

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

**CRIMINAL APPEAL NO.315 OF 2023
WITH
INTERIM APPLICATION NO.2823 OF 2025**

Kalamuddin Mohammad Isteyar Ansari
alias Koail

Aged : 27 Years, Hill No.3, Kholi No.3,
Near Gati Masjid, Himalaya Society,
Ghatkopar (East), Mumbai

... Appellant

V/s.

1. State of Maharashtra
Ghatkopar Police Station,
Mumbai CR No.613/2016

2. XYZ
Hill No.3, Kholi No.3, Near Gati
Masjid, Himalaya Society,
Ghatkopar (East), Mumbai

... Respondents

Mr. O.P. Lalwani a/w Ms. Kunda Gaikwad, Mr. Gypson John, Mr. Suraj Kunchikorve and Ms. Riya John i/b Mr. Rajesh Sakhare, Advocates for the Appellant.

Mrs. Kranti Hiwrale, A.P.P. for Respondent No.1-State.

Ms. Shraddha Sawant, Appointed Advocate for Respondent No.2.

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

DATE : 2nd FEBRUARY 2026

Oral Judgment (Per Sandesh D. Patil, J.)

1) By the present Appeal, the Appellant has challenged the Judgment and Order dated 7th December 2020, passed by the learned Special Judge, under the Protection of Children from the Sexual Offences Act, 2012, at Greater Bombay, in POCSO Special Case No.120 of 2017, whereby the Appellant was convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short “**POCSO Act**”), and was sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/-, and in default of payment of fine, he was to undergo simple imprisonment for one month. The Appellant was, however, acquitted for the offence punishable under Section 10 of the POCSO Act. The Appellant was not separately sentenced for commission of offence punishable under Section 376 of the Indian Penal Code, in view of the Section 42 of the POCSO Act. The Appellant was also to pay compensation of Rs.25,000/- under Section 33(8) of the POCSO Act, within a month from the date of the impugned Order, and in default of payment of compensation, he was to undergo imprisonment of six months.

2) The case of the Prosecution is that on 9th December 2016, the daughter of the Complainant, who was four years old, was residing with her parents and siblings. It is further the case of the Prosecution that the mother used to fill water from the tap of the neighbor-Farooq. He used to give water first to one of the Complainant's neighbor, namely, Saira and thereafter, the water used to be given to the Complainant. It is the case of the Prosecution that the Complainant used to fill the water from the pipe of her neighbor-Saira. When she was called to fill the water, at that time, she sent her daughter with a pot. The daughter went along with the pot to her neighbor's house. At that time, the Accused was present at home. He called the daughter inside the house. It is the prosecution case that he forced the victim to take his private part in her mouth. The victim came frightened at home and told the Complainant. When the complainant confronted the Accused about the same, he ran away.

3) The charge was framed and the evidence was led. The Prosecution has examined 14 witnesses. The Prosecution has examined P.W.1 as the victim. Since she was eight years of age at the time of her examination, the Court had first asked her about the sanctity of the oath.

The Court was convinced that she understood the sanctity of the oath and therefore, the oath was administered to her. She stated in her evidence, about the details of her family. She stated that her mother used to fill water through the pipe from her neighbor's house. The victim further stated that the mother asked her to bring a pot from the neighbor's house, when she went there, the accused was in that home. At that time, the Accused had inserted his private part in her mouth. She further stated that she narrated the said fact to her mother and her mother told this fact to her father. After her father came, they went to lodge a report with the Police Station. She further stated that she was taken to the doctor at Rajawadi Hospital. She had also given the statement in the Court. She had identified the Accused.

In her cross examination, she stated that she used to reside near Lalubhai's house. She stated that her father was doing colouring, masonry work. She stated that she went to bring the pipe from the neighbor-Saira's house. She further stated that the neighbor used to wash clothes in front of their house. She had also stated they all used to wash clothes in front of their house. She stated that, at that time, when the incident happened, she was five years old. She stated that the said house of her neighbor where the incident took place, was about two

houses away from her house. She was specifically asked as to whether she was tutored. To this particular question, she replied that she was knowing the facts. She was also asked a question as to whether she was asked to tell all these facts in the Court, to which she specifically replied negatively and stated that she was already knowing these facts.

