



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

CRIMINAL APPEAL NO. 137 OF 2024

Mangesh Janrao Tayde (In Jail),
Aged about 32 years, Occupation : Labour,
R/o. Gram Ramgaon, Tq. And Distt. Akola. ... **APPELLANT**

...VERSUS...

State of Maharashtra,
Through P. S. O., P. S. Borgaon Manju,
Tq. Dist. Akola. ... **RESPONDENT**

Mr. Ajay S. Londhe, Advocate for Appellant.
Mr. U. R. Phasate, A.P.P. for Respondent/State.
Mr. Shantanu B. Taywade, Advocate (Appointed) for Victim.

CORAM : NEERAJ P. DHOTE, J.
JUDGMENT RESERVED ON : 10.03.2026
JUDGMENT PRONOUNCED ON : 17.04.2026

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 25.08.2023 passed by the learned Additional Sessions Judge, Akola in Special (Child Protection) Case No.39/2021 convicting and sentencing the Appellant as follows :

“1 The accused Mangesh Janrao Tayade, aged 28 years, occupation: agriculture, resident of Ramgaon, Tq. and Distt. Akola is hereby convicted u/s.235(2) of The Criminal Procedure Code r/w. section 42 of The Protection of Children from Sexual Offences Act, 2012, of the offence

punishable u/s. 376(2)(f) of The Indian Penal Code alongwith section 3 punishable u/s. 4 of The Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer Ten years Rigorous Imprisonment alongwith fine amount of Rs.5,000/- (Rs. Five Thousand only), i/d. to suffer Simple Imprisonment of three months.

- 2 *He is also convicted u/s. 235(2) of The Cr.P.C. r/w. section 42 of The Protection of Children from Sexual Offences Act, 2012, of the offence punishable u/s. 354 of the Indian Penal Code r/w. section 7 punishable u/s. 8 of The Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer Three years Rigorous Imprisonment alongwith fine amount of Rs.1,000/- (Rs. One Thousand only), i/d. to suffer Simple Imprisonment of one month.*
- 3 *Both the sentences of Rigorous imprisonment shall run concurrently.*
- 4 *The accused be given benefit of the provisions of section 428 of The Cr.P.C. and the period undergone by him in jail in the present crime be remitted from the quantum of Rigorous Imprisonment.*
- 5 *The seized property being worthless be destroyed after appeal period is over.*
- 6 *The Copy of judgment be given to the convict free of cost.*
- 7 *The accused is directed to comply with the provisions of section 437-A of The Cr.P.C.*
- 8 *Issue conviction warrant against accused, accordingly.*
- 9 *Inform concerned Police Station and the Jail Authority, accordingly.*

Judgment pronounced in open court.”

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

a] The Victim aged 14 years was residing with her parents on the given address in Village Ramgaon. She was studying in 7th standard. On 17.01.2021, around 12.30 p.m., she had gone to the agricultural field for bringing vegetables. The Appellant, who is her cousin uncle followed her. While she was removing the vegetables, the Appellant came near her, caused her to lay down, removed her slack and undergarment, removed his pant and undergarment and raped her. She shouted. The Appellant gagged her mouth with his hand. The Victim bite his hand and managed to flee. The Victim reached home and informed the incident to her father. When the Victim's mother returned home in the evening, the incident was informed to her. The report was lodged with the Borgaon Manju Police Station and Crime bearing No.0022/2021 came to be registered for the offence punishable under Sections 354, 376, 376(2)(f), 376(3) of the Indian Penal Code, 1860 (for short, 'IPC') and for the offence punishable under Sections 4 and 8 of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act').

b] The Victim was referred for medical examination. The Spot Panchanama came to be drawn. The Appellant came to be

arrested and sent for medical examination. The clothes of the Appellant and of the Victim came to be seized. 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 below Exhibit-13 for the offence punishable under Sections 354, 376, 376(2)(f) of the IPC and for the offence punishable under Sections 4 and 8 of the POCSO Act. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined in all twelve (12) witnesses comprising the Spot Panch as PW-1, Victim as PW-2, Victim's mother as PW-3, the relative of the Victim as PW-4, the Victim's father as PW-5, the Medical Officers as PW- 6 to 10, the Registrar of Birth as PW-11 and the Investigating Officer as PW-12. The relevant documents are brought on record in the evidence of these witnesses.

d] 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.PC. The Appellant denied the case and evidence of the prosecution. Appreciating the evidence on record, 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 medical evidence completely contradicts the Victim's version as no injuries of any nature were found on the Victim. The forensic evidence does not support the prosecution's case. The age of the Victim was not properly proved. The sole testimony of the Victim was wholly unreliable. Possibility of false implication cannot be ruled out. The bite mark on the Appellant may at the most indicate the altercation or scuffle. Alternatively he submitted that, at the most, the offence of attempt can be made out. He relied on the judgment in *Kailas s/o. Hiranman Salve Vs. The State of Maharashtra & Anr. [2023 ALL MR (Cri) 2798]*.

