



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

**938 CRIMINAL APPEAL NO.857 OF 2025
WITH
CRIMINAL APPLICATION NO.2902 OF 2025**

Anil Chabu Dhole,
Age-41 years, Occu-Labour,
R/o. Dholewadi, TQ. Sangamner,
Dist. Ahmednagar

...APPELLANT

VERSUS

1. State of Maharashtra
Through Officer In charge.
Police Station Sangamner City,
Dist. Ahmednagar

2. XYZ.

...RESPONDENTS

Ms. Ashwini A. Lomte, Advocate for the appellant
Mr. A. S. Deshmukh, APP for the respondents/Sate
Ms. Sunita Sonwane, Advocate for the victim (appointed) (absent)

CORAM : RAJNISH R. VYAS, J.

DATE : 30th JANUARY, 2026

ORAL JUDGMENT:

1. This is an appeal challenging the judgment of conviction in Special Case No.56/2021 by the Additional Sessions Judge, Sangamner on 27-09-2024 convicting the appellant for commission of offence punishable under Section 376 of the Indian Penal Code [Hereinafter would be referred to as 'the IPC' for the sake of brevity] and directed to suffer rigorous imprisonment for 10 years and to pay

fine of Rs.5000/-.

2. The appellant was also convicted of an offence punishable under Section 376(2)(n) of the IPC and directed to suffer rigorous imprisonment for 12 years and to pay a fine of Rs. 5000/-. The appellant was also convicted for the commission of an offence punishable under Section 6 of the Protection of Children From Sexual Offences Act, 2012 [Hereinafter referred to as 'the Act of 2012' for the sake of brevity] and directed to suffer rigorous imprisonment for 12 years and to pay a fine of Rs. 10,000/-. Default sentences were also imposed. All the sentences were directed to run concurrently.

3. The appellant is the father of the victim. Criminal law was set in motion based on information supplied by the mother of the victim, who was examined as PW-2 during the course of the trial. Based on the information provided, First Information Report No. 511/2021 dated 29-09-2021 was registered with the Sangamner City Police Station, Ahmednagar, against the appellant. The appellant is the father of the victim. The appellant was arrested on 30-09-2021, and during the course of the investigation, the appellant as well as the victim were subjected to medical examination. Their clothes were seized. The birth certificate of the victim was also seized.

4. After completion of the investigation, a final report No. 288/2021 was presented before the Additional Sessions Judge,

Sangamner. As the appellant did not plead guilty to the charge, the prosecution brought its case, examined seven witnesses. The list of witnesses is already mentioned in the trial court's judgment.

5. In short, it is the case of the prosecution that the mother of the victim was having frequent quarrels with the appellant and therefore, she left the company of the appellant. At that time, the appellant insisted that the victim should reside with him, and thus the victim stayed. According to the victim, she was subjected to forcible sexual intercourse. Thereafter she visited the house of her maternal aunt and narrated the incident to her mother. Mother then lodged a report with the concerned police station.

6. At this juncture, it is necessary to mention here that since the appellant is convicted under the Act of 2012, it is essential to see whether the prosecution by production of documentary evidence and leading oral evidence has proved that the victim was a child as per section 2(d) of the Act of 2012.

7. Learned Advocate for the appellant has submitted that the prosecution has not proved the date of birth in accordance with the law, and according to her, it was necessary to examine the person on whose information the entry was taken in the birth record. She submitted that neither the victim nor the PW-2 mentioned the date of birth in testimony. She further contended that, as the provisions of

the Act, 2012, are stringent, the prosecution is duty-bound to prove the victim's age. To buttress her contention she has relied upon the judgments delivered by the Hon'ble Apex Court in the case of Madan Mohan Singh and Ors Vs Rajni Kant And Anr reported in AIR 2010 SC 2933 also in the case of Prakash Jagannath Pawar Vs State of Maharashtra reported in 2016 (1) ABR (Cri) 201:: 2015 as well as in the case of Ittarsingh Janaklal Dahikar Vs State of Maharashtra reported in 2019 (1) ABR (Cri) 385. Relying upon the aforesaid judgments, she submitted that the date of birth is not proved. By pointing out the judgment in the case of Madan Mohan Singh (supra), she invited my attention to para 12 and contended that the admissibility of the documents is one thing, and probative value is quite another; the two aspects cannot be combined.

8. She further stated that documents may be admissible, but whether the entry contained therein has any probative value must be examined in the facts and circumstances of a particular case. She has also relied upon para No. 15 of the aforesaid judgment and contended that the entry in the school register and the school-leaving certificate are required to be proved in accordance with the law, and the standard of proof required in such a case remains the same as in any other civil or criminal case. She submitted that, for determining a person's age, the best evidence is the person's parents.

