

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

CRIMINAL APPEAL NO.273 OF 2023

Bhikan Nazir Pinjari	Appellant
Versus	
The State of Maharashtra	
and another	Respondents

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WITH
INTERIM APPLICATION NO.2058 OF 2025
IN
CRIMINAL APPEAL NO.273 OF 2023

Mr. Nitesh S. Nevshe, Advocate (appointed through Legal Aid) (Through V.C.)
a/w Shweta N. Nevshe, for the Appellant.

Ms. Supriya Kak, APP for the Respondent No.1-State.

Ms. Lakshmi Raman, Advocate (appointed through Legal Aid) for the
Respondent No.2

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

DATE : 09th JANUARY, 2026

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

1. The Appellant has challenged the judgment and order dated 30.4.2022 passed by the learned Additional Sessions Judge-1, Niphad, District-Nashik in Sessions Case No.46/2017. By the impugned judgment and order, the Appellant, who was the original accused No.1, was convicted for commission of the offences punishable under Sections 302 and 363 of IPC. He was sentenced

to suffer RI for five years and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer further RI for six months for the offence punishable under section 363 of IPC.

He was sentenced to suffer life imprisonment and to pay a fine of Rs.25,000/- and in default of payment of fine to suffer further RI for one year for the offence punishable under Section 302 of IPC. He was acquitted from the charges of commission of offence punishable under Section 8 of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act'). He was granted set-off under Section 428 of Cr.PC.. He was put under arrest from 7.7.2017.

2. The Appellant's mother was the original accused No.2. She was acquitted from the charges of commission of the offences punishable under Section 109 read with Sections 363, 302 of IPC and under Section 17 of the POCSO Act.

3. Heard Mr. Nitesh Nevshe, learned appointed counsel for the Appellant, Ms. Supriya Kak, learned APP for the Respondent No.1-State and Ms. Lakshmi Raman, learned appointed counsel for the Respondent No.2.

4. The prosecution case is that the deceased in this case

was a six year old boy. On 25.6.2017, his father (PW-1 – Lukman Pinjari) returned home from his work. The deceased wanted new clothes. PW-1 Lukman Pinjari went to the market to buy the clothes. When he returned home at around 8.30 p.m., the boy was not found either in the house or in the vicinity. Therefore, they took search for him. Since he was not found till 11.00 p.m., PW-1 went to Pimpalgaon police station and lodged his FIR under Section 363 of IPC vide C.R. No.I-89/2017 against an unknown person for abduction of his child. After lodging of the FIR, he returned to his house. He and the neighbours took search for the missing boy. According to the prosecution case, the Appellant's house was in the vicinity. It was locked. The Appellant's mother (original accused No.2) was sitting outside. The neighbours wanted to take search of the house, but, she told them not to enter the house and not to break the lock as the Appellant would get angry. But, PW-1 and others got suspicious. They broke open the lock and entered the house. They found that the missing boy was wrapped in a mattress. He was unconscious. He was taken to the hospital but he did not survive and he was declared dead. The investigation continued. The postmortem notes showed that the deceased had

died because of asphyxia due to smothering.

5. The spot panchnama was conducted. Some chocolate wrappers, chewing gums and chocolates were found at the spot. The articles were seized. The statements of the witnesses were recorded. The articles were sent for chemical analysis and at the conclusion of the investigation the charge-sheet was filed. The case was committed to the Court of Session.

6. During the trial, the prosecution examined seventeen witnesses including the parents of the deceased, the neighbours, the panchas, the medical officers and the investigating officers. The two main witnesses were on the point of 'last-seen together' theory and the Appellant's conduct of locking his house when the search was undertaken for the missing boy. The defence of the Appellant was of total denial. According to him, he did not reside at the place where the boy was found. He resided at a distance of 3 Kms from the house where the boy was found. In short, he disassociated himself from the house where the boy was found.

