



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

CRIMINAL APPEAL NO. 22 OF 2024

Vivek Khushal Rangari,
Aged : 34 yrs., Occu. : Electrician,
R/o. Ballarshah, Tah. Ballarpur,
Distt. Chandrapur.

... APPELLANT

...VERSUS...

1. State of Maharashtra,
Through P. S. O., Ballarshah, Tah. Ballarpur.
District - Chandrapur.
2. XYZ Mother of the Victim in
Crime No.778/2018 dated 15.07.2018,
registered with P.S.O. Ballarsha,
Tah. Ballarsha, District Chandrapur.

...RESPONDENTS

Mr. M. V. Rai, Advocate for Appellant.
Mr. U. R. Phasate, A.P.P. for Respondent/State.
Ms. Shreya H. Bhagat, Advocate (Appointed) for Respondent No.2.

CORAM : NEERAJ P. DHOTE, J.
JUDGMENT RESERVED ON : 06.02.2026.
JUDGMENT PRONOUNCED ON : 11.03.2026

JUDGMENT :

1. This is an Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the Judgment and Order dated 26.08.2021 passed by the learned Additional Sessions Judge, Chandrapur in Special (POCSO) Case No.69/2018 convicting and sentencing the Appellant as follows :

*“1) The accused Vivek Khushal Rangari, Aged 34 years, Occu. Electrician, R/o Ballarshah, Tah Ballarpur, Distt. Chandrapur is hereby convicted for the offence punishable under Section 367 of the Indian Penal Code and he shall undergo **Rigorous Imprisonment for three years and shall pay a fine of Rs.2000/- (Two Thousand) in default, R.I. for one month.***

*2) The accused Vivek Khushal Rangari is also hereby convicted for the offence punishable under Section 6 of the Protection of Children From Sexual Offences Act, 2012 and he shall undergo **Rigorous Imprisonment for Ten years and shall pay a fine of Rs.3000/- (Three thousand) in default, R.I. for 3 months.***

3) Both the sentences shall run concurrently.

4) Fine amount be given to the victim resident of Buddha Nagar Ward, Ballarpur, Tah. Ballarpur, Distt. Chandrapur.

5) Set off be given to the accused as per Section 428 of Criminal Procedure Code, from the date of his arrest i.e. 15/07/2018.

6] Seized property, if any, being worthless be destroyed after appeal period is over.

7] Copy of the judgment be given free of cost to the accused.”

2. The case of the prosecution's as revealed from the police report is as under :

a] The Informant was residing with her husband and two

minor sons. The Victim son was 9 years old. The Informant and her husband are labourer. The Victim was studying in 4th standard. The Appellant was residing in the same locality. After the school hours, the Victim used to go out for playing. On 15.07.2018, being the holiday, the Victim went to play in the morning at 7.00 a.m. at Vishwashanti Square and returned home at 11.00 a.m. with his two friends. Immediately thereafter, the Victim and his friends went to play. In the afternoon, the informant went in the search of the Victim, however, he was not found. The Informant again went in the search of the Victim. The Victim was playing with his friends. The Informant asked the Victim to come home for lunch. In the evening again, the Victim went to play at 4.00 p.m. and returned home at 7.00 p.m.. At that time, the Victim appeared annoyed. When the informant asked the Victim to study, the Victim told the informant that, the Appellant committed unnatural intercourse with him in the public toilet. The Informant told the incident to her husband. The Informant, her husband and the Victim went to Ballarshah Police Station and lodged the report. A Crime No.778/2018 came to be registered against the Appellant for the offences punishable under Sections 367, 377 of the Indian Penal Code, 1860 (for short, "IPC") and for the offences punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act (for short, "POCSO Act").

b] The police sent the Victim for medical examination. The statement of the Victim was recorded. The Appellant came to be arrested. The Appellant was sent for Medical Examination. The blood samples of the Victim and that of the Appellant came to be drawn. The Spot Panchanama was prepared. The clothes of the Appellant and the Victim came to be seized. The statement of the Victim has been recorded. The seized muddemal was sent for examination to the Chemical Laboratory. The necessary documents were collected. On completion of the investigation, the Appellant came to be chargesheeted.

c] The learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 377, 367 of the IPC and for the offence punishable under Sections 4 and 6 of the POCSO Act below Exhibit-11. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined in all Nine (9) witnesses, who are the Informant (PW-1), the panch witness (PW-2), the Victim (PW-3), the father of Victim (PW-4), the Medical Officer (PW-5), the friends of the Victim (PW-6, PW-7 and PW-8) and the Investigating Officer (PW-9). In the evidence of the witnesses, the relevant documents are brought on record. After the prosecution closed the evidence, the Statement of the Appellant came to be recorded under Section 313(1)(b) of the Cr.P.C.. The Appellant

stated that, he was falsely implicated. Appreciating the evidence on record and after hearing both the sides, the learned Trial Court passed the impugned Judgment and Order.

