



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

CRIMINAL APPEAL NO.87/2024

Naresh Devrao Ganvir,
aged about 45 Years, Occup.Driver
R/o Plot No.137, Near Ramabai
Garden Chandan Nagar, Nagpur

Appellant

- Versus -

1. State of Maharashtra,
through P.S.O.Sakkardhara, Nagpur.

2. X.Y.Z. Victim in Crime No.151 of 2022
through, PSO, Sakkardhara, Nagpur.

Respondents

Mr.O.K.Masurke, Advocate for the Appellant.
Mr.U.R.Phasate, A.P.P for Respondent No.1/State.
Mrs.Sonali Saware-Gadhawe, Advocate (appointed) for Respondent
No.2/Victim.

CORAM: NEERAJ P. DHOTE, J.

DATE OF RESERVING THE JUDGMENT: 24.02.2026.

DATE OF PRONOUNCING THE JUDGMENT: 06.04.2026.

JUDGMENT:-

1) This is an Appeal under Section 374(2) of the Code of Criminal Procedure (henceforth referred to as "Cr.P.C." for short) against the Judgment and Order dated 30/10/2023, passed by the learned Additional Sessions Judge-11, Nagpur, in Special Case No.238/2022 convicting and sentencing the Appellant as follows:-

1) *Accused Naresh S/o Devrao Ganvir is acquitted of the offence punishable under Section 6 of The Protection of Children From Sexual Offences Act, 2012 vide Sec.235(1) of the Code of Criminal Procedure.*

2) *Accused Naresh S/o Devrao Ganvir is convicted for the offence punishable under Section 452 of the Indian Penal Code, vide Sec.235(2) of the Code of Criminal Procedure. He is sentenced to suffer imprisonment for 7 years and to pay fine of Rs.5,000/- (Rupees Five Thousand only). In default of payment of fine, he shall suffer rigorous imprisonment for six months.*

3) *Accused Naresh S/o Devrao Ganvir is convicted for the offence punishable under Section 506 of the Indian Penal Code vide Sec.235(2) of the Code of Criminal Procedure.*

He is sentenced to suffer imprisonment for 2 years.

4) *Accused Naresh S/o Devrao Ganvir is convicted for the offence punishable under Section 376(3) of the Indian Penal Code and U/sec. 4 The Protection of Children From Sexual Offences Act, 2012, vide Sec.235(2) of the Code of Criminal Procedure.*

He is sentenced as per provision U/sec. 4 of Protection of Children from Sexual Offences Act, 2012, to suffer imprisonment for 20 years and to pay fine of Rs.15,000/- (Rupees Fifteen Thousand only). In default of payment of fine, he shall suffer rigorous imprisonment for one year.

5) *Set off be given to the accused for the period for which he has already undergone in custody in this matter as per provision under Section 428 of Cr.P.C.*

6) *All the sentences shall run concurrently.*

7)

8).....

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11)

2) The prosecution's case, as revealed from the police report, is as under:-

a] The informant was residing on the given address with her family comprising husband and the Victim aged 15 years. The informant and her husband were working couple. On 19.03.2022, the informant, her husband and the Victim went to attend the function at the house of her sister-in-law. All the relatives gathered for the said function. As it was noticed that, the Victim was withdrawn (not talking to anybody), the informant's sister-in-law inquired with the Victim the reason for her silence. The Victim informed the informant's sister-in-law that, when she along with her parents were residing in the tenanted premises of Chaaya Nanwate, on 14.02.2022 in the evening between 5.00 p.m. to 6.00 p.m., the Appellant who was acquainted with her father came to her house and raped her. The Victim narrated the incident to the informant. The informant and her husband went to the house of the Appellant to question him about the incident. The Appellant denied happening of such incident and left. On 19.03.2022, again the informant inquired with the Victim. The Victim informed her that, due to fear she was silent. The informant approached the police and lodged the

report. The Crime bearing No.151 of 2022 came to be registered against the Appellant for the offence punishable under Sections 376(1), 376(3), 452, 506(2) of the Indian Penal Code, 1860 (for short IPC), and for the offence punishable under Sections 4 and 6 of the Protection of Children From Sexual Offences Act,2012 (for short POCSO).

b) The Victim was referred for medical examination. The Victim's statement came to be recorded. The Appellant came to be arrested. The Appellant came to be medically examined. The statement of the witnesses were recorded. The clothes of the Victim and that of the Appellant came to be seized. The spot panchnama was drawn. The seized articles were referred to the chemical laboratory. On completion of the investigation, the Appellant came to be charge sheeted.

