

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 325 OF 2024
WITH
INTERIM APPLICATION NO. 973 OF 2024
IN
CRIMINAL APPEAL NO. 325 OF 2024
WITH
INTERIM APPLICATION NO. 1698 OF 2025
IN
CRIMINAL APPEAL NO. 325 OF 2024

Chandevdas Ramanand Das	]	
Age about 45 years.	]	
Residing At Village: Rampur, Kodra,	]	
Post: Kodra, P.S. Pali, Patna,	]	
Dist: Patna, Bihar State.	]	
	]	
At present in Lajpore Central Jail, Surat	]	
(Convict No.2077)	]	... Appellant/ Applicant

Versus

1. The Union Territory of Daman	]	
Coastal Police Station Moti Daman.	]	
	]	
2. XYZ	]	
Through Coastal Police Station,	]	
Moti Daman.	]	
Vide C.R. No.06 of 2013.	]	
	]	
3. The State of Maharashtra	]	... Respondents

Ms. Farhana Shah (appointed Advocate) along with Amna Khan, for
the Appellant/ Applicant.

Mr. Ashwin Thool, S.P.P. along with Mr. Ayush Singh, Ms.
Archishmati Chandramore, for the Respondent No.1.

Ms. Sakshee Chavan (appointed Advocate), for the Respondent No.2.

Ms. Supriya Kak, A.P.P. for the Respondent No.3-State.

CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.

DATE : 02nd FEBRUARY, 2026.

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. The Appellant has challenged the Judgment and Order dated 30/03/2016 passed by the learned Session Judge, Daman at Silvassa in Sessions Case No. 14 of 2013. By the impugned Judgment and Order, the Appellant was convicted for commission of offence punishable under Section 376(f) and (i) of Indian Penal Code (IPC). He was sentenced to suffer rigorous life imprisonment and to pay fine of Rs.1,000/- and in default to suffer rigorous imprisonment for two months. He was also convicted for commission of offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO) and he was sentenced to suffer rigorous life imprisonment and to pay fine of Rs.1,000/- and in default to suffer rigorous imprisonment for two months. The sentences were directed to run concurrently. He was granted set off under Section 428 of the Cr.P.C. The Appellant was

acquitted from the charges under Section 10 of POCSO. The administration of Union Territory of Daman and Diu was directed to pay an amount of Rs.2,50,000/- to the victim under the Victim Assistance Scheme, 2012.

2. The Prosecution case in brief is as follows :

The victim in this case was seven years old child. The Appellant was a distant relative. On 03/02/2013, between 12:00 p.m. to 1:00 p.m, the victim was playing outside her house. The Appellant took her to his house under the pretext of giving biscuits/chocolates. Once she was inside the house he locked the house from inside and committed forcible sexual intercourse upon her. He didn't send her back. He himself ran away. While the victim was returning home, she met her uncle who took her home. There was bleeding injury from her private part. The uncle lodged the F.I.R. Investigation was carried out and the Appellant was arrested. Statements of witnesses were recorded. The victim was subjected to medical examination. Various panchanamas were drawn. At the conclusion of the investigation, the charge-sheet was filed and trial was conducted before the learned Sessions Judge as

mentioned earlier.

3. During trial, the Prosecution examined the victim, her uncle, her mother, the medical officers, the panchas and the investigating officer. The defence of the Appellant was of total denial. According to him, he had not done anything. It was a false case. He himself had appeared before the Police as he had not done anything. He was implicated falsely. The learned trial Judge disbelieved this defence. The learned trial Judge relied on the evidence of the victim and her near relatives and relied on the circumstance of the blood of the victim having been found on the underwear of the Appellant. Based on these circumstances and evidence, the learned trial Judge convicted and sentenced the Appellant as mentioned earlier.

4. The most important evidence in this case is that of the victim herself. She is examined as PW-7. At the time of recording her evidence on 14/12/2015, the age of the victim was nine years as recorded by the learned trial Judge. The date of incident is 03/02/2013. This evidence was recorded after about two and a half years from the date of the incident and hence she was of the age

around seven years at the time of incident. There can hardly be any dispute that she was below 18 years of age. She was merely a child at the time of recording of her evidence and there is no way that it can even be argued that she was above 18 years of age. The learned trial Judge has noted that she was a child. He asked some preliminary questions to her. He was satisfied that the victim was able to understand the questions and therefore, oath was administered to her. She deposed that about two years prior to her deposition, she was residing at Bhagubhai chawl. On the date of incident she was playing outside her house. It was noon time. She used to call the Appellant as 'baba'. The Appellant told her that he would give chocolate and biscuits. On that pretext, he took her to his house. He gave her some biscuits. He sent her brother out of the house. He locked the house from inside. Then he removed her clothes. He also removed his clothes. She then deposed that, he laid on her person. She suffered pain on her private part. Then he asked the victim to go home. He fled away from there. She started crying. She met her uncle on the road. She could not tell him anything. The victim's uncle took her to her house. She narrated the incident to her mother. At that time, there was bleeding from the victim's private part. Her mother examined her. Her mother called her

father and told about the victim's state. The victim's father took her to the hospital. This was the deposition of the victim.

