



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 232 OF 2025

Sunil Balaji Suwarnakar
Age-24 years, Occupation-Carpenter,
R/o. Mohija Paranda, Tq. Kandhar,
Dist.Nanded.

..APPELLANT

VERSUS

1. State of Maharashtra
Through Officer In charge,
Police Station Malakoli,
Dist.Nanded.

2. XYZ

..RESPONDENTS

....

Mr. S.J. Salunke a/w Ms. Neha Udwant and Ms. Ashwini Patil, Advocates for
appellant

Mr. V.K. Kotecha, A.P.P. for respondent no.1 – State

Mr. Ajinkya Mirajgaonkar, Advocate for respondent no.2

....

CORAM : RAJNISH R. VYAS, J.

DATE : 10th MARCH, 2026

ORAL JUDGMENT :

. Heard Mr. Salunke alongwith Ms. Neha, learned counsels for the
appellant, Mr. Kotecha, learned A.P.P. and Mr. Mirajgaonkar, learned counsel
appointed to represent Respondent No.2 / victim.

2. The challenge in this appeal, at the instance of sole accused, is to
the judgment passed in Special (POCSO) Case No. 21 of 2019 dated 10th
September, 2024 by the Special Judge, Kandhar, convicting the appellant for

commission of offence punishable under Section 18 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the Act of 2012') and rigorous imprisonment of ten years, and fine of Rs.5,000/-, with default sentence.

3. In short, it is the case of prosecution that on 03rd September, 2019, when PW 1/ father of victim, working in his field alongwith his wife, his father came and informed that blood was oozing from the anus of the victim. Therefore, PW 1, along with his wife, immediately rushed to the house and noticed the victim was crying and her clothes were stained with blood. He, therefore, examined her anus. On being enquired, the victim disclosed that a boy from neighbourhood had beaten her. On further enquiry, she stated that she would show the house and the boy. The victim was then taken to the said house, and she pointed out towards the boy, who was taking lunch.

4. This incident, resulted in setting the criminal law in motion and consequent registration of F.I.R. No. 128 of 2019 dated 04th September, 2019, against the appellant / accused. The appellant was arrested on the same day at 03:02 p.m. The victim and the accused were forwarded for medical examination. The spot panchanama was prepared. The victim's and the accused's clothes were seized and forwarded to the laboratory for examination. The documents were seized to prove the child's age. Statements under Section 164 of the Code of Criminal Procedure (hereinafter referred to

as 'Cr.P.C.') were also recorded, and, after completion of the investigation, the charge-sheet was filed.

5. Since prima facie material was found in the final report, the Additional Sessions Judge / Special Judge, Kandhar, framed the charge below Exhibit 11 on 18th February, 2021. The appellant was charged for the commission of an offences punishable under Sections 377 and 376AB of the I.P.C. and under Sections 4, 5, and 6 of the Act of 2012. At this stage, it is necessary to mention here that the accused was acquitted of the commission of offences punishable under Sections 377 and 376AB of the I.P.C. and Sections 4, 5(i)(m) and 6 of the Act of 2012. The said acquittal is not taken exception to by either the State or the victim.

6. In order to bring home the charge, the prosecution has relied upon testimony of total nine witnesses, which read as under :-

Rank	Name	Nature of Evidence
PW 1	Victim's Father	Informant
PW 2	Maroti Laxman More	Panch Witness
PW 3	Balaji Madhukar Kadam	Panch Witness
PW 4	Nagarbai Ganpati Biradar	Witness
PW 5	Dr. Chandrakant Govindrao Thote	Medical Officer
PW 6	Dr. Shivanand Ambadasrao Devsarkar	Medical Officer
PW 7	Dr. Syed Zahur Mazhar Ali	Medical Officer
PW 8	Ashroba Limbaji Ghate	Investigating Officer
PW 9	Santosh Gajanan Khade	Police Witness C.A. Carrier

The documents were also relied upon, which were proved during the course of the trial. After the prosecution completed its evidence, the accused was questioned under Section 313 of Cr.P.C., and the statement was recorded below Exhibit 91 on 02nd November, 2013. The defence of the accused was based entirely on denial and false implication. The learned trial Court then convicted the accused as stated above and sentenced him in accordance with the mandate of Section 235 of Cr.P.C.

