



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

901 CRIMINAL APPEAL NO.832 OF 2025

Vishal Babasaheb Nipunge,
Age-25 years, Occu-Labour,
R/o. Bhanasahivra, Tq. Newasa,
Dist. Ahmednagar

...APPELLANT
[Ori. Accused]

VERSUS

1. The State of Maharashtra

2. XYX

...RESPONDENTS

Mr. Rajendra P. Phatke, Advocate for the appellant
Ms. A. S. Deshmukh, APP for the respondents/State
Ms Anagha Pedgaonkar, Advocate (appointed) a/w Mr. D. R. Adhav,
Advocate for the respondent No. 2

CORAM : RAJNISH R. VYAS, J.

DATE : 08th JANUARY, 2026

ORAL JUDGMENT :

1. Heard learned advocate Mr. Phatke for the appellant, Ms. Deshmukh, learned APP for the State and Dr. Pedgaonkar, Advocate appointed for respondent No. 2 who has assisted Mr. Adhav learned Advocate.

2. A challenge in this appeal is to the judgment dated 20-09-2025 passed by the Special Judge (POCSO), Newasa, Dist. Ahmednagar in Special Case No. 236/2023 by which, the appellant was convicted for the commission of offence punishable under

Section 11 (iv) read with section 12 of the Protection of Children From Sexual Assault, 2012 [for short 'the Act of 2012'] and sentenced to suffer simple imprisonment for six months and to pay fine of Rs.2000/-. In default he was directed to suffer simple imprisonment for one month. By the said judgment the accused was acquitted for the commission of offence punishable under Sections 354-D, 509, 504 & 506 of the Indian Penal Code [for short 'the IPC'] so also, sections 11 (I) read with section 12 of the Act of 2012.

3. In nutshell, it is the case of the prosecution that a victim who is 15 years old and was studying in 9th Std used to attend her school. Since 3 to 4 months prior to the registration of the First Information Report the appellant/accused used to follow her. This fact was disclosed by her to her father. The father of the victim accordingly gave understanding to the appellant.

4. It was the case of prosecution that on 17-06-2023 at about 09.30 am the accused went to the victim's school, at which time the victim was in a class room and made some gesture. As the complaint was made by the victim to a teacher pointing out the aforesaid incident, the teacher asked the appellant to remove himself from the school. Said fact of giving understanding was also narrated by the victim to her parents. This time, the father of the victim went at village Bhanashivra where the accused was residing and tried to

give understanding to him, but the accused threatened him.

5. The said act resulted into setting a criminal law in motion by way of registration of First Information Report as Crime No. 669/2023 dated 17-06-2023 with Newasa Police Station for the commission of offence punishable under Section 354-D, 509, 504, 506 of the IPC and section section 12 of the Act of 2012. The investigation was carried out and after culmination of same a final report was submitted.

6. The learned Trial court on 22-02-2024 framed the charge against the appellant below Exh.18 for the commission of the offences punishable under Section 354-D of the IPC and Section 11 (iv) punishable under Section 12 of the Act of 2012. The appellant was also charged for the commission of offences punishable under Section 509 of the IPC read with section 11 (i) of the Act of 2012. Further charged under Section 504 of the IPC, so also the charge under Section 506 read with Section 34 of the IPC was framed. As the accused did not plead guilty, the prosecution examined total six witnesses in order to bring home the charge.

7. PW-1 is the victim of the crime. PW-2 is the father of the victim. PW-3- Swapnil Gaikwad is the teacher where the victim was taking education. PW-4- Bhima Gaikwad is a panch witness. PW-5 Kavita Aher is a Gramsevak who has produced the birth certificate of

the victim. PW-6 Shailendra Sasane was the Police Inspector. After recording of evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure. A defense of the accused was of false implication and total denial. The accused neither entered into the witness box nor examined any other witness.

8. In the aforesaid background the learned advocate for the appellant submitted that the appellant could not have been convicted for the commission of the offence punishable under Section 11 (iv) of the Act of 2012. According to him, entire story advanced by the prosecution was not at all convincing and the ingredients of the offences were not proved. He submits that in fact the prosecution case rests on two separate incidences. First incident is where the accused entered in the school and made some gestures to the victim. So far as this incident is concerned the accused has been acquitted.

9. The question is only regarding second incident where according to the case of the prosecution the appellant was following the victim repeatedly since last 3 to 4 months. He further submitted that on the basis of same evidence, he is acquitted for the commissions of offence punishable under Section 354-D, 509, 504 and 506 of the IPC so also section 11 (i) read with section 12 of the Act of 2012 and therefore, same principle should have been made applicable while deciding the question of applicability of offences

punishable under sections 11 (iv) of the Act of 2012. He further submitted that there is delay in lodging the first information report.

10. Though according to the case of the prosecution, the appellant was following the victim prior to three months from the date of registration of the FIR, no attempt was made either by the victim or by the father to lodge the FIR. According to him, even spot panchanama regarding the incident for which he was convicted was not carried out. He further contended that there are several contradictions and omissions and two different stories are advanced by PW-1 and PW-2. He, therefore, prays for acquittal.