9. In this regard, it is necessary to appreciate the evidence of PW-2/mother. PW-2 has stated that at the time of the incident, the victim was studying in the 6th std. of High School. Though she did not state the date of birth in the examination-in-chief, the fact remains that the victim, was studying in the 6th standard, which fact was also not disputed by the appellant in the cross-examination. In cross-examination, particularly para 11 of PW-2's testimony, it was suggested to PW-2 that at the time of the incident, her daughter, i.e., the victim, was studying in 6th std. A suggestion was also made that her marriage had occurred 12 years before the incident. Thus, it is clear that the prosecution does not seriously dispute the victim's age.

10. Not only this even the Investigating Officer in her cross-examination has categorically stated that she had sought information regarding the date of birth of the victim from the concerned Municipal Council. Accordingly, she received the birth certificate. She stated that the birth certificate, which was proved below Exh. 46, bears the seal and signature of the concerned Municipal Council and Sub-Registrar of Death and Birth of the concerned Municipal Council. A perusal of the Exh. 46 would reveal that the victim's name is mentioned and her date of birth is given, i.e., 10-04-2010. It also shows that the name of the mother, i.e. PW-2, is recorded, so also the name of the appellant, i.e. father,. Thus, in the aforesaid background,

I conclude that the prosecution duly proves the date of birth. It is further necessary to mention here that this document was not subjected to any cross-examination by the defence.

11. I have gone through the aforesaid judgments. Law laid down in the Hon'ble Apex Court cannot be disputed. In the case in hand, as already stated, the victim was the appellant's daughter, and the manner in which the cross-examination was conducted clearly revealed that the age was not seriously challenged. Not only this, in the examination-in-Chief, the mother of the victim, PW-2, has categorically stated that at the time of the incident, the victim was studying in the 6th std. Even during cross-examination, PW-2 was asked whether the victim was studying in 6th std, to which PW-2 replied affirmatively. Further, the testimony of PW-7 and the birth certificate below Exh. 46 corroborates, and therefore, the ratio will not be applicable.

12. So far as the ratio in the cases of Prakash Jagannath Pawar (supra) and Ittarsing Janaklal Dahikar (supra), judgments are also on a similar line. The court has emphasised that, for proving the date of birth and the relevant documents, the relevant consideration is whether the concerned persons were examined. In view of the discussion made (supra), suffice it to say that those judgments, with due respect, would not apply to the case in hand.

13. Coming to the incident of subjecting the victim to forcible sexual intercourse, it is necessary to appreciate the testimony of PW-6/victim of the crime. In her examination-in-chief, she has contended that the incident occurred in 2021, when the appellant and the victim were the only residents of the house. She deposed that her date of birth was 10-04-2010 and that her father was employed at the Milk Dairy. At the relevant time, the victim was studying in the 5th Std in High School.

14. She submitted that as the appellant/father used to beat her mother, PW-2-mother had gone to reside at the village where PW-2's brother was living. She stated that when the mother was about to take the victim with her, the appellant obstructed and forcibly kept the victim with him. She contended that the mother and brother of the victim then started residing at the village where the paternal uncle was living.

15. She stated that after that, the appellant/father of the victim started beating her and did not permit her to talk on the mobile with her mother.

16. She submitted that in June, when she was sleeping at night, the appellant removed her clothes and thereafter inserted his penis into her vagina and pressed her breast. She further stated that a similar act was performed in July and again two weeks later. On the

first occasion, the victim told the appellant that she had pain in her vagina. She stated that a day before the eve of immersion idol Lord Ganpati, the appellant/father of the victim was pulling her clothes and beating her and therefore, the victim ran away and hid herself on the terrace.

17. She stated that thereafter, in the early morning, she went to her maternal aunt's place, but since the house was locked, she went to another maternal aunt's place. Thereafter, the maternal aunt telephoned the mother of PW-6, and both went to the village where the maternal uncle resided.

18. The victim has further deposed that her mother, PW-2, was saying that they would go to the house of the appellant, at which time the victim refused. On being inquired by PW-2, PW-6/victim narrated the incident. Thereafter, the maternal uncle and other relatives were informed, and then a report was lodged at the police station. She stated that she was then taken to the civil hospital and her statement was recorded before the Magistrate. Her clothes were seized.

19. In cross-examination, she submitted that her uncle, aunt, and grandparents used to reside in the adjoining room where she was living. She further admitted that the aforesaid persons used to enquire about day-to-day affairs from her. She admitted that she used

to run a flour mill, and many people visited it. She also admitted she worked in a factory. She admitted that many people were known to her. She admitted that whenever she had a phone conversation with her mother, her mother would ask her about her day-to-day life. She stated that when her mother came to take her in August, a quarrel occurred between the appellant and her mother, after which her mother filed a complaint at the police station, and the victim and the appellant were called there.

