

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1212 OF 2024

Ravindra Somnath Gupta,
Age – 30 years,
Residing at Native Kurakat
Post-Handiya, Dist.- Ilahabad,
Uttar Pradesh.
(Presently lodged in Central Prison, Thane)
Versus

...Appellant/
Accused

1. The State of Maharashtra & Anr.,
(Through Kalwa Police Station)
2. XYZ (Victim),
(Through Kalwa Police Station)

...Respondents

Mr. M.B. Shirsat a/w Fehmida Ahmed for Appellant.
Mr. Hitendra J. Dedhia, APP for State.
Mr. Mahendra Sandhyanshiv a/w Mr. Vikas Maurya for
Respondent No.2.
PSI, Balu Rathod, Kalwa Police Station, Thane present.

CORAM: R.M. JOSHI, J.

DATE : 23rd FEBRUARY 2026.

**ORAL
ORDER:**

1. This Appeal takes exception to the judgment and order dated 13th June, 2024 passed in Special (P) Case No.1364 of 2022 whereby the Accused came to be convicted for the offences punishable under Sections 376(2)(f), 376(3) of the Indian Penal Code, Section 3(a) punishable under Section 4, Section 5 (j)(ii)(n) punishable under Sections 6 and 7 punishable under Section 8 of the Protection of

Children from Sexual Offences, Act, 2012 (for short “POCSO Act”) and sentenced to suffer rigorous imprisonment for twenty years and to pay fine of Rs.10,000/- in default to suffer simple imprisonment for six months.

2. The first informant is the mother of the victim, who was aged about 13 years at the time of occurrence of the incident. The accused is the paternal uncle of the victim. On 18th October, 2022 the victim told her mother about she having stomach pain and therefore, she was taken to hospital at Kalwa for treatment. On examination of the victim and after conducting sonography it was diagnosed that she was carrying was 18 weeks pregnancy. The informant and her husband took the victim in confidence and enquired with her. At that time, the victim disclosed to them that in June, 2022, when there was no one present in the house, the accused did forcible penetrative sexual assault on her, due to which she has become pregnant. She has also disclosed that the accused threatened her not to disclose this incident to anyone. On the basis of the said report, Crime No.531 of 2022 came to be registered with Kalwa Police Station.

3. Investigation into the said crime was carried. The victim was sent for medical examination so also statement was recorded under Section 164 of Criminal Procedure Code.

The samples of the victim and featus were collected. The accused was arrested and his blood samples were also obtained. The seized muddemal and samples were sent to Forensic Laboratory. On completion of investigation, chargesheet came to be filed before Competent Court.

4. The charge was framed against the Accused vide Exhibit-10. The Accused denied the charge and was tried. Prosecution examined six witnesses, including the victim, first informant, Medical Officer and the Investigating Officer. Apart from the oral evidence, reliance is also placed by the prosecution on documentary evidence such as C.A. Report, medical papers, examination paper of the victim, spot panchanama etc. Inspite of fact that victim and informant failed to support case of prosecution, learned Trial Court found evidence in the form of DNA Report to be sufficient to prove the guilt of the Accused and hence conviction is recorded by the impugned judgment and order.

5. Learned counsel for the Appellant submits that both informant as well as the victim have not supported the case of the prosecution and they were declared hostile. It is his further submission that even during the cross-examination conducted by the APP, nothing could be brought on record, which would enable prosecution to establish the

complicity of the Appellant in this crime. He further argued that the judgment of conviction has been recorded against the Appellant solely on the ground that the DNA Report indicates that the Appellant is biological father of fetus of the victim. In this regard, it is his submission that there is no evidence which conclusively establishes the fact that the DNA Report is of the accused for the reason that there is no evidence led by the prosecution about collection of the blood samples of the accused for DNA profiling. In this regard, he drew the attention of the Court of the evidence of PW No.5 Dr.Priti Sitaram Naykuudi and PW No.6 Mr.Nilesh Arun Kanade to indicate that the said medical officer has collected the blood samples of the victim and fetus. According to him, there is no evidence of the Medical Officer showing collection of the blood samples of the deceased. Moreover, the Investigating Officer has admitted that DNA kit was received from FSL Laboratory on 19.10.2022 however, admittedly the blood samples of the victim were collected on 18.10.2022. It is thus his contention that the said evidence does not conclusively prove that the accused / Appellant is biological father of fetus and therefore he has committed an offence charged against him.