4) The Prosecution examined P.W. 2, her mother, who stated that she used to fill water from the house of her neighbor- Farooq. It was Farooq's tap. He used to give water first to her neighbor Saira. Thereafter, P.W-2 used to fill water from the pipe of Saira. She stated that on that relevant day, somebody asked her to fill water and hence, she sent her daughter with a pot. She went to Saira's house. At that time, the Accused, who was the nephew of Saira was present there. He called the victim inside the house. The victim came home frightened and narrated to her mother (P.W.2) that the Accused had inserted his private part in her mouth. She stated that she told this fact to her husband. They, thereafter, lodged the complaint against the Accused. The complaint was marked and exhibited through her at Exhibit 26. The victim was sent for medical examination. She handed over the clothes of her daughter to the police. She also handed over the copy of the birth certificate of the

victim to the police, the same was marked at Exhibit 27.

In her cross-examination, she stated that the house of Saira was adjacent to her house. It was a chawl, comprising of six to seven families. They all were residing in the rented premises. She stated that her daughter-victim was four years old. She stated that the Accused had told her that he had given the bottle in the mouth of the victim. However, she forgot to mention the same in her report. She denied that there was any quarrel between her and her neighbor- Saira, and therefore, she had lodged a false report.

5) The Prosecution examined P.W. 3- A.P.I. Nandini Bansode. She stated that on 10th December 2016, she recorded the statement of the informant (P.W.2). She also recorded the statement of the victim, who was four years as per her say.

In the cross-examination, she stated, she recorded the statement at 01.00 a.m. and that the victim had come to the Police Station at 00:40 hours.

6) The Prosecution examined, P.W.4, who is the father of the victim. He stated that Saira was his neighbor. He stated that he used to take water from Farooq. He stated that the water was taken through the water pipe. He also stated that Saira also used to take water from Farooq bhai. He stated that when he came back from work, he came to know through his wife that the Accused had inserted his private part in the mouth of the victim. He stated that the victim went with a pot to bring water. When she went to bring the water pipe from Saira's house, nobody was present, except the Accused. The wife of P.W.4 sent the victim with a pot to take the pipe. When the victim went there, she came back crying and she narrated the incident to his wife. Thereafter, they lodged the F.I.R.

In the cross-examination, he stated that Saira was his neighbor. He and Saira used to take the water from Farooq bhai's tap. He stated that their houses were adjacent to each other. He stated that Saira was not the owner of the pipe. She was their neighbor since last four years. He stated that he could not tell the time, when his wife went to the Accused to ask him about the incident. He stated that they went to the police station at about 10.00 p.m. to 10.30 p.m.

7) The Prosecution examined P.W. 5-Dinesh Bodake, who was the Investigating Officer. The said witness stated that he was attached to Ghatkopar Police Station and he was on night duty on 10th December 2016. At about 00:40 hours, P.W. 2-the Complainant came along with her husband and the victim. She reported that her daughter was sexually assaulted by the Appellant. WPSI-Nandini Bansode (P.W.3) had recorded the statement of the Complainant. The crime was registered under Section 377 of IPC, read with Sections 4, 12 of the POCSO Act. He stated that the WPSI-Nandini Bansode (P.W.3) recorded the statement of the victim in question and answer form. He stated that he had visited the spot and conducted the spot panchnama, which was exhibited by him and marked at Exhibit 37. He further stated that the birth certificate of the victim was tendered by her father. Her birth date is 25th July 2012. He stated that Accused was arrested. The arrest panchnama was marked at Exhibit 38.

In his cross examination, he stated that he had asked about the descriptions of the pot and the pipe. He stated that such descriptions are not given in the F.I.R. He stated that he had not recorded the statement of Farooq bhai, who supplied the water. He further stated that he had not recorded the statement of any independent witnesses seeing the

victim and the Accused on the spot. He stated he had not recorded the statement from any witness from the neighborhood to conclude that the Accused- Koil, Koyal Kalamudin and Koi Bhaiya are one and the same person.