20. She also admitted that in August, the police had enquired from her and also asked where the victim was willing to reside. At that time, she told the police that she would reside with the appellant/father. At this stage, she volunteered that the appellant had forcibly put her in one of the rooms and had also threatened her. She also stated that the appellant had threatened that in case the victim leaves the house, one does not know what would happen to her mother and her brother. She admitted that when the police enquired about her mother, her mother refused to stay with the appellant. She submitted that her menstrual cycle was not regular, and she was required to undergo Sonography.

21. She admitted that when the mother had taken the victim to the maternal house, an enquiry was made by the mother. Even after visiting the paternal uncle's home, the victim's mother had

enquired about the victim and the appellant. She admitted that a discussion took place between him and her maternal aunt, and thereafter, it was decided by the relatives that the mother of the victim would not cohabit with the appellant.

22. She admitted that relatives and the maternal uncle of the victim had decided to separate the appellant and the mother of the victim. She further submitted that before lodging the report, there was a discussion between the mother and the maternal uncle. She admitted that the police did not record her statement, but said it was videotaped. She further admitted that on three occasions she had come to the court and the police officer had taken her mother to a room. She denied the fact that the police had tutored her mother and herself. She stated that her mother had told her to tell the truth in court.

23. Assailing the testimony of the aforesaid witness, the learned Advocate for the appellant submitted that the version advanced by the victim is not reliable and cogent. She submitted that, considering the spot of the incident and the victim's admission, it is clear that the house where she resided was in a densely populated area. She submitted that in one room, her uncle and aunt were living, and in another room, her grandparents were residing. She thus submitted that there was every occasion for the victim to raise a hue

and cry.

24. She submitted that the victim was an intelligent girl who was not only running the flour mill but also working in the factory and was therefore known to many persons, and could consequently have disclosed the incident to them. She further submitted that the victim's non-disclosure clearly shows a possibility of false implication.

25. Learned Counsel submitted that victims statement under section 161 of the Cr. P. C. was admittedly not recorded by the police, which goes to the root of the matter. She submitted that there are several contradictions in the statements of the mother (PW-2) and the victim (PW-6).

26. According to her, several independent witnesses were not examined. There was no explanation for not examining grandparents, uncle and aunt, maternal uncle and therefore, the entire investigation is one-sided. She submitted that it is not the job of the Investigating officer to collect the evidence, which favours the prosecution. She thus prayed that the benefit of doubt is required to be given to the appellant.

27. Per contra Ms Deshmukh, learned APP has categorically stated that there is absolutely no reason to disbelieve the version of the victim, who was no other than the daughter of the appellant. She submitted that, in fact, stringent punishment is required to be

imposed upon the appellant, as he has breached the trust.

28. With the help of respective counsels, I have gone through the record of the case, and I have given thoughtful consideration to the argument advanced.

29. In the testimony, the victim has categorically stated that her mother and the appellant were in a quarrel on many occasions. It was the appellant who had insisted that the victim should stay with him. She has further stated that she was subjected to sexual intercourse on many occasions. She had stated that the appellant had threatened that if the incident is disclosed, the sufferer would be her mother and brother. The victim's testimony, who at the time of the incident was merely 11 and 3 months old, inspires confidence. The contention of the learned Advocate for the appellant that due to a quarrel between the appellant and PW-2, a false report was lodged is not appealable. It is tough to believe that a mother will ask her daughter to falsely implicate any person by making serious allegations of forcible sexual intercourse. It is sufficient to say that it cannot be done at the cost of the entire life of the daughter.

30. Contention that the victim could have well disclosed the fact to several persons, as she was running a flour mill and working in a factory, fails to make any appeal, as it is a normal tendency that such types of acts are not disclosed to persons outside the family and

even to the family members immediately. The fact cannot be ignored that the spot, i.e., the house, was occupied by the victim and the appellant only.

31. The medical examination also corroborates the testimony of the victim. PW-4 is the medical officer Dr Chhaya, who was attached to the Rural Hospital, who on 30-09-2021, had examined the victim. She stated that she did not find any injuries on her labia majora and minora. Victim's hymen was found to be ruptured. She also found hard congested mucosa and tenderness present of her vagina. She had opined that there were no signs of physical violence. However, signs were suggestive of sexual violence or intercourse. But the final opinion was reserved after receipt of chemical analysis report.

32. In cross-examination, she has admitted that a ruptured hymen was possible due to cycling, but it is not possible due to sports. Said witness proved the medical examination report below Exh. 30.

33. Learned counsel for the applicant submitted that the victim has admitted that she was driving a bicycle, and admission in the light of testimony given by the PW-4, would make it clear that the possibility cannot be ruled out that the hymen might have been torn due to riding bicycle. She may be right, but the testimony of the

PW-5 destroys the case of the defence.

