



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 955 OF 2025

Sanjay Sampat Chandanshive
Age: 54 years, Occu.: Nil,
R/o Tembhorni, Tq. Jafrabad,
Dist. Jalna

..APPELLANT

VERSUS

1. State of Maharashtra
Through Police Station Officer,
Tembhorni, Tq. Jafrabad,
Dist. Jalna

2. X.Y.Z.

..RESPONDENTS

....
Ms. Nirmala K.Helkute, Advocate for appellant (appointed through Legal Aid)
Ms. U.S. Bhosle, A.P.P. for respondent no.1 – State
Ms. Pratibha R. Jamdhade, Advocate for respondent no.2 (appointed through
Legal Aid)

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CORAM : RAJNISH R. VYAS, J.
DATE : 27th FEBRUARY, 2026

ORAL JUDGMENT :

. This appeal, at the instance of the sole accused, takes exception to the conviction awarded in Special Case No. 196 of 2023 for the commission of an offence punishable under Section 377 of the Indian Penal Code (herein after) referred to as 'I.P.C.') and seven years' imprisonment and fine of Rs.20,000/- in default to suffer rigorous imprisonment for six months. The challenge is also to the conviction under Section 506 of I.P.C., for which a

sentence of one year rigorous imprisonment was imposed, and it was directed to pay a fine of Rs.1,000/- in default to suffer rigorous imprisonment for one month. All the sentences were ordered to run concurrently.

2. The applicant was acquitted of commission of offence punishable under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the Act of 2012'). The other two accused, who were tried along with the present applicant, were acquitted of the offence punishable under Section 66-E of the Information Technology Act, 2000.

3. Heard the respective counsels for the parties. In short, it is the case of prosecution that the victim of the crime /PW 2, who was student of 8th standard, was given Rs.20/- by the appellant / original Accused No.1, and thereafter accused / appellant had taken him to the quarters of government hospital and removed his pant and inserted penis in the anus of the victim. This brief incident has triggered criminal law. At this juncture, it is necessary to mention that the incident occurred on 18th June, 2023, but the victim did not narrate it to anyone. On 23rd June, 2023, PW 1 / father of the victim was shown a video clip by PW 5 / Deepak Jadhav in which the present appellant was seen having sex with the victim. When PW 1 enquired with PW 2/victim about the incident, initially, PW 2/victim was reluctant, but after PW 1 was taken into confidence, the incident was narrated to him. The next day, i.e.,

24th June 2023, F.I.R. No. 173 of 2023 was registered at the respondent police station at 16.16 hours.

4. During the course of investigation, the appellant was arrested on 24th June, 2023. Two other accused, named Krushna and Shivaji, were also arrested. A mobile phone was also seized, and a communication was issued to the headmaster of the concerned school requesting an extract of the admission register. The clothes of the accused and the victim, after seizure, were forwarded for chemical analysis examination. A spot panchnama of the incident was also prepared, and after completion of investigation, a final report was filed against three accused. The charge was framed against the accused persons by the learned Special Court on 05th December 2023, as per Exhibit 15. To bring home the charge, the prosecution has examined all 11 witnesses, which are as under :-

Rank	Name	Nature of Evidence
PW-1	‘S.S.G.’ (father of victim) Exh.25	Informant
PW-2	‘A.S.G.’ (Exh.26)	Victim
PW-3	Subhash Shenphad Kalange (Exh.27)	Panch witness to seizure panchanama
PW-4	Dr. Amol Punjaram Wagh (Exh.34)	Medical Officer
PW-5	Deepak Kaluram Jadhav (Exh.35)	Witness and panch witness
PW-6	Gajendra Dnyandev Bhutekar (Exh.36)	Police Witness
PW-7	Mina Vitthalrao Jamdar (Exh.50)	Incharge Headmaster
PW-8	Hrushikesh Narayan Gawali (Exh.51)	Panch Witness
PW-9	Pratap Vishwanath Ingale (Exh.53)	Investigating Officer

PW-10	Satish Laxmanrao Dinde (Exh.63)	Investigating Officer
PW-11	Dr. Dnyaneshwar Tulshiram Wayal (Exh.65)	Radiologist

5. After recording of evidence and closure of the case of prosecution, the accused was questioned under section 313 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') in which defence of false implication and total denial was taken. The accused neither entered the witness box nor examined any other witness.