In the cross-examination, she stated that she and her family were knowing the Appellant. She had narrated the incident to the Police. There were certain statements in her deposition which were not mentioned in her police statement. She had not stated before the Police that the Appellant had asked her brother to go out of his house and then the Appellant locked the victim in the house. The victim's mother had examined her and found bleeding in the victim's private part. Her mother then called her father and told him about the bleeding and her father took her to the hospital. These facts were not stated by her in her police statement. However, it is important to note that the main incident of rape was not an omission from her police statement. In her further cross-examination, she stated that once she came out of room of the Appellant, her siblings were not there. She herself unlatched the door from inside and came out. She denied the suggestion that the Appellant had not gone out. She denied the suggestion that while playing she fell down on an iron rod and suffered injuries. She also denied that the Appellant picked her up in his arms and asked her

to go home. She denied the suggestion that she was tutored by her parents and therefore she was deposing falsely against the Appellant.

In the re-examination, the victim was asked to identify the Appellant. She correctly identified the Appellant.

5. PW-1-Mr. Sonu Kumar was the uncle of the victim. He had lodged the F.I.R. PW-1 deposed that he was residing with his brother, brother's wife and the victim. His brother had two sons and two daughters including the victim. They are residing at Bagubhai chawl. In the year 2013, he was working in a company. On 03/02/2013, PW-1 was in his room. He had night duty. PW-1's brother was on day duty. At around 12:00 p.m. to 12:30 p.m., the victim and her brother were playing outside the room. The Appellant was a distant relative. The Appellant gave a biscuit to the victim and took her to his room in the nearby chawl. The victim's brother told these facts to her mother. The victim's brother told that the Appellant had committed the objectionable act with the victim in his house. He took them to the room of the Appellant. At that time the victim was coming back crying. They brought her to

their room. There was bleeding from the victim's private part. Somebody called the ambulance. They took the victim to a government hospital. The Doctor told them that they would have to report the incident to the police. PW-1 then lodged the F.I.R. and identified the Appellant in the Court. The F.I.R. is produced on record at Exhibit-7.

In the cross-examination, PW-1 admitted that many people resided at the place of his residence and there were various chawls around his house. The distance between the victim's chawl and the Appellant's chawl was about 5 to 7 minutes walking distance. There were various rooms in between. These rooms are occupied by various families. Many children were playing on the date of incident at about 12:30 p.m. PW-1 himself was sleeping in his house. The victim's brother who narrated the incident was about 4 years of age at that time. He further deposed that though he was sleeping, his sister-in-law i.e. the victim's mother woke him up and told him to search for the victim. He saw the victim coming back towards their home. She was alone. PW-1 was a native of Bihar. He could not read and write Gujarati. He had signed the report but he did not know what was written in the report. He had not given any

documents showing age of the victim to the Police. The victim's mother had told him about the bleeding suffered by the victim. The Appellant used to visit their house. He used to bring biscuits. In further cross-examination of PW-1, he deposed that the Doctor had advised them to lodge the report but he had not gone to the police station. His brother had gone to the police station but PW-1 himself signed the report at the police station. When PW-1's brother had lodged the report he was not with his brother. PW-1 had gone to the police station at about 8:30 p.m. The F.I.R. itself shows that the statement was read over to him in hindi language.

6. PW-3-Kanchandevi was the mother of the victim. She deposed that on 03/02/2013, in the afternoon, the victim and PW-3's younger son were playing outside the room. After sometime, PW-3's son came to her and told her that the Appellant had taken the victim to his room and had committed the act of forcible sexual intercourse. PW-3 then informed PW-1 who was sleeping in the house. PW-1 then went to search for the victim. He saw the victim coming back. PW-3 saw the bleeding on the victim's private part. PW-3 told these facts to PW-1 and requested him to call her husband who came home. She informed this fact to the chawl

owner who called the ambulance. Then they took the victim to the hospital. Police made inquiry with her in the hospital. PW-3 identified the Appellant in the Court. She deposed that the victim was born in the year 2006 in the month of May but she could not recollect the exact date.