7. Learned counsel for the appellant, challenging the judgment, has contended that the entire case of prosecution is based on hearsay evidence and withholding of the material evidence would go to the root of the matter. She submitted that the victim of the crime, according to the case of prosecution, was five years old and was in a fit physical and mental condition, but surprisingly, she was not examined in the trial. She submitted that the victim's age is also not proved, and therefore, the provisions of the Act of 2012 could not have been taken recourse to. She further contended that the testimony of PW 1 / father of the victim, cannot be looked into as it is just hearsay. The testimony of PW 5 and PW 6 / Medical Officers, also fails to prove the charge for which the accused was tried. She thus prayed for acquittal.

8. Learned A.P.P. submitted that the prosecution has proved the case beyond a reasonable doubt. The prosecution proved the date of birth, and

therefore, the provisions of the Act of 2012 were invoked. According to him, non-examination of victim will not go to the root of the matter.

9. Mr. Mirajgaonkar, learned counsel appointed to represent Respondent No.2 has supported the stand taken by learned A.P.P. and has contended that the victim, who was minor at the time of commission of offence, was subjected to unnatural sexual intercourse and since the prosecution had proved foundational facts, recourse of Sections 29 and 30 of the Act of 2012 would come into field, which was not rebutted by the accused. He, therefore, prayed that the appeal, being devoid of any substance, be dismissed.

10. With the help of respective counsels, I have gone through the record of the case and have taken into consideration the arguments advanced.

11. PW 1 is the father of the victim, who, in his testimony, has stated that the incident had taken place when his daughter was five years old, at which time he used to reside with his parents, children and wife. On 03rd September, 2019, at about 01:30 p.m., the incident had taken place in the house of the accused. On that day, he, along with his wife, was working in the agricultural field, where the father of PW 1 came and disclosed that PW 1's daughter, i.e., the victim ('G'), was subjected to forcible sexual intercourse and blood was oozing from her anus.

12. PW 1, along with his wife, rushed to the spot and noticed that the victim was crying, and therefore, made a necessary enquiry. The victim disclosed that when she had been to the neighbour's to watch television, one boy was also there, who removed her knickers as well as his pants and knickers. The victim then told PW 1 that the said boy inserted his penis in her anus. When the private part of the victim was examined, PW 1 noticed that the victim had sustained injury to the anus and a crack had developed there. PW 1 then lifted the victim and went to the accused's house, where the accused was taking his food. The victim then pointed towards the boy and also said it was the same house. The victim then narrated the incident again. PW 1 then took the victim to the hospital at Kurula, where she was examined by PW 5 / Dr Thote, who informed that, as it is a police case, the victim should be taken to the government hospital. The victim was taken back to the house, and thereafter they went to the police station. By night, the police officer recorded the statement of PW 1 and referred the victim to Vishnupuri Hospital for medical treatment. The report was lodged, which was proved by this witness below Exhibit 14.

13. PW 1 then deposed that on 04th September, 2019, at about 03:00 in the morning, a medical examination of the victim was done. Thereafter, the house was shown from which a red-coloured bed cover was seized, and a panchanama was prepared. During the course of the investigation, the victim's

clothes were also seized, and stain-like spots were observed on them. Then, the clothes were shown to the accused and PW 1, as well as the bed cover. His statement under Section 164 of Cr.P.C. was also recorded. The accused was also identified by PW 1.

14. In cross-examination, an attempt was made by the defence to bring on record that the spot of the incident was in fact surrounded by several houses and thus situated in a thick locality. Several attempts were made to test the memory of this witness by asking different questions about the partition between him and his relatives. Then a part of the testimony was tried to be encashed, in which he admitted that while giving the report, he had stated that “rape’ was committed on his daughter, and thereafter clarified that a “forcible act’ was committed. He admitted that he did not tell that the rape was committed on his daughter. He further admitted that when the statement was recorded before the Magistrate, he has disclosed that rape was committed on his daughter, but he has clarified that the word ‘rape’ there. He further admitted that he could not recollect that the word ‘rape’ was not mentioned in the F.I.R., and therefore, was not disclosed to the police.

