



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

CRIMINAL APPEAL NO.465 OF 2024

Anil s/o Bajirao Madavi,
Aged about 39 years,
Occ. Sweeper,
R/o: Government Vastigurh,
Mohali, District – Gadchiroli.

.... Appellant

VERSUS

State of Maharashtra,
Through Police Station Officer,
Police Station Dhanora,
Dist. Gadchiroli.

..... Respondent

Appearance :

Mr. K. G. Rathi, Advocate for the Appellant
Mr. Bhagwan M. Lonare, APP for the Respondent - State
Mr. R. D. Hajare, Advocate for the Victim (Appointed)

CORAM : NEERAJ P. DHOTE, J.
Reserved On : 16th March, 2026
Pronounced On : 27th April, 2026

JUDGMENT :

1. This is an Appeal under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereinafter referred to as 'BNSS'] against the Judgment and Order dated 15/12/2023, passed by the learned Additional Sessions Judge, Gadchiroli [hereinafter referred to as 'the learned Trial Court'], in Special (POCSO) Case No.10/2018, convicting and sentencing the Appellant as follows :-

"1. Accused **Anil Bajirao Madavi** is hereby convicted under Sec. 235(2) of the Code of Criminal Procedure for offences punishable under Secs. 376(2) (i) & 506-II of the Indian Penal Code and Secs. 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Accused **Anil Bajirao Madavi** is collectively sentenced for commission of offences under Sec. 6 of the Protection of Children from Sexual Offences Act 2012, and under Sec. 376(2) (i) of the Indian Penal Code, to suffer rigorous imprisonment for twenty years and to pay collective fine of Rs. 75,000/- (Rs. Seventy-five Thousand only) and in default of payment of fine, he shall undergo further rigorous imprisonment for one year. In view of scope of Sec. 42 of POCSO Act, no separate sentence is awarded for the offence punishable under Sec. 4 of POCSO Act.

3. Accused **Anil Bajirao Madavi** is sentenced for commission of offence punishable under Sec. 506-II of Indian Penal Code, to suffer rigorous imprisonment for five years and to pay fine of Rs.25,000/- (Rs. Twenty-five Thousand only) and in default of payment of fine, he shall undergo further rigorous imprisonment for three months.

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

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2. The Prosecution's case, as revealed from the Police Report, is as under :

[I] The Informant is the mother of Victim. The Victim was a child aged eleven (11) years. On 17.01.2018, the Informant was not well. The Victim returned home in the afternoon by 02:00 p.m. from the School. The Informant asked her to go near the lake for washing the clothes. Accordingly, the Victim went to wash the clothes. The Victim returned home at 03:45 p.m. The Appellant came to the Informant's house. When the Victim came home, she saw the Appellant and went out. When the Informant's mother-in-law returned home, she asked the Informant to drive out the Appellant from home. After the Appellant left the Informant's home, the Victim returned home and started weeping. On asking, the Victim told the Informant that, when she had gone to wash the clothes, the Appellant had come there, caught hold of her hand and raped her. When the witness – Pungati was passing from the spot, the Appellant fled. The Appellant again returned and threatened the Victim not to disclose the incident to anybody. The report was lodged with Dhanora Police Station on 24.01.2018 against the Appellant and Crime

came to be registered for the offence punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act').

[II] The Victim was sent for medical examination. The Victim's statement was recorded. The Spot Panchnama was drawn. The Appellant came to be arrested and sent for medical examination. The statements of witnesses were recorded. The articles seized during the investigation were sent to the Chemical Laboratory. On completion of investigation, the Appellant came to be charge-sheeted along with six (06) others. The learned Trial Court framed the Charge for the offence punishable under Sections 376, 506-II and 202 r/w Section 34 of IPC and Sections 4, 6 and 21(1) of the POCSO Act against the Appellant and Co-accused below Exhibit - 50. The Appellant and Co-accused pleaded not guilty and the claimed to be tried. To prove the Charge, the Prosecution examined in all nine [09] witnesses. The Victim is examined as PW - 1, the Victim's mother is examined as PW - 2, Panch Witness is examined as PW - 3, the witness -

Pungati is examined as PW – 4, the Medical Officer is examined as PW – 5, the grand-mother of the Victim is examined as PW – 6, the School Headmaster, where the Appellant visited to meet the Victim is examined as PW – 7, the Volunteer of the organization is examined as PW – 8 and the Investigating Officer is examined as PW – 9. After filing of the evidence closure pursis by the Prosecution, the statement of the Appellant and Co-accused came to be recorded under Section 313(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC'). On appreciating the evidence available on record, the learned Trial Court passed the impugned Judgment and Order convicting the Appellant and acquitting the Co-accused as above.