b] It is submitted by the learned A.P. P. that, though the Victim was intensely cross-examined, nothing material has come on record. The Victim can be relied as her evidence remained unshaken. The injury on the hand of the Appellant corroborates the Victim's testimony. The ossification test proved that, the Victim was below 18 years of age. The omissions in the evidence of the Victim's mother were negligible. The date of birth of the Victim was proved. All the foundational facts are established by the prosecution. Nothing is

shown that, the Victim had any motive to falsely implicate the Appellant. The presumption under Section 29 of the POCSO Act comes into play. Hence, the Appeal be dismissed.

c] It is submitted by the learned Advocate for the Victim that, no interference was called for in the impugned judgment and order. He relied on the decision in *Ranjit Hazarika Vs. State of Assam [(1998) 8SCC 635]*.

4. When the charge is for the penal sections of the POCSO Act, it becomes necessary for the prosecution to establish that, the Victim was the child as defined under Section 2(d) of the POCSO Act i.e. below 18 years of age. The evidence of PW-11 Dr. Manisha A. Borekar shows that, she was the Medical Officer at Akola and holding additional charge of Registrar, Birth and Death Registration Department, Akola Municipal Corporation. The entry in the original birth register dated 15.09.2018 bearing No.12356 was in respect of female child born to Gautam Tayde and Mangala Tayde. The date of birth of the child was recorded as 23.08.2008. The report in respect of the birth of female child and the Birth Certificate are brought on record at Exhibits - 65 and 66. Her evidence shows that, the said certificate was issued by the office under the signature of previous Registrar. In her cross-examination, it is confirmed that, the entry of the date of birth was made on 15.09.2008. Nothing has come in the

cross-examination to discard the evidence in respect of the official record and the Birth Certificate. The evidence of PW-3 and PW-5 shows that, they are the mother and father of the Victim respectively. They are biological parents of the Victim. They deposed that, the date of birth of the Victim was 23.08.2008. Though both of them were cross-examined, their evidence in respect of the date of birth of the Victim remained unshaken. With this evidence on record, the prosecution proved the date of birth of the Victim. Undisputedly, the report was lodged on 18.01.2021 for the incident dated 17.01.2021. From this, it is clearly established that, at the time of the incident, the Victim was 11 years and 6 months old and was a child. In **Kailas** (*Supra*), the prosecution did not examine either of the parents of the Victim and the record of the second school of the Victim was not found safe to rely as the entry was taken on the basis of the record of the first school of the Victim.

5. As regards the incident is concerned, the Victim, who is examined as PW-2, is the star witness of the prosecution. The Victim's evidence shows that, the Appellant was her uncle by relation. The evidence of PW-5 father of the Victim shows that, the Appellant was his cousin brother. The said evidence is not disputed. Therefore, it is clear that, the Appellant was known to the Victim and, therefore, there is no question of proving the identity of the Appellant.

According to the Victim, when on 17.01.2021, at about 12.30 p.m. she had gone to her agricultural field to pluck the pulse pods, the Appellant followed her and when she was plucking the pulse pods, the Appellant came and praised her long hairs and made her to fall on the earth, removed her slack and knicker and also removed his pant and knicker and committed Penovaginal intercourse. She tried to resist and raised a cry, however, due to road traffic, it was in vain. She bite the hand of the Appellant and the Appellant left. She deposed that, she came crying to her house and narrated the incident to her father and the father informed her mother over the telephone and after her mother came home, they lodged the report with the Police Station, which was at Exhibit-30. Thereafter, she was referred for medical examination where she narrated the history.

6. In the cross-examination, it is tried to show that, since the place of incident was adjoining to the main road and visible from the main road, the happening of the incident was improbable. The evidence of the Victim shows that, it was the agricultural field. The evidence of PW-1 Shubham V. Raut, the Spot Panch shows that, the spot of incident was between the pulse plants. The said evidence of panch witness is corroborated by the Spot Panchanama below Exhibit-26 having the sketch of the spot of incident. The cross-examination of the Victim shows that, on the way to home, PW-4

Nilesh met her as he was grazing the she-goats near the cattle pound. The Victim denied that, PW-4 Nilesh enquired with her the reason of weeping. Though in the cross-examination of PW-4 Nilesh, it has come that, the Victim told him that, she fell down while playing when he enquired with her, the Victim denied that, she informed PW-4 Nilesh that, she was weeping as she had fallen down.

