



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 169 OF 2023

Amitkumar s/o Satyanarayan Kushwah,
Aged about 27 years, Occupation - Kacchi,
R/o Idlapur, Post – Madanpur,
Tahsil – Sikohabad, District – Firojabad
(UP), at Present R/o Durga Chowk,
Deori, District – Gondia.

.... **APPELLANT**

VERSUS

- 1) State of Maharashtra,
through Police Station Officer,
Police Station, Deori, Tahsil – Deori,
District – Gondia.
- 2) XYZ (Victim),
through Police Station Officer,
Police Station, Deori, Tahsil – Deori,
District – Gondia.
(Spl. POCSO Case No. 12/2015)
Crime No. 104/2014.

.... **RESPONDENTS**

Mr. Raju Kadu, Sunil Kulkarni and Kunal Dhoble, Counsel for the
appellant,
Ms. H.N. Prabhu, Addl.PP. for respondent No.1/State,
Ms. Radha Mishra, Counsel (appointed) for respondent No.2.

CORAM : NIVEDITA P. MEHTA, J.
DATE : 5th JANUARY, 2026

JUDGMENT :

The present appeal is preferred by the appellant/accused, who is aggrieved by the judgment and order dated 21.08.2021 passed by the

learned Special Judge (POCSO), Gondia in Special Case No.12/2015. By the said judgment, the appellant was convicted for the offences punishable under Sections 376, 354-A of the Indian Penal Code (IPC) and Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act) and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.3,000/-, in default to suffer rigorous imprisonment for one month, for the offence punishable under Section 354-A of the (IPC). The appellant was further sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default to suffer rigorous imprisonment for one month, for the offences punishable under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). In view of provisions of Section 42 of the POCSO Act, the learned Special Judge imposed alternate punishment under Section 3 read with Section 4 of the POCSO Act instead of Section 376 of the IPC.

2. The prosecution case, in brief, is that on 23.12.2014, the victim had gone to her school at about 9.30 a.m. At about 1.30 p.m., the appellant allegedly went to the school and informed the victim that her brother was admitted in the hospital. Upon receiving this information, the victim was stated to have taken permission from the class captain, Neha Parteki, and left the school premises along with the appellant on his motorcycle.

3. The victim and the appellant proceeded to Government Hospital, Deori, where the victim's mother was present with her brother. The mother asked the victim to bring warm clothes from home. Accordingly, the victim again went home with the appellant, collected the clothes, and handed them over to her mother at the hospital. The victim informed her mother that she was returning to school.

4. It is alleged that while taking the victim back, the appellant did not stop the motorcycle near the school despite the victim's request. Instead, he allegedly took her towards Keshori Lake on Shedepar Road, stopped the motorcycle, caught hold of the victim's hand, dragged her towards the forest and forcibly kissed her. In spite of protest from the victim, the appellant did not release her hand. Then the victim got her hand released and rushed towards the road. At that time, the school Peon Shri Gondhale was standing there along with some other persons.

5. The prosecution further alleged that the appellant committed sexual intercourse upon the victim inside the forest. After the victim's brother was discharged from the hospital, the victim went to Police Station, Deori, and lodged a report regarding the incident.

6. On the basis of the said report, Crime No.104/2014 came to be registered initially for the offences punishable under Section 354-A of

IPC and Section 12 of the POCSO Act. During the course of investigation, the Investigating Officer prepared the spot panchnama, seized the motorcycle, sent the victim and the appellant for medical examination, recorded statements of witnesses and forwarded the seized articles for chemical analysis.

7. Subsequently, on the basis of a supplementary statement of the victim, allegations of forcible sexual intercourse were introduced and offences under Section 376 of IPC and Section 3 read with Section 4 of the POCSO Act were added. After completion of the investigation, the charge-sheet was filed.

8. The learned trial Court framed Charge (Exhibit 3) against the appellant under Sections 376 and 354-A of IPC, Sections 3 read with 4 of the POCSO Act, and Sections 3(1)(xi) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act). The appellant pleaded not guilty and claimed to be tried.

9. The prosecution examined 21 witnesses. The statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure. The appellant denied all allegations and entered the witness box as Defence Witness No.1.

10. After appreciating the evidence on record, the learned Special Judge convicted the appellant for offences under Sections 376 and 354-A of IPC and Section 3 read with Section 4 of the POCSO Act, while acquitting him of the offences under the Atrocities Act.