In the cross-examination, she had deposed that she had given the Birth Certificate of the victim to the Police. She denied the suggestion that the bleeding was because of menstruation. Her husband came home at around 1:00 p.m. and then went to the hospital at 2:00 p.m.

7. PW-2-Mr. Bhagubhai Patel acted as a pancha of the spot panchanama carried out in the room of the Appellant. They observed one mattress, bed sheet and pillow stained with blood. There were blood stains on the lungi. The spot panchanama was conducted and is produced on record at Exhibit-10. All these articles were seized. He identified the articles in the Court.

In the cross-examination, he deposed that Police had come to the house at around 5:30 p.m. to 6:00 p.m. The Appellant's

chawl was about half kilometer away from his house. Panchanama started at 6:00 p.m. and was over by 7:00 p.m. When he went to the spot, the room was open. Nobody was there inside the room. The victim's father and uncle had shown the room which was a single room.

8. PW-4-Dr. Siddharat Rathod had conducted medical examination of the Appellant and had formed an opinion that the Appellant was capable of performing sexual act. It is mentioned at Exhibit-15.

9. PW-5-Dr. Zankita Shah was present when blood sample and vaginal swab of the victim was collected by Dr. Shailesh. The clothes on the person of the victim were also removed and nail clippings and public hair were also collected. All these samples were sealed. This was done on 03/02/2013 at around 4:10 p.m.

10. PW-6-Dr. Shailesh Arlekar had examined the victim. On 03/02/2013, he deposed that the patient was a baby girl. Her age was about 7 years. There was clinical proof of forceful vaginal penetration with perineal tear. The injury certificate with his

endorsement is produced on record at Exhibit-17. The victim had suffered 3rd degree perineal tear involving 6 cm., post vaginal wall and perineal body upto 3 cm., of lower rectum 2 cm., long skin deep laceration on both sides labia. Perineal tear was repaired under anesthesia. He collected the samples referred to by PW-5. PW-6 issued the Certificate which is produced on record at Exhibit-20. According to PW-6, 3rd degree perineal tear meant a tear that involved vagina and extended upto patient's rectum. Such injury was possible if there was application of force of penetration.

In the cross-examination, PW-6 stated that the victim's injury was possible if rod or any hard object was penetrated forcefully. In further examination-in-chief, the medical papers were brought on record at Exhibit-38 which included the story narrated by the victim's mother.

11. PW-11-Dr. Dhanvijaya Prabhakar had received a letter from the police on 03/02/2013 for examination of the Appellant. On that day, the Appellant's semen was not collected and he was called on the next day. On 04/02/2013, PW-11 sent the samples of pubic hair and nail clippings to the police station. Importantly, she

also sent the clothes of the Appellant in sealed condition. The letter is produced on record at Exhibit-37. PW-11's evidence is important because the underwear of the Appellant shows presence of the victim's blood.

In the cross-examination, PW-11 stated that she sent the samples to her office and then her office forwarded that to the police.

12. PW-8-Mr. Ramji Solanki-Retired Police Officer was in-charge at the Out Post of Moti Daman Police Station. On that day, the in-charge of Costal Police Station handed over the investigation of Crime No.6 of 2013 to this witness. PW-8 then went to the spot and conducted spot panchanama. He seized the articles on the spot. He recorded statements of the victim's mother and other witnesses. He arrested the Appellant. On 04/02/2013, he sent the Appellant for medical examination. He produced the Appellant before the Magistrate. He collected the medical certificate. After collecting the necessary papers, he submitted the chargesheet against the Appellant. On 12/03/2013, he received the F.S.L. Report. It is produced on record at Exhibit-24. He filed the DNA Report at

Exhibit-26. He identified the Appellant in the Court.

In cross-examination, PW-8 admitted that he had not recorded the statements of the persons residing nearby. He was present at the spot for about an hour. After 6:00 p.m., he reached the government hospital. During his investigation, he had not collected the birth certificate of the victim.

13. PW-9-Mr. Chhunilal Solanki - Asstt. PSI, Nani Daman Police Station, had received a message about the incident from government hospital at about 2:40 p.m. on 03/02/2013. He went to the hospital. He made the entry in the police station diary. He recorded the report of the first informant-PW-1. He brought the first informant to the Costal Police Station and registered the F.I.R. Further investigation was transferred to a Senior Police Officer. He conducted some part of the investigation after that. He recorded statements of some witnesses. He collected samples from the hospital.

In the cross-examination, he admitted that he did not collect the birth certificate of the victim and that he had not got her age

determination test conducted by the doctor.

14. PW-10-Mr. Dinesh Vaja - PI had recorded the victim's statement on 18/10/2013. He denied the suggestion that the victim had not narrated the statement and but her mother had told the facts which were reduced into writing. He had not videographed the recording of the victim's statement.

