



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 732 OF 2025

X Y Z

... Appellant

Versus

1. Ashish Madhukar Suryawanshi
Age 25 years, Occ. Education,
R/o Raje Shivaji Nagar, Latur.
2. Suresh0ani Madhukar Suryawanshi
Age 46 years, Occ. Household,
R/o Raje Shivaji Nagar, Latur.
3. The State of Maharashtra
Through Police Inspector,
Shivaji Nagar Police Station,
District Latur.

... Respondents

.....

Mr. Suhas P. Urgunde, Advocate for the Appellant
Mr. Yogesh G. Birajdar, Advocate for Respondent Nos. 1 and 2
Mrs. Saie Swapnil Joshi, APP for Respondent No.3-State

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23.03.2026

Pronounced on : 26.03.2026

JUDGMENT :

1. By invoking Section 372 of Cr.P.C., original complainant challenges the judgment and order of acquittal dated 29.05.2024 passed by learned Extra Joint District Judge and Additional Sessions Judge, Latur in Special Case (POCSO) No. 42 of 2019 acquitting

present respondents from charges under Section 363, 366, 376 r/w 34 of IPC and under Sections 4, 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. In brief, prosecution was launched against accused no.1 Ashish and his mother on the premise that, on 21.07.2017, accused persons kidnapped complainant's daughter, a minor, and committed offence of Section 363 IPC and further, accused no.1 inflicted sexual assault and thereby also committed offence of Section 376 of IPC and Sections 4 and 12 of POCSO Act. On above premise, crime was registered, investigated and accused, who were chargesheeted, were tried by the above court, but the trial ended up in acquittal. Hence, appeal by original complainant.

3. Learned counsel for the appellant would point out that, daughter of complainant was admittedly minor. That, there was positive and convincing evidence about on this point. According to him, she being minor and being removed from the guardianship of parents, initially offence of kidnapping was reported and lodged. That, there was evidence of father, victim as well as medical evidence on the point of age of victim. However, same has not been correctly appreciated by the trial court.

4. He further submitted that, medical expert who had examined the victim, was also a prosecution witness and clear opinion has been rendered about sexual assault but the same is also not appreciated. Thus, according to learned counsel, learned trial court has rendered judgment on incomplete appreciation of available evidence and settled law has also been ignored. For above reasons, indulgence of this Court is urged for.

5. Learned counsel for respondents-original accused would justify the acquittal as, according to him, prosecution has failed to establish firstly, victim to be minor and secondly, there to be no evidence of any forceful sexual relations and scientific evidence not supported prosecution version.

6. Re-appreciated the entire evidence. Prosecution case is rested on the evidence of in all five witnesses i.e. PW1 complainant father, PW2 victim, PW3 Headmistress, PW4 medical expert and PW5 Investigating Officer (IO).

7. In the light of charges, and provisions of POCSO Act being invoked, it is incumbent upon prosecution to prove that victim was minor on the date of incident. Father and victim stated that at the

time of incident, she was studying in 12th standard in Prayagbai Patil Junior College, Ambajogai Road, Latur. PW3, who is the Headmistress of the college, deposed about school record carrying date of birth of victim as 26.05.2000 and this witness has placed on record general register extract at Exhibit 41 wherein date of birth of victim is shown as 26.05.2000. Admittedly, birth certificate has not been placed on record. In the evidence of PW3 Headmistress, she has admitted that, entries in general register are not noted by herself. She has admitted that birth certificate was also not handed over to the school and that, entries in the register are on the basis of previous Transfer Certificate. Therefore, apparently, there is no birth certificate on record to substantiate the age of victim.

8. Very recently the Hon'ble Apex Court in the case of ***P. Yuvaprakash v. State represented by Inspector of Police*** reported in 2023 INSC 676 has narrated the hierarchy of documents which should be preferred while deciding the age of minor, i.e. date of birth certificate from school/matriculation or equivalent certificate, if available, and in absence of it, birth certificate issued by a corporation or a municipal authority or panchayat and lastly, medical evidence on the basis of ossification test.