7. The evidence of PW-5 father of the Victim shows that, on the day of incident i.e. on 17.01.2021, at about 1.00 p.m., the Victim came home weeping. This evidence of the father corroborates the testimony of the Victim that, she came home weeping. The medical evidence of PW-8 Dr. Prachi S. Koranne, who examined the Victim shows that, the history given by the Victim was of *attempt* to commit penetrative intercourse and bite on the hand of the Appellant. The medical evidence shows that, there were no injuries on the body as well as on the private part of the Victim and the hymen of the Victim was intact and there was no injury nor any inflammation (redness). The medical examination report at Exhibit-51 brought in the evidence of the Medical Officer clearly notes that, "*victim gives history of removing clothes and touching private part by the Appellant, but does not give history of penetration. There is no injury or inflammation over the private part*". Column in respect of final opinion in the medical report is blank. The medical evidence of

PW-7 Dr. Ariz Uffat Haque, the Medical Officer, who examined the Appellant shows that, he found bite mark on *left supra clavical* on the Appellant and he was referred for further investigation and treatment of that injuries. This medical evidence on record in respect of injury on the Appellant corroborates the testimony of the Victim that, she bite the Appellant's hand.

8. From the above discussed evidence of the Victim, it is clear that, the incident took place in the agricultural field. However, the evidence of the Victim in respect of penovaginal intercourse do not find slightest corroboration by the medical evidence. The history given by the Victim to the Medical Officer does not corroborate the Victim's evidence of rape/penetration. Even the medical evidence shows two different versions of history given by the Victim at the time of medical examination. *One is the attempt to commit rape / penetration sexual assault and second is touching of private parts by the Appellant with no history of penetration.* The medical evidence of PW-8 shows that, if one falls on the hard surface and in case of scuffle while removing the clothes, there is a possibility of injuries and no such injuries or marks were on the body of the Victim. It is true that, the Victim's testimony is sufficient to prove the charge. However, considering the evidence of the Victim in respect of the incident, it is strange that, there was not a single injury on her

person. Though the spot of incident was the field and the Victim admits that there were soil and nuts in the field, one can receive injury, if fallen down on such rough surface having soil and nuts. The evidence on record by the Victim in respect of penetrative intercourse/rape appears to be an exaggeration. The circumstance of the injury on the hand of the Appellant, which remained unexplained by the Appellant corroborates the Victim's testimony. The overall evidence on record falls short of establishing the offence of rape / penetrative sexual assault. However, the evidence on record proved the offence of sexual assault as defined under Section 7 of the POCSO Act and offence punishable under Section 354 of the IPC. With the evidence available on record, the presumption under Section 29 of the POCSO Act comes into play. Except denial, there is no defence of the Appellant. In the statement under Section 313(1)(b) of Cr.PC., the Appellant stated that, he was falsely implicated. The Appellant failed to rebut the presumption.

9. In *Ranjit Hazarika (supra)*, the evidence of the Prosecutrix was found credible and it was observed that, the opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the Prosecutrix, was held not material in view of the cogent and trustworthy evidence of the Prosecutrix. As discussed

above, the evidence on record do not give the required assurance in respect of rape / penetrative sexual assault on the Victim. In the backdrop of the above discussion, the conviction and sentence imposed by the learned Trial Court on the Appellant needs modification. As the evidence on record falls short of the offence of rape and penetrative sexual assault, the Appellant would be entitled for acquittal from the said offence. However, as the offence punishable under Sections 354 of the IPC and 8 of the POCSO Act are proved, the conviction and sentence imposed by the learned Trial Court for the offence punishable under Section 354 of IPC and Section 8 of the POCSO Act is maintained. Hence, the following order:

ORDER

- i] The Appeal is partly allowed.
- ii] The conviction and sentence recorded by the learned Trial Court on 25.08.2023 against the Appellant for the offence punishable under Section 376(2)(f) of the IPC and for the offence punishable under Section 4 of the POCSO Act is quashed and set aside.
- iii] The Appellant is acquitted for the offence punishable under Section 376(2)(f) of the IPC and for the offence punishable under Section 4 of the POCSO Act.
- iv] The conviction and sentence imposed by the learned Trial Court on the Appellant for the offence punishable under Section 354 of the IPC and for the offence

punishable under Section 8 of the POCSO Act is maintained.

- v] The Appellant shall be entitled to set off under Section 428 of the Cr.PC. for the period of incarceration already undergone in this crime.
- vi] The muddemal property be dealt with as per the operative order of the impugned Judgment.
- vii] Record and proceedings be sent back to the learned Trial Court.

(NEERAJ P. DHOTE, J.)