7. The learned Judge relied on the prosecution evidence. He accepted the theory of the deceased having seen together with the Appellant shortly before the incident. The learned Judge also

relied on the evidence of the witness who had seen the Appellant locking the door and going away. The learned Judge then referred to Section 106 of the Evidence Act and observed that the Appellant had failed to discharge the burden of proving the facts which were within his exclusive knowledge. Based on all these circumstances, the learned Judge convicted and sentenced the Appellant. However, the learned Judge acquitted the original accused No.2 because according to him, the prosecution had failed to prove that the original accused No.2 had in any manner helped the Appellant in commission of the offences or in saving him from any allegation.

8. The background of the case and the initial part of the boy going missing is deposed by PW-1 and his wife. PW-1 Lukman Pinjari deposed that he had three daughters and one son. The incident took place on 25.6.2017. On that day, he returned home from his work at about 8.00 p.m.. At that time, his son asked him to get new clothes for him. PW-1 then went to the market to buy the clothes and returned home at around 8.30 p.m.. His son was not found in the house. He was told that his son was playing outside the house but PW-1 could not find him and, therefore, they

searched for his son. He was not found. PW-1 went to Pimpalgaon police station and lodged his FIR which is produced on record at Exhibit-24. When he returned home from the police station, his relatives and neighbours had gathered at his house. They helped him in searching his son. They found that the original accused No.2 i.e. the Appellant's mother was sitting in front of the Appellant's house which was locked. PW-1 requested her for allowing her to enter the house. He asked her to open the lock but she refused. Therefore, PW-1 and others forcibly broke open the lock and entered the house. They found PW-1's son rolled inside a mattress. There was froth oozing from the mouth and his heart-beat was low. He was unconscious. PW-1 and others took him to the hospital. He was sent to Civil Hospital, Nashik by the police but the doctors at the Civil Hospital, Nashik declared him dead. PW-1 deposed that one day prior to the incident when he returned home, he had seen that his son was at the house of the Appellant. The Appellant had put his hand inside PW-1's son's pant and was touching his private parts. At that time, PW-1 had scolded the Appellant and had taken back his son to his house. He further deposed that the date of birth of his son was 3.7.2011. There is

hardly any dispute about his date of birth and in any case the prosecution has proved his date of birth through the birth-certificate produced by PW-12 Lingam Jangam, who was the Village Development Officer. PW-1 further deposed that he had shown the spot of incident to the police i.e. the place from where his son went missing. It was the *Ota* in front of his house and in front of house of the Appellant. He identified his son's clothes.

In the cross-examination, he stated that the Appellant was married earlier to PW-1's niece but the Appellant had performed another marriage and he was residing at Pimpalgaon with his second wife. He could not say as to whether the house at Islampura was in the name of the Appellant. There are some minor contradictions from his FIR. But it must be noted that at that time, the priority was to report to the police that his son had gone missing and that fact is clearly mentioned in the FIR. He admitted that when he found his son he did not immediately inform the police about the same and in the hospital he did not tell anyone or to the police that when they had gone to the house of the original accused No.2, she was present outside and that the house was locked. He had not lodged any report about

the objectionable behaviour of the Appellant on the previous day of the incident. He could not explain as to why this fact was not mentioned in his FIR. He further stated that, on the date of incident the Appellant was assaulted and he was hospitalized at Civil Hospital. He denied the suggestion that since the Appellant had married another woman and was not cohabiting with PW-1's niece, PW-1 had lodged this report holding a grudge against the Appellant. The FIR produced at Exhibit-24 shows that it was lodged at 11.45 p.m. on 25.6.2017. It was lodged against an unknown person on the allegation that PW-1's son was abducted. Thus, the FIR was mainly regarding his son's abduction and there could not have been any more details. The boy was found subsequently. It is also understandable that in that situation PW-1 would be concentrating on reporting missing of his son and not giving details about other facts. Hence, we are not impressed with the argument that there were omissions and contradictions from his FIR compared to his deposition.

