



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

CRIMINAL APPEAL NO.347/2024

Vithhal Ramaji Kamathe
aged about 37 Years, Occu. Nil,
R/o Tarkhed, Tah. Tiosa, District
Amravati (Presently at Central Jail
at Amravati, Convict No.6386).

Appellant

- Versus -

1. State of Maharashtra,
through Police Station Officer,
Tah. Tiosa, District Amravati.
2. X.Y.Z. (Victim)
in Crime No.40 of 2021
Through Police Station
Tiosa, Tah. Tiosa,
Distt. Amravati.

Respondents

Mr. P.K. Dahat, Advocate for the Appellant.
Mr. U.R. Phasate, A.P.P. for Respondent No.1/State.
Ms. Mahak Agrawal (appointed) for Respondent No.2.

CORAM: NEERAJ P. DHOTE, J.
DATED 25.02.2026.

ORAL 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 07/11/2023, passed by the learned Additional Sessions Judge (Court No.2), Amravati in Special (Atrocity) Case No.66 of 2021 convicting and sentencing the Appellant as follows:-

“1] The accused Vitthal Ramaji Kamathe is hereby convicted under section 235(2) of the Code of Criminal Procedure for an offence punishable under section 376 (3) of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for 20 years and to pay fine of Rs. 10,000/- (Rs. Ten thousand only), in default of payment of fine, accused shall suffer rigorous imprisonment for Six months.

2] The accused Vitthal Ramaji Kamathe is hereby convicted under section 235(2) of the Code of Criminal Procedure for an offence punishable under section 4 the Protection of Children from Sexual offences Act, 2012 and he is sentenced to suffer rigorous imprisonment for Twenty years and to pay fine of Rs. 10,000/- (Rs. Ten thousand only), in default of payment of fine, accused shall suffer rigorous imprisonment for Six months.

3] The accused is hereby acquitted under section 235(1) of the Code of Criminal Procedure for an offence punishable under sections 3 (1) (w) (i) (ii) and 3 (2) (v) and (va) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4] All the substantive sentences of imprisonment shall run concurrently.

5] Accused is entitled for set off under section 428 of the Code of Criminal Procedure.

6] Copy of this judgment be given to Secretary, District Legal Services Authority, Amravati who shall put the matter before the Committee to determine the quantum of compensation under section 357-A of Cr.P.C. to be paid to the Victim under

the Victim Compensation Scheme.

Copy of this Judgment be given to accused free of cost”.

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

a) The Victim was residing with her parents. She was studying in the 7th Standard and was the child. The Appellant was the friend of the Victim's father. The Appellant was on visiting terms at the house of the Victim. On 04.02.2021, the Appellant came to the house of the Victim and took the Victim. The Victim did not return home for the whole night. The Appellant did sexual intercourse with the Victim at one agricultural field. In the morning, the Appellant dropped the Victim to her house. The Victim narrated the incident to her parents. The Victim's mother lodged the report with Tiosa Police Station and Crime No.40 of 2021 came to be registered against the Appellant for the offence punishable under Section 376(3) of the Indian Penal Code (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) and for the

offence punishable under Sections 3(1)(w)(i)(ii), 3(2)(va) and 3(2)(5) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short SC and ST Act.).

b) The Victim was referred for medical examination. The Appellant came to be arrested. The statement of the witnesses were recorded. The spot panchnama was drawn. The Motorcycle used by the Appellant, at the time of the incident, was seized. The necessary documents were collected. On completion of the investigation, the Appellant came to be Charge-sheeted. The learned Trial Court framed the Charge against the Appellant below Exh.2 for the offence punishable under Sections 376(3) of the IPC and for the offence punishable under Section 4 of POCSO and for the offence punishable under Sections 3(1)(w)(i)(ii) and 3(2)(v)(va) of the SC and ST Act. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined the informant i.e. the Victim's mother as PW-1, the Victim as PW-2, the Medical Officer, who examined the Victim, as PW-3, the panch for seizure of the motorcycle, as PW-4 and the Investigating Officer,

as PW-5. The relevant documents, such as the report, statement under Section 164 Cr.P.C., the medical papers of the Victim, the spot panchnama, seizure panchnama, the birth certificate, etc., are brought on record in the evidence of these witnesses. After prosecution closed its evidence, the Appellant's statement was recorded under Section 313(1)(b) of the Cr.P.C. The Appellant denied the case of the Prosecution. Appreciating the evidence available on record, the learned Trial Court passed the impugned judgment and order.

