



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

CRIMINAL APPEAL NO.240/2024

Vikram @ Sanny Devisingh Thakur,
aged about 28 Years, Occup.Labour
R/o Nangpura, Murri,Gondia, Tah. And
Dist. Gondia.

Appellant

- Versus -

1. State of Maharashtra,
through Police Station Officer,
Police Station Gondia, District Gondia.
2. X.Y.Z. Victim
through, Police Station Gondia, Dist.Gondia.

Respondents

Mr.A.P.Raghute, Advocate for the Appellant.
Mr.U.R.Phasate, A.P.P for Respondent No.1/State.
Mr.Syed Salman Ali, Advocate (appointed) for Respondent
No.2/Victim.

CORAM: NEERAJ P. DHOTE, J.

DATE OF RESERVING THE JUDGMENT: 26.02.2026.

DATE OF PRONOUNCING THE JUDGMENT: 09.04.2026.

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 21/02/2024, passed by the

learned Special Judge, Gondia in Special Case No.11/2017

convicting and sentencing the Appellant as follows:-

1. *The accused Vikram @ Sanny S/o Devisingh Thakur, aged 27 years, R/o- Nangpura Murri, Gondia, Tahsil and District Gondia is found guilty for the offence under Section 375 Class (a) punishable under Section 376(2)(i) (n) of The Indian Penal Code, 1860 and Section 3(a) punishable under Section 4, Section 5(m) punishable under Section 6, Section 7 punishable under Section 8 and Section 9(m) punishable under Section 10 of The Protection of Children from Sexual Offences Act, 2012, vide Section 235(2) of the Code of Criminal Procedure, 1973.*
2. *The accused Vikram @ Sanny S/o Devisingh Thakur is convicted for the offence punishable under Section 6 of The Protection of Children from Sexual Offences Act, 2012, vide Section 235(2) of the Code of Criminal undergo rigorous Procedure and sentenced imprisonment for Ten Years and to pay fine of Rs.1,000/- (Rs. One thousand). In default of payment of fine, he shall undergo rigorous imprisonment for Three Months.*
3. *The accused Vikram @ Sanny S/o Devisingh Thakur is convicted for the offence punishable under Section 10 of The Protection of Children from Sexual Offences Act, 2012, vide Section 235(2) of the Code of Criminal Procedure and sentenced to undergo rigorous imprisonment for Five Years with fine of Rs.1,000/- (Rs. One thousand). In default of payment of fine, he shall undergo rigorous imprisonment for Three Months.*
4. *No separate sentence is inflicted upon the accused for the offence punishable under Section 376(2)(i) (n) of The Indian Penal Code, 1860 and Sections 4 and 8 of The Protection of Children from Sexual Offences Act, 2012.*
5. *The substantive sentence shall run concurrently vide Section 31 of Code of Criminal Procedure.*

6. The period of inquiry, investigation and trial undergone by the accused Vikram @ Sanny S/o Devisingh Thakur since 15.12.2016 till 08.11.2017 be set off vide Section 428 of the Code of Criminal Procedure.

7. The accused to surrender his bail bonds.

8).

9)

10)

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

a] The Informant was residing at the given address along with her family comprising husband, Victim aged Six (6) years and Six (6) months and son aged Three (3) years. Her husband was in the business of selling bags. They were residing on the ground floor. On the 2nd and 3rd floor of the building her brother-in-law was running the plant of manufacturing the bags. Four (4) to five (5) workers were engaged in the said manufacturing unit. The Appellant was one of the employee working in the said manufacturing unit. On 11th December 2016, the Informant's mother came to her house. On 12th December 2016, the Informant's husband went to Nagpur for work. The Informant, her mother and her children were at home. The Informant's mother took bath and washed her clothes and asked the Victim to put her clothes for drying on the 2nd floor. The Victim