Here, there is only Transfer Certificate and it is made the basis of taking entries in the school extract. Consequently, there is no conclusive proof on behalf of prosecution on the point of age of victim.

9. As regards to offence of rape and sexual assault, thereby attracting provisions of POCSO Act are concerned, again evidence of victim is crucial and the same, which is at Exhibit 61, is put to scrutiny. She has stated that, while she was studying in junior college, accused used to follow her and offered to marry her. She claims that she refused, but further stated that he asked her to accompany him by issuing life threats and therefore, she accompanied him to Pune, where they spent two days at bus stand and then he took her to a room of his friend, namely, Suraj where they halted for four days and there, she narrated about accused inserting his finger in her vagina.

However, translated version of her cross is as under :

“I am not familiar with 'Shri School'. It is true that I was studying in the 8th standard at Shri School. I used to reside in Vaibhav Nagar. I do not know the name of the owner of the house where I was residing. It is not true that the landlord's son, Ganesh, used to speak to me over the phone. He used to visit me at both my school and my home; and it was because of this that we vacated that house. It is true that I had taken admission to Nilkantheshwar College. We had rented a house located behind 'Nikki Bar'. I was

unaware that Ashish's house was situated behind Nikki Bar. I secured 60% marks in the 10th standard. I am unaware that my father had lodged a complaint against Ashish at the MIDC Police Station regarding the fact that Ashish and I were meeting and speaking to each other over the phone. It is not true that I was summoned by B.R. Kanhere (PMC) and counseled at the police station. It is not true that I continued to speak with Aashish even after having been counseled. It is not true that I had a friendship with Aashish for a period of one and a half years prior to July 2013. **It is true that, in my supplementary statement, I mentioned that I have known Aashish since a period of one and a half years prior to July 2013.** This fact was stated by me before the police. In my supplementary statement, I did not mention to the police that Aashish resides nearby my home. **It is true that, the police did not record the supplementary statement—specifically regarding the fact that the accused resides near my home—exactly as per my narration. It is true that, I did not read through the contents of my supplementary statement.**

I did not recognize vehicle number MH-45-BC-1823. It is not true that my father discontinued my college education prior to July 21, 2017, because I was speaking with Ashish. It is not true that on June 17, 2017, my father caught Ashish and me near the Hanuman Temple located behind COCSIT College. I am familiar with Chaitrali Beauty Parlour. I know the proprietress(owner) of Chaitrali Beauty Parlour. It is true that, I did not possess a mobile phone prior to July 2017. It is not true that, I used to make calls from the mobile number 8482818292. It is not true that Ashish had enrolled in the Commerce stream; nor is it true that I enrolled in Commerce solely because I was aware that he had done so. I am not familiar with the 'Crazy Coffee Shop' located opposite Borgaonkar Classes in Sham Nagar. It is not true that Ashish and I used to meet regularly at the Crazy Coffee Shop. It is not true that, in the morning of July 21, 2017, I called Aashish to the Crazy Coffee Shop using

the mobile phone of its owner, Sachin. It is not true that, my father subjected me to severe physical assault on June 17, 2017. It is not true that, while I was residing in Pune, I spoke to Ashish's father over the mobile phone.

Application marked at Exhibit 62 was filed by the father of the accused. Pursuant to the order passed thereon, the further cross-examination was adjourned.

Date: 27.07.2022

sd/-

Additional Joint District Judge
& Additional Sessions Judge, Latur.

Cross-examination under oath has commenced.
Cross-examination conducted on behalf of the accused S. N. Jawale, Advocate

It is true that July 21, 2017, was a Friday, and college was in session on that day. I had not attended college for two to three days prior to July 21, 2017. I know how to ride a bicycle. It is not true that I do not ride a TVS XL moped. There is a grocery store near my house. It is not true that there are many grocery stores on the road leading to the college. It is not true that my father saw me and the accused together on a motorcycle behind the college; nor is it true that, as a result, my father beat both me and the accused.