34. PW-5 is Dr Gahaninath, a Gynaecologist attached to the Civil Hospital, Ahmednagar. He stated that he had conducted the medical examination of the victim and found that there was a tear on the hymen of the victim at the 7 o'clock position. He found no local infection and noted no external injury. He produced the medical papers below, Exhs—35 & 36, including the MLC.

35. In cross-examination, this witness stated that hymen rupture was not possible from bicycle riding or sports. Due to itching, hymen rupture was also not possible. He stated that there are many reasons for a tear in the hymen.

36. In view of said testimony , it cannot be said that the only reason for the rupture was riding a bicycle. The testimony of the victim, who was a girl of 11 years 3 months and the daughter of the appellant, cannot be discarded on that ground.

37. PW-2 has also deposed that a quarrel used to take place between the appellant and her and due to that, she had decided to reside at her brother's place. She further stated that the appellant did not allow to take the victim with her. She deposed that on 19-09-2021, she received a phone call from her sister and therefore visited sister's place on 20-09-2021. She took the victim to her parents' place. She disclosed that when the victim refused to visit the village,

victim was questioned and victim disclosed that on 22nd July and 28th July and thereafter two weeks, she was subjected to harassment, and her father inserted his penis in her vagina. She also stated that she told the father about the pain she was experiencing in the vagina.

38. In the cross-examination, nothing material was brought on record, except to show that it was due to frequent quarrels between the appellant and PW-2 & since PW-2 did not intend to reside with the appellant, a false case was filed. In the cross-examination, PW-2, has admitted that she was not willing to reside with the appellant. She further stated that the reasons for not residing was harassment at the hands of the appellant.

39. It is necessary to state that PW-2 has only proved that a quarrel occurred between the appellant and PW-2; When she left the matrimonial home, it was the appellant who forcibly kept the victim with him and the sister of PW-2 had informed telephonically about the victim visiting her place.

40. In this background, the prosecution has also examined PW-3 by name Chhaya, who was the maternal aunt of the victim. She narrated that on 19-09-2021, the victim had been to her place, at which time the victim was afraid. On being questioned, victim disclosed that since the appellant had harassed her, she had hidden herself on the terrace at night. In the morning, victim came to PW-3's

place. She submitted that on 20-09-2021, PW-1 had taken the victim with her.

41. In the cross-examination, she admitted that at that time the victim was studying in the 6th std. She also admitted that she and her husband, the brother of the appellant, had tried their best so that the appellant and PW-2 could reside together. She further admitted that, before 2 days of the incident, she, along with PW-2, had been to the house of the appellant and quarrel took between them. She also admitted that at that time, the report was lodged by PW-2 with the Sangamner City Police Station, and the appellant and the victim were called for enquiry . She also stated that, at that time, the victim showed her willingness to reside with the appellant.

42. Learned Advocate for the appellant submitted that it was the victim who resided in the house, which clearly shows that there was no harassment at the hands of the appellant.

43. It is necessary to state that the victim in her testimony, as discussed (supra), has already admitted that it was due to a threat given by appellant that she resided with the appellant. Considering the testimony of witnesses it can be said that the prosecution has proved that the victim was a minor at the time of the incident and there was an aggravated penetrative sexual assault, since the victim was subjected repeatedly to the penetrative sexual assault. The trial

court has rightly convicted the appellant under section 6 of the Act of 2012.

44. So far as the commission of offences punishable under section 376 of the IPC is concerned, suffice it to say that it prescribes punishment for the offence of rape. Section 375 defines rape; it means that the insertion of the penis in the vagina..... The prosecution duly proved the aforesaid fact, and therefore, a conviction under Section 376 is rightly awarded.

45. So far as conviction under section 376 (2) (n) is concerned, said section states that any person who commits rape repeatedly on the same woman, is liable for punishment for the commission of an offence punishable under section 376.

46. In that view of the matter, even conviction is rightly recorded for the commission of the aforesaid offences. Since the reading of testimony of the witnesses clearly show that there is a ring of truth in the case advanced by the prosecution and the appellant has failed to rebut presumption under section 29 and 30 of the Act of 2012, it would not be proper to disturb the finding given and conviction recorded by the trial court. In that view of the matter, I come to conclusion that appeal deserves to be dismissed. Accordingly, the appeal is dismissed.

47. It is required to be stated that Ms Lomte, learned Advocate (appointed) for the appellant in a short time, without seeking adjournment, has prepared her arguments and has relied upon several judgments. She has tried her best to convince the court to allow the appeal. Her fees are quantified at Rs. 10,000/-.

48. Learned Advocate (appointed) for the victim be paid Rs.5000/-.

49. Pending applications, if any, stand disposed of.

[RAJNISH R. VYAS, J.]

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