



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

CRIMINAL APPEAL NO.311/2021

Sachin s/o Shivaji Dhongade

Vs.

State of Maharashtra, Through P.S.O., Police Station Bhadrawati

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mrs. Sunita Paul Advocate (Appointed) for Appellant
Mr. S.S.Doifode, Addl. Public Prosecutor for Respondent

CORAM: ANIL L. PANSARE, AND
NIVEDITA P. MEHTA, JJ.

DATED : 5th JANUARY, 2026

1. Heard.
2. On 12th June, 2023, following order was passed :

“ Heard.

2. We are facing a very difficult situation which happens seldom. The appellant (accused) was charged for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”, for short) and Section 376 of the Indian Penal Code, 1860 (“IPC”, for short). After full fledged trial, the Trial Court has sentenced the appellant (accused) to suffer rigorous imprisonment for seven years for the offence punishable under Section 4 of the POCSO Act. Though, the Trial Court also convicted the accused for Section 376 of the IPC, however, no separate punishment was imposed.

3. Being aggrieved by the order of conviction, the accused has preferred Criminal Appeal No.30 of 2015 before this Court. The learned Single Judge has tested the legality and

was of the view that the order of conviction was proper. However, the learned Single Judge noted that the prosecutrix was barely a four years of age and thus, the conviction should have been under Section 5(m) read with Section 6 of the POCSO Act, which is a punishment provided by statute for aggravated form of penetrative sexual assault. With such a finding, this Court has remitted back the matter to the Trial Court to pass appropriate sentence for the offence punishable under Section 6 of the POCSO Act coupled with the offence of rape, as per Section 376(2)(i) of the IPC. Latter, the Trial Court has heard both the sides on the point of sentence, obviously which was expected by order of remand. After hearing both the sides, the Trial Court has sentenced the accused to suffer imprisonment for life for the offence punishable under Section 6 of the POCSO Act, but not passed separate sentence for Section 376(2)(i) of the IPC.

4. *The learned Advocate (Appointed) would submit that this appeal was admitted, and therefore, the entire matter is to be heard. It is submitted that challenge to the finding of guilt still subsists. In our view, already order of conviction was challenged before the learned Single Judge of this Court. This Court has affirmed the finding of guilt, but only remitted the matter to the Trial Court for passing appropriate sentence for the offence of aggravated form of penetrative sexual intercourse. In the background, the Sessions Court after remand has merely heard on the point of sentence and sentenced to undergo imprisonment for life.*

5. *In the situation, according to us, it is now open for accused to only challenge the aspect of proportionality and quantum of the sentence. We cannot consider the correctness of the finding of guilt because already the learned Single Judge of this Court has decided the appeal by affirming the finding of guilt. In any way, we cannot sit in appeal against the finding recorded by the learned Single Judge.*

6. *It was informed by learned Advocate*

(Appointed) that the finding of learned Single Judge was not challenged before the Hon'ble Supreme Court. In the situation, if the appellant intends to challenge the finding, we feel that he should have approached to the Hon'ble Supreme Court or he should choose to pursue this appeal, which we will deal to the extent of proportionality of the punishment. It is a matter where the Legal Aid Counsel was appointed. We feel that a proper legal advice should be given to the appellant (accused) as to what course of action he should adopt.

7. *Mr S. V. Sirpurkar, Advocate who is well experienced in dealing criminal matters is before us to whom we request to consider the situation and give his opinion to the Secretary, High Court Legal Services Sub-Committee, Nagpur, so that the further course of action would be decided.*

8. *Stand over after three weeks."*

3. As could be seen, the appellant had approached the High Court against the order of conviction in Criminal Appeal No. 30/2015. The learned Single Judge of this Court held that the conviction was proper but was of the view that punishment imposed is inadequate. The learned Single Judge accordingly remanded the matter back to the trial Court for the purpose of passing appropriate sentence for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (In short, POCSO Act), coupled with offence under Section 376(2)(i) of the Indian Penal Code (In short, IPC).

4. Accordingly, the trial Court heard both the sides on the point of sentence and sentenced the appellant to imprisonment for life for offence punishable under Section 6 of the POCSO Act, but did not pass

separate punishment for the offence punishable under Section 376(2)(i) of IPC.

5. We are informed that the appellant had challenged the judgment passed by the learned Single Judge before the Hon'ble Supreme Court in SLP (CRL.) Nos. 4795-4797/2025. The Hon'ble Supreme Court vide order dated 21st April, 2025 was pleased to set aside the order dated 8th March, 2016, passed by the learned Single Bench in Criminal Appeal No. 30/2015. Consequently, the order passed by the Special Court dated 28th April, 2016 in Special Case No. 5/2013, convicting and sentencing the appellant to suffer life imprisonment is also set aside.

6. We are further informed that pursuant to the order passed by the Hon'ble Supreme Court, the appellant has been released.

7. In view thereof, nothing survives in the present appeal. The same is accordingly disposed off.

8. Fees of the appointed counsel for the appellant be quantified and be paid according to rule.

(NIVEDITA P. MEHTA, J.)

(ANIL L. PANSARE, J.)