11. Heard Mr. Kulkarni, learned Counsel for the appellant, Mrs. Prabhu, learned Additional Public Prosecutor for the State, and Ms. Radha Mishra, learned Counsel for the victim.

12. Submission on behalf of the Appellant :

12.1 Learned Counsel for the appellant submitted that the initial FIR dated 24.12.2014 discloses allegations only of catching hold of the victim's hand and forcibly kissing her, attracting Section 354-A of the IPC and Section 12 of the POCSO Act. It was argued that the allegation of rape was introduced subsequently by way of a supplementary statement, which amounts to a material improvement.

12.2 Learned Counsel for the appellant further submitted that the entire prosecution case rests solely on the testimony of the victim, which itself is not consistent and suffers from material improvements. It was argued that when the initial version given by the victim immediately after the incident discloses only an offence under Section 354-A of the IPC, the subsequent introduction of allegations of rape in

a supplementary statement, without any contemporaneous corroboration, renders the prosecution version doubtful.

12.3. The victim stated that the incident occurred between 3.00 p.m. and 4.00 p.m., and that she reached home between 5.00 p.m. and 6.00 p.m., when her father was present, yet she did not disclose the incident to him. Contrary to this, the father of the victim deposed that he was taken to the spot of incident and thereafter took the victim to the hospital. These contradictory versions, according to the appellant, strike at the root of the prosecution case.

12.4 It was further contended that the evidence of school teachers and staff is highly suspicious. Though they claimed to be present near the spot and waiting for the victim to come out of the forest, none of them entered the forest or raised alarm or immediately informed the police. Their statements were recorded after considerable delay, which raises a strong possibility of tutoring and afterthought.

12.5 It was further argued that the victim alleged that she was dragged for 50 to 60 meters and subjected to forcible sexual intercourse. However, the medical examination revealed no external or internal injuries on her person. The doctor admitted that hymen rupture can occur due to cycling or sports like *Kabaddi*, which the

victim admittedly used to play. It was submitted that this demolishes the prosecution's attempt to medically corroborate the allegation of rape.

12.6 The learned Counsel also pointed out that the victim claimed that the appellant was beaten by the school peon, yet no injury was found on the appellant. It was further submitted that the conduct of the victim, as reflected from her own deposition, is unnatural and inconsistent with the prosecution story. Though she claimed that she was forcibly dragged into the forest and sexually assaulted, she admittedly did not raise any alarm despite the place being accessible and despite the presence of people on the road. Further, even after reaching home when her father was present, she did not disclose the alleged incident to him, which conduct seriously affects the credibility of her version.

12.7 It was submitted that there are inconsistencies regarding the timing of the incident, as some witnesses stated that it occurred around 2.00 p.m., whereas the victim stated it occurred between 3.00 p.m. and 4.00 p.m.

12.8 Learned Counsel also submitted that the Chemical Analysis report does not support the prosecution case, as no semen or blood

stains were detected on the clothes of the victim or the appellant.

12.9 It was lastly argued that the appellant, in his deposition, stated that due to monetary disputes with the victim's brother, he was falsely implicated. It was submitted that this defence was plausible but was brushed aside by the learned trial Court without proper consideration.

12.10 It was therefore submitted that in view of material contradictions, improvements and lack of corroboration, the prosecution failed to prove its case beyond reasonable doubt. The appellant has already undergone incarceration of more than four years and six months, which exceeds the sentence for the lesser offence.

13. Submissions On Behalf Of The State And Victim :

13.1 Per contra, the learned Additional Public Prosecutor submitted that the testimony of the victim is reliable and inspires confidence. The frightened mental condition of the victim while deposing was noted by the learned trial Court and explains the initial hesitation in disclosing the full incident.

13.2 It was contended that though the initial report mentioned a lesser offence, the supplementary statement clearly discloses rape. It

was further submitted that the victim's testimony has remained consistent on the core aspect that the appellant misled her, took her to an isolated place, and committed sexual assault. Minor discrepancies regarding timing or sequence of events are bound to occur and do not go to the root of the matter.

13.3 It was further submitted that teachers and staff members of the school deposed that they found the victim in a disturbed mental condition immediately after the incident, and she disclosed the assault to them at the earliest opportunity. They also stated that they informed the victim's father and took him to the spot. Their conduct in informing the victim's father and accompanying him to the spot supports the prosecution case.

13.4 It was argued that minor omissions and discrepancies are natural and do not affect the core of the prosecution case. Absence of injuries is not fatal to the prosecution case, and medical evidence supports the occurrence of sexual intercourse.