15. Again, an attempt was made by the defence to bring on record that since the victim was babbling, her language was only understood by PW 1 and his wife and not by others. He admitted that the victim was in a position to

understand whatever he said to her. Further, the defence attempted to bring on record that, although several family members were residing in the house, they were not examined. The defence has also, by way of cross-examination, brought on record that PW 1 and his wife had given the clothes of the victim to the police, who had kept them in a carry-bag. PW 1 had given the frock of the victim, whereas leggings and underwear were given by the wife of PW 1. He admitted that since they were going to the hospital, they had carried the clothes with them, and they had gone to the hospital on 04th September, 2019.

16. During cross-examination, the defence has challenged the reliability of the medical papers by presenting evidence that the medical officer who initially examined the witness did not actually examine her. It was also stated that, when enquired, the accused denied having committed any act, and that when PW 1 visited the accused, no one was present in the house. The seizure of clothes was also challenged by way of cross-examination, as was the medical examination of the victim, because identification marks were not noted on the medical papers. The defence has also tried to encash the part of the testimony in which PW 1 stated that he did not recollect whether he had read the contents of the document taken from him before he gave consent.

17. Since according to the case of prosecution, forcible sexual intercourse is committed, it is necessary to look into the testimony of Dr. Thete, who was examined as PW 5 by the prosecution. PW 5 – Dr. Thete, in his examination-in-chief has stated that he holds qualification of B.A.M.S. and on 03rd September, 2019, the victim was brought in his hospital and on medical examination he found blood was oozing from her anus and there were injuries, and therefore, he gave oral advise to PW 1. In cross-examination, he admitted that the entry regarding the patient's visit was not recorded in the register, and that PW 5 was known to PW 1 and his wife prior to 03rd September, 2019.

18. A question was put to this witness that the victim, who was medically examined by this witness, was not present in the Court, and therefore, he cannot tell to whom he examined. To the said question, PW 5 replied in the affirmative. Counsel for the appellant thus contended that there is absolutely no documentary evidence to show that the victim had sustained injuries and same goes to the root of the matter, and consequently, the genesis of the crime is suppressed.

19. As PW 5 had given oral advice for medical examination, it is necessary to go through the testimony of PW 7 / Dr Syed Ali, who on 4th September, 2019, was working as Medical Officer at Vishnupuri Government Hospital. He examined the minor victim medically, who was brought by

Kandhar Police, and a letter to that effect was given to him, which was at Exhibit 59, which he proved. He stated that the consent of the father of the victim was taken, who also narrated the history to him and on examination, he did not find evidence of stains or foreign material on her body; likewise, no fresh injuries were found on the body of the victim. On local examination of the genitals, anus and oral cavity, he found her hymen was intact, the urethra was normal; however, there was a perineal tear at the 6 o'clock position, 1.5 cm x 1.00 cm mucosa deep on the anus, and a mucosal laceration at the 12 o'clock position. He collected blood samples and a swab. He then mentioned that there is no evidence related to non-penetrative assault, and there is also no evidence of injuries, stating that the application of force is present. The age of the injuries was one day, and it was opined that the overall findings were suggestive of forceful unnatural sexual intercourse.

20. He deposed that the final opinion was kept pending till receipt of CA reports, and he prepared the sexual assault report of the victim in his handwriting and under his signature below Exhibit 60. The CA reports dated 02nd January 2020, below Exhibits 61, 62, and 63, were shown to him, and based on the FSL report, he gave the final opinion that the overall findings are suggestive of possible unnatural intercourse. The final opinion, which was signed by him and filled in by him, is proved below Exhibit 64.

21. This witness was subjected to cross-examination. A point was raised that the Kandhar Police Station, though in no manner concerned with the registration of F.I.R., forwarded the victim not the Malakoli Police Station, where the offence was registered. Witness admitted that the he and another medical officer Dr. Babhale had examined the victim and it is mandatory to affix a signature to the report, and Dr. Babhale's signature is not on the said document. PW 7 had volunteered that the medical officer, who had given an opinion, was required to sign the report, and, in that case, since he himself had prepared the report, he signed it.