3) The learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 452, 506, 376(3) of the IPC and for the offence punishable under Sections 4 and 6 of the POCSO Act below Exh.6. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined in all Nine (9) witnesses. The informant-mother of the Victim is examined as PW-1, the Victim is examined as PW-2, the

Medical Officer who examined the Victim is examined as PW-3, the Medical Officer who examined the Appellant is examined as PW-4, the employer of the Appellant is examined as PW-5, the Landlady, where the Victim and her family were residing is examined as PW-6, the spot panch is examined as PW-7, the aunt of the Victim is examined as PW-8 and the investigating officer is examined as PW-9. The relevant documents are brought on record in the evidence of the witnesses.

4) After the prosecution filed the evidence closure pursis, 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 on account of financial dispute with his employer. Appreciating the evidence on record, and after hearing both the sides the learned trial Court passed the impugned judgment and order.

5) Heard the learned Advocate for the Appellant, the learned APP and the learned Advocate appearing for the Respondent No.2-Victim. Scrutinised the evidence on record.

a] It is submitted by the learned Advocate for the Appellant that, the birth certificate was issued after the FIR is lodged. No witness was examined to prove the birth certificate. The prosecution

failed to prove that, the Victim was the child at the relevant time. The Victim disclosed the incident to her mother after 35 days. The spot of the incident was the residential area and so the neighbourers could have easily heard the cry, if such incident had taken place. The police did not record the statement of PW-6, who is the aunt of the Victim. There can be many reasons for hymenal torn. When the Victim was working with her mother at the shop, her presence at the house was doubtful. Considering the overall evidence on record, the prosecution failed to prove the Charge. The Appeal be allowed.

b] It is submitted by the learned APP that, the Victim deposed of the incident. After disclosure of the crime, immediately, the FIR was lodged and therefore, there was no delay in lodging the report. The delay will not be fatal for the prosecution in view of the settled legal position. The Victim's silence is not fatal. The cross examination could not shake the testimony of the Victim. By examining the Medical Officer, the injury on the Victim is proved. Due to the delay in examining the witnesses, the injuries were not fresh. The Victim's mother deposed of the Victim's age. The birth certificate of the Victim was brought on record. The aunt of the Victim to whom there was first disclosure of the incident was examined and her evidence corroborate the Victim's evidence.

Defence of false implication due to financial dispute with the employer was improbable. The Appeal be dismissed. In support of his submissions he relied on the decision in the case of *State of Rajasthan -Versus- Chatra (2025) 8 SCC 613*.

c] It is submitted by the learned Advocate for the Victim that, she adopts the submissions made by the learned APP. The history given to the medical officer, corroborates the testimony of the Victim. The presence of the Appellant in the house of the Victim was established. The defence was not probable. In support of her submissions, she cited the decision in the cases of *Dildar Singh Versus State of Punjab (2006) 10 SCC 531* and *Deepak Versus State of Haryana (2015) 4 SCC 762*.

6) To prove that, the Victim was the child, as defined under Section 2(d) of the POCSO Act, the prosecution relied on the birth certificate of the Victim brought on record at Exhibit-17, in the evidence of the mother of the Victim, who is examined as PW No.1. Her evidence shows that, the original birth certificate from the Registrar (Birth and Death), Nagpur was shown to her and she deposed that, it was the birth certificate of the Victim, showing the date of birth as 25/11/2007. She deposed that, the Victim's birth was registered on 25/02/2008 and the said Exhibit-17 contains their

names as the parents. In her evidence, she deposed that, the date of birth of the Victim was 25/11/2007. The suggestion that, the birth certificate at Exhibit-17 was false is denied by her. She is the biological mother of the Victim. The evidence of PW-9, the Investigating Officer shows that, during the investigation she wrote the letter dated 24/03/2022 below Exhibit-54 to the Commissioner of Municipal Corporation, Nagpur for providing the birth certificate of the Victim. Thereafter, on 11/05/2022 she sent the reminder below Exhibit-59 to the said authority for providing the birth certificate of the Victim and accordingly, Exhibit-17 birth certificate of the Victim was received. The said evidence remained unchallenged. Undisputedly, the crime is registered on 20/3/2022. With the said credible evidence on record, the prosecution has established that, the Victim was the child at time of incident.