13.5 Learned Additional Public Prosecutor further submitted that the evidence of the victim cannot be discarded merely on the ground that the initial report disclosed a lesser offence. It was argued that it is not uncommon for victims of sexual offences, particularly young girls, to

initially understate the incident due to fear, shame, and social stigma. The subsequent disclosure of rape in the supplementary statement and in Court is therefore natural and believable.

13.6 Learned Additional Public Prosecutor contended that the medical evidence does not rule out sexual intercourse. Absence of injuries or semen is not decisive, particularly when there is delay in medical examination and when the victim did not offer violent resistance due to fear. It was argued that medical evidence is only corroborative and conviction can be based solely on the trustworthy testimony of the victim.

13.7 Learned Counsel for the victim submitted that the learned trial Court, which had the advantage of observing the demeanor of the victim, found her testimony to be natural and credible. The frightened mental condition of the victim while deposing was specifically noted, which supports the prosecution case. It was therefore contended that the learned trial Court has properly appreciated the oral and documentary evidence and has rightly convicted the appellant. The appeal deserves to be dismissed.

14. Before adverting to the rival submissions and recording conclusions, it becomes necessary to critically evaluate the testimonies

of the prosecution witnesses.

15. PW-1 Shivcharan Barse (Panch – Spot & Seizure): PW-1 deposed that he acted as a panch for spot panchnama and seizure of clothes of the victim. However, in cross-examination, he admitted that no written notice was issued to him personally, no movement entry was taken in his office, and he was deputed merely on oral instructions of his superior. He further admitted that the spot was not within his personal knowledge.

The admissions regarding absence of written notice, lack of official movement entry, and absence of personal knowledge of the spot seriously weaken the credibility of the spot panchnama. The possibility of preparation of panchnama in police station cannot be ruled out.

16. PW-2 Victim : The victim alleged that the appellant took her from school on the pretext of her brother's illness, took her to jungle near Shivling Mandir near Keshori Lake and committed forcible sexual intercourse. However, she admitted that she did not give any written application to leave school, that several important facts stated in Court were not mentioned in her FIR or police statement, and she could not assign any reason for such omissions. She further admitted that she did not immediately disclose the incident to her father.

Material omissions and subsequent improvements relating to the manner of assault, alleged public beating of the appellant, and conduct immediately after the incident materially affect the reliability of her testimony. The delay in disclosure and contradictions create serious doubt.

17. PW-3 Manoj Shende (Panch – Blood Samples) : PW-3 deposed about seizure of blood samples of the accused and victim. In cross-examination, he admitted that no written notice was issued to him and that panchnamas were signed in the police station.

Signing panchnamas in police station without written notice undermines the sanctity of the seizure process and weakens the evidentiary value of forensic linkage.

18. PW-4 Tulshiram Salame (Teacher): PW-4 stated that he was informed by a Peon that a girl in school uniform was seen with a boy in jungle and that the victim told him she was raped. He admitted that he had no personal knowledge of the incident and that he did not know when the FIR was lodged.

This witness is not an eye-witness. His evidence is hearsay and based solely on what the victim allegedly narrated, offering no independent corroboration.

19. PW-5 Dashrath Gondhle (Peon): PW-5 stated that he saw the victim and appellant coming out of jungle arranging clothes and that the victim told him about forcible intercourse. He admitted that the school gates remain locked during school hours and that the victim did not take permission to leave.

Though he claims presence near the spot, he did not witness the alleged act. His admission regarding lack of permission to leave school contradicts the prosecution's version that the victim lawfully left school.

20. PW-6 Dr. Gagan Gupta (Medical Officer): PW-6 examined the appellant and opined that he was capable of performing sexual intercourse. However, he admitted that he did not examine the appellant on the date initially stated.

The discrepancy regarding date of examination creates doubt about procedural correctness and reliability of medical evidence against the appellant.

21. PW-7 Dipmala Rathod (LPC): PW-7 deposed that she escorted the victim for medical examination and handed over samples to the Investigating Officer.

This is a formal witness. Her evidence does not corroborate the occurrence of the offence.

22. PW-10 Neha Parteki (Class Captain): PW-10 claimed that she permitted the victim to leave school. However, she admitted that this fact was not mentioned in her police statement.

The omission regarding her authority to permit students is material and raises doubt whether the victim actually obtained permission to leave school.

23. PW-12 Chimutai Rakshanwar (Teacher): PW-12 admitted that her statement was recorded one month after the incident and that she did not disclose the incident to anyone during that period.