11. Per contra, the learned APP submits that prosecution has proved the case beyond reasonable doubt by leading cogent and reliable evidence. According to the learned APP it is categorically stated by PW-1 and PW-2 that the appellant was following the victim since 3 to 4 months prior to lodging of the first information report. The said fact was brought to the notice of the father of the victim who gave understanding to the accused, but he threatened the father of the victim.

12. The learned APP further submitted that if the testimony of witnesswa is taken into consideration holistically it would point out towards the guilt of the accused. She has further contended that there was no reason for the victim to falsely implicate the appellant

in the crime.

13. Dr. Anagha Pedgaonkar, learned counsel who was appointed by this court has ably assisted Mr. Adhav, learned Advocate for victim. She, in a brief time, made research and has assisted this court in proper manner. In order to consider the case of the prosecution, she brought my attention to the provision of section 11(iv) of the Act of 2012 and also relied upon section 30 of the said Act. According to her since the offence for which the appellant is convicted is intention based offences, presumption under section 30 of the Act is required to be raised as foundational facts are established by the prosecution.

14. She submits that presumption is to be drawn by the court which is further required to be rebutted by the accused by proving his case beyond reasonable doubt and not merely on the basis of preponderance of the probability. She submits that the judgment passed by the learned trial court is just and proper.

15. Mr. Aadhav, learned Advocate who is appearing for the victim has also supported the stand taken by the prosecutrix. He submits that there are absolutely no omission and contradiction as alleged by the learned counsel for the appellant. He further submitted that delay in lodging the First Information Report is not at all fatal considering the age of victim. He, therefore, prays of this

court to dismiss the appeal.

16. With able assistance of the learned counsel for the parties, I have gone through the record and have given thoughtful consideration to the points raised by the respective counsels.

17. In this case, admittedly, the age of the victim at the time of incident was 15 years old whereas accused was 22 years old. In her examination-in-chief the victim has specifically stated that her date of birth is 16-11-2009 and whenever she used to go to school on bicycle, the appellant used to follow her. The act of following the victim was done by the appellant since 3 to 4 months prior to lodging the FIR. So far as testimony regarding the said incidence is concerned, the relevant portion of the deposition more particularly examination-in-chief is reproduced below:

‘My date of birth is 16-11-2009. I am residing with my mother, father, brother and grandparents. At the time of incidence, I was studying in “Shri” High School at ‘Bh’; village. I was studying in 9th standard. I am resident of village ‘Kh’. I used to go to school on bicycle. Vishal Nipunge used to follow me. He used to following me for 3 to 4 months. I informed about the same to my parents. My parents tried to advice him.’

In further evidence she narrated the incident dated 17-06-2023. Neither the age of victim is disputed nor the identification of accused by the counsel for the appellant. If the cross-examination is perused, it would reveal that she has stated that she used to go to school in group of friends and distance between her house and school was about 2 km.

She further stated that in cross-examination in para 7 as follows: “ *It is not true to say that I have deposed that due to*

insistence of my parents that the accused was following me for 3 to 4 months. It is true to say that my brother is elder than me. My brother is now taking education in 1st year of BSC. Village 'Kh' is our native. It is not true to say that my brother had quarreled at village with the boys from Nipunge family. It is not true to say that my brother had sustained injury in said quarrel. I do not know as to whether the accused is my distant relative. It is not true to say that my brother had forced me to lodge false FIR against the accused out of dispute amongst the boys."

18. At this stage, it is necessary to clarify that no cogent and reliable evidence is lead by the prosecution to prove that the appellant was in fact following her since 3 to 4 months prior to lodging the FIR, which can be said to be an offence under Section 11 (iv) of the Act of 2012. So far as incident of entering the school and making gestures is concerned, the appellant is already acquitted for the said incident. Neither the victim, nor the prosecution has filed any appeal challenging those findings.

19. So far as PW-2/ father of the victim is concerned, he has stated that PW-1 has informed him that since 3 months one boy was following her on the way of school and back. Therefore, he accompanied the victim to the school and asked her to show the said person. Accordingly, the victim shown him the appellant on which, PW-2 asked his name. The appellant disclosed his name as Vishal Nipunge and when PW-2 questioned him he assured that he would not harass her.

20. After this incident, on 17-06-2023 the appellant visited to the school and made gesture. This fact was also narrated by the victim not only to the teacher but also to the father. It is pertinent to mention here that neither PW-1 nor PW-2 or any other witnesses have stated anything about the act which would show that act was done by the appellant with sexual intent. At this juncture, it is necessary to reproduce the provision of section 11(iv).

*11 Sexual harassment:- A person is said to commit sexual harassment upon a child when such person with **sexual intent***

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

21. Perusal of the record would reveal that nothing has been brought on record by way of evidence that there was a sexual intent at the instance of the appellant. Though the learned APP and Dr. Anagha Pedgaonkar have relied upon the section 30 of the Act of 2012 and contended that the presumption is required to be drawn that the accused was having sexual intent, same cannot be done since foundational facts are required to be proved by the prosecution before any presumption is raised.