9. PW-3 Shabana Pinjari was the mother of the deceased. Her evidence is exactly on the same lines as that of PW-1. There is one minor omission brought out on record by the defence that she

had not stated before the police that the original accused No.2 did not allow them to open the lock. But in the context of the case it is quite a minor omission, but, that was also in respect of the original accused No.2 who is acquitted.

10. PW-2 Deepak Kuyate was a pancha for the spot panchnama. He deposed that he was called by the police attached to Pimpalgaon police station to Islampura in Pimpalgaon Baswant on 25.6.2017. They went to the house of the Appellant. One Tausif Pinjari had shown the house. It was locked. They opened the lock and entered the house. They found that there was one underwear on the bed. There was one waist belt. One chewing-gum was stuck to the bed. There were four chocolates on the mat. All the articles were seized. They were produced in the Court. They were identified by PW-2.

In the cross-examination he deposed that the house was locked and Tausif Pinjari had opened the lock with a key. He further admitted that since he was a Government servant, the police frequently called him to act as a pancha. He further admitted that he did not see any documents to confirm that the house belonged to the Appellant but Tausif who was a relative of

the Appellant was present there and he had informed that the house belonged to the Appellant.

The spot panchnama at Exhibit-32 corroborates PW-2's evidence. There is a reference to all the articles found at the spot.

11. PW-4 Rafique Pinjari was a pancha in whose presence the clothes of the deceased and the clothes of the accused were seized. Apart from the clothes, the wrappers of chocolates and a piece of beedi were also seized in his presence. Those two articles were not mentioned in the spot panchnama. They were produced by one Dr. Smt. Patil as can be seen from the evidence of the first investigating officer PW-13 Bipin Shevale. The prosecution has not examined Dr. Smt. Patil, therefore, we are ignoring the seizure of articles i.e. the beedi and wrappers of chocolates. As far as the clothes of the accused are concerned, they were seized on 7.7.2017. There were blood stains on the shirt but the evidence shows that the Appellant was also assaulted and he was hospitalized. Therefore, seizure of his clothes may not be a relevant piece of evidence in this case.

12. PW-6 Asif Mansuri was another pancha in whose presence a panchnama was made of the *Ota* in front of the house of

the informant from where PW-1's son went missing. That spot was shown by PW-1. The panchnama is produced on record at Exhibit-41. This evidence may not be of a much importance. It is undisputed that the boy went missing from outside his house.

13. PW-7 Dr. Dhanawate was the doctor to whom PW-1's son was taken first.

14. PW-8 Dr. Anand Pawar had conducted the postmortem examination. The date of postmortem in this case i.e. 26.6.2017 is undisputed. The postmortem examination conducted by PW-8 shows that the deceased had two surface wounds as follows :

- 1] Reddish, bluish contusion of size 2 x 2 c.m. was present over inner aspect of lower lip with swelling; and
- 2] Laceration of size 2 x 0.2 x 0.02 was present over inner aspect of lower lip situated at junction of lip with gingival.

. The cause of death was mentioned as Asphyxia due to smothering which was sufficient to cause death in ordinary course of nature.

The postmortem examination was conducted at 9.00 a.m. on 26.6.2017 and the time since death was between 12 hours to 24 hours, which matches with the time since when the boy went missing and since when the dead body

was found. The postmortem notes are produced on record at Exhibit-51.

PW-8 Dr. Anand Pawar had taken the anal swab to find out whether there was any sexual assault on the deceased. However, the medical officer did not find any evidence of sexual assault and, therefore, the Appellant was acquitted from the charges of commission of the offence punishable under the POCSO Act.

15. PW-11 Rama Rasal was a pancha, in whose presence the panchnama of the house of the Appellant and the *Ota* in front of his house was conducted on 29.6.2017. This panchnama is not of much significance.

16. PW-15 Sunil More had drawn the sketch of the spot which shows that the house of the Appellant and of PW-1 were in the vicinity.