refused to go upstairs. The Informant's mother asked the Victim, reason for the same. The Victim told that, the Appellant was a bad person and in last Fifteen (15) days, the Appellant sexually molested her two (2) to three (3) times in the toilet on the upper floor. The Victim informed that, she was having trouble in urinating. After the Informant's husband returned, the report was lodged with the Gondia Police Station against the Appellant and the Crime bearing No.241 of 2016 came to be registered for the offence punishable under Section 376(2)(n) 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 spot panchnama was drawn. The Appellant came to be arrested. The Appellant was referred for medical examination. Statement of the witnesses were recorded. The articles were seized and sent for examination to the Chemical laboratory. The documents in respect of birth of the Victim came to be collected. On completion of the investigation, the Charge-sheet came to be submitted.

3) The learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 376(2)(i)(n) of

the Indian Penal Code,1860 (for short IPC) and for the offence punishable under Sections 4,6,8 and 10 of the POCSO Act below Exh.16. The Appellant pleaded not guilty and claimed to be tried.

4) To prove the Charge, the prosecution examined the mother of the Victim as PW-1, the Victim as PW-2, the Spot panch as PW-3, the Medical Officer, who examined the Victim as PW-4, the Policeman, who did the video recording during the spot panchnama as PW-5, the Registrar for birth and death as PW-6 and the Investigating Officer as PW-7. The relevant documents are brought on record in the evidence of the witnesses. 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 due to quarrel between two brothers. Appreciating the evidence on record, 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 for the Victim. Scrutinised the evidence on record.

a] It is submitted by the learned Advocate for the Appellant that, there was no dispute in respect of age of the Victim. To evict the industrial undertaking from the building, which was being run

by the brother-in-law of the Informant, false report was lodged. There was delay in lodging the report. When there were dispute between two brothers, it was not likely that, the Victim would go upstairs. Though there was manufacturing unit, strangely no one noticed the incident. The spot of the incident was shown by the nephew of the Informant. The medical evidence do not corroborate the prosecution's case. There was no final opinion by the medical officer. The prosecution failed to prove the fundamental facts of the case and therefore, the presumption under Section 29 of the POCSO will not come into operation. In support of his submissions, he relied on Six (6) judgments; in *Mariappan Vs. The Inspector of Police of Madras High Court in Criminal M.P(MD) no.1396 of 2023 dated 08.09.2023*, in *Gautam Chandrakan Kharnar vs. State of Maharashtra and anr. (Criminal Appeal No.508 of 2015) of this Court Bench at Aurangabad*, in *Sagar Dinanath Jadhav Vs. State of Maharashtra (2018)Cr.L.J.,4271*, in *Deelip Tatoba Raje Vs. State of Maharashtra in Criminal Appeal No.990 of 2019 of Bombay High Court*, in *Bagari Ravi Kumar Vs. State of Telangana in Criminal Appeal No. 88 of 2024 of Telangana High Court* and in *Dashwanth Vs. State of Tamil Nadu reported in (2025) 10 SCR 587*.

b] It is submitted by the learned APP that, there was credible evidence of the Victim and her mother to prove the Charge. As the Victim was in the hospital, the spot was shown by the relative of the Informant. The argument made by the learned Advocate for the Appellant that, why the Informant would allow the Victim to go upstairs when there was dispute is misplaced. Why the Victim would go to such an extent to implicate the Appellant falsely, who was the employee of her uncle. The sole testimony of the Victim can be relied. The delay in reporting the incident to the Police was explained by the Informant. No suggestions are given to dislodge the case of the prosecution. The totality of the evidence on record go to show that, the Charge was proved and it was not the case having reasonable doubt. The Appeal be dismissed.

c] It is submitted by the learned Advocate for the Victim that, the Victim was a small girl. She deposed about the incident before the learned Trial Court. There was no material cross-examination. Even, the touch to the private part was sufficient to attract the offence of POCSO. The delay in reporting the incident to the Police was explained. No interference was called for in the conviction and sentence. Hence, the Appeal be dismissed.