Unexplained delay in recording statement and silence for a month weakens credibility and raises suspicion of afterthought.

24. PW-13 Arun Shahare (Teacher): PW-13 stated that victim told him that appellant forced himself on her. He admitted that his statement was recorded after one month.

Delayed statement and absence of direct witnessing makes his evidence unreliable and merely corroborative hearsay.

25. PW-16 Najukram Kadpate (Teacher): PW-16 admitted that the victim did not submit any application to leave school and that no report was lodged by school authorities.

Failure of school authorities to report the matter and absence of school records dent the prosecution story regarding victim leaving school during school hours.

26. PW-21 Dr. Garima Mishra (Medical Officer): PW-21 found no external or internal injuries on the victim. She admitted that age could not be conclusively determined without ossification test and that timing of hymen rupture could not be ascertained.

Absence of injuries and inability to fix timing of sexual intercourse fails to medically corroborate the prosecution version, especially considering the alleged manner of assault.

27. Defence Witness (DW-1):DW-1 deposed regarding monetary transactions with the victim's brother and prior threats of false implication.

The defence version appears plausible and raises a reasonable doubt regarding motive for false implication, which the prosecution failed to disprove.

28. It is well settled that in an appeal against conviction, the appellate Court is required to re-appreciate the entire evidence on record and arrive at its own independent conclusions. Though a

conviction can be based on the sole testimony of the prosecutrix, such testimony must be of sterling quality and must inspire implicit confidence. If the evidence suffers from material contradictions, omissions, or improbabilities, the accused is entitled to the benefit of doubt.

29. In the present case, the incident is alleged to have occurred on 23.12.2014. The FIR lodged on 24.12.2014 discloses allegations limited to catching hold of the victim's hand and forcibly kissing her, leading to registration of offence under Section 354-A of the IPC and Section 12 of the POCSO Act. The allegation of forcible sexual intercourse was introduced subsequently by way of a supplementary statement. The victim herself admitted in cross-examination that she had initially given only one statement wherein offence under Section 376 of IPC was not invoked. No satisfactory explanation has been offered as to why such a serious allegation was not disclosed at the earliest opportunity.

30. Though it is true that victims of sexual offences may hesitate to disclose the entire incident due to fear or social stigma, it is equally settled that when a subsequent version introduces a graver offence, the same must be examined with greater caution and should receive corroboration from independent or medical evidence. In the present case, such corroboration is conspicuously absent.

In *Radhu v. State of Madhya Pradesh*, (2007) 12 SCC 57; the Hon'ble Apex Court has held that while courts must be sensitive to the trauma and hesitation of victims of sexual offences, and must equally avoid mechanical appreciation of evidence, but at the same time they must also exercise caution where the allegation is susceptible to false implication. The determination of whether rape occurred must ultimately rest on the facts and circumstances of each case, and where the version is doubtful or expanded to a graver offence, careful scrutiny and corroboration may be required. The relevant para of the said judgment is reproduced below :

“6. ----- The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstance of each case.”

31. The conduct of the victim, as emerging from her deposition, also raises serious doubt. According to her, she was dragged for about 50 to 60 meters into the forest and sexually assaulted. However, she admitted that she did not raise any hue and cry, despite the place being accessible and despite the presence of passersby on the road. Further, after reaching home, when her father was present, she admittedly did

not disclose the incident to him. This version stands in contradiction to the deposition of her father, who stated that he was taken to the spot of incident by school staff and thereafter took the victim to the hospital. These inconsistent versions strike at the root of the prosecution case.

32. While the reaction of a victim may vary from person to person, the Courts cannot ignore conduct which is wholly inconsistent with normal human behaviour when such conduct is not satisfactorily explained. In the facts of the present case, the conduct of the victim creates serious doubt regarding the veracity of the prosecution story.

In *Tameezuddin @ Tammu v. State (NCT of Delhi)*, (2009) 15 SCC 566; the Hon'ble Apex Court in para 9 has observed as follows:

“9. It is true that in case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that his evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.”.

33. The evidence of the school teachers and staff also does not inspire confidence. None of these witnesses is an eye-witness to the alleged incident. Their testimony is based entirely on what the victim allegedly narrated to them. Though they claimed that they were present near the spot and waited for the victim to come out of the

forest, none of them entered the forest, raised alarm, or immediately approached the police. Their statements were recorded after considerable delay, extending up to one month in some cases, without any explanation. Such evidence, being hearsay and delayed, cannot be treated as reliable corroboration.