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

4) It is submitted by the learned Advocate for the Appellant that, there is inconsistent evidence of the informant and the Victim. The Victim's testimony was inconsistent with her previous statement. No fresh injury was noticed during the

medical examination of the Victim. There was delay in lodging the FIR. Her evidence on record was not sufficient to prove the Charge and therefore the Appeal be dismissed. In support of his submission, he relied on the judgments in *Birka Shiva..Vrs. The State of Telangana arising out SLP (Cri.) No.1445 of 2025 dated 16.07.2025, Tameezuddin @ Tammu Vs. State of (NCT) Delhi, 2009 Lawsuit (SC)1562 and Ashik Ramjan Ansari Vrs. Vs. State of Maharashtra and anr. 2023 law suit (Bom) 1208.*

5) It is submitted by the learned APP that, the birth certificate of the Victim was exhibited being the public document. As per the date of birth mentioned in the birth certificate, the Victim was the minor. There is no contrary evidence to dispute the said date of birth of the Victim. The case rests on the sole testimony of the Victim. The Victim deposed of the incident. The medical evidence corroborates the testimony of the Victim. The evidence of the Victim's mother

also corroborates the Victim's testimony. It is submitted that, the Appeal be dismissed.

6) The learned Advocate appearing for the Respondent No.2 Victim submitted that, she adopts the submissions made by the learned APP.

7) In **Birka Shiva** (supra), it is observed that, the conviction for rape can be sustained solely on the testimony of the Victim provided her evidence inspires confidence in the mind of the Court and appears to be natural and truthful. It is further observed that, however, if the version given by the Victim is inconsistent, unsupported by any medical evidence, or the whole surrounding circumstances are highly improbable and unbelievable in the case set up by the Victim, the Court shall not act on the solitary evidence of the Victim. In **Tammezuddin @ Tammu**, it is observed that, in the case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that the evidence has to be accepted even if the story is improbable and belies logic, would be doing

violence to the very principles, which govern the appreciation of evidence in a criminal matter. In **Ashik Ramjan Ansari** (Supra), the Victim was 17 years of age and it was found that, the Victim and the convict therein were in love affair and romantic relationship. The conviction was set aside.

8) As regards the date of birth and the age of the Victim is concerned, the evidence of the Victim's mother (PW-1) shows that, she did not remember the Victim's date of birth. Though, the Victim herself deposed of her own date of birth, it would be inadmissible being hearsay. The only evidence, which the prosecution relies in respect of the age of the Victim is the copy of birth certificate below Exh.51. The record indicates that, the Application was filed by the learned APP below Exh.49 with the prayer to exhibit the copy of the birth certificate. The said application was strongly opposed by the Appellant by giving say. The learned Trial Court allowed the said Application and exhibited the copy of the birth certificate. No doubt that, the birth certificate, if issued by the competent public authority, gets covered by the definition of the public document. However

in the case at hand, undisputedly, the birth certificate was not secured by the Investigating Officer. Undisputedly, the said document was not collected by the Investigating Officer during the course of the investigation. The cross-examination of PW-5 Jitendra P. Jadhao, the Investigating Officer shows that, he did not issue the letter to secure the birth certificate and certificate from the school. The suggestion is given that, the false birth certificate was placed on record. Therefore, it was necessary for the prosecution in the case at hand to prove the authenticity of the said birth certificate. Close scrutiny of the same shows that, the date of issue was 08.02.2021, which is undisputedly, after the FIR was lodged. Therefore, said Exh.51 cannot be considered to prove the date of birth and the age of the Victim. In absence of any other admissible evidence in respect of date of birth of the Victim, without hesitation, it is observed that, the prosecution failed to prove that, the Victim was the 'child' as defined under Section 2(d) of the POCSO i.e the Victim was below 18 years of age.

