



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

CRIMINAL APPEAL NO.410/2024

Sudhakar @ Shankar @ Chandrya
Jangluji Uike, aged about 39 Years,
Occup. Beggar, R/o Near Mari Mata Temple,
Ladgad, Post Masod, Tah.Arvi,
District Wardha..

Appellant

- Versus -

State of Maharashtra,
Police Station Officer,
Railway Police Station, Akola.
District Akola.

Respondent

Mr. Amit M. Balpande, Advocate (appointed) for the
Appellant.
Mr.U.R.Phasate, A.P.P. for Respondent No.1/State.

CORAM: NEERAJ P. DHOTE, J.
DATE OF RESERVING THE JUDGMENT: 12.02.2026.
DATE OF PRONOUNCING THE JUDGMENT: 25.03.2026.

JUDGMENT:-

1) This is an Appeal under Section 415(2) of the Bharatiya
Nagrik Suraksha Sanhita (for short BNSS),2023 against the
judgment and order dated 30.11.2023 passed by the learned Extra

Joint Additional Sessions Judge, Akola in Special POCSO case

No.112 of 2020 convicting and sentencing the Appellant as follows.

(i) Accused Sudhakar @ Shankar @ Chandrya Jagluji Uike aged about 35 years Occ: Begger R/o near Marimata temple Ladgad Post Masod Tq. Arvi Dist. Wardha is convicted under Section 235 (2) of the Criminal Procedure Code for the offence punishable under sections 376(2)(n), 376(3), 363, 363-A of the Indian Penal Code and Section 5 (1) (j)(ii) punishable under Section 6 of the POCSO Act.

(ii) No separate sentence is awarded for the offence punishable under Section 376 (2)(n) and 376 (3) of the Indian Penal Code in view of Section 42 of the POCSO Act, as greater punishment is provided under Section 6 of the POCSO Act.

(iii) The accused is convicted for an offence punishable under Section 6 of the POCSO Act and sentence to suffer R.I. for 20 (Twenty) years and to pay fine of Rs.10,000/- (Rs.Ten thousand) in default of payment of fine to suffer further R.1. for one year.

(iv) The accused is convicted for an offence punishable under Section 363 of the Indian Penal Code which is separate and distinct offence and sentence to suffer R.I. for 7 (Seven) years and to pay fine of Rs. 10,000/- (Rs. Ten thousand) in default of payment of fine to suffer further R.L. for six months.

(v) The accused is convicted for an offence punishable under Section 363-A of the Indian Penal Code which is separate and distinct offence and sentence to suffer R.I. for 7 (Seven) years and to pay fine of Rs. 10,000/- (Rs. Ten thousand) in default of payment of fine to suffer further R.I. for six months.

(vi) The accused is acquitted under Section 235 (1) of the Cr.P.C. of the offence punishable under Section 224 and 376 (m) of the Indian Penal Code.

(vii) The substantive sentence shall run concurrently as per Section 31 of the Code of Criminal Procedure.

(viii) The accused is entitled for set off period he undergone in jail as per Section 428 of the Code of Criminal Procedure.

(ix) On realization of the amount of fine it shall be paid to the baby of the accused and the victim under Section 357 (1)(b) of the Code of Criminal Procedure. On payment of this amount to the baby of the Victim, it shall be kept in fixed deposit with any Nationalized Bank by her Care-taker till she attend majority.

(x) Copy of Judgment be given to the accused free of costs under Section 354 (4) of the Code of Criminal Procedure.

(xi) The clothes which were seized from the accused be returned to him after the appeal period or the decision of the appeal if preferred by either side.

(xii) Dictated and pronounced in open Court.

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

a) On 22.08.2020 the coordinator with Railway Child Line, Akola assigned with the work of providing necessary help to the children found wandering within the railway premises, noticed the Victim along with the Appellant on platform No.6 of Railway Station, Akola. The Coordinator was accompanied by the other Colleagues. On enquiry with them, the coordinator and his team got suspicious and they both were brought to the Police Station. The

Victim was referred for medical examination to the Government Hospital and thereafter, was taken to the Child Welfare Committee (CWC). Again as per advice of the CWC, the Victim was taken for medical examination and she was found pregnant for Eighteen (18) to Nineteen (19) weeks. The ossification test of the prosecutrix was conducted and she was found to be aged 15 years (+ -) six months. The statement of the Victim was recorded by the Police and by the CWC. The Report was lodged by the Policeman and Crime bearing No.211 of 2020 came to be registered for the offence punishable under Section 376(2)(i)(m)(n) 224 of Indian Penal Code (for short IPC) and for the offence punishable under Section 6 r/w Section 5(j) (2) and (l) of the Protection of Children From Sexual Offences Act, 2012(POCSO) against the Appellant. The Appellant came to be arrested. The Appellant was referred for medical examination. The blood samples of the Victim and of the Appellant came to be drawn and sent to the forensic science laboratory. Statement of witnesses were recorded. Victim was sent to the Child Care Center. The spot panchnama was conducted. The clothes of the Victim and of the Appellant came to be seized. The Test Identification Parade (T.I.P) was conducted. As it was learnt that, the Victim was with her relatives at Kachewani, Tq.Tiroda, District Gondia. Search was

done. However, the Victim was not traced and it was learnt that, the Victim delivered the baby girl and one person adopted the child. The samples of the child were drawn and sent to the laboratory. The seized articles were sent to the laboratory for examination. The DNA report disclosed that, the Appellant and the Victim were biological parents of the baby. The necessary documents were collected. On completion of the investigation, the Charge-sheet came to be filed against the Appellant.