6. After convicting the present appellant / original Accused No.1, the mandate of Section 235 of Cr.P.C. was honoured, and ultimately, conviction and sentence came to be awarded as stated above.

7. Learned counsel for the appellant has argued that there is an unexplained delay in lodging the F.I.R. and the testimony of the medical officer would reveal that there was no injury to the body of the victim or the accused. He further submitted that the trial Court has wrongly treated the DVD on which the immoral act was recorded as a reliable source for the prosecution. He submitted that, since the other accused were acquitted of the offences charged, and the present appellant, under the provisions of the Act of 2012, same clearly shows that the prosecution's case is extremely weak. According to him, there was a quarrel that had taken place between the father of the victim and the appellant, which resulted in the lodging of a false report.

8. Learned counsel for the appellant also relied upon the law laid down in the judgment passed by the Delhi High Court in Criminal Leave Petition No. 62 of 2015, decided on 09th February, 2015, in the case of ***State (Government of NCT of Delhi) Vs. Mullah Muzib***, as well as judgment delivered by the Hon'ble Apex Court in Criminal Appeal No. 94 of 2025 (Arising out of SLP (Crl.) No. 11687 of 2019) in the case of ***State (GNCT of Delhi) Vs. Vipin @ Lalla*** dated 07th January, 2025.

9. Per Contra, learned A.P.P. has contended that there is absolutely no reason to interfere in the judgment passed by the trial Court, since it has appreciated the material available in the form of evidence on record and has rightly awarded the conviction . She thus submitted that the judgment is just and proper. So far as delay is concerned, learned counsel has contended that there is absolutely no delay, as the incident was narrated to his father for the first time on 23rd June 2023, and the F.I.R. was lodged the next day. According to her, in sexual offences, considering the nature of the offence and since the prestige of the family is involved, delay would not go to the root of the matter. She submitted that just because there is no injury to the private part of the accused and the anus of the victim, the story of the prosecution cannot be disbelieved.

10. Ms. Jamdade, learned counsel appointed to represent the victim, has argued that the testimony of the victim is cogent and reliable, and

therefore, it can be relied upon. Further, it is not the law that corroboration is required in every case. He adopted the contentions advanced by learned A.P.P.

11. In this background, I have tested the arguments put forth by the respective counsels and also gone through the record of the case.

12. The victim, at the relevant time, was studying in 8th standard. As deposed by PW 2 in her testimony, the incident had occurred 9 months back from the date of deposition when he had gone near a temple where the accused / appellant came and told him that he would give him Rs. 20/- and the victim should accompany him. The accused then gave him Rs. 20/-, took him to a dilapidated quarter near the school, pulled his pants till his knees, and thereafter inserted his penis in the anus of the victim and shook his penis. As a co-accused, Sonu was recording the incident in the mobile phone, the victim ran away and did not disclose the incident to anybody. The accused took out a razor used for shaving, which the victim thought was a knife, and was threatened by the accused that he would kill him; therefore, he did not disclose the incident to anybody.

13. PW 2 deposed that after few days, his father enquired about the video clip and then the victim narrated the incident, after initial reluctance. The victim and his father then went to the police station. The police

questioned him. His statement was recorded in Court under Section 164 of Cr.P.C., which was shown to him and marked as P1/PW2. This witness was subjected to cross-examination and stated that the police had not inquired about him, and that he was unable to state in which year he had taken admission in the school. He admitted that he had taken admission in 6th standard, and an F.I.R. was lodged when he was in 8th standard. The incident was narrated to Father by Sonu. PW 2, in his cross-examination, has stated that the distance between the temple and the residential house is approximately 200 feet, and trees are standing in the road. He deposed that he went to the police station with his father for 4 to 5 minutes, returned home, and did not go there again. He denied the suggestion that Deepak Jadhav and the accused used to come to his father's shop to eat chicken, that there was a quarrel, and that they were therefore not on talking terms. He submitted that in the quarter itself, a quarrel had taken place between him and the victim. He denied that blood was oozing after the incident, and he had pain. He admitted that there was only one entrance to the quarter. The other suggestions were denied. He identified Accused No.2 before the court.