9) Undisputedly, the Appellant is acquitted for the offence punishable under the SC and ST Act. The evidence of Victim's mother, who lodged the report though shows that, in the night of the incident, she was cooking the food and her husband had gone out, the Appellant came with one Sagar Meshram and called the Victim and took the Victim with him, however in her cross-examination, it has come that, as she was inside the house, she did not know as to who had come in her house. She also admitted in her cross-examination that, she did not inquire with the Victim, when the Appellant called her. As regards her evidence that, the Appellant did sexual intercourse with the Victim, she is not the eye witness to the same. Her evidence that, the Appellant committed sexual intercourse with the Victim was an omission in her previous statement recorded under Section 164 of Cr.PC.

10) The prosecution's case rests on the testimony of the Victim, who is examined as PW-2. Her evidence shows that, on the date of the incident the Appellant came to her house, called

her and asked her to accompany him and so she sat on the bike and went with the Appellant. The Appellant took her to the agricultural field and did sexual intercourse with her. For the whole night, they stayed in the field. In the afternoon of the next day, the Appellant dropped her at her house. When her parents inquired with her, she shared the incident with them. The examination-in-chief of the Victim nowhere shows that, the Victim was taken forcefully or by way of deception. Further her evidence nowhere shows that, the sexual intercourse by the Appellant was without her consent. Her evidence also shows that, before the said date, the Appellant committed sexual intercourse with her. The necessary details regarding the same are missing in her testimony. In her cross-examination it has come that, before the learned Magistrate she stated that, she accompanied the Appellant on her own. Her cross-examination further shows that, at the time of Medical history, she stated that, the Appellant did not force her. She admitted that, she was in love with the Appellant. The essential ingredients for the offence under which the Appellant is convicted are completely

absent from the Victim's testimony. The Victim's testimony is inconsistent. It is not possible to rely on her testimony.

11) The medical evidence on record is that of PW-3 Pallavi Narendra Pachgade. She was the medical officer with the Government Hospital, where the Victim was taken for the medical examination. Her evidence shows that, in the history, the Victim stated of love affair with the Appellant and sexual relations since last two months and lastly on 05.02.2021. The medical evidence shows that, there was no fresh injury to the private part of the Victim. The medical evidence shows that, the hymen was old torn. At the same time, in the cross-examination of this medical officer, it has come that, the hymen can be torn due to activities like cycling and jumping. Further, it is clear that, the medical evidence do not support the case of prosecution for rape and sexual assault.

12) Though, PW-4 Sudhir Vighne, the panch witness, is examined to show that, the motorcycle was seized at the

instance of the Appellant, the same was not pursuant to the disclosure statement by the Appellant under Section 27 of the Indian Evidence Act and therefore it will not be relevant. Lastly, there is evidence of the Investigating Officer, who deposed of the investigation done by him. The evaluation of the overall evidence on record do not prove the Charge framed against the Appellant. At the cost of repetition, the prosecution failed to establish that, the Victim was the child at the relevant time and further failed to establish that, the Appellant committed rape and sexual assault on the Victim. On evaluation of the evidence on record, the conviction and sentence recorded by the learned trial Court is not sustainable and hence the following order.

ORDER

- (i) The Appeal is allowed.
- (ii) The conviction and sentence passed on 07/11/2023 by the learned Additional Sessions Judge, Amravati in Special (Atrocity) Case No.66 of 2021 is quashed and set aside.

- (iii) The Appellant is acquitted for the offence punishable under section 376 (3) of the Indian Penal Code and under section 4 the Protection of Children from Sexual offences Act, 2012
- (iv) The Appellant is behind bars and he be released, if not required in any other offence.
- (v) The fine amount, if any, paid by the Appellant be refunded to him
- (vi) R and P be sent back to the learned Trial Court.
- (vii) Fees of the learned appointed Advocate for Appellant is quantified at Rs.10,000/- (Rupees Ten Thousand only). The same be paid accordingly by the High Court Legal Services Authority.
- (viii) Fees of the learned appointed Advocate for Respondent No.2 is quantified at Rs.7,500/- (Rupees Seven Thousand and Five Hundred only). The same be paid accordingly by the High Court Legal Services Authority.
- (ix) Criminal Appeal stands disposed of.

(NEERAJ P. DHOTE, J.)