8) After hearing the parties, the learned Trial Court held that the Prosecution proved that on 9th December, 2016, the Accused had committed rape upon the victim, aged five years, by forcefully inserting his private part in the mouth of the victim, thereby, committing offence punishable under Section 376 of the I.P.C. The learned Trial Court further held that the Prosecution had proved that the Accused had committed aggravated penetrative sexual assault upon the victim, thereby committing offence punishable under Section 6 of the POSCO Act. The learned Sessions Judge had observed that the evidence of the victim was reliable and the defence could not shake the evidence. The learned Trial Court for the reasons recorded in detail, in the Judgment and Order dated 7th December 2020 passed the impugned judgment and order.

9) We have heard the learned Counsel Mr. O. P. Lalwani for the Appellant, Mrs. Kranti Hiwrale, A.P.P for the Respondent No.1-State and Ms. Shraddha Sawant, Appointed Advocate for the Respondent No.2. We have also perused the depositions of the parties as well as the impugned Judgment and Order along with the Exhibits.

10) The learned Counsel Mr. Lalwani appearing for the Appellant submitted that there is a difference in version in the time of Complainant approaching the Police Station. He submitted that P.W. 2 stated that she along with her husband and daughter reached the Police Station at 10.00 p.m. The husband, P.W.4, however, stated that they reached to the Police Station at 10:30 p.m. He further submitted that P.W.5 has stated that the Complainant had reached the Police Station at 00:40 hours. Therefore, there are different versions of narration as to when the F.I.R. was lodged. He submitted that the seizure panchnama of clothes, was exhibited. However, the panch witnesses, were not examined. He submitted that the doctor was also not examined. He further submitted that none of the independent witnesses from the locality were examined. He submitted that the Prosecution could not prove the case beyond reasonable doubt and hence, he submitted that the Appeal be allowed.

11) The learned A.P.P as well as the learned Counsel appearing for the victim and for the respondent No.2, both submitted that the victim had immediately informed the incident to her mother. They submitted that the mother had immediately confronted the Accused. They immediately, thereafter, brought this incident to the notice of the victim's father and all of them immediately went to the Police Station. They submitted that there is no reason why a young girl of 5 years, would make a false statement. They submitted that the evidence of the Accused was trustworthy and that the evidence was not at all shaken in the cross examination. They submitted that it was not necessary to examine the panch witnesses, as nothing turned much on the spot panchnama. Both prayed for dismissing the Appeal.

12) We have heard the parties appearing for both the sides. After perusing the documents and evidence on record, as well as the impugned Judgment and Order, it would be material to consider the evidence of P.W.1. P.W. 1 had narrated the incident with clarity. She had stated as to how the Accused had committed the act. She stated that when she had told the fact to her mother and others, they all had gone to the Police Station to lodge the Complaint. She had narrated the entire incident. In

cross examination, the credibility of the witness was sought to be shaken. However, nothing has turned out in the cross-examination in favour of the accused. The specific question was asked to her, whether she was taught, as to what she has to say in the Court, to which, she answered in negative and stated that she was knowing all these facts. Thereafter, she also identified the Accused. The mother of the victim had also corroborated the incident and immediately after the incident had taken place, she had reported the same to the Police. She had initially told the same to her husband and they all went to the Police Station. The F.I.R. was duly exhibited, it was duly proved and for that purpose, the A.P.I., who had taken the said F.I.R. as well as statement of the victim, was examined. The evidence of the father also corroborates the statement of the victim as well as evidence of P.W.2 - the mother of the victim.

13) Taking into consideration the evidence of the witnesses, it is very unlikely that a small girl of five years would have any grudge against the Accused, or would concoct a false story of this nature. The statement of P.W.1 as well as P.W. 2 appear to be quite natural. They immediately went to the Police Station and the statement was lodged. The victim was

a minor girl of five years at that relevant point of time, when the incident occurred. She was eight years, when she had entered into witness box. The evidence recorded clearly shows that she had narrated the facts very clearly and without any tutoring. We therefore, find that the Prosecution had proved their case, beyond reasonable doubt, as far as offences under Section 376 of IPC and Section 6 of the POCSO Act, are concerned.