14. The statement recorded under section 164 of Cr.P.C. of this witness is below Exhibit P1/PW 2, which is consistent so far as the act is concerned. There is absolutely nothing to disbelieve the testimony of this witness.

15. PW 1 is the father of the victim, who has stated that on 23rd June 2023, PW 5 had shown him a video clip on his cell phone, in which the accused was having sex with the victim. He was known to the accused as residing in the same village. When PW 1 asked his son/victim / PW2, who initially did not reply, but when taken in confidence, narrated the incident to him. The next day, he lodged the complaint, which was proved and marked as Exhibit P1/PW1 below. His statement was recorded under Section 164 of Cr.P.C., which was marked as Exhibits P 2 and PW 1. He further submitted that he is in a position to identify the video clip if shown.

16. PW 1 was then subjected to cross-examination in which he admitted that PW 5 is his friend and that he resides near his house and accompanied him to the police station. PW 5 reported the incident to the police, which was recorded. He admitted that PW 5 had asked to put his signature, and accordingly, he did. PW 1 was at the police station for 5 to 6 hours and arrived at about 12:00 noon. He stated that he can identify Accused No.1 from any direction. He admitted that he had stated to the police that the portion marked 'A' in his statement. At this stage, the portion marked 'A' is reproduced below -

“One person somebody.”

He deposed that he had stated to the police that Accused No.1 was having sex with his son and the quarters were in dilapidated condition.

17. At this stage, it is observed that PW 9 and PW 10 are the Investigating Officers, to whom neither the omission nor the portion marked 'A' was put. This witness admitted that only two people would be seen in the video clip, and both were wearing clothing. Accused No.1 was wearing a blackish/dark-coloured shirt, and the victim was wearing a light pink shirt, blue jeans, and shoes. He admitted that he had a stall selling chicken drumsticks in the village, but denied the suggestion that there was a quarrel between Accused No.1 and Deepak over the payment of the bill, and that a false report was lodged as a result.

18. Testimony of this witness shows that the victim was initially reluctant, but when taken in confidence, narrated the incident to him. Statement under section 164 of Cr.P.C. of PW 1 was recorded, which is below Exhibit P2/PW1, in which he has deposed about what was narrated by the victim, so far as the incident is concerned.

19. PW 5 is Deepak, who had stated that he is having a salon and on 19th June 2023, Accused No. 2 had come to his salon at which time he had shown the video clip of the victim in which Accused No.1 was seen committing atrocity on the victim. He then told him to show him the clip, and he would forward it to the victim's parents. On 23rd June 2023, Hrushi Gawli forwarded the video clip to PW 5's mobile, which PW 5 then showed to the

victim's parents. PW 5, then, with the victim's parents, went to the police station, where his statement was recorded. He also stated that the spot panchanama prepared in his presence, on which his signature was taken, which was below Exhibit P1/PW5.

20. This witness, since, according to the prosecution, was not supporting the case of the prosecution, permission was sought to declare him hostile, which was granted.

21. In cross-examination conducted by the prosecution of this witness, he has identified Accused No.2 in the court, as well as the fact that when the spot panchnama was prepared, the police had called him. He admitted that the accused was also present at the police station and that the accused had produced a shaving blade, which was seized by the police, as shown in the panchnama, which was shown to this witness to prove it (see exhibit P2/ PW5 below). In cross-examination conducted by the prosecution, PW 5 admitted that the police again called him on 12th July 2023, at which time he had taken his cell phone with him, and Shivraj Sasane and Subhash Ghode were present. The police had shown a video clip on PW 5's cell phone to the panchas. He admitted that in the video clip, Accused No.1 was seen in a black T-shirt with white dots, black pants, and white shoes, while the victim was standing with his back to the camera. The victim was wearing sky-blue jeans pant and an almond-coloured shirt.

22. PW 5 further admitted that police had connected the cell phone to a laptop and copied the contents onto a CD. He was unable to state whether the CD was white. He admitted that police had kept the CD in an envelope and sealed it, so they prepared the panchanama and obtained his signature, as shown below as exhibit P-3/PW-5. At the prosecution's request, a CD was played. Testimony shows that PW 5 stated that Accused No. 2 could be seen, as could the victim. He identified the accused person present in the Court.