22. The defence also tried to bring on record that to identify the person properly, identification marks are required to be noted in medical papers , but in the present case, no such attempt was made. This witness admitted that thumb impression would be attestation and not another identification mark. He admitted that the Kandhar Police did not bring the victim to him for medical examination. He denied the suggestion that he did not examine the victim and filed a fall report. Exhibit 60 is the forensic medical examination report of the victim of rape / sexual assault. Column VI, clause 'J', shows the injury narrated by PW 7, and column 'X' gives details of the age of injury. Column (h) is the opinion given.

23. The prosecution has argued that it has proven the case of rape or unnatural sexual intercourse, and that documentary evidence will further

corroborate these findings. Further attention was also drawn to the examination report submitted by R.F.S.L., Nanded, below Exhibit 61, which shows that the victim's blood group was 'A'. Exhibit 62 / examination report shows no semen was detected on Exhibits 1 and 2, i.e. only swab of the victim. Exhibit 63 is the examination report of the laboratory, which deals with the following details -

“6) Description of articles contained in the parcel:

Exhibit No. 1: Small Lagging in a packet labelled-EXB.No-A.

Exhibit No.2: Jangya in a packet labelled--- EXB.No-A2.

Exhibit No.3: Small frock in a packet labelled-EXB. No-A3.

Exhibit No.4: Full open shirt in a packet labelled---EXB.No.B1.

Exhibit No.5: Sandow baniyan in a packet labelled-- EXB.No.B2.

Exhibit No.6: Full pant in a packet labelled---EXB.No.B3.

Exhibit No.7: Nicker in a packet labelled---EXB.No.B4.

Exhibit No.8: Mattress cover in a packet labelled--- EXB.No.B5.

RESULTS OF ANALYSIS

Exhibit 1 has a few blood stains of about 0.1 cm to 1 cm in diameter on the upper back, middle portion

Exhibit 2 shows a few blood stains, about 0.1 to 1 cm in diameter, on the middle portion...

Exhibit 3 shows a few blood stains, about 0.1 to 1 cm in diameter, on the lower back portion....

Exhibit 6 shows two blood stains, about 0.5 cm in diameter, on the right pocket.

No blood is detected on exhibits 4.5.7 and 8.

No semen detected on exhibits 1,2.3.4.5.6.7 and 8.

Blood detected on exhibits 1.2.3 and 6 is human.

Exhibits 1 and 3 are stained with the blood of group 'A'.

Group of blood detected on exhibits 2 and 6 cannot be determined as the results are inconclusive”

24. The final report is below Exhibit 64, which is issued by PW 7.

25. In the aforesaid background learned A.P.P. also invited my attention to the testimony of PW 9/ Santosh Khade, who stated that on 09th September, 2019, muddemal of Crime No. 128 of 2019, i.e., the present crime, was handed over to him by one API Mr. Ghate for forwarding it to the chemical analyser, and accordingly he did. An office copy of the same was shown to this witness, which is below Exhibit 80.

26. In cross-examination, this witness admitted that Mr. Ghate had given him a sealed memorandum consisting of five envelopes. He has shown his inability to state what those envelopes contained. He further admitted that the statement did not mention the description of the muddemal containing envelope. He was shown a portion marked 'A' in his statement. He didn't recall giving a statement; he only recalled stating the description. He admitted that he had disclosed the said portion to the API Ghate.

27. PW 8 is the Investigating Officer / Ashroba Ghate, who has deposed about the procedural aspect of investigation. He stated that he had seized the bed cover in the presence of the panchas, and the said seizure was shown in the spot panchnama itself, which was below Exhibit 27 and bears the signature of two panchas. The bed cover was shown to him, as provided in Article 4. He also deposed about the seizure of one chocolate colour underwear, one yellow colour legging and one light yellow colour frock

having a red border of the victim from her father and prepared the panchnama below Exhibit 30. The clothes of the accused, i.e., an almond-coloured full-sleeve shirt, a chocolate-coloured sando half baniyan, dark green-coloured underwear, and a black-coloured pant, were also seized in the presence of two panchas, and a panchnama was prepared below Exhibit 31. The clothes were marked as Articles D to G. He stated that he had forwarded the victim for medical examination. He deposed that he had obtained the birth certificate of the victim from the Anganwadi, and the birth extract shown to him was below Exhibit 36.