22. The learned Advocate for the appellant has relied upon the law laid down in the case of Bandu Vitthal Borwar VS State of Maharashtra reported in 2016 SCC Online Bom 16128 more

particularly para 11 which reads as under:

“11. It is obvious that the intent, which is nothing but a state of mind, must be to establish some sort of physical contact or must be related to or associated with sex or indicative of involvement of sex in the relationship, if it is to be considered as sexual. I have already stated that the utterance indicating an expectation of a person that the other person should have love him would not by itself amount to sexual intent as contemplated by the legislature. There should be something more which must suggest that the real intention is to drag in the angel of sex, if the words uttered are to be taken as conveying sexual intent. If we consider the other evidence of the prosecution in order to ascertain the state of mind of the appellant, we would find that there is not a single circumstances, which would indicate that the appellant’s real intention was to establish a sexual contact with the appellant then or in near future. No evidence has been brought on record throwing any light upon the eye expressions, voice modulations, body language etc. of the appellant. Besides, the utterances in question have not been made repeatedly but only singularly. Such being the nature of evidence, I do not think that the utterances made by the appellant, in the presence of the victim girl and that were heard by her as well as her friend PW 6 Manisha in this case, indicated any sexual intent on the part of the appellant. If this is so, it would have to be said that even the offence punishable under Section 12 of the POCSO Act, which is an offence of sexual harassment, has not been proved by the prosecution beyond reasonable doubt. The learned Additional Sessions Judge has committed an illegality in not considering the true import of the offence of sexual harassment, as defined in section 11 of the POCSO Act.”

23. He has also relied upon the judgment dated 30-06-2025 passed by in Criminal Appeal No. 471/2017 by the Nagpur Bench of Bombay High Court specifically para 34 to 36 which reads as under:

“34. Admittedly, “intention” is inner compartment of mind of that person and has to be determined from surrounding facts and circumstances. If somebody says that he is in love with another person or express his feelings itself would not amount to an “intent” showing some sort of his “sexual intention”. What constitutes such “sexuality” of “sexual intent” and what is not, is a question of fact.

35. While interpreting “sexual intent”, single Judge bench of this court in the case of Bandu Vitthalrao Borwar Vs State of Maharashtra, thr. PSO, reported in 2016 SCC Online Bom 16128 observed that perhaps understanding generally accepted meaning of words “sexual” and “intent” will help us in finding out an answer. Words ‘sexual’ and ‘intent’ have not been defined anywhere in the Act and, therefore, it would be useful to understand their meaning as are commonly understood in English language. For this purpose, a reference to the English dictionary would be useful. In Webster’s New Explorer Encyclopedic Dictionary, 2006th Edition, the words ‘sexual’ and ‘intent’ have been defined on page Nos. 1683 and 959 respectively as under:

‘Sexual’: 1: of, relating to, or associated with sex or the sexes (sexual differentiation) (sexual conflict) 2: having or involving sex (sexual reproduction)”

‘Intent’ : “1a : the act or fact of intending : PURPOSE; especially : the design or purpose to commit a wrongful or criminal act (admitted wounding him with intent)., and

b : the State of mind with which an act is done : VIOLATION. 2 : a usually clearly formulated or planned intention : AIM 3a : MEANING, SIGNIFICANCE b: CONNOTATION”.

36. Thus, the state of mind, must be to establish some sort of physical contact or must be related to or associated with sex or indicative of involvement of sex in the relationship, if it is to be considered as sexual. Words uttered should be with “sexual intent” associated with

indicative of involvement of sex or physical contact or expressing sexual overtures. Words expressed 'I love You' would not by itself amount to "sexual intent" as contemplated by the legislature. There should be something more which must suggest that the real intention is to drag in the angle of sex, if the words uttered are to be taken as conveying sexual intent. It should reflect by the act."

24. If the ratio of the aforesaid two cases is taken into consideration, it would be crystal clear that intention is required to be proved. The intention is nothing but the state of mind and it must be with a view to establish the some sort of physical contact or must be related to or associated with sex or indicative of involvement of sex in the relationship, if it is to be considered as sexual.

25. As I have already discussed that nothing has been brought on record by the prosecution to show that the appellant was having sexual intent and therefore, I have no other option but to allow the instant appeal. The prosecution has not proved the case beyond the reasonable doubt. Findings given by the learned trial court in that regard are not proper.

26. That being so the judgment dated 20-09-2025 passed in Special Case No. 236/2023 by the Special Judge (POCSO) at Newasa, Dist. Ahmednagar so far as convicting the appellant for the commission of the offence punishable under sections 11 (iv) read with section 12 of the POCSO is set aside. The appellant is acquitted

for the offences for which, he was convicted. The bail bonds of the accused stands discharged. Fine amount, if any be returned to the accused. The appeal stands disposed of.

27. Since the appeal is disposed of all the pending applications, if any, stand disposed of accordingly.

[RAJNISH R. VYAS, J.]

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