

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 180 OF 2023
WITH
INTERIM APPLICATION NO. 4672 OF 2024
IN
CRIMINAL APPEAL NO. 180 OF 2023

Shravan @ Valiba Lahanu Gaikwad]
Age: 35 years, presently lodged in]
Nashik road Central Prison,]
R/at-Nipani Pimpalgaon,]
Taluka-Niphad, District-Nashik] ... Appellant

Versus

1. State of Maharashtra]
Through Sakheda Police Station,]
In C.R. No.I-32/2019/]

2. XYZ]
Through Natural Guardian, Informant.]
Address : Nipani Pimpalgaon,]
Taluka-Niphad, District-Nashik.] ... Respondents

Mr. Sushil Inamdar, for the Appellant.

Ms. Mahalakshmi Ganapathy, A.P.P. for the Respondent No.1.

Ms. Sandhya Mailagir, for the Respondent No.2 (Through Legal Aid).

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

DATE : 14th JANUARY, 2026.

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

1. The Appellant has challenged the judgment and order dated 23/07/2021 passed by the learned Additional Sessions Judge Niphad in Session Case No.43 of 2019. The Appellant was convicted for commission of offence punishable under Sections 376(2)(f) and 376(2)(n) of the Indian Penal Code (**IPC**) and under Section 5(j)(ii) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (**POCSO**).

The Appellant was sentenced to suffer rigorous imprisonment for life which was directed to be, imprisonment for remainder of his natural life; in addition, he was sentenced to pay fine of Rs.10,000/- and in default to suffer rigorous imprisonment for three months. The Appellant was given set-off under Section 428 of the Code of Criminal Procedure (**Cr.P.C.**). He was in jail since 16/02/2019.

2. Heard Mr. Sushil Inamdar, learned Counsel for the Appellant, Ms. Mahalakshmi Ganapathy, learned A.P.P. for the Respondent No.1 and Ms. Sandhya Mailagir, learned Counsel for the Respondent No.2.

3. The prosecution case in brief is that, the Appellant was the step-father of the victim in this case. The victim was around 16 years of age at the time of offence. The period of offence was between Diwali 2018 to 31/01/2019. It is the case of the prosecution that on a few occasions, the Appellant took the victim to an agricultural field and committed rape on her. The victim being a minor step-daughter of the Appellant could not inform about the offence to anyone. Her mother took her to the Doctor, who had examined her and opined that she was pregnant. An F.I.R. was lodged with the help of neighbour against the Appellant. The investigation was carried out. The victim underwent the procedure for medical termination of the pregnancy. The blood samples of fetus and the victim was taken and preserved. The Appellant was arrested on 16/02/2019. When the blood samples were taken, the samples were sent for DNA testing. The DNA Report shows that, the Appellant was the biological father of the product of conception. During investigation, the statements of various witnesses were recorded. The spot panchanama and other panchanamas were recorded and at the conclusion of the investigation, the chargesheet was filed. The case was tried before the

Court of Session. It resulted from the investigation in C.R. No. 32 of 2019 registered at Saykheda Police Station, District Nashik.

4. During the trial, the prosecution examined 16 witnesses including the victim, her mother, panchas, medical officers, head master of the victim's school, the police officers including the carrier and the investigating officers. The victim, her mother i.e. Appellant's wife turned hostile. They did not support the prosecution case. The defence of the Appellant was that, he was addicted to liquor and used to quarrel with his wife and therefore, the false case was lodged against him. He examined his wife as a defence witness. She supported his defence of denial. The defence witness i.e. wife of the Appellant was also examined as a prosecution witness. The learned Judge considered the evidence on record. He disbelieved the victim and her mother's evidence, because according to him, they supported the Appellant because of their close relationship. The learned Judge relied on the DNA Report which shows that the Appellant was the biological father of the product of conception. Based on these observations, he convicted and sentenced the Appellant as mentioned earlier.

5. The victim was examined as PW-1. She deposed that she was residing with her father, mother and sister. She did not go to school. Her parents were doing agricultural work in the field of Ramesh Naik. The Appellant was her father. According to her, nothing had happened and that her father had not committed any act with her. He was involved in a false case but she could not say who has involved him in a false case.

Since she did not support the prosecution's case, learned A.P.P. was permitted to cross-examine her. The contradictory portion in the police statement was read over to her. The said statement was treated as the F.I.R. She denied her signature on that document. She denied having made such statement implicating her father. She denied that she had gone to Medical Officer and denied she came to know that she had remained pregnant. She accepted the suggestion that, since her father was in jail, wanted to get him released. She denied the suggestion that the Appellant was her step-father. The contradictory portion from her statement before the Police is in consonance with the prosecution's case. Recording of those portions in the police statement

was proved through the evidence of the Police Officer Bharti Bhalerao-PW-5.