b) The learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 363, 363-A, 376(2)(m)(n), 376(3) and 224 of the Indian Penal Code and for the offence punishable section 6 of the POCSO Act below Exh.101. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined in all nineteen (19) witnesses and brought on record, the relevant documents. After the prosecution filed the evidence closer 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 by his family members due to the land dispute. Appreciating the evidence on record, the learned trial court convicted and sentenced the Appellant as above.

3) Heard the learned Advocate for the Appellant and the learned APP for the State. Scrutinised the evidence on record.

a) It is submitted by the learned Advocate for the Appellant that, the Victim was not examined by the prosecution. There was no document to prove the date of birth and age of the Victim which was not conclusive. The Ossification Test was conducted to prove the age of the Victim. The conviction was recorded by the learned Trial Court only on the basis of the DNA report. Since, the Charge was not established the Appellant be acquitted. In support of his submissions, he relied on the following decisions:-

- (i) *Kailas Hiranman Salve Vs. The State of Maharashtra and anr.* reported in **2023 ALL MR (Cri.) 2798**
- (ii) *Mekala Shiva Vs. The State of Telangana* reported in **2022 ALL MR (Cri.) Journal 121.**
- (iii) *Mohan Ambadas Meshram Vs. State of Maharashtra* reported in **2018 ALL MR(cri.) 4362.**

b) It is submitted by the learned APP that, the Victim was from the lower strata of life. As per the ossification test, the Victim was found to be Fifteen (15) years old. Two (2) years margin on the either side would show that, she was below Eighteen (18) years of age. There was no date of incident. Therefore, five (5) months prior period from the FIR needs to be taken into consideration. The Victim

and the Appellant were found together. The evidence on record indicate repeated sexual performance by the Appellant on the Victim. There is no defence of consensual relations. As the Appellant absconded after his arrest, the Charge for abscondance was framed. The samples were kept in the ice-packs and there is no suggestion that, the samples got contaminated. There were no loopholes in handling the samples. The Appellant was found to be the biological father of the child born to the Victim. The presumption can be drawn that, the Appellant kidnapped the Victim. The circumstantial evidence proved the Charge. The Appellant was not entitled for benefit of doubt and the Appeal be dismissed. In support of his submissions, he relied on the judgment in *Nandkumar Sitaram Jadhv Vs.The state of Maharashtra reported in 2014 ALL MR(Cri.)697*.

4) As one of the Charge against the Appellant is under POCSO, the prosecution is under obligation to prove that, the Victim was the child as defined under Section 2(d) of the POCSO i.e. below 18 years of age. The evidence of PW-18 Kiran Dnyandeo Salve, who was the in-Charge Officer of the Railway Police Station, Akola who invested the crime shows that, he made enquiry with the grandmother of the Victim for the document in respect of age,

however, no document was found with her in respect of the age of the Victim.

5) The prosecution examined PW-9 Dr. Pradnya Gajanan Atram to prove the age of Victim on the basis of Ossification test. The evidence of this witness shows that, she was attached to the Government Medical College, Akola as the Associate Professor on 24.08.2020. Her evidence shows that, on the basis of the requisition received from the concerned Police Station for age determination of the Victim, the Victim was referred to the Dental department, Radiology department, Forensic department and Gynecology department on 24.08.2020. All the Heads of the said department examined the Victim and gave their remarks on the case papers. She deposed that, at the relevant time, the Victim was found Fifteen (15) years of age (+ -) Six(6) months. The Exh.44, age certificate was issued under her signature and signature of the concerned head of the departments. The suggestion is given in the cross examination that, she could not ascertain the correct age of the Victim. Undisputedly, the doctors, who conducted the Radiological, Dental and Forensic tests are not examined by the prosecution. The evidence of this witness clearly shows that, after examining the Victim as per routine, she referred the Victim to the said various

departments. Though, this witness is one of the signatory to the said Exh.44 certificate, her evidence will not be sufficient to accept the evidence in respect of determination of age of the Victim. The Ossification test report, radiology test report and dental X-ray report are not brought on record and exhibited to give an opportunity to the defence to cross-examine the experts regarding the method used by them while performing such examination. Thus, foundational facts regarding the determination of the age of the Victim are not led by the prosecution. Thus, this evidence fall short of proving the age of the Victim. No other evidence is brought on record to prove the age of the Victim. There is no need to discuss the judgment cited by the learned Advocate for the Appellant on the point of Ossification test evidence. Prosecution utterly failed to prove that, the Victim was the child.