In accordance with the order recorded at Exhibit No. 62, I was played an audio recording stored on a pen drive. I do not admit to the conversation contained therein as being a conversation between myself and Accused No. 3 (now deceased). **I know Ashish; I was shown five photographs. Accused Ashish appears in all five of these photographs. I do not know the person who accompanying him in the photographs is. These photographs are marked as Articles A to E.** It is not true that, I am present alongside the Accused in the said photographs. I was staying at the Shivaji Nagar Bus Stand in Pune. I utilized the washroom(restroom)

facilities at the bus stand for two days. My financial situation was sound. I had not asked Ashish to look for a house for me in Pune. **It is true that I had ample opportunities to return to my own home.** It is not true that I was unwilling to return home because Ashish was taking proper care of me. **It is true that, in my statement, I identified Ashish's friend by the name of Sachin. It is true that, I did not personally know exactly where I was staying in Pune, or at whose house I was staying.** It is not true that my father had discontinued my education, I was feeling distressed; consequently, I called Ashish and asked him to come and take me to Pune and I had told him that, otherwise, I would commit suicide. It is not true that, prior to my marriage, I called Ashish on his mobile number (7758882302) from my mobile number (8482818292) to inform him that my father has discontinued my education, my marriage has been arranged, and told to take me(with him). It is true that, the 'Chaitrali Beauty Parlour' is located near the Sai Temple. I am unaware that the mobile number 8482818292 belongs to the woman who runs the beauty parlor. My mother's name is Bhavana Sonawane. She is illiterate; she is unable to read or write. Ganpati Sonawane is my uncle (father's brother); he is literate. It is not true that, on July 21, 2017—one and a half years ago—Ganpati Rambhau Sonawane, Balaji Gyanoba Suryavanshi, Datta Chitte, and Police Constable Kanhere counseled me not to speak with Ashish.

In my statement, I mentioned that Ashish used to stalk me when I was attending college. On July 21, 2017, between 9:00 AM and 10:00 AM, Ashish approached me from behind. He forcibly pulled me aside and told me that he intended to marry me, promising to take good care of me. I rejected his proposal; he then threatened me, saying, "Come with me, or else I will kill you." These specific details are not recorded in my statement. I am unable to provide a reason for this omission. It is not true that I was unaware of

what was written in my statement. My wedding date is May 23, 2019. My matrimonial house is in Latur. I have one son. It is not true that Ashish did not subject me to any form of harassment after my marriage. I have not filed a complaint against him at the police station. It is not true that I desired to marry Ashish; however, my parents were opposed to our marriage. It is not true that I am giving false testimony at the behest of my parents.

It is not true that Ashish took me to Pune by bus; we stayed at the Pune bus stand for two days, after which he took me to his friend Suraj's room, we stayed in that room for four days. For the first three days, Ashish did not engage in any physical acts with me, however, one afternoon, he pulled down my black leggings and my underwear, and inserted his finger into my private parts, I told him that it was causing me pain and asked him not to do it, he was kissing my cheek and neck; then, he inserted his finger into my private parts again, I was in pain, but he failed to understand, I jerked away and pushed him aside, is falsely stated by me.”

10. Above answers given by the victim in her cross, coupled with the photographs, go to show that she was well acquainted with accused. Further, here, age of the victim is not substantiated by conclusive evidence. Consequently, prosecution has not proved that victim was minor. She seems to have accompanied accused to various places and though she stated that there were life threats, her cross shows that this was never stated by her in her statement to police. Therefore, apparently it is an improvement.

11. Though there is evidence about medical examination by PW4, cross of this witness shows that opinion was issued by senior lecturer and this witness merely prepared the report. Medical expert has admitted that, she herself had not gone through the medical examination. She has admitted that injuries noticed are possible by cycling, tampon or masturbation and she candidly admitted that she cannot firmly state whether victim was sexually assaulted or abused. With such medical evidence and when scientific evidence is also negative, even charges to above extent cannot be said to be proved.

12. After going through the impugned judgment, with such quality of evidence on record, the view taken by learned trial Judge is the possible view that could emerge and when this Court cannot take a distinct view than the one taken by learned trial court, there is no merit in the appeal. Hence, the following order :

ORDER

The Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]