23. Cross-examination of PW 5 by defence shows that he had admitted that the father of the victim had a stall of chicken drumsticks, and he resides in the lane where the victim's father is residing, and both are good friends. He denied the suggestion that Accused No.1 and he himself used to regularly go to his shop for eating chicken, and due to a quarrel on account of payment of the bill, the father of the victim had a grudge against Accused No.1. He admitted that Accused No. 2 had not forwarded the video clip to him. He admitted that the video clip was shown to him on the cell phone, and that Police Sub Inspector Dinde and he, the panchas, and the police were present when the panchanama below Exhibit P3/PW5 was prepared. He also admitted that in the video clip, the backside of the person is seen, i.e., the victim and Accused No.1 are not seen in the video clip. His father admitted that he did not execute any certificate. Testimony of this witness shows that the video clip was shown to him, which he showed to the father of victim PW

2. Through this witness was declared hostile by the prosecution, law in this regard is crystal clear that testimony of such witness cannot be ignored in totality.

24. PW 8 is one Hrushikesh Gawli, who had stated that on 24th June 2023, he had gone to the police station along with Krushna and met PSI Dinde, and the informant was also present. The clothes of the victim were seized. The panchnama was prepared below exhibit P-1/PW-8, which bears his signature. He identified the victim's and the accused's clothes. He deposed that on 19th June 2023, he had received a video clip on his WhatsApp from Mahadu Gophane. He had seen it and forwarded it to Dipak Jadhav, and they discussed the accused and the victim, who were seen in the video clip. The video clip was then shown to the father of victim, who decided to lodge a complaint.

25. In cross-examination, he had stated to police that Dipak had shown the video clip to the father of the victim, but had not assigned any reason why police had not recorded it. He stated that he had asked the police, who told him that the panchnama for the clothes was to be prepared, but he could not state the timing. He admitted that Dipak has a salon and they are good friends. He denied the other suggestions. At this stage, it is necessary to note that although the clothes were forwarded for chemical analysis, nothing incriminating was found.

26. PW 4 is the Medical Officer, who examined the victim as well as the accused. PW 4, in his evidence, stated that his qualification is MBBS and that he has been attached as a Medical Officer to the rural hospital since 2019. The police had issued him a letter on 24th June 2023, as shown below in Exhibit P-1/PW-4, for the examination of the victim. The victim was 15 years old, and he was examined; thereafter, a medical examination report was issued, which was marked under his signature below Exhibit P-2/PW-4. On the same day, he also examined the accused and, under his signature, submitted the medical report below Exhibit P-3/PW-4.

27. At this stage, it is necessary to mention here that in the medical examination, no injuries were found either on the body of the victim or the accused. In cross-examination, PW 4 has admitted that the skin of the private part of the anus is sensitive and if any foreign material is inserted, there is a possibility of skin wear and tear and bleeding. He also admitted that any friction in that area can lead to itching and irritability, and that the victim may have difficulty performing daily activities.

28. It is in this background that the contentions made by the respective parties are required to be tested. As far as the point that there is a delay in lodging the F.I.R., it is necessary to mention here that PW 2 / victim of crime in his examination-in-chief has categorically stated that he was studying in 8th standard at the time of the incident. In cross-examination, the victim also

stated that it was true to say he was in 8th standard when the complaint was lodged. The fact remains that the class in which the victim was studying is also not disputed by the defence. The aforesaid aspect is relevant since it would prima facie give the impression that the intellectual capacity of the victim was that of the child. If that is taken into consideration, then it can be said that since the accused was 52 years old and the victim was studying in 8th standard and since the accused had a razor blade and threatened the victim, then it cannot be said that there is a delay in lodging the F.I.R. The victim stated he ran away from the scene, indicating that at the time of the incident, one Sonu Gophane was recording the the video of incident. He also did not disclose the incident. It is only when PW 1 / father took him into confidence that he narrated the incident on 23rd June 2023. The next day, the F.I.R. was lodged, i.e., 24th June 2023. Thus, the overall testimony clearly reveals that there is absolutely no delay in lodging the F.I.R., and the prosecution has properly explained the delay. Even otherwise, when the case pertains to sexual offences and since the prestige of the family is at stake, delay in lodging the F.I.R. is understandable, in the facts and circumstances of the case.