7) The prosecution's case mainly rests on the testimony of the Victim, who is examined as PW No.2. Her evidence shows that, she was residing with her parents. Her father was the painter and her mother was working in the shop. Her parents used to go for work in the morning and used to come back in the evening between 08 p.m. and 08:30 p.m. At the time of incident they were residing in the house of Nanwate (PW-6) on rent, which was situated in Somwari

Quarter area. PW-6 Chhaya Nanwate examined by the prosecution deposed that, the Victim and her family were her tenant. The evidence of Victim shows that, her father was knowing the Appellant, as he was working as the driver with Mr. Gaurav (PW-5). The evidence of Victim shows that, on 14/02/2022 around 4:00 p.m, when she was present at home, her father came with the Appellant. She provided water to them. Thereafter, they left. She was alone in the house. The door was not locked. The Appellant entered in her house around 5:00 p.m. The Appellant gagged her mouth and threatened to kill. The Appellant removed his clothes and her clothes and raped her. Thereafter the Appellant left. Out of fear she did not disclose the incident to anyone at her home. On 19th March, when she had gone to the house of her aunt (PW-8), she disclosed the incident to her aunt and thereafter to her mother. The report was lodged with the concerned police station. She was referred for medical examination. Her samples were taken. Her statement was recorded before the Magistrate. The Appellant was identified by her before the Court.

8) The submission of the learned Advocate for the Appellant as to how the Victim was present at her house, when she was working with her mother at the shop has no merit because the cross-

examination of the Victim shows that, she started working in the shop, where her mother was working since last two(2) to three(3) years. The incident was of February-2022 and the Victim was examined in May-2023 and two (2) to three (3) years back means certainly after the incident. Not disclosing the incident immediately by the Victim to anyone cannot be said to be unnatural, as her evidence shows that, due to fear, she kept mum.

9) The evidence of PW-8, who is the aunt of the Victim, shows that, she was also the resident of the same city, i.e. Nagpur and on 19th March, 2022, she invited her brother, i.e. the father of the Victim, along with his family for meals and accordingly, the Victim and her parents visited her house for meals. The evidence of aunt shows that, she noticed that, the Victim was seen withdrawn, which was unusual and so she asked the reasons. The Victim started crying and disclosed the incident which took place with her on 14/02/2022. The aunt informed the parents of the Victim. Non-recording of the statement of the aunt will not be sufficient to discard her testimony, as nothing has come in the cross-examination so as to create any doubt about her testimony. Even the Victim deposed of visiting the house of PW-8 on 19th March-2022 with her parents. Even the evidence of PW-1 Victim's mother shows that, on

19th March-2022, she visited the house of her sister-in-law (PW-8) for meals. The mother's evidence also shows that, the Victim appeared withdrawn and not talking with anybody and when the Victim was asked about her silence, she started crying and informed PW-8 about the incident. Nothing has come in the cross-examination of the Victim and the said witnesses i.e. PW-1 and PW-8 to create any doubt in respect of their said evidence.

10) The delay in not informing the incident to her family members is explained by the Victim. It was due to fear. Her evidence shows that, she was threatened by the Appellant. That is natural for the girl of her age, who was subjected to sexual assault. The Appellant was known to her father and had visited her house and there is no doubt about identity of the Appellant. The evidence of the Victim and PW-6 Chhaya Nanwate shows that, the tenanted premises, where the Victim was residing with her parents was on the first floor. It has come in the evidence of Victim's mother (PW-1) and the evidence of the Victim that, the rented premises in which they were residing was Ground+1 floor. It has come in the cross-examination of PW-1 that, the staircase was from outside starting from the entrance of the house, where the landlady was residing. With this topography of the house, where the incident took place,

the admission by the Victim in the cross-examination that, the Nanwate family (landlord) usually watch the person coming inside the house will not be fatal.

11) The evidence of PW-5 Gaurav Banait, with whom, the Appellant was employed shows that, he was residing next to the house, where the Victim was residing in the house of PW-6. His evidence shows that, on 14.02.2022 i.e. the date of the incident, the Appellant had come to him in the drunken stage. In the evening, he saw the Appellant with the father of the Victim near his house. This evidence on record confirms the presence of the Appellant near the place of the incident and supports the Victim's evidence that, the Appellant had came to the house with her father before the incident.

12) The testimony of the Victim inspires confidence. Her testimony remained unshaken in the cross-examination. Though it has come in the cross-examination of the Victim that, the house of PW-6 Chhaya Nanwate, where she was residing, was in the residential area surrounded by many houses it becomes immaterial as the evidence of Victim and PW-6 Chhaya Nanwate shows that, the tenanted premises, where the Victim was residing with her parents was on the first floor. The evidence of PW-6 Chhaya Nanwate shows

that, after the incident the informant and the family left the said tenanted premises.