15. This in short is the ocular evidence led by this Prosecution. The Prosecution has also filed the CA Report on record at Exhibit-24. In addition, the Prosecution submitted the DNA Analysis Report. The CA Report shows that there was blood of 'A' Group on the clothes of the Appellant and the victim as well as on the bedsheet and other articles. Importantly, the DNA Report mentions that stains of the victim's blood was found on the underwear of the Appellant.

16. Learned Counsel for the Appellant submitted that the Prosecution has not proved that the victim was a minor girl at the time of incident. There is a serious doubt raised as to how the F.I.R. was lodged and whether it was lodged by PW-1 or his brother. The

victim's father i.e. PW-1's brother was not examined. Nobody from the vicinity was examined. The Prosecution's case was not true. The Appellant was implicated falsely. It was improbable that the Appellant would take the victim and her brother to his house and then leave the victim's brother to go home to narrate the incident to his family. The Investigating Agency and the Medical Officers had not taken sufficient precautions while collecting samples and therefore, there is scope to believe that the samples were not collected properly and there was no linking evidence showing that the samples were related to the Appellant and no one else. She further submitted that the seizure of the underwear of the Appellant is also doubtful.

17. The learned S.P.P. on the other hand submitted that there is no reason to disbelieve the truthful version given by the victim herself. Her ocular evidence is supported by the medical evidence. She had suffered a serious injury for which she had to undergo surgery under anesthesia. Therefore, it is beyond doubt that the incident had taken place. The victim would not leave the real culprit out and would blame the Appellant falsely. He further submitted that the Appellant has not brought anything on record as

to why the victim or her family would implicate him falsely. The CA Report and in particular, the DNA Report were most incriminating. No explanation is offered by the Appellant in that behalf.

18. We have considered these submissions. As far as the age of the victim is concerned, the victim was a small child aged about 7 years at the time of incident and aged about 9 years at the time of recording of her deposition. It is not even a borderline case where it could be argued that she was more than 18 years of age or around 18 years of age. Therefore, considering her very young age of 7 years, though the Birth Certificate is not produced on record there is no reason to disbelieve the doctors who have recorded her age as 7 years and even the Session Judge who has recorded her age as 9 years.

19. Moreover, the mother of the victim has stated that victim was 7 years of age at the time of the incident and there is no cross-examination on that particular aspect. Even it is not the case of the Appellant himself that the victim was not 7 years old at the time of the incident.

20. As far as the main incident is concerned, it is narrated in sufficient details by the victim herself. The Appellant was a distant relative and therefore, trusting him she had accompanied him to his house. She had thereafter described the incident of forcible sexual intercourse. Some part of her description is corroborated by her younger brother who had gone to the house of the Appellant but he was driven out by the Appellant. The subsequent events of her returning home and her uncle meeting her on the way are also corroborated by the evidence of the victim herself as well as from the evidence of PW-1 and PW-3. The immediate events after she returned home show that she was bleeding from her private part. She was immediately taken to the hospital. The Medical Officers examined her and treated her. Within a short time the F.I.R. was lodged. There was no time to concoct a false story to implicate the Appellant falsely. During spot panchanama various articles including the clothes of the Appellant were seized from the spot which show presence of blood of 'A' group which was the blood group of the victim. The most incriminating CA Report is regarding DNA Analysis which show presence of the victim's blood on the underwear of the Appellant. That underwear was seized by a

Medical Officer in the hospital. There is no reason to disbelieve the evidence of the Medical Officer. Finding of the victim's blood on the Appellant's underwear is a very strong corroborative piece of evidence supporting the victim's deposition and the prosecution's case.

21. The victim had infact suffered a very serious injury, that tear was quite big which required surgery under anesthesia. A small girl of tender age had to go through all this trauma. She had clearly named the Appellant. The learned trial Judge rightly considered all these aspects in convicting and sentencing the Appellant. Considering the injuries suffered by the victim, there is no scope even to reduce the sentence. The Appellant is in custody since February, 2013. In this view of the matter, we are of the opinion that the Prosecution has proved its case beyond a reasonable doubt. The learned trial Judge has given good reasons in convicting and sentencing the Appellant. We see no reason to interfere with the impugned Judgment and Order. For the reasons mentioned herein above, we proceed to pass the following order.

ORDER

- (i) Criminal Appeal No.325 of 2024 is dismissed.
- (ii) Copy of this Order be sent to the Appellant, who is in jail.
- (ii) In view of dismissal of the Appeal, the connected Interim Application Nos.973 of 2024 and 1698 of 2025, are also dismissed

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)