6. PW-2 was the mother of the deceased. She deposed that she could not tell the age of the victim. According to her, there was a quarrel between herself and the Appellant and therefore, she had filed the case against him. The Appellant had not committed any act with the victim. However, she admitted that the victim was attending her school at Nipani Pimpalgaon and that she was studying in the 10th standard.

Since she did not support the prosecution's case. She was cross-examined. The contradictory portion from her police statement was brought to her notice. She could not explain as to why the fact mentioning that when she was not at home, the Appellant took the victim to the agricultural field and committed rape on her was found in her statement. She denied the statement made by her about taking the victim to a doctor who gave the opinion that the victim had become pregnant. The same witness i.e. PW-2 was also examined by

the Appellant as his only defence witness. She deposed in her evidence as a defence witness that the Appellant was her husband. They were residing together at Nipani Pimpalgaon. The Appellant quarreled with her under the influence of liquor. Because of that quarrel she had lodged the present case. The victim was her daughter. The victim was married at the time of her deposition. There was no dispute between herself and her husband i.e. the present Appellant. She had no complaint against him in respect of allegations against the Appellant. On this occasion also, this witness was cross-examined by the learned A.P.P.. She admitted that the Appellant was the only earning member in the family and they wanted him to come out of the jail but she denied the suggestion that she was deposing false to save the Appellant from the sentence. The statement of this witness recorded by the Police dated 10/02/2019 had a different story to tell. The portions of statements which were contrary were brought to her notice were required to be proved through the evidence of PW-14-Ambadas More, Police Inspector. However, her contradictory portion from her police statement were not proved through the evidence of the officer recording her statement. The learned A.P.P. should have taken

precaution to get those contradictory portions from her police statement, proved through evidence of the Investigating Officer.

7. PW-4-Ramesh Naik had an agricultural land. The Appellant, the victim and the Appellant's wife were residing together in this witnesses farmhouse. On 09/02/2019 PW-2 informed this witness that the victim had become pregnant because of the act of the Appellant. PW-2 needed money to take the victim to Civil Hospital. Subsequently, the F.I.R. was lodged.

In the cross-examination, he admitted that the Appellant had taken Rs.20,000/- from him and that there were frequent quarrels between the Appellant and his wife i.e. PW-2 but he denied knowing the reason of their quarrel. He also admitted that the Appellant was addicted to liquor but he denied that the Appellant's wife used to complain to this witness about the Appellant's behaviour. He denied the suggestion that PW-2 wanted to teach a lesson to her husband and therefore with the help of this witness she had lodged false complaint.

8. PW-5-Bharati Bhalerao, Police Constable, was attached to Saykheda Police Station. On 09/02/2019, she was directed by her superior to accompany him to the Civil Hospital, Nashik. The victim gave her statement in the presence of this witness. In that statement, she had described how the Appellant had taken her to an agricultural field and had committed rape on her resulting in her pregnancy. The contradictory portions from her statement before the Police which the PW-1 had denied in her deposition were proved through this witness. Those portions were marked as Exhibits-14, 15 and 16.

9. PW-6-Sanjay Bagul, Police Hawaldar, had registered the offence vide C.R. No.32 of 2019 at Saykheda Police Station which is produced on record at Exhibit 18.

10. PW-7-Manik Patil, was Head Master. He produced school record before the Court. He produced the school leaving certificate of the victim which is on record at Exhibit-22. As per that record, the victim's date of birth was 03/11/2002. He was working as a Headmaster at Z.P. School at Nipani Pimpalgaon. He brought the

General Register from the School. He admitted in the cross-examination that the School Authority had not verified the date of birth from her Birth Certificate. The school leaving certificate shows that the victim was studying in that school from 01/08/2011 and she left the school on 01/05/2016. It shows that the victim-PW-1 had falsely deposed that she had not gone to any school. She clearly wanted to save the Appellant.

11. PW-3-Narayan Nikole was a Medical Practitioner having B.E.M.S. degree. On 04/02/2019, the victim came to his clinic with her mother. He conducted the urine test and confirmed that the victim was pregnant. There is hardly any dispute that the victim was pregnant because subsequently, she had undergone the procedure for medical termination of pregnancy.

12. PW-8-Dr. Dhanashri Patil, had carried out the procedure of medical termination of pregnancy. She was working as a Medical Officer in the Gynec Department of Civil Hospital, Nashik. She produced the case papers in respect of PW-1. On 09/02/2019, the

victim i.e. PW-1 was found to carry pregnancy of 13 weeks and 3 days. The pregnancy was medically terminated on 17/02/2019. PW-8 had extracted PW-1's blood placenta and had taken samples from the foetus for analysis. The sample was packed and given in the custody of police.

