conviction in rape case. The evidence of victim of sexual assault*

stands on par with the evidence of an injured witness and is entitled to great weight, absence of corroboration notwithstanding. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist for corroboration.”

Law to such extent is reiterated in numerous judgment including Judgment of Hon’ble Apex Court in the case of ***State of Himachal Pradesh v. Manga Singh*** (2019) 16 SCC 759 and the relevant paragraph for ready reference is borrowed and quoted hereunder :

*“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.”

25. Learned counsel for appellant has placed reliance on judgment of the Hon'ble Apex Court in the case of **Mohan Ambadas Meshram** (supra) on the point of difficulty in accepting the case of prosecution when foundational facts are not proved. On the same point, reliance is placed on the decision of this Court in the case **Balu** (supra) as well as judgment of this Court in the case of **Gautam Chandrakant Khairnar** (supra). Though learned counsel would submit that, here, prosecution failed to establish foundational facts, on Court query, he failed to demonstrate how foundational facts are not proved. On the contrary, there is sufficient support to the evidence of victim by the testimony of PW3 immediate neighbour, who was party to conversation between victim and her father on telephone owned by the witness, which was put to use by victim to intimate her father about incident, shortly after alleged incident happened. Therefore, the above rulings do not come to the rescue of the appellant in any manner.

SUMMATION

26. To sum up, prosecution has indeed proved that victim was a

‘minor’. After act of accused no.1, by threatening, accused no.2/ appellant herein has also indulged in similar act and therefore, no fault can be found in the findings and conclusion reached at by learned trial Court. There being no merits in the appeal, the same deserves to be dismissed. Accordingly, following order is passed :

ORDER

Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE

SPT