6) The other evidence on which reliance is placed by the prosecution is the Forensic evidence in the nature of DNA report showing the Appellant and the Victim as the biological parents of the baby of the Victim. The said report is brought on record in the evidence of PW-19 Sidharth Ransing More, who was the Assistant Chemical Analyser in the Regional Forensic Laboratory at Amravati. His evidence shows that, on receipt of the samples of the Victim, the

Appellant and the new born baby, from his department, he performed the analysis and opined about the parentage of the new born girl to the Victim. It has come in his cross examination that, as per the norms, the blood samples must be forwarded by the Police Station to the laboratory within 24 hours and the same should be forwarded in the ice box.

7) As regards the collection of the blood and forensic samples is concerned, according to PW-19 the blood samples of the new born baby of the Victim was collected by the Medical Officer Dr.Mahesh Jaiswal. Said Mahesh Jaiswal is not examined by the prosecution. It has come in the cross-examination of this forensic expert that, *so far the collection of the blood sample of the Victim and the accused, their identification form received by him shows the signature and seal of the Medical Officer of GMC, Akola but their names were not written.* The evidence of PW-1 though shows that, the Medical Officer collected the blood samples of the Appellant in his presence and kept and sealed it in the DNA kit in the ice pack and it was handed over to him and he handed over the same to the Investigating Officer, his evidence nowhere shows the dates of the same i.e. as to when the samples were collected and when the same was handed over by him to the Investigating Officer. The PW-5

Woman Police Naik of the Railway Police Station, Akola, though deposed that, on 02.09.2020 blood samples of prosecutrix and the Appellant were collected for DNA test, her evidence nowhere shows as to who collected the same and handed over to whom. PW-7 Dr. Prachi S.Koranne, the Medical Officer, though deposed that, the Forensic samples of the prosecutrix were collected, her evidence nowhere shows as to who was the concerned police to whom the samples were handed over. Evidence of PW-11, the Police Constable of the Railway Police Station, Akola shows that, on 02.09.2020, he carried the samples of the Victim and of the Appellant to the laboratory and on 04.02.2021 deposited the samples (appears to be of the new born baby) to the laboratory. It has come in his cross examination that, the DNA samples are to be deposited in the laboratory that very day and he admitted that, he had not deposited the DNA samples that, very day. The evidence of PW-12 Police Constable of the Railway Police Station, Akola shows that, on 04.09.2020, he carried the clinical samples of the Victim and the Appellant to the laboratory.

8) Useful reference can be made on the judgments in the case of *Nivrutti S/o Nagorao Hange V/s. The State of Maharashtra and another* **2024 ALL MR (Cri.) 3445** and *Chandu @*

Chandrashekhar Keshaorao Chambhare V/s. State of Maharashtra
2025 DGLS (Bom.) 590 in respect of handling the DNA samples.

The above evidence on record do not clearly establish the chain of handling the DNA samples as required by the medical protocol. The evidence in respect of the samples do not rule out the possibility of the samples getting contaminated. Therefore, in the light of the principle laid down in the above referred decisions in respect of the DNA samples, the Forensic evidence showing the Appellant as the biological father of the new born baby of the Victim cannot be relied. Further, it has come in the cross examination of PW-17 Sunil Ashok Bhise that, the Police Officer, who conducted some part of the investigation, that, he could not get any document showing that, the child in the custody of the person Jamil Anwar Sheikh was the child of the Victim.

9) The other evidence brought on record by the prosecution is that, of the brother-in-law of the Appellant, the Police Patil of the village and one witness who were examined as PW-13 and 14 and 15 to show the past conduct of the Appellant. Even accepting the said evidence as it is, the prosecution cannot escape from the duty to establish the Charge with cogent evidence. The evidence of PW-7 Dr. Prachi S.Koranne shows that, while examining the Victim, the

history given was that, the Appellant and Victim had performed the marriage and had sexual intercourse. Her evidence shows that, there were no injuries on the Victim. In *Nandkumar Sitaram Jadhv (supra)*, it is observed that, non examination of the Victim due to non availability is not fatal to the prosecution and the conviction can be based on the other material on record. There cannot be any dispute on the said legal position. However, in the case at hand, the evidence available on record do not prove the Charge against the Appellant. The prosecution failed to establish that, the Victim was the child. Further, the prosecution failed to establish that, the Victim was kidnapped and raped by the Appellant. Thus, it is not possible to maintain the conviction recorded by the learned trial Court against the Appellant. The Appellant is entitled for acquittal. Hence, the following order.

ORDER

- i) The Criminal Appeal is allowed
- ii) The conviction and sentence recorded by the learned Trial Court against the Appellant in Special POCSO Case No.112 of 2020 is quashed and set aside.
- iii) The Appellant is acquitted for the offence punishable under Sections 376(2)(n), 376(3), 363, 363-A of the IPC and for the offence punishable under Section 6 of the POCSO.

- iv) The Appellant is behind bars, he be released from the jail, 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.
- 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.

(NEERAJ P. DHOTE, J.)

Kavita