3. Heard the learned Advocate for the Appellant, the learned A.P.P. for the State and the learned Advocate for the Victim. Scrutinized the evidence on record.

a] It is submitted by the learned Advocate for the Appellant that, the age of the Victim was not disputed. There are material contradictions in the testimony of the Victim and the Informant. The evidence in respect of day of incident is contradictory. The report taken on the statement of the witness is not brought on record. The Informant nowhere deposed of the incident dated 9th July. The medical evidence do not corroborate the testimony of the Victim. No blood stains are shown on the clothes of the Victim and that of the Appellant in the Seizure Panchanamas. The C.A. reports are inconclusive and hence, the possibility of tampering cannot be ruled out. One of the friends of the Victim did not support. The presence of the another friend of the Victim is not shown by the Victim. The omissions in the evidence of the Victim and the Informant are proved through Police Officer, who recorded the statement. The place of incident was the public toilet and no such act would be done by any one at such place. The prosecution failed to prove the Charge. Hence, the conviction and sentence be set aside and the Appeal be

allowed.

b] It is submitted by the learned A.P.P. that, the conviction is for unnatural offence. The two eye witnesses were playing with the Victim prior to the incident. There are minor discrepancies in the testimony of the Victim and the same are not fatal. The friend of the Victim confirms the incident as deposed by the Victim. Nothing has come in the cross-examination of the witnesses so as to discredit their testimony. The discrepancy in respect of day of incident is not fatal for the prosecution. The report was lodged on the day of incident. Though medical evidence is not supportive, it would not be fatal for the prosecution. The witnesses withstood the cross-examination. The foundational facts are proved by the prosecution. There is no doubt in respect of the evidence on record. The Appeal be dismissed.

c] The learned Advocate for the Victim submitted that, she adopts the submissions made by the learned A.P.P.

4. When the charge is for the offence punishable under the Section of POCSO Act, it becomes necessary for the prosecution to prove that, the Victim was a child as defined under Section 2(d) of the POCSO Act. In the case at hand, according to the prosecution, at the time of incident, the Victim was a child aged 9 years. As it is clear from the cross-examination of the witnesses, the age of Victim is not disputed. The Birth Certificate at Exhibit-27 showing the date of birth

of the Victim as 24.09.2008, is admitted by the Appellant. Even during the submissions, the learned Advocate for the Appellant submitted that, there was no dispute in respect of the age of the Victim. In this view of the matter and on the basis of the evidence on record, the prosecution proved that, the Victim was the child at the time of lodging report and the incident prior to day.

5. It is the prosecution's case that, the Appellant kidnapped the Victim and committed unnatural offence with the Victim at public toilet near the place where the Victim was playing with his friends. As it can be seen from the cross-examination of the Victim (PW-3), the Informant (PW-1) and the father of the Victim (PW-4) that, the Appellant was known to them. It has come in the cross-examination that, the relative of the Informant was residing nearby and Appellant performed the plumbing work in the house of the said relative. It is the defence of the Appellant that, as is clear from the cross-examination that, the relative of the Victim owed Rs.5,000/- to the Appellant for the plumbing work. It is also the defence that, the Appellant performed the work of repairing fan in the house of the Victim and charged Rs.500/- for the same and the said money was not paid by the Victim's father to him. It is the defence that, to avoid giving the said payments, the false case was lodged against the Appellant.

6. The Victim deposed that, on 09.07.2019, while he was playing with his friends named Chetan, Harsh, Moksh and Raj in the ground, the Appellant came there and took him inside the public toilet. The Appellant removed the Victim's pant and also his pant and committed unnatural intercourse with him. When the Victim shouted, the Appellant let him free. It is further deposed by the Victim that, again on 15.07.2019, while he was playing in the ground, in the afternoon at 1.00 p.m., the Appellant took him to the public toilet and committed unnatural intercourse with him. While he shouted at the time of second incident, his friends came there and the Appellant left. The Victim deposed that, he informed his mother about the act committed by the Appellant on him. It has come in the cross-examination of the Victim that, the said toilet was the public toilet constructed by local body where the residents of Santoshi Mata Ward and Buddha Nagar Ward used to come to answer the nature's call. The evidence of Victim's mother shows that, the Victim informed her about the incident dated 15.07.2018. Her evidence does not show that, the Victim informed her about the incident dated 09.07.2018. According to the Victim, the day of incident was Monday and not Sunday. According to the Victim's mother, the day of incident was Sunday. This shows inconsistency in the evidence of the Victim and mother in respect of the incident. The evidence of the Victim's

mother that the Victim appeared to be annoyed when he came home was an omission proved through PW-9, Police Officer, who recorded her statement. Though the Victim's mother deposed that, she lodged the report and the crime was registered on her report, it has come in the Victim's cross-examination that, he went to the police with his father and he gave the information of the incident to the police and his father signed on the report. However, undisputedly, the said report is not on record. The adverse inference can be drawn from this evidence that, the said report was not favourable to the prosecution.