17. PW-5, PW-9 and PW-10 are important witnesses in this case. PW-5 Saida Mansuri ran a small shop at Islampura. She sold biscuits and chocolates. She deposed that on 25.6.2017 at 7.30 p.m., the Appellant came to her shop and purchased chewing-gum and chocolates. At about 10.00 p.m. she saw a crowd in the locality.

She came to know that PW-1's son was missing and that the crowd was searching for him. They decided to take search of the houses. When they reached the Appellant's house, they found that it was locked and the original accused No.2 did not allow anyone to open the lock but they broke open the lock and entered the house and saw that the boy was rolled in the mattress. The chewing-gum and the chocolates purchased by the Appellant were produced in the Court at Article 5. She identified them. She also identified the wrapper produced at Article 8.

In the cross-examination, she stated that the Appellant and his mother were her relatives. She denied the suggestion that since she had quarreled with them she was not on talking terms with them. She admitted that except her bare words she had no evidence to show that the Appellant had purchased the chocolates from her shop at 7.30 p.m. on the day of the incident. There were minor omissions from her police statement as she had not stated that the accused No.2 was preventing them from opening the lock. However, there is no contradiction or omission that the deceased was found inside the house wrapped in the mattress. Her evidence is very important in the context of the case which we shall refer to

in the following discussion.

18. PW-9 Arif Shaikh is another important witness. He deposed that he had to collect some money from one Bhikan Pinjari. There was some argument advanced regarding the name of that person whom he referred to as Bhikan Pinjari. From the police statement, it is brought on record that there were two persons by the name Bhikan Pinjari; one was Bhikan Gani Pinjari and the other was Bhikan Nazir Pinjari. The Appellant is Bhikan Nazir Pinjari. PW-9 is not cross-examined on this aspect. The investigating officer was cross-examined. It was accepted by the investigating officer PW-15 that there were two such persons but he clarified that through inadvertence the police statement mentions the name of Bhikan Gani Pinjari to whom this witness had approached instead of recording correctly that he had approached the Appellant whose name was Bhikan Nazir Pinjari. This witness PW-9 had further stated that the deceased was standing near Bhikan Pinjari. PW-9 was told to come later. At about 10.30 p.m. when he returned he saw the crowd near the house of the Appellant and then he narrated the same incident as to how the boy was found from that house.

In the cross-examination, he clarified that there was no other person residing in the locality by the name Bhikan Pinjari except the accused who appeared on video screen on that date. He identified the Appellant as the same person. Thus his evidence is quite clear that he had approached the Appellant for asking for his money and at that time he had seen the deceased near the Appellant. The defence tried to bring out some omission from his police statement. PW-9 accepted that his police statement did not mention that the Appellant was standing in front of his house. Hence, this omission was only in respect of the *Ota* and not to the fact that the deceased was standing next to the Appellant. Therefore, his evidence is on the theory of 'last-seen together'. The other omissions are quite minor in the context.

19. PW-10 Sonu Pinjari is another important witness. At about 10.30 p.m. he received a call from one Tausif Pinjari who informed him that PW-1's son was missing. PW-10 went to Islampura. He saw a crowd in front of the Appellant's house. He saw the Appellant and his mother i.e. accused No.2 sitting on the *ota* in front of the house. He asked the Appellant to give water, upon which the Appellant told PW-10 that that he did not have

water to drink in the house. All of them had then decided to search every house. At that time, the Appellant asked this witness to sit outside the house. He locked the door and left under the pretext of going to PW-1's house. Because of his conduct, the people got suspicious and decided to enter that house. The lock was broken and the boy was found inside.

In the cross-examination, he stated that when he went to Islampura he did not meet Lukman Pinjari and till hospitalization of the boy he did not meet PW-1. He admitted that PW-1 was his relative and the Appellant was the relative of Tausif as well as PW-1. He has stated that when they took search of the boy at the house of the Appellant, PW-1 was not present but he added that he did not go to the hospital when the boy was taken to the hospital.