In her cross-examination, she stated that Police prepared panchanama of the sample extracted by her. At the time of giving letter for sample, the police had provided the kit containing two small test tubes for collecting the blood samples but since the DNA sample required a big container it was taken from the hospital. This sample was handed over to the Police on 19.02.2019. After extracting the blood for DNA samples, it was packed and preserved in refrigerator. She denied the suggestion that the medical termination of pregnancy procedure was not conducted in her hospital.

13. PW-9-Sandeep Shewale, Police Constable had carried the samples to the C.A. Laboratory, Nashik on two occasions. On 16/02/2019, he carried nine articles to the C.A. Laboratory at Nashik.

On 20/02/2019, he carried other articles including samples of the foetus, blood sample, a closed sealed envelop and two tubes to the C.A. Laboratory at Nashik.

14. PW-10-Dr. Nirmala Gaikwad was another Doctor who had confirmed the pregnancy of PW-1 on 12/02/2019.

15. PW-11-Sau Vaishali Mahajan is an important witness. She was working as Asstt. Chemical Analyser in C.A. Laboratory, Nashik. Her laboratory had provided two kits for extracting DNA samples. On 16/02/2019, they received a letter from Saykheda Police Station along with one sealed plastic container which was having blood sample of the Appellant. On the same day, she started analysis of that sample and DNA profile of the Appellant was prepared. On 20/02/2019, their office received two more plastic containers having blood of PW-1 taken in DNA kit and the sample of the aborted foetus. Their DNA profile was also prepared. Then she compared all the three DNA profiles and concluded that the DNA profile of the Appellant matched the obligate paternal alleles presented in aborted foetus at all 15 STR

loci. Similarly, PW-1's DNA profile matched obligate maternal alleles presented in aborted foetus. Thus, she concluded and opined that the Appellant and PW-1 were the biological parents of the aborted foetus. The report is produced on record at Exhibits 49 and 50.

In the cross-examination, she stated that the kit was prepared in the laboratory. It was not branded. She denied the suggestion that the samples if forwarded belatedly would result in wrong conclusion.

16. PW-12-Dr. Yogita Patil had conducted the Ossification test of the victim-PW-1 and reached the conclusion that her radiological age was between 14 to 16 years. That report is produced at Exhibit-57.

In the cross-examination, she deposed that there was margin of only two years in determining the age.

17. PW-13-Sangita Giri, P.S.I, had conducted the spot panchanama in the field of Ramesh Naik. It is produced on record at Exhibit-28. She denied the suggestion that the spot was not shown by

PW-1. The prosecution produced the photographs of the proceedings of conducting spot panchanama.

18. PW-14-Ambadas More, Police Inspector, was the first Investigating Officer. The victim's statement was recorded in his presence. He also endorsed recording of her statement and the portion marked in her statement which was proved by PW-5-Bharti Bhalerao at Exhibits-14, 15 and 16. He arrested the Appellant. He collected all the samples mentioned hereinabove. He forwarded the victim and the PW-2 for recording her statements under Section 164 of Cr.P.C. Though, statements were produced on record however, the prosecution cannot take advantage of these statements because those statements were not brought to the notice of witnesses i.e. PW-1 and PW-2. He had caused the samples to be collected and then had forwarded the samples for chemical analysis.

In the cross-examination, he admitted that he could not find the details of the victim's real father. He denied the suggestion that, the DNA sample was deliberately kept in the police station and that it

was tampered.

19. PW-15-Ramchandra Karpe, A.P.I. was another Investigating Officer. He had seized the Appellant's motor-cycle. He had received the C.A. Report from the laboratory and he has submitted the chargesheet before the Court.

20. PW-16-Madan Kahandal, Police Constable had videographed recording of the statement of the victim in the Civil Hospital.

21. This is the evidence laid down in this case.

22. Learned Counsel for the Appellant made the following submissions:- The age of the victim is not proved. The prosecution has failed to prove that she was minor. Though the prosecution has examined the headmaster of the school, the said witness PW-7 has relied on the school Register. There is no evidence as to how the entries were made in the school Register and what was the basis of making those entries. The Birth Certificate is not available therefore,

the age of the victim is not proved. He further submitted that the most important evidence in this case was that of the victim-PW-1 but she had not supported the prosecution case. Even her mother who was examined as PW-2 as well as DW-1, had not supported the prosecution case. In fact she has supported the Appellant's case that he has not committed the offence and that he was falsely implicated because of his quarrel with this witness. There is delay in lodging the F.I.R. The incident had taken place over a period of Diwali 2018 upto 31/01/2019 and the F.I.R. is lodged on 09/02/2019. This delay has remained unexplained.