29. So far as contention regarding false implication is concerned, the defence is taken that PW 1 was running a stall of selling chicken drumsticks and there was a quarrel on the ground of non-payment of the bill amount

between the accused and PW 1, and therefore, a false report was lodged. It is necessary to mention here that nothing has been brought on record to show that there was a quarrel, what the amount due was, and on which day the quarrel took place. The defence is totally vague and fragile. Even otherwise, the accused's false implication on that count by the father with the help of the victim is not convincing. In the statement recorded under Section 313 of Cr.P.C., no specific plea has been taken. Neither the defence was built up in cross-examination nor was any witness examined. Thus, the accused's story that he was falsely implicated cannot be believed.

30. Learned counsel for the accused contended that the testimony of PW 4 / Medical Officer clearly shows that there were no injuries. Therefore, the offence under Section 377 of the IPC is not proved, and should also be rejected. Just because an injury was not caused, it cannot be said that the offence was not committed. In this regard, the explanation of Section 377 of the IPC, which speaks about intercourse against the order of nature, is relevant. The explanation states that penetration is sufficient to constitute the carnal intercourse necessary to the offence. Thus, even the slightest of penetration would attract the ingredients of offence.

31. PW 2's testimony that his pants were removed to the knees by the accused, so also the pants of the accused, and thereafter he inserted his penis in the anus and shook his penis is cogent and reliable. Cross-examination of

this witness would clearly reveal that nothing has been brought on record to disbelieve, just because the medical officer, who examined the victim and was accused of the crime, has not stated anything about the injuries would not result in denying the case of prosecution. It is necessary to mention here that the prosecution's core case has remained unshaken. The incident in question took place on 18th June 2023, whereas the medical examination was conducted on 24th June 2023; therefore, it cannot be ruled out that, due to the lapse of time, the injury might not have been noticed . Even otherwise, in testimony of the victim, he has denied that after the act committed by the accused, blood was oozing, and he had pain. Thus, in the light of the aforesaid evidence, I conclude that the offence under section 377 of the IPC is rightly proved by the prosecution, and just because there is no injury, it cannot be said that the accused did not commit the offence.

32. The accused is already acquitted for the commission of an offence punishable under the provisions of the Act of 2012, and therefore, the testimony of PW 7 / Headmaster for proving the age of the victim is not necessary to be dealt with, as there is no challenge by the prosecution to the acquittal awarded to the appellant / accused.

33. At this stage it is necessary to mention here that the video clip in question is tried to be proved by the prosecution by taking recourse to the evidence of PW 6 / Gajendra Bhutekar, who was attached to the concerned

police station since 2018 and had taken training in I-bike course, which was in respect of collecting digital evidence, electronic evidence and collecting samples. He stated that he was trained to copy electronic evidence and to obtain its hash value. On 12th July 2023, witness Deepak Jadhav produced the Redmi mobile, which contained a video clip concerning the offence, and it was seen by PW 6. Then he attached the cell phone to his laptop, played the video on the laptop and watched it, copied the video clip onto a DVD, also obtained the hash DVD value of the Karen's hasher V2.3.1 software, and. It was 50 seconds long. He had handed over the DVD to the investigating officer, which was seized in the presence of the panchas. He also issued a certificate under section 65-B of the Evidence Act, on which he affixed his signature, and it is proved below as Exhibit P-1/PW-6. He stated that he could identify the DVD if shown. The DVD was then played, and he identified the video clip.

34. In cross-examination, he admitted that he has not produced any certificate of the training undergone by him, and he had not mentioned in the certificate that he had seen the video clip on the cell phone. He denied other suggestions.