34. The medical evidence assumes significance in the present case. PW-21, the Medical Officer who examined the victim, found no external or internal injuries on her person. The doctor admitted that though the hymen was not intact, the timing of rupture could not be ascertained and that such rupture can occur due to cycling or sports activities like *Kabaddi*, which the victim admittedly used to play. In cases alleging forcible sexual intercourse involving dragging and resistance, absence of injuries assumes importance. Though absence of injuries is not always fatal, in the present case it fails to lend assurance to the prosecution version.

35. The Chemical Analysis report further weakens the prosecution case, as no semen or blood stains were detected on the clothes of the victim or the appellant. In a case alleging completed sexual intercourse, absence of forensic corroboration, when viewed along with other infirmities, creates serious doubt regarding the prosecution story.

36. The evidence of the panch witnesses also suffers from serious procedural infirmities. PW-1 and PW-3 admitted that no written notices were issued to them and that panchnamas were signed in the police station. PW-1 further admitted that he had no personal knowledge of the spot. These admissions cast doubt on the authenticity of the spot and seizure panchnamas, thereby affecting the credibility of the investigation.

37. The appellant, examined as Defence Witness No.1, put forth a plausible defence of false implication on account of a monetary dispute with the victim's brother. This defence could not be effectively demolished by the prosecution. It is well settled that the defence is not required to prove its case beyond reasonable doubt. If the defence version appears probable and creates doubt in the prosecution case, the accused is entitled to benefit of doubt.

In *Narender Kumar v. State (NCT of Delhi)*, (2012) 7 SCC 171, the Hon'ble Apex Court has held in paras 28, 29 and 30 which read thus:

“28. The courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of witnesses which are not of a substantial character.

29. *However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witness have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide Tukaram v. The State of Maharashtra, and Uday v. State of Karnataka).*

30. *Prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.*

31. *The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtue/unchaste woman that itself cannot be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.”*

38. On a cumulative appreciation of the entire evidence on record, this Court finds that the prosecution case suffers from material

contradictions, unexplained improvements, lack of medical and forensic corroboration, unreliable hearsay evidence, and serious procedural lapses. The prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The record reveals that the learned trial Court convicted the appellant under Sections 376, 354-A of the IPC and Section 3 read with Section 4 of the POCSO Act primarily on the basis of the subsequent version given by the victim. However, upon careful scrutiny of the evidence on record, the prosecution has failed to establish the allegation of forcible sexual intercourse said to have been committed by the appellant by dragging the victim into the forest, as subsequently narrated by her. The medical evidence assumes significance in this regard. The Medical Officer (PW-21), who examined the victim, categorically noted the absence of any external or internal injuries on her person and reserved the final opinion regarding sexual intercourse pending receipt of the Forensic Science Laboratory report. The Chemical Analysis report, in turn, does not detect the presence of blood stains or semen on the clothes of either the victim or the appellant. These circumstances materially weaken the prosecution case. In the light of such medical and forensic evidence, coupled with unexplained inconsistencies, anomalies, and material variations in the versions given by the victim, her testimony does not attain the standard of a sterling witness so as to sustain conviction for the said offences. In

these circumstances, this Court is constrained to extend the benefit of doubt to the appellant.

39. Consequently, the conviction of the appellant for the offences punishable under Section 376 of the IPC and Section 3 read with Section 4 of the POCSO Act cannot be sustained. However, considering the initial version disclosed in the FIR and the evidence on record, the offence under Section 354-A of IPC and Section 12 of the POCSO Act stands proved. The record reveals that the appellant has already undergone rigorous imprisonment of four years and six months. Since the appellant has already undergone substantial period of incarceration, he is entitled to be released forthwith. Hence, I proceed to pass the following order:

Order

- (i) Criminal Appeal is partly allowed.
- (ii) The judgment and order dated 21.08.2021 passed by the learned Special Judge (POCSO), Gondia in Special Case No.12/2015 is hereby quashed and set aside.
- (iii) The conviction under Section 354-A of IPC and Section 12 of the POCSO Act is maintained.
- (iv) Since the appellant-accused has already undergone the sentence prescribed for the offence under Section 354-A of the IPC, he shall be released forthwith, if not required in any other case.

- (v) The fine, if paid by the appellant under Section 354-A of the IPC, shall not be refunded.
- (vi) The fees of the learned Counsel Ms. Radha Mishra appointed for the victim be quantified and paid as per rules.

(NIVEDITA P. MEHTA, J.)

adgokar