6) When the Charge is for the Penal section under the POCSO, 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 the age of 18 years. To prove that, the Victim was the child at the time of incident, prosecution examined PW-6 Jitendra Laxmanda Vaishnav, who was working as the Registrar with the concerned office from 2019. He brought with him the original register with true copies, which were at Exh.42. The entry of birth of the Victim was at Serial No. 59/59 and the date of birth was 02.01.2010. He deposed that, the birth certificate at Exh.24 bears his signature and the contents therein were as per the original register. Nothing has come in his cross-examination to discard his testimony. He denied the suggestions that, no report of birth of Victim was received from the Chaudhary Nursing Home and he recorded the wrong date of birth.

7) PW-1 – Vaishali Bawankar is mother of the Victim. She is also the Informant. She deposed that, the Victim's date of birth was 02.01.2010. The Victim was born in the Chaudhary Nursing Home, Gondia. Her evidence shows that, the original birth certificate of the Victim was submitted in the school and she again applied to the Municipal Council for issuing the birth certificate, which was at

Exh.24. The said Exh.24 bears the date of birth, name of the Victim, name of the parents and address. There is no challenge in the cross-examination to the evidence of the PW-1 in respect of the date of birth and birth certificate of the Victim.

8) The above evidence on record clearly establishes the date of birth of the Victim as 02.01.2010. Nothing has come in the cross-examination of the witnesses so as to create any dent in the evidence in respect of the date of birth of the Victim. Even the learned Advocate for the Appellant submitted that, there was no dispute that, the Victim was the child at the relevant time. Thus, the prosecution proved that, the Victim was the child.

9) The prosecution's case largely rests on the testimony of the Victim who is examined as PW-2. Her evidence shows that, she was studying in the 5th standard and residing with her parents and brother and was studying in the first standard at the time of incident. She knew the Appellant as he was working in the factory of her Bade papa (elder brother of father), which was on the upper floor of the building. She used to go on the upper floor for giving water. When she used to go to the upper floor for giving water, the Appellant used to take her to the latrine, remove his clothes, also her clothes, make her to lie down. The Appellant used to give his

private part in her mouth and also used to put his penis in her vagina. The Appellant used to give her threats to beat till she bleeds and to throw in the tank, if she disclosed the incident to anyone. She further deposed that, her grandmother had come to their house and asked her to go upstairs to dry the clothes, but she refused to go upstairs and told the reason for the same. Her mother lodged the report with the Police. The police enquired with her. She was sent for medical examination.

10) The cross-examination of the Victim shows that, she did not remember whether, she had stated in her statement that, the Appellant used to threaten her of beating and throwing in the tank if she disclosed the incident to anyone and that she used to go to the upper floor for giving water. She did not remember whether, there was any bleeding from her place of urination when the accused raped her. Further, the employees did not notice when the Appellant used to take her on the upper floor. There used to be five (5) to six (6) workers.

11) The evaluation of the Victim's testimony shows that, though she deposed of rape and oral sex on her by the Appellant, it is strange that, she did not remember as to whether there was bleeding when the Appellant committed rape on her. The evidence of Victim

shows that, the spot of the incident was the toilet on the upper floor. The prosecution examined the spot panch as PW-3 Baliram Dhanuji Bhendarkar. His evidence shows that, the spot panchnama below Exh.28 was prepared in his presence by the Police Officer. The size of the toilet shown in the spot panchnama was 5 ft X 34 inch. It is strange as to how, the act deposited by the Victim committed by the Appellant on her was possible in such a small place. These aspect shows improbability in the evidence of the Victim. The evidence of PW-4 Dr. Rashmi S.Solnki shows that, he was the Assistant Professor, Gynecologist and resident doctor at the Government Hospital, Gondia. On 15.12.2016, the Victim was brought to her for examination. She examined the Victim and found *labia majora and labia minora were normal. Clitoris was normal. Fourchtte and introitus vagina were normal. The hymen was intact. There was no evidence of perineal tear. There were no injuries to the genitals.* She gave the opinion that, the evidence of sexual intercourse/assault cannot be ruled out, but final opinion was kept pending till receipt of FSL report. The medical examination report prepared by PW-4 Dr. Rashmi Solnki, is at Exh.36. It corroborate her testimony. The cross-examination shows that, on medical examination *genital and oral cavity was normal.* If FSL report was shown, she can try to give her