28. In cross-examination, an attempt was made to bring on record that neither the seizure of clothes was properly made nor a fair investigation was carried out. The statements of the mother, grandfather, and other witnesses were not recorded. An attempt was also made by bringing material on record that no letter was given to Anganwadi to obtain the birth certificate of the victim and was brought by going to Anganwadi itself. PW 8 / Investigating Officer has admitted that he had demanded the certificate from the Anganwadi, and that she had given it. Pointing out the inconsistency of the case, so far as the aforesaid aspect is concerned, reliance is also placed upon the testimony of PW 1, who has stated that on his oral request to PW 4, the birth certificate was given.

29. In this regard, the contention of the testimony of learned counsel for the appellant is required to be considered. Coming to the argument that the victim of crime was not examined, so also the mother of the victim, as well as the grandparents of the victim, it is necessary to mention here that what the law expects from the prosecution is to prove the case beyond reasonable doubt. The concept is of proving beyond reasonable doubt. The Hon'ble Apex Court defines the reasonable doubt in the case of ***Zainul Vs. State of Bihar, 2025 SCC OnLine SC 2152***, more particularly paragraph no. 81 which reads thus :-

"81. In Ramakant Rai v. Madan Rai, reported in (2003) 12 SCC 395, this Court explained the meaning of "reasonable doubt". It means doubts that are free from abstract speculation, not a result of an emotional response, which are actual and substantial doubts on the guilt of the Accused person, and not vague apprehensions. It cannot be an imaginary, trivial or a possible doubt, but a doubt based upon reason and common sense. The relevant observations have been reproduced hereinbelow:

23. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to (sic) of probability amounts to "proof" is an exercise, the interdependence of evidence and the confirmation of one piece of evidence by another, as learned author says: [see The Mathematics of Proof II: Glanville Williams, Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)]

The simple multiplication Rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the

evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the Defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the Defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.

24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the Accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

*25. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the Accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of the administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in *State of U.P. v. Krishna Gopal* (1988) 4 SCC 302: 1988 SCC (Cri) 928: AIR 1988 SC 2154.”*

30. Thus, the doubt cannot be imaginary, trivial or a possible doubt, but a doubt based upon reason and common sense. In this context, it is necessary to examine the reasons for not bringing the victim of a crime into the witness box.

31. It is necessary to mention here that the victim was five years old at the time of the commission of the offence. The age of the victim would be discussed at length in the later part of the judgment, which discussion would prove that the victim was a minor, five years old. It is the defence which has brought on record that the victim was babbling and her language was understood by her parents only and not by others. Further, during cross-examination, it was brought on record that if a conversation is held with the victim, she could understand it. Thus, it is the defence itself that has brought on record that the victim was babbling , and that her expression, by way of language, was not understood except by her parents. There is one more aspect. It is the case of PW 1 that the victim was his daughter, and he has two children. In cross-examination, PW 1 has admitted that his son was two years younger than the victim.

32. It is in this background that it will have to be seen whether or not bringing the victim into the witness box will go to the root of the matter or not. It is necessary to mention here that it is not the law that the offence of

rape is required to be proved only on the touchstone of the testimony of the victim.

33. In this regard reliance placed by the learned A.P.P. in the judgment of ***Sanju Vs. State of Maharashtra***, reported in ***2004 Cri.L.J. 1102***, more particularly paragraph no. 9, is worth noting -

“9. This Court finds substance in the submission advanced on behalf of the prosecution, and, therefore, dismisses the criticism levelled by the counsel for the appellant in this context in context with the prosecution evidence and non-examination of the victim. The evidence of Dr Varsha Kulkarni shows that Sushma, the victim, was a child of five years old. Her secondary sexual characters were also not developed. Shri Sahaji Shinde submitted that there was no point in examining a child victim aged about five years for proving the guilt of the accused, though it happens to be a case revolving around rape committed on her. When the victim is such a child of tender age, the prosecution's case does not get infirmed on account of the non-examination of such a victim who happens to be a child of tender age in the Court as a prosecution witness. What could she have done when brought into the Court as a prosecution witness? She would not have even understood the questions asked by the prosecutor or the defence counsel to her. That would have been nothing but exposing her to cruelty and humility and making her to face the barrage of questions asked by the prosecutor or defence counsel in the atmosphere of the court which has to be in fact avoided. The spirit of Juvenile Justice Act deprecates bringing the children or juveniles to the Court atmosphere and exposing them to smell of criminality. Such tender aged children are not to be exposed to such humiliation which could create a trauma in their personality which would be as good as gifting them a serious mental disease for their future life. It is to be noticed that the way in which she narrated the said incident to her mother was self-eloquent of her innocent childhood when she told her mother that the appellant had urinated on her private