23. The prosecution has not proved that the blood sample of the Appellant was collected by taking necessary precautions and by following the proper procedure. Therefore, the DNA analysis based on this sample is not reliable. He further submitted that in any case, the learned Judge erred in awarding the sentence of life imprisonment which was upto the natural life of the Appellant. He submitted that the period of offence ended on 31/01/2019 whereas the Section 6 of POCSO Act was amended with effect from 16/08/2019. Only from

that day, the sentence was made upto to life imprisonment which would mean imprisonment for remainder of natural life. Before that, the sentence was minimum 10 years extending to the period ordinary imprisonment for life. He submitted that therefore, the learned Judge acted beyond the scope of Section 6 of POCSO Act. Although Sections 376(2)(f) and 376(2)(n) provides for imprisonment for life which was remainder of natural life, however, the learned Judge has specifically stated in the operative part that though the Appellant was convicted under Sections 376(2)(f) and 376(2)(n) of IPC and Section 5(j)(ii) read with Section 6 of POCSO Act, 2012. The Appellant was sentenced under Section 6 of POCSO Act, 2012 and therefore, the learned Judge could not have sentenced him to suffer imprisonment for life which was to mean imprisonment for remainder of his natural life. The learned Judge ought to have otherwise clearly held that the sentence was imposed under Sections 376(2)(f) and 376(2)(n) of IPC. This is a serious error which needs to be corrected. He submitted if the offence is held to be proved, the leniency be shown in sentencing the accused as the victim had not supported the prosecution case.

24. On the other hand, the learned A.P.P. as well as learned Counsel for the Respondent No.2-Victim submitted that though PW-1 has not supported the prosecution case, her F.I.R. i.e. the statement before the Police was contradictory to her deposition. The said statement clearly supported the prosecution case. The recording of her statement was videographed and contradictory portions are proved through the evidence of the police officers who had recorder her statements. It is quite clear that, she is trying to support her step-father at the behest of her mother or on her own; considering the close relationship. Even PW-2 or the DW-1 i.e. the wife of the Appellant has not supported the prosecution's case for the same reasons. Both of them further submitted that the most important circumstance in this case is the DNA Analysis Report which conclusively proves that the Appellant is the natural father of the foetus. The victim i.e. PW-1 was the mother. This establishes the fact that the Appellant had committed rape on the victim. They further submitted that the school record shows that she was about 16 years of age during the period of commission of offence. There is no reason to disbelieve the said documentary evidence. Even otherwise, the

prosecution and the investigating agency had taken care to subject PW-1 to undergo ossification test. The said test also reveals that her age was around 16 years at the time of commission of the offence. The prosecution has thus, proved all the necessary ingredients of the offences and sufficiently proved the prosecution case through the evidence.

25. We have considered these submissions. Though PW-1 has not supported the prosecution case, the police officers who recorder her statement have proved the contradictory portions from her statements recorded by them. In that statement, she had described in detail how the Appellant had established forcible physical relation with her on more than one occasions. This act resulted in PW-1 getting pregnant. The Medical Officers viz PW-3, PW-8 and PW-10 have led cogent evidence to show that not only PW-1 was pregnant but she had undergone the procedure of medical termination of pregnancy. PW-1 has not given plausible explanation as to how she became pregnant. On the other hand, her statement which is stated in the F.I.R. shows that it was none other than the Appellant who was responsible for her

pregnancy. PW-1's statement was recorded by the police and the entire process was videographed. It is not possible to believe that PW-1 had not given the statement before the police, therefore, it can safely be observed that PW-1 herself had given the F.I.R. blaming the Appellant as the offender. Those allegations were corroborated by the fact that she had become pregnant and had to undergo medical termination of pregnancy.

26. PW-1 quite clearly tried to save the Appellant. She denied even going to the school which is falsified by the evidence of PW-7-headmaster. He has produced the school record including the school leaving certificate which show that PW-1 was studying in that school from 2011 upto 2016.

27. There is no substance in the arguments of learned Counsel for the Appellant that the Prosecution has failed to prove the age of the victim. We have no reason to disbelieve the school record. It cannot be said that the school record was manipulated to implicate the Appellant falsely. The School Register was maintained in the ordinary course of

business. There was no reason to enter false date of birth. Her age was around 16 years at the time of offence. It is corroborated by the ossification test conducted by PW-12-Dr. Yogita Patil. This evidence shows that PW-1 is not a truthful witness. She is trying to save her step-father i.e. the Appellant. She was below 16 years at the time of incident. Prosecution has established these basic facts.