35. At this stage, it is necessary to mention here that the video clip which was transferred to the laptop was from the mobile of PW 5 / Deepak Jadhav. In his cross-examination, he admitted that a video clip was shown to

him on PSI Dinde's cell phone, and that he, the panchas, PSI Dinde was only present when the panchnama Exhibit P-7/PW-5 was prepared, and in the said video clip, the back of the person was visible, but their face was not. Thus, in the video clip, the faces of the persons were not visible, and the prosecution does not even dispute this. The question is whether, in this background, the electronic evidence can be relied upon. It is a well-settled principle of law that the original evidence need not be produced; recourse to Section 65-B of the Indian evidence act may be taken, which course was rightly adopted by the prosecution. The fact remains that the faces were not visible in the video. Thus, it would not be proper to rely on this piece of evidence. Further, it cannot be ignored that there were multiple forwards of the video and chain of custody of video has not been properly proved. In that view of the matter, I conclude that, though the electronic evidence is ignored, the testimony of PW 2 is sufficient to invite conviction of the accused.

36. Learned counsel for the appellant has relied upon the law laid down by the Delhi High Court in the case of Mullah Muzib (*supra*) and contended that in the absence of medical evidence, the conviction cannot be awarded. He further submitted that the question of delay was also considered in the said judgment, and that the appeal preferred by the State was thereafter dismissed.

37. At this stage, it is necessary to mention here that the appeal which was the subject matter of consideration before the Delhi High Court is an appeal against acquittal preferred to by the State. The parameters of the said case are totally different. Even otherwise, the facts in the said case were totally different. As observed in paragraph no. 20, where there were material contradictions taken into consideration by the trial Court, the acquittal was awarded. In the case in hand, no contradictions and omissions are pointed out. On the contrary, the omissions put to the witnesses were not proved by the investigating officer.

38. As far as the judgment cited of the Hon'ble Apex Court in Vipin @ Lalla (supra) is concerned, the learned counsel for the appellant has contended that the delay in lodging the F.I.R. is vital for the prosecution. She may be right in saying so, but the fact remains that it is not a universal rule that, just because there is a delay, it would be fatal to the prosecution in every case. In the case of Vipin @ Lalla (supra), the offence was committed on 16th September 2014, and the F.I.R. was lodged on 18th September 2024, with an unexplained delay. Whereas in the present case, as already stated, the delay is properly explained by the prosecution. Therefore, the judgment cited by the appeal would not come to his rescue.

39. Learner A.P.P. then relied upon the judgment in the case of ***Phool Singh Vs. State of Madhya Pradesh, (2022) 2 SCC 74***. The gist of said

judgment is that there can be conviction on the sole testimony of the victim, if evidence is found to be trustworthy, unblemished, credible and of sterling quality.

40. The law laid down in Phool Sing's case (*supra*) is rightly pointed out by learned A.P.P., as in the present case also, though there is sole testimony of the victim boy, it is of sterling quality and it is cogent and reliable. The testimony of the victim has remained consistent throughout and had withstood the cross examination. Thus, I conclude that prosecution has proved the case against the accused, and appellant has not pointed out any material which would compel the Court to take a different view from what is taken by the trial Court.

41. So far as conviction under Section 506 of the I.P.C. is concerned, it is necessary to mention here that the said section speaks about punishment for criminal intimidation. Criminal intimidation is defined under Section 503 of the I.P.C. which states that whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

42. In this case, the victim in his deposition has categorically stated that the accused, on the day of the incident, had taken out a razor blade, which the victim thought was a knife and had threatened to kill him. He also asked the victim not to disclose the incident. The accused is 52 years old. Taking out a razor blade and threatening the victim, who was studying in 8th standard, clearly shows that the ingredients of criminal intimidation are attracted. Therefore, the accused has been rightly convicted for the said offence.

43. In view of the above, I could find a ring of truth in the case of the prosecution. The prosecution has proved the case before the trial Court and the trial Court has rightly awarded the conviction and sentence to the accused. In that view of the matter, there is no merit in the appeal, and therefore, the following order is passed -

ORDER

- (I) Appeal is dismissed.
- (II) The fees of Ms Nirmala K.Helkute, learned counsel appointed for the appellant, as well as Ms Pratibha R. Jamdhade, learned counsel appointed for the victim, are quantified at Rs. 10,000/- each, to be paid by the High Court Legal Services Sub-committee, Aurangabad.

(RAJNISH R. VYAS, J.)