part. That was her understanding of the act committed by the appellant in respect of her. Thus, keeping in view all these things, the prosecution case does not get weakened any way in this case on account of non-examination of such tender aged victim.”

34. It is thus crystal clear that examination of the victim at such tender age in the Court would not be in the interest of child itself and even otherwise her expressions through language were understood only by her parents. Thus prosecution has rightly relied upon the testimony of PW 1, who was the natural witness.

35. The learned counsel for the appellant argued that the victim could have been examined in a friendly atmosphere, and assistance could have been provided by creating a friendly environment. They suggested that the victim could have been asked to narrate the incident through the use of a doll. Even the presence of parents with a conducive atmosphere would be sufficient. She submitted that the victim may not be in a position to state the facts exactly, but she could have narrated the act which was committed by the methods which could be suggestive or leading. Argument is worth noting, but while appreciating the case, what is required to be seen is what is brought on record, not what is not. What is not on record by the prosecution may go to the root of the matter, if defence proves that why it is not brought on record. It is not the case of defence that testimony of witness/victim was intentionally withheld. On the contrary, as already stated, it was due to the child's tender age and her inability to express herself; she was not examined.

36. Further considering the remote area where the victim resided, her idea of expression would be limited.

37. Coming to the contention that the mother was not examined, so also the grandfather, suffice it to say that it is not the number of witnesses, but the quality of witnesses, which is required to be seen. The person who informed PW 1 of the incident can be called a star witness for the prosecution. The victim has narrated the incident at length to PW 1; therefore, the examination of PW 1 in the peculiar facts and circumstances of the case was sufficient to prove the guilt of the accused. Immediate disclosure to PW1 by his daughter strengthens the case of prosecution.

38. The question is whether the victim was subjected to forceful sexual intercourse. PW 1/ father of the victim, has stated the act narrated by the victim to him. The incident was reported to the police within a few hours, and the medical examination of the victim and the testimony of PW 7, as well as PW 5, corroborate PW 1's testimony. Just because proper identification marks are absent in the medical papers does not go to the root of the matter.

39. The testimony of PW 5, who holds a B.A.M.S. qualification and was the first to witness the injuries, should not be disregarded simply because he has not maintained any records of the medical examination. This witness

has, in fact, categorically stated that he noticed the injuries on the anus of the victim and orally directed PW 1 for further examination. The grounds realities in such circumstances cannot be ignored. PW5 can be called a village doctor, and it's natural for PW1 to take his daughter to him. There is nothing to disbelieve the version advanced by PW 1; in fact, it corroborates the testimony of PW 7.

40. Learned counsel for the appellant then contended that the clothes were not properly seized, and therefore, the C.A. report cannot also be relied upon. Counsel contended that the date on which the clothes of the victim were seized is also not proved by the prosecution by leading cogent evidence. She submitted that two different versions regarding the seizure of clothes are not helpful to the prosecution. She submitted that the condition under which the clothes were seized is also not brought on record. She submitted that the cross-examination of PW 9 also reveals that there is sufficient material to conclude that this witness was not aware of what property was kept in the sealed envelope.

41. At this stage, it is necessary to mention here that PW 8 has stated that he had issued a letter to the Junior Engineer, M.S.E.B., below Exhibit 75 and requested to provide panchas. In the presence of panchas, he had seized the bed cover and prepared the spot panchanama, which was below Exhibit 27. PW 8 had further stated that he had seized chocolate colour underwear,

one yellow colour legging, and one light yellow colour frock from the father of the victim, below Exhibit 30, and those were given Articles A to C. The clothes of the accused were seized below Exhibit 31 and were given Articles D to G.