20. PW-12 Lingam Jangam was the Village Development Officer. He produced the birth-certificate of the deceased and also the extract of his ownership. It is produced on record at Exhibit-73 which showed that the house was in the name of Amin Najir Pinjari. The defence tried to take advantage by saying that there was no entry in the name of Amin Najir Pinjari. He denied the

suggestion that there was no house in the name of the Appellant at Islampura.

21. PW-13 PI Bipin Shevale was the first investigating officer. He had carried out the first part of the investigation. He had registered the FIR. After the death of the deceased, PW-13 had conducted the inquest panchnama. He had recorded the supplementary statement of PW-1. He had conducted the spot panchnama from where the boy was found inside the house. He had seized the articles. He deposed that Dr. Smt. Patil had collected beedi butts, bed cover and chocolate wrappers from the spot but since she was not examined we are ignoring that part of the evidence.

In the cross-examination, he admitted that when the boy was found in the house he did not draw any panchnama or record the statements of any witnesses. He further deposed that he had issued a letter at Exhibit-78 showing that the Appellant was assaulted badly by unknown persons due to which he was hospitalized in Civil Hospital, Nashik.

22. PW-14 PI Vasudeo Desale was the second investigating officer who had conducted the rest of the investigation. He had

arrested the Appellant when he was discharged from the hospital on 7.7.2017. He proved the omissions from the police statements of the witnesses. He clarified that as mentioned earlier there was typing mistake in the name of Bhikan Najir Pinjari as Bhikan Gani Pinjari in respect of the evidence of PW-9 Arif Shaikh which we had referred to in the earlier part of the discussion.

23. PW-16 Dr. Thakare was examined to show that the deceased was forwarded to the General Hospital, Nashik where this witness had declared him dead. At about 4.30 a.m. on 26.6.2017 the Appellant was admitted in the same hospital due to some assault.

24. PW-17 Tausif Mansuri is another important witness. He deposed about the fact of taking search for the missing boy and finding him inside the Appellant's house. He persuaded the accused No.2 and they broke open the lock. His evidence is consistent with the evidence of PW-1 and PW-3. He denied that when he showed the house to the police he had a key of that house. Even the spot panchnama does not show that he had the key of the house.

25. Learned counsel for the Appellant submitted that all the

prosecution witnesses are relatives of PW-1 and, therefore, they are falsely implicating him. The Appellant was residing elsewhere. There is nothing to show that the house was in the name of the Appellant or that he was residing in the same house where the dead body was found. The evidence of PW-9 is not reliable. There are omissions and contradictions from his evidence to suggest that he had not seen the deceased in the company of the Appellant. Therefore, the prosecution has failed to prove the 'last-seen together' theory. PW-10 is an unreliable witness. His evidence that the Appellant had locked the house and had gone away is not substantiated or corroborated by any other evidence. PW-5 Saida Mansuri was also an interested witness because she had fought with the Appellant and his mother and, therefore, she was falsely implicating him. The prosecution witnesses were implicating the Appellant merely on suspicion. There are important omissions from the evidence of PW-5, PW-9 and PW-10. There is no incriminating C.A. report.

26. Learned APP as well as learned counsel appearing for the Respondent No.2 i.e. the victim's father submitted that the prosecution has proved its case beyond reasonable doubt. There is

strong evidence of PW-9 showing that the deceased was seen in the company of the Appellant shortly before the incident. There is evidence of PW-10 who had seen the Appellant locking the door at the time when the neighbours were trying to search for the boy. They submitted that it is not necessary that the house should stand in the name of the Appellant. It was consistently deposed by all the prosecution witnesses that it was the Appellant's house. Finding of the dead body from the Appellant's house is a strong incriminating circumstance. The Appellant has not discharged the burden under Section 106 of the Evidence Act. The evidence of PW-5 is even more important. Shortly before the incident the Appellant had bought the chocolates and chewing-gums to lure the deceased boy to his house. Some chocolates and chewing-gums were found inside the house of the Appellant at the time of spot panchnama. This is yet another strong incriminating circumstance.