13) There is medical evidence on record in the form of evidence of PW-3 Dr. Shreya, who was the Medical Officer in the Government Medical College, Nagpur. She examined the Victim on 20/03/2022. The history was that, of penovaginal sexual intercourse on 14/02/2022 between 5:00 p.m. and 6:00 p.m. at the Victim's rented house. This history corroborates the testimony of the Victim. The evidence of this Medical Officer shows that, on examination of the Victim she found, injuries on the hymen, edges were irregular, ragged, no bleeding or edema, position of tears 3, 6, 10 O'clock in position. She opined that, sexual intercourse or assault cannot be ruled out. The medical examination papers of the Victim are brought on record in her evidence at Exhibits- 24 and 25. It has come in the cross-examination that, no bleeding, no edema means the injuries on the private part on the hymen of the Victim were not fresh injuries. This cross-examination further fortifies the Victim's testimony of sexual assault for the reason that, the incident of rape took place on 14/02/2022 and the medical examination of the Victim was on 20/03/2022, which was after a period of 35 days. It has come in the cross-examination of the Medical Officer that, tear on the hymen

may cause with some other reason and sexual assault can be one of the reasons. Though further it has come that, because of cycling or gymnastics the tear may occur, there is nothing to create any dent in the medical evidence.

14) The evidence of PW-4 Dr.Swapnil Shirsat who was the Medical Officer in the Government Hospital College, Nagpur shows that, the Appellant was brought to him for medical examination. On the medical examination he found nothing to suggest that, the Appellant was not capable of performing sexual intercourse. This evidence shows that, the Appellant was potent. The evidence of this witness is supported by the medical papers at Exh.28. The evidence of PW-7 Kishor Shingne shows that, on 20.03.2022, he was called by the Shakkardara Police for the spot panchnama and the spot was one room at the first floor of the house. The spot panchnama is brought on record below Exh.35. The evidence of the Investigating Officer shows the investigation done by him.

15) In State of ***Rajasthan Vs. Chatra(supra)*** cited by the learned APP it is observed that *“Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favorite other than the truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must*

be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case”.

16) In **Dildar Singh Vers. State of Punjab** (Supra) it is observed that, *thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report. Delay has the effect of putting the court on guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory”.*

17) In **Deepak Vrs. State of Haryana** (supra), it is observed that *“the testimony of the prosecutrix in such cases is vital and unless there are compelling reasons, which necessitate looking for corroboration of her statement or where there are compelling reasons for rejecting of her testimony, there is no justification on the part of the court to reject her testimony.*

18) The above discussed evidence shows that, the Victim was the credible witness. Her consistent evidence support the case of

prosecution. Her testimony is corroborated by the medical evidence. The delay in not disclosing the incident by the Victim is natural and not fatal for the prosecution. There is no delay in lodging the report by the mother of the Victim, after she learnt about the incident. The other evidence of the aunt and the employer of the Appellant further supports prosecution's case. As regards the Charge for the offence punishable under Section 452 of the IPC is concerned, there is no evidence in respect of preparation by the Appellant for hurt, assault or wrongful restrain before house trespass. However, the evidence on record establishes the offence punishable under Section 451 of the IPC. (*House trespass in order to commit the offence punishable with imprisonment*). The re-appreciation of the evidence on record, calls for no interference with the conviction recorded by the learned Trial Court against the Appellant.

19) The learned Trial Court as seen from the operative order, acquitted the Appellant for the offence punishable under Section 6 of the POCSO. The learned Trial Court imposed the punishment of 20 years and fine of Rs.15,000/- in default, to suffer RI for one (1) year for the offence punishable under Section 4 of the POCSO and no separate punishment is imposed for the offence of rape, and rightly so, pursuant to the provisions of Section 42 of the POCSO

which provides for alternate punishment which is greater in degree. The minimum sentence for the offence punishable under Section 376 (3) of the IPC is Twenty (20) years and the sentence for the offence punishable under Section 4 of the POCSO is not less than Ten (10) years. The learned Trial Court has awarded the sentence in accordance with law. Hence the following order.

ORDER

- i) The Criminal Appeal is partly allowed
- ii) The conviction and sentence for the offence punishable under Section 452 of the IPC is converted to conviction for the offence punishable under Section 451 of the IPC. and the Appellant is sentenced to suffer imprisonment for one(1) year with fine of Rs.1,000/- in default, to suffer imprisonment for one(1) month.
- iii) The conviction and sentence awarded by the learned Trial Court against the Appellant for the offence punishable under Section 376(3) and 506 of the IPC and for the offence punishable under Section 4 of the POCSO is maintained.
- iv) The operative order in respect of the set off under Section 428 of the Cr.P.C., concurrent running of the sentence and directions to pay Rs.10,000/- from the fine amount to the Victim is maintained.
- v) The excess amount of fine be refunded to the Appellant.
- vi) The Record and Proceedings be sent back to the learned Trial Court.

- viii) Fees of the learned appointed Advocate for Respondent No.2 is quantified at Rs.10,000/- (rupees ten thousand only). The same be paid accordingly by the High Court Legal Services Authority.

(NEERAJ P. DHOTE, J.)

Kavita