42. It's important to note that the prosecution hasn't provided a date after the seizure of those clothes when they were deposited in the store room. depositing clothes with the laboratory on 09th September 2019, though the clothes were seized on 04th October 2019 and 06th September 2019, clearly shows that it was not proved by the prosecution as to under which condition the clothes were from the date of seizure till the date of sending to the laboratory. Thus, I conclude that the seizure of clothes was not properly carried out and, consequently, the CA report cannot be relied upon. Even otherwise the report are corroborative and not foundational.

43. Be that as it may. Just because the prosecution does not prove the CA report, it will not be an additional factor for the accused to seek the benefit of doubt in his favour. Evidence of PW 1 and the medical officer is enough to prove the charge.

44. As the prosecution has come with the case that the victim was minor at the time of commission of offence, it will have to be seen whether the prosecution has proved that the victim was below 18 years according to Clause (d), Section 2 of the Act 2012. Before dealing with the aforesaid

aspect, it is necessary to consider the law laid down by the Hon'ble Apex Court in the case of ***Sushil Kumar Tiwari Vs. Hare Ram Sah and Ors., AIR 2025 SC 4828***, more particularly paragraph nos. 16, 17 and 18, which reads thus -

"16. As regards the first issue concerning the age of the victim, it is quite understandable that, for an offence under the POCSO Act, the victim must be under 18 years of age. To prove this, the prosecution has relied on both oral and documentary evidence. The oral testimony of the mother of the victim, examined before the Trial Court as PW-3, reveals that the victim was 12 years old at the time of the incident. Further, the victim's statement under Section 164 of the Code of Criminal Procedure also bears an endorsement regarding her age. The concerned ACJM, examined as PW-4, has recorded her age as 13 years. The father of the victim, examined as PW-5, has deposed that the victim's age at the time of the incident was 12 years. Insofar as the documentary evidence is concerned, the Transfer Certificate (Annexure P-10) issued by the government school attended by the victim records her date of birth as 03.10.2004, thereby meaning that during the concerned time-frame of the year 2016, the victim was around 12 years old. The medical report dated 01.07.2016 (Annexure P-1) is also relevant on this aspect. The said medical report pertains to the ultrasound examination of the victim and records her age as 15 years.

17. It cannot be denied that there are slight variations in the age of the victim at the relevant point in time, as discernible from the oral and documentary evidence. However, we do not find ourselves in agreement with the High Court that the age was not proved during the trial. The oral testimonies of PW-3, PW-5, and PW-6 are consistent with each other and with the Transfer Certificate issued by the government school. The victim's age appears to be within the range of 12-13 years at the relevant time. The medical report records the age as 15 years. However, we cannot lose sight of the fact that the age of the victim was not

challenged during the cross-examination of any of the witnesses mentioned above. Their testimonies, on the point of age, have largely remained un rebutted, thereby meaning that the Respondent Nos. 1 and 2 had no claim that she was not a minor at the relevant point. We do not mean to say that, in cases involving the POCSO Act or the Juvenile Justice (Care & Protection) Act, 2015, the determination of age is not required. Most certainly, the determination of the minority is essential to extend the protection of these legislations; however, as long as the age conclusively appears to be under 18 years, the special protections carved out in favour of children cannot be diluted by insisting upon a rigid determination of the age, that too when it was not even questioned at the right time. In the present case, even if it is believed that the age of the victim was not determined to the hilt, the Trial Court had concluded that the victim was aged between 12 and 15 years at the relevant point in time and thus, was a minor. Thus, it could not be said that the Trial Court had failed to determine the victim's minority. It was done and, in our opinion, rightly so, based on the un rebutted oral and documentary evidence.

18. Interestingly, the Respondent Nos. 1 and 2 neither claimed that the victim was not a minor at any point in time nor led any evidence to that effect. We find that the High Court has erred in raising a doubt where none existed, even between the parties to the case. We are also of the opinion that once the minority of the victim was beyond doubt, the special protection of the POCSO Act ought not to have been diluted by raising a fictitious doubt regarding the precise age of the victim, for the Courts must remain alive to the socio-economic circumstances of the victims, especially those based in remote regions of the country. In rural regions, discrepancies in the educational and identification documents are not unknown and, in such circumstances, the Courts must be sensitive to the ground realities of the society, to ensure that the intent of the law is not suppressed and protections created by the legislature reach the intended persons in their right spirit."