final opinion. The evidence of this Medical Officer shows that, there was no final opinion in respect of sexual intercourse/assault. Nothing has come in the medical evidence so as to corroborate the testimony of the Victim in respect of penetrative sexual assault. It is strange that, the nature of sexual assault as deposed by the Victim, did not find support from the medical evidence.

12) The evidence of Victim's mother, who is examined as PW-1 shows that, her elder brother-in-law was residing on the ground floor in the adjoining building and second brother-in-law was residing on the first floor of the building where, she was residing with her family. Her evidence shows that, their business were separate from 2015 and there was dispute in respect of partition between her husband and brother-in-law (Sevakram), who was running manufacturing unit on the upper floor of the building where they were residing. Her evidence shows that, their dispute persisted from 2015 to 2017 and they were not on talking terms with Sevakram. This evidence goes to show that, the relations between the Victim's parents and her uncle who was running the manufacturing unit, were not cordial. She admitted in her cross examination that, few days after the incident, Sevakram i.e. brother-in-law shifted his factory from their building to another place. The

suggestion is put that, to vacate the place from building, false report was lodged against the employee of Sevakram. This evidence of the Victim's mother, shows that, the defence put up in the cross-examination was not improbable. In response to question No.19 in the 313 (1)(b) statement, the Appellant stated that, due to the quarrel between two brothers he was falsely implicated. Though the Informant's evidence shows that, the Victim stated about the incident to her and complained of pain while passing urine, she did not take the Victim to the doctor.

13) PW-1 Victim's mother deposed that, the spot of the incident was shown to the police by her. This evidence gets falsified from the evidence of PW-7 Milind Navgire, the Investigating Officer, wherein he deposed that, the spot of incident was shown by the Informant's nephew namely, Nachiket Bawankar. The spot panchnama at Exh.28 corroborates the evidence of PW-7 the Investigating Officer that, the spot was shown by the nephew of the Informant. There is no evidence to show that, as to how the nephew of the Informant knew the spot of the incident. Further evidence of PW-7, the Investigating Officer, shows that, at the time of spot panchnama, neither the Victim nor the Informant was present on the spot. This evidence on record shows exaggeration by Victim's mother.

14) The above discussed evidence on record, do not show that, the evidence brought on record by the prosecution is concrete. Though the Victim deposed of the rape on her by the Appellant, the same is required to be seen with doubt in the light of evidence in respect of the place of occurrence. The Victim's testimony do not give the required assurance that, the Appellant committed the act of rape. The medical evidence is far from supporting the Victim's version. The opinion of the medical officer was provisional and not final. The relations between the Victim's family, and the owner of the manufacturing unit which was being run on the upper floor of the building and where the Appellant was working were not cordial. Soon before the First Information Report, the manufacturing unit was shifted. All these aspects create reasonable doubt about the prosecution's case and makes defence probable. The evidence on record lacks credibility and it is not possible to maintain the conviction and sentence. The benefit goes to the Appellant. The judgments cited by the learned Advocate for the Appellant are on the facts and circumstances of the respective cases. There is no need to burden this judgment by discussing the said judgments. The Appeal succeeds. Hence the following order.

ORDER

- i) The Criminal Appeal is allowed
- ii) The conviction and sentence passed by the learned Special Judge-Gondia in Special Case No.11/2017 against the Appellant is quashed and set aside.
- iii) The Appellant is acquitted for the offence punishable under Sections 376(2)(i)(n) of the Indian Penal Code and for the offence punishable under Sections 4, 6, 8 and 10 of the POCSO.
- iv) The Appellant is behind bars, he be released if not required in any other offence.
- v) The fine amount if paid, 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.)