

Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1131 OF 2024

Mr. Pankaj Bapu Bachhav, Age 40 years,
Occ: Agriculturist, r/o Raje Shanti Co-
operative Housing Society, Shiv Road, Near
Nivant Bar, Dabhadi Vicinity, Tal.
Malegaon, District (Nashik) (At present
serving the sentence of rigorous
imprisonment) (At present in Nashik Road
Central Jail).

...Appellant
(Org. Accused)

~ versus ~

1. The State of Maharashtra,
through office in-charge of
Malegaon Chhavani Police
Station, Malegaon Rural.
2. XYZ (through Malegaon
Chhavani Police Station,
Malegaon Rural).

...Respondents

APPEARANCES

For the Appellant	Mr. Shrikant Gadade
For Respondent No.2	Ms. Shradha D. Sawant (Appointed legal-aid Advocate)
For the State	Mr. A. S. Gawai, APP

CORAM : R.M. JOSHI, J.

RESERVED ON : 28TH JANUARY, 2026.
PRONOUNCED ON : 2ND FEBRUARY, 2026.

JUDGMENT :-

1. This appeal takes exception the judgment and order dated 17th August, 2024 passed in Special POCSO Case No.64 of 2021, whereby the Appellant came to be convicted for the offenses punishable under Section 354A of IPC and Section 8 of POCSO Act and is sentenced to suffer rigorous imprisonment of four years, with fine of Rs.20,000/- with default sentence.

2. First Informant-father of the victim lodged report on 22nd July, 2021 with Chhavani police station, Malegaon stating that on that day, his daughter(victim) informed him about the incident occurred on 20th July, 2021. He stated to the police that his daughter told him about occurrence of the incident on 21st July, 2021, at 8.15 p.m. as well. She disclosed the incident occurred on 20th July, 2021 by stating that accused pressed her breast and kissed her. On receiving the said information, Informant went to the accused and confronted him with the said incident, and had also beaten him before he was brought to the police station. Offence came to be registered vide C.R. No.279 of 2021 with the said police station. Investigation was carried out in the said offence. Accused was arrested. Victim was sent for medical examination. Statement was recorded under Sections 161 as well as 164 of Cr.P.C. Statements of witnesses were also recorded. On completion of investigation charge-sheet was filed before the competent Court.

3. Charge was framed against the accused vide Exhibit 10. The accused denied the charge and claimed trial. Prosecution examined following five witnesses: PW 1-Victim, PW 2-Bharat Popat Nikam,

PW 3 -Prashant Uttam Sonawane, PW 4 -Informant and PW 5- Jayesh Piraji Patil.

4. Prosecution also relied upon statement of victim under Section 164 of Cr.PC., birth certificate of the victim, Seizure panchanama, medical report of the victim and other documentary evidence. The learned Trial Court found evidence led by the prosecution sufficient to prove the guilt of the accused. Hence, recorded conviction against him by the impugned order.

5. Learned counsel for the Appellant submits that having regard to the nature of evidence and more particularly, inconsistencies in the statement of the victim with regard to the occurrences of the incident, it is unsafe to convict the accused for the offences charged against him. It is his submission by the drawing attention of the Court to the testimony of the Informant-PW 4 and victim-PW 1 that their statements are contrary to the statements recorded in the FIR, so also under Sections 161 and 164 of Cr.PC.. It is his submission that in such cases and having regard to the nature of allegation, there must be complete consistency in the evidence of prosecution, and if it is not there, no conviction can be recorded against the accused. By drawing attention of the Court to the testimony of the victim, it is argued that victim gives altogether different version of the incident than her previous statements, and hence, her testimony becomes doubtful. It is submitted that suggestions made to the victim and Informant indicates that there were disputes between the Informant and the accused, and hence this is the case of false implication.

6. Learned APP and learned counsel for the Respondent No.2 supported impugned judgment and order. According to them, sole testimony of victim would be sufficient to convict accused without seeking any further corroboration. It is their contention that having regard to the age of the victim, minor inconsistencies if have occurred in her evidence needs to be ignored. It is submitted that there is no evidence on record to show that the accused is falsely implicated in crime in question. It is argued that though the victim admits in her cross- examination that her version about the incident is not appearing in statement before the police as well as Magistrate, in fact, such statement does appear therein. It is submitted that there would not be any reason for the Informant and victim to falsely implicate the accused in this crime.

7. There cannot be any dispute with regard to the proposition of law that in case, testimony of the victim of sexual assault is free from doubt and is of sterling quality, it would be open for the Court to convict the accused without seeking any further corroboration.

8. In order to prove offence under POCSO Act, prosecution at the first instance required to prove that victim is minor and hence, child under Section 2(d) of the Act. Prosecution examined Prashant Sonawane (PW 3), clerk with Chalisgoan Municipal Council to prove birth certificate of victim (Exhibit 22). In the cross-examination of this witness nothing is elicited to disbelieve his testimony. Prosecution therefore has proved that date of birth of victim is 13th March, 2013 and thus, she is child under the Act.

9. Here in this case, the incidents have occurred on 20th July, 2021 and 21st July, 2021. As per the first information report on 20th July, 2021 the accused said to have rubbed the breast of the victim and on the next day i.e. on 21st July, 2021 he said to have kissed her and asked her to come to terrace. In this regard, the substantial evidence of the victim shows that the first incident has occurred in front of the house on ota. She claims that accused rubbed her breast by putting hand in her shirt. She accepts that the said place i.e. ota is visible to others in the building around the same. She further states that she informed to Magistrate about the fact that accused was sitting on ota and occurrence of incident there but was unable to give reason for no mention about the same in the statement. According to her, on the next day, when she was called, accused kissed her on her cheeks and made gestures to her to come to the terrace. She also states that accused put mouth into her mouth. She however made excuse and went home, did not go to terrace. In her statement under Section 164 of the Cr.PC., however, she claims that accused licked her face and blinked towards her and asked her to come to the terrace. The statement made before the Trial Court, therefore, materially defers from the statement made to the Magistrate under Section 164 of Cr.PC.. Even if it is accepted that some concession needs to be given while assessing testimony of victim owing to her age, however, it would not be open for the Court to ignore the material inconsistencies in the manner of occurrence of incident itself. Apart from material inconsistencies there are other variable in the evidence of Informant with regard to victim going for tuition to accused, victim stating gestures made by accused by his fingers for calling her to terrace etc.

10. The Informant as well as the victim were suggested of previous disputes between the parties i.e. Informant and accused. There are discrepancies in the evidence of victim with regard to exact occurrence of incident with which creates doubt about her version. The first incident is allegedly occurred at place within public view, but there is no evidence even to indicate that both victim and accused were at least seen together. It is settled position of law that in case of reasonable doubt being created in the case of the prosecution, benefit thereof deserves to be given to the accused. Thus, it cannot be held that prosecution has proved the guilt of accused beyond shadow of reasonable doubt.

11. In such circumstances, the following order is passed:-

ORDER

I. Appeal stands allowed.

II. Appellant stands acquitted for the offenses punishable under Section 354A of IPC and Section 8 of POCSO Act in connection with Crime No.279 of 2021 registered with Chhavani Police Station.

III. The fine amount paid, if any, be refunded to the accused.

(R. M. JOSHI, J.)