45. In this background, if the testimony of PW 1 is perused, it would reveal that at the time of incident the age of victim was 5 years old. If cross-examination of this witness is perused, it would reveal that the age of the victim was not seriously challenged by the defence. Coming to the testimony of the medical officer, more particularly PW 5, he stated that the parents of the victim had taken their minor daughter, aged 5 years, to the hospital, and they came for examination. There is absolutely no challenge to this testimony by defence. On the contrary, it was brought on record by way of cross-examination that the parents of the victim were regular patients.

46. The medical papers, more particularly the medical examination report of the victim, also show that her age is 5 years. Exhibit 60, Column No. 4, clearly shows her age as 5 years. PW 7, in his examination, had stated that the victim was 6 years old. The said aspect is not challenged. Hon'ble Apex Court in the aforesaid case has clearly stated that the grounds realities of society cannot be ignored.

47. There is one more aspect to the present case. To prove the age, PW 4 was examined by the prosecution, who stated that, from 1993 to the date of deposition, she had been serving as an Anganwadi Sevika at the said village, and the victim was an inhabitant of the same village. She stated that she knows the victim and her date of birth is 02nd May 2014, and she had issued

her birth certificate. The birth certificate was shown to her below Exhibit 36. On the date of deposition she had brought original register based on which she had prepared the birth certificate.

48. In cross-examination, she had stated that she had not brought her appointment letter, but shown her willingness to bring the same on the next date. She stated that there are many registers since 1993, but she had brought only one register, which contains the victim's birth entry, and that register covers entries from August 2009 to May 2017. She admitted that, after receiving the register, it is required to mention the total pages on the last page of the register and to affix a signature, which has not been done. She further admitted that the name of the person who had provided the birth date is also required to be mentioned, and in the register, it was mentioned as 'Dai'(midwife), who had given the birth date of the victim. She admitted that she had given a birth certificate, which is marked as Exhibit 36, as it was asked orally by the father of the victim, and she had taken the birth entry of the victim in the register in her own handwriting. She denied the other suggestions.

49. Learned counsel for the appellant submitted that the birth certificate can not be relied upon since this witness has stated that it was on the oral request of the father of the victim. Whereas PW 8/Investigating

Officer stated that he had demanded the birth certificate from PW 4. The question is not who has demanded the birth certificate, but whether the birth certificate is a genuine document.

50. This witness has categorically stated that she has been working as an Anganwadi Sevika since 1993. Therefore, it can be said that she is aware of the entire record from 1993 to the date of deposition. She further categorically stated that the date of birth of the victim is 02nd May 2014, and the victim was residing in the same village where she was residing.

51. The birth certificate was challenged on the ground that it does not bear the outward number, and therefore, cannot be believed. According to learned counsel for the appellant, the birth certificate bears the name 'G'; therefore, it cannot be accepted as the name of the victim, as the victim's name is 'KH'. In this regard, it is necessary to mention here that the birth certificate is not a suspicious document, since the content of which is proved by PW 4, who had brought the original register and from which necessary entries were noted. The said extract of the register was also produced on record by PW 4, which was below Exhibit 38. The birth certificate, though it does not give the outward number, still shows that there is no column in which the outward number is required. As already stated, it is not even the case of prosecution that there are two different persons by the names 'G' and

'Kh'; and therefore, even the birth certificate Exhibit 36 supports the case of prosecution.

52. In that view of the matter, I conclude that the prosecution has rightly proved that the accused has committed the offence under Section 18 of the Act of 2012. The trial court has correctly taken the evidence available on record and has awarded the conviction. There is a ring of truth in a case advanced by the prosecution.

53. Hence, I pass the following order -

ORDER

- (I) Criminal appeal is dismissed.
- (II) At this stage, it is necessary to mention here that Mr Ajinkya Mirajgaonkar, learned counsel appointed to represent Respondent No.2, has argued the case at length . His fees are quantified by the High Court Legal Services Sub-Committee, Aurangabad, in accordance with the rules.

(RAJNISH R. VYAS, J.)

SSD