7. The evidence of Medical Officer (PW-5) shows that, he was posted at the Rural Hospital, Ballarpur in July 2018. On 16.07.2018, the Victim was brought for medical examination. He found no sign of any injury or abrasion on the Victim. He took the cotton swab of anal region and blood sample of the Victim. His evidence further shows that, the Appellant was brought for medical examination. On examination, he found no sign of injury or abrasion on penis. There were few abrasion over chest and abdomen. The medical reports of the Victim and that of the Appellant are brought on record in his evidence at Exhibits 47 and 51. The cross-examination of this Medical Officer shows that, injuries on the penis and the anus are possible due to unnatural sex with a boy aged between 10 and 13 years, by the person aged between 28 and 30 years. His cross-

examination shows that, whether unnatural sex was committed with the Victim, it depends on the circumstances. This medical evidence on record clearly shows that, there were no injuries on the anus of the Victim and the penis of the Appellant. Considering the nature of the accusation, the abrasions over the chest and abdomen are inconsequential.

8. PW-6, the friend of the Victim did not support the case of the prosecution. PW-7, the friend of the Victim though deposed that, while they were playing near the public toilet, the Appellant came there and took the Victim with him and they heard the sound from the direction of the public toilet and when they went towards the public toilet, they noticed that, the Appellant and the Victim coming out of the public toilet and they both left, the evidence of the Victim do not show the presence of this PW-7 as the friend with whom he was playing. In the evidence of PW-8, he deposed that, on 09.07.2018, while they were playing, the Appellant came and took the Victim with him toward the public toilet. They heard the cry of the Victim and when they went towards the public toilet, the Victim and the Appellant left to their respective houses. On 15.07.2018, the similar incident took place. The cross-examination of this witness shows that, he deposed as per the directions of the police. Even accepting the evidence of this witness, he is not the witness to the act

of unnatural intercourse and further his witness would at the most create a suspicion and nothing more.

9. The another aspect is that, the report of the Chemical Analyzer at Exhibit-6 in respect of the clothes of the Victim and the clothes of the Appellant, though show two (2) blood stains on the jeans pant of the Victim and blood stains on the full pant and full T-shirt of the Appellant, the blood group was not determined as the result was inconclusive. It is surprising that, though Exhibits – 29 and 38, the Seizure Memos of the clothes of the Victim and the Appellant respectively do not speak of any blood stains on the clothes, how the blood stains were found on the above referred clothes. This glaring discrepancy finds favour with the submission made by the learned Advocate for the Appellant that, the possibility of tampering with the articles cannot be ruled out. Be that as it may. In any case, the C.A. report do not take case of prosecution any further.

10. The above discussion shows that, the prosecution failed to establish the charge beyond reasonable doubt. There are vital inconsistencies in the testimony of the Victim and that of his mother. No injuries were found on the Victim and on the Appellant. The place of incident, being the public toilet, it is highly improbable that, such act would be committed by the Appellant on the Victim and that too during the day time. The report taken by the police as stated by the Victim under the signature of the Victim's father, is not brought on

record by the prosecution. With the evidence available on record, the prosecution case is required to be seen with doubt. With these aspects of the matter, no presumption under Section 29 of the POCSO can be raised against the Appellant. Thus, it is not possible to maintain the conviction recorded by the learned Trial Court. Hence, the following order :

ORDER

- i] The Appeal is allowed.
- ii] The conviction and sentence recorded by the learned Trial Court against the Appellant by the impugned Judgment and Order dated 26.08.2021 in Special (POCSO) Case No.69/2018, is hereby quashed and set aside.
- iii] The Appellant is acquitted for the offence punishable under Sections 367 of the Indian Penal Code, 1860 and for the offence punishable under Section 6 of the POCSO Act.
- iv] The Appellant is behind bars. He be set at liberty, if not required in any other offence.
- v] Fine amount, if any, paid by the Appellant be refunded to him.
- vi] Muddemal articles be dealt with as per the Operative Order of the impugned Judgment.
- vii] Record and proceedings be sent back to the learned Trial Court.
- viii] Fees of the appointed Advocate for the Respondent No.2 is quantified to Rs.7,500/- to be paid by the High Court Legal Services Sub-Committee, Nagpur.

(NEERAJ P. DHOTE, J.)