14) As far as the sentence is concerned, the amendment to Section 376 of the I.P.C., was effected on 21st April 2018. At that relevant period of time, Section 376(2)(i) was operating. Section 376(2)(i) states as under :-

(i) whoever commits rape on a woman when she is under sixteen years of age; or”

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.

15) It is pertinent to note that this section was deleted by Act 22 of 2018 and at the same time by Act 22 of 2018, more specifically, by virtue

of Section 5 of the Amendment Act, Section 376AB- Punishment for rape on woman under twelve years of age, was inserted. It is worthwhile to mention that the incident had occurred on 9th December 2016 and therefore, at that relevant point of time, Section 376(2)(i) was in force.

16) It is also important to note that Section 6 of the POCSO Act was amended with effect from 16th August 2019 by virtue of Act 25 of 2019. Before the the amendment, the minimum sentence was ten years, but which could extend to imprisonment for life and the accused will also be liable to pay fine. This in a nutshell is the position of law, which existed on the day, on which the offence was committed.

17) After perusing the evidence and carefully considering the submissions, we affirm the Judgment of the Trial Court that the Accused has committed offence under Section 376 the I.P.C. and under Section 6 of the POCSO Act. We, however, note that the Accused was only 20 years of age, at the time, when the offence had taken place. The said fact is reflected in the F.I.R. It is also important to note that the Accused was not released on bail, even during Covid-19. He is

continuously in custody since the date of his arrest from December 2016, i.e. for more than nine years. There are no criminal antecedents against the Accused.

18) The learned Counsel Mr. Lalwani, who is appearing for the Accused has produced on record copies of various certificates issued by the various Authorities, where the Appellant had appeared for examination. One such certificate is issued by Tilak Maharashtra Vidyapeeth, Pune, whereby it is certified that the Accused had participated in the programme for “analysis of the books”. The second certificate is a certificate issued by Ramchandra Pratishthan Mumbai, whereby it is certified that the Accused had participated in “Essay Competition” and the third certificate is issued by Mumbai Sarvodaya Mandal for studying the thoughts of Mahatma Gandhi, where he had successfully participated and passed the examination. All these factors considered cumulatively, would make us show some leniency towards him for the sentencing part.

19) We are therefore, inclined to reduce the sentence of the Accused.

However, taking into consideration the gravity of the offence, we are imposing the sentence which is more than the minimum sentence of ten years. In our opinion, the sentence of twelve years would meet the ends of justice.

20) We, therefore, pass the following order.

: O R D E R :

- (i) The Appeal is partly allowed.
- (ii) The conviction of the Accused under Section 376 of I.P.C. and Section 6 of the POCSO Act, *vide* the Judgment and Order dated 7th December 2020, passed by the learned Special Judge, under the Protection of Children from the Sexual Offences Act, 2012, at Greater Bombay, in POCSO Special Case No.120 of 2017, is maintained. However, the sentence of life imprisonment is set aside.

Instead, the Accused is sentenced to suffer rigorous imprisonment for twelve years and to pay a fine of Rs.1,000/- for commission of offence punishable under Section 6 of the POCSO Act. In default of payment of fine, he shall undergo simple imprisonment of one month. No separate sentence is imposed for offence punishable under Section 376 of the I.P.C., in

view of the Section 42 of the POCSO Act.

- (iii) The direction of the learned Special Court, awarding the compensation of Rs.25,000/- under Section 33(8) of the POCSO Act, is maintained.
- (iv) The set off for the period of detention already undergone during pendency of trial by the Accused be given to him under Section 428 of the Criminal Procedure Code.
- (v) A copy of the Judgment be provided to the Accused free of costs, as per Section 363(i) of the Criminal Procedure Code.
- (vi) The Appeal is partly allowed and disposed of in the aforesaid terms.
- (vii) Since the Appeal is disposed of, nothing survives in the Interim Application. The connected Interim Application is also disposed of accordingly.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)