28. One of the most important piece of evidence in this case is in the nature of DNA analysis. At the first instance, the blood sample of the Appellant was collected on 11/02/2019. The sample extract form is produced at Exhibit-32. It bears the signatures of three witnesses and it is signed by the medical officer. The said document is admitted by the defence and hence it was produced on record. Therefore, it is clear that the defence had not raised any doubt regarding collection of blood sample of the Appellant. The said sample was sent for DNA testing through PW-9 on 16/02/2019. Subsequently, the medical termination of pregnancy was carried out. The blood sample of PW-1 and of the foetus was collected and sent to the laboratory on 20/02/2019. PW-11- Sau Vaishali Mahajan is an important witness.

She has carried out the DNA analysis. Her evidence shows that the DNA analysis reveals that the Appellant and PW-1 were the biological parents of the foetus. There is no challenge to this piece of evidence. Thus, the prosecution has proved that the Appellant was the biological father of the foetus of PW-1. Therefore, the prosecution has proved that he was the offender in this case.

29. Considering all these circumstances and evidence together, we are of the opinion that the prosecution has proved its case beyond reasonable doubt. We have seriously considered the submissions in respect of the sentencing of the accused. Though the Appellant is convicted under Sections 376(2)(f) and 376(2)(n) of IPC as well as Section 5(j)(ii) read with Section 6 of POCSO Act, 2012 however, the operative part quite clearly mentions that he was sentenced under Section 6 of the POCSO Act, 2012, and was sentenced to suffer rigorous imprisonment for life which was to mean imprisonment for remainder of his natural life.

30. It is necessary to note here that under Sections 376(2)(f) and

376(2)(n), the punishment provided was not less than 10 years but which could extend to imprisonment for life which would mean the imprisonment for the remainder of that persons natural life. In this case, the learned Judge could have very well sentenced the Appellant under Sections 376(2)(f) and 376(2)(n) of IPC and could have sentenced him to suffer imprisonment for the remainder of his natural life, but the learned Judge chose to sentence him only under Section 6 of POCSO and in that case, in our opinion he has committed an error. The Section 6 of POCSO was amended with effect from 16/08/2019. The said Section as it stands today provides for punishment of not less than 20 years but it could extend to imprisonment for life which would mean imprisonment for the remainder of natural life of that person. However, this amendment was brought into effect on 16/08/2019. The period of offence in this case is between Diwali 2018 upto 31/01/2019. The period of offence was prior to the amendment therefore, the punishment provided under Section 6 of POCSO as it stood prior to the amendment of 16/08/2019 will have to be taken into consideration. In that case, the punishment was not less than 10 years but which could extend to imprisonment for life. There is no

reference to the imprisonment for remainder of the natural life of the accused and the minimum sentence was 10 years. Under Sections 376(2)(f) and 376(2)(n) of IPC also the minimum sentence provided is 10 years. In this view of the matter, we are inclined to modify the sentence.

31. Certain factors can be taken into consideration for reducing the sentence. The Victim-PW-1 and PW-2 have not supported the prosecution's case. The Appellant was in custody. There was no question that he could have exerted pressure but they on their own tried to save the Appellant. The Appellant is continuously in custody since February, 2019. Even during the period of spread of Covid-19, the Appellant remained in custody without any benefit. Considering these factors, the sentence can be reduced to a certain extent. However, looking at the close relationship between the parties, the offence is serious therefore, sentence more than the minimum sentence provided under those provisions will have to be imposed on the Appellant. Therefore, we are inclined to sentence the Appellant to suffer rigorous imprisonment for 15 years and not the minimum

sentence of 10 years. Accordingly, the following order.

ORDER

(i) The Criminal Appeal No.180 of 2023 is partly allowed.

(ii) The conviction of the Appellant under Sections 376(2)(f) and 376(2)(n) of IPC and under Section 5(j)(ii) read with Section 6 of POCSO Act, 2012 is upheld. However, the sentence of rigorous imprisonment for life which was till the remainder of the natural life is set aside. Instead, the Appellant is sentenced to suffer rigorous imprisonment for 15 years. The sentence of payment of fine of Rs.10,000/- and in default sentence to suffer rigorous imprisonment for three months is maintained.

(iii) The Appellant is granted set-off under Section 428 of Cr.P.C.

(iv) Accordingly, the Criminal Appeal No.180 of 2023 is disposed of.

(v) In view of disposal of Appeal, the connected Interim Application No. 4672 of 2024 is also disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)