27. We have considered these submissions. There are certain undisputed facts in this case. First of all, the age of the deceased is not disputed. In any case, the birth certificate of the deceased is produced on record by PW-12 which shows that the deceased was barely six years of age. Secondly, there is no evidence

of any sexual assault and the learned Judge has rightly acquitted the Appellant from the charges of commission of offences under the POCSO Act. The postmortem notes show that the deceased had died because of asphyxia due to smothering. There is no serious challenge to this cause of death. There were injuries inside the lips of the deceased that would indicate that somebody had tried to gag the mouth of the deceased and in the process had caused death due to asphyxia because of smothering. All these facts are undisputed.

28. The main question would remain whether the Appellant can be held guilty for committing this offence. The most incriminating circumstance in this case is that the boy was found unconscious inside the house of the Appellant.

29. Though the learned counsel for the Appellant had submitted that there is no proof of ownership of that house vis-a-vis the Appellant, the ownership of the house may not be a conclusive factor to establish that the Appellant was using that house. The extract produced on record shows that the house belonged to one Amin Najir Pinjari. The name of the Appellant is Bhikan Najir Pinjari. Be that as it may, all the witnesses examined by the prosecution who were residing in the vicinity have consistently

deposed that it was the Appellant's house meaning thereby that the Appellant was using that house. The accused No.2 was found sitting outside the house. The house was locked. PW-10 had in fact seen the Appellant locking the house and going away. We do not see any reason to disbelieve PW-10. Thus, it is sufficiently established by the prosecution that the house was under control of the Appellant. PW-10 Sonu Pinjari's evidence is important in this context. As soon as the neighbours started searching for the boy, under some pretext, the Appellant locked the house in front of this witness and went away. This witness was very much present there and when the lock was broken and the crowd entered the house, the boy was found wrapped in the mattress inside the house. This is one of the most incriminating circumstances against the Appellant which the prosecution has proved beyond reasonable doubt.

30. Finding of the boy inside the house in an unconscious condition was an incriminating circumstance which was within the exclusive knowledge of the Appellant. Therefore, the burden was on him under Section 106 of the Evidence Act to explain this fact. The Appellant has failed to discharge that burden. The Appellant

has given a vague answer in the examination under Section 313 of Cr.P.C. and has stated that he was not residing in his house but was residing 3 kms away. This explanation is not enough. The Appellant has not discharged his burden and has not explained as to how this boy was found inside the house which was under his control.

31. PW-9 Arif Shaikh was examined on the theory of the deceased having been last seen together with the Appellant. He has deposed that he had gone to ask for his money. When he referred to Bhikan Pinjari he meant none other than the Appellant. He was not cross-examined by the defence regarding the confusion of Bhikan Gani Pinjari and Bhikan Najir Pinjari. He has very emphatically stated that there was no other person but the Appellant when he referred to Bhikan Pinjari. The defence had asked questions about this common name only to the investigating officer but no question in that behalf was asked to PW-9.

32. The boy was found very shortly from that point of time. Thus there is proximity of time when we consider the theory of last seen together.

33. Another important circumstance is the evidence of

PW-5 Saida Mansuri. She has stated that the Appellant had purchased chocolates and chewing-gums at around 7.30 p.m.. The boy went missing at around 8.30 p.m.. He was seen in the company of the Appellant during that period. The chocolates and chewing-gums were found from the spot inside the house. All these circumstances fit in together to form a complete chain.

34. From the discussion above, it is quite clear that the prosecution has proved each of the incriminating circumstances beyond reasonable doubt. All these circumstances form a complete chain against the Appellant ruling out any possibility of somebody else committing the offence. The learned trial Judge has considered all these aspects carefully and has reached a proper conclusion. We do not see any reason to interfere with his sound reasoning and judgment. With the result, we do not find any merit in the Appeal. It is accordingly dismissed. With dismissal of the Appeal, the connected Interim Application is also disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)

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