6. Learned APP and learned counsel for Respondent No.2 opposed the Appeal. It is their contention that even

though the victim and the informant have not supported the case of the prosecution, evidence in the form of DNA Report conclusively prove and that the Appellant is biological father of the featus and rightly came to the sole conclusion that he committed sexual intercourse with the victim, who was admittedly the minor at the time of occurrence of the incident.

7. A perusal of the evidence on record indicates that the victim as well as the informant have not supported the case of prosecution and they were declared hostile and were cross-examined with the permission of the Trial Court. The law on the point of appreciation of evidence even of the hostile witness is fairly settled to say that the entire evidence of the said witness need not be discarded and the evidence relevant for determination of the case would be considered by the Court. Here in this case, the testimony of the victim and the informant is practically of no use for determination of the issue involved in this case. In the cross-examination, the informant as well as the victim however accept the fact that the blood samples of the victim and featus were collected by the Medical Officer. Except for this, there is no other part of evidence of these witnesses is relevant for the determination of the case nor it is supported the case of the prosecution.

8. In absence of any evidence of victim, the only evidence remains on record is DNA profiling report, which indicates that the Accused is the biological father of fetus of the victim. In this regard however, admittedly there is no evidence led by the prosecution about the collection of blood samples of the accused nor accept the DNA profiling report. Once, no such evidence is led the prosecution, there remains missing link between the collection of blood samples of the accused and FSL Report indicated the DNA test result. Apart from this, it is also pertinent to note that the Investigating Officer in his evidence has admitted that the DNA kit was received from the Laboratory on 19th October, 2022 whereas the Medical Officer's deposition about the collection of blood samples of the victim on 18th October, 2022. Thus the evidence on record clearly establishes that when the blood samples of the victim was collected, the DNA kit was not available. This therefore create serious doubt with regard to the DNA Report to incriminate the Appellant in this crime.

9. A perusal of the impugned judgment shows that solely on the basis of DNA profiling report indicating paternity of the fetus of the victim, to be of the Appellant, the conviction came to be recorded against him. Once the said evidence is excluded from consideration for the reason that there is no proof of collection of blood sample of the

accused, which was sent for DNA profiling, there remains no evidence on the basis of the conviction of the accused can sustain.

10. Even in case of offences under the POCSO Acts, the burden solely rests upon the prosecution to prove the guilt of the accused beyond establishment of reasonable doubt. In the instant case, there is neither oral evidence nor evidence in the form of medical opinion, including the DNA profiling report which would conclusively prove the guilt of the accused. Consequently the judgment of conviction recorded against the Appellant cannot be sustained. As a result of above discussion, following order :

O R D E R

(i) Appellant/Accused- Ravindra Somnath Gupta, residing at Kurakat, Post-Handiya, District- Ilahabad (Uttar Pradesh) is hereby acquitted for the offence punishable under Sections 376(2)(f), 376(3) of the Indian Penal Code, Section 3(a) punishable under Section 4, Section 5(j)(ii)(n) punishable under Sections 6 and 7 punishable under Section 8 of the Protection of Children from Sexual Offences, Act, 2012.

(ii) The impugned Judgment and Order passed by the learned Special Judge under POCSO Act, Thane in Special (P) Case No.1364 of 2022 dated 13th June 2024 is hereby quashed and set aside

(iii) Appellant/Accused be released forthwith in F.I.R. No. I-531 of 2022, registered with Kalwa Police Station.

(iv) His bail bonds, if any, shall stands cancelled.

[R.M. JOSHI, J.]