3. Heard the learned Advocate for the Appellant, learned APP for Respondent No.1 – State and the learned Advocate for Respondent No.2 – Victim.

4. It is submitted by the learned Advocate for the Appellant that, there was inordinate delay in lodging the report. There are discrepancies in the evidence of witnesses. The evidence on record is not consistent to prove the

penetrative sexual assault. The medical evidence do not support the case of Prosecution in respect of rape. The reports from the Chemical Analyzer are not incriminating. The Prosecution failed to prove that, the Victim was the child. The age of the Victim was challenged in the cross-examination. The delay for lodging the report belatedly is not explained. The punishment awarded by the learned Trial Court was not in consonance with law. The evidence on record do not prove the offence of rape and penetrative sexual assault. The Appeal be allowed by setting the impugned Judgment and Order.

5. It is submitted by the learned APP for Respondent No.1 – State and the learned Advocate for Respondent No.2 – Victim that, the Victim's testimony finds corroboration from the testimony of the Informant and medical evidence. The evidence on record proves the essential ingredients for the offence, under which, the Appellant was charged. The delay in lodging the report has been explained. The certificate issued by the Grampanchayat was brought on record to prove the date of birth and the age of the Victim. The medical evidence shows injury on the Victim, which

corroborates the Victim's testimony. The learned Trial Court has rightly passed impugned Judgment and Order and no interference was called for. Hence, the Appeal deserves to be dismissed.

6. When the Charge is for penal sections under 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, at the relevant time. According to the Prosecution, the Victim was the child. For this, the Prosecution relied on the evidence of PW – 2, the Mother of Victim. Her evidence shows that, the Victim's date of birth was 11.04.2007. There is no challenge to the said evidence by the Appellant in the cross-examination. The evidence of PW – 2 (Mother) shows that, the birth certificate of the Victim below Exhibit – 75 was brought on record by the Prosecution. According to the PW – 2 (Mother), the said certificate was issued by the Chinghli Grampanchayat. Even there is no challenge to the said certificate in the cross-examination of PW – 2 (Mother). The cross-examination of PW – 9 (Investigating Officer) shows that, the said birth certificate was collected from the Victim's

house and the contents therein were not confirmed from the Grampanchayat office. The suggestion is given that, the said certificate was false. The learned Trial Court exhibited the said birth certificate being the public document. It is clear from the cross-examination that, the date of birth of the Victim and the said certificate is not seriously challenged. In absence of any other evidence to falsify the said date of birth and the certificate sans serious challenge to the same, the Prosecution proved the date of birth of the Victim. Undisputedly, the Crime came to be registered on 24.01.2018 for the offence prior to lodging the FIR. From this, it is clear that, at the relevant time, the Victim was a child within the meaning of above-referred Section 2(d) of the POCSO Act.

7. As regards the aspect of delay in lodging the report, the incident is dated 17.01.2018 and the report is lodged on 24.01.2018. The evidence of PW – 2 (Mother) shows that, the report was lodged after seven (07) days of the incident because she thought that, it will defame them. Her evidence shows that, she was the Labourer. Her cross-examination shows that, she was an illiterate. It has come in her cross-

examination that, the Co-accused asked her to lodge the report, however, subsequently, they prevented her from lodging the report. The evidence of PW – 9 (Investigating Officer) shows that, after the offence, the meeting of Jat (Caste) Panchayat was held and the matter was tried to be settled. The evidence of PW – 9 (Investigating Officer) further shows that, after the Victim – girl was discharged from the hospital, the Victim and her family members were boycotted by the members of Jat Panchayat. The evidence on record shows that, the place of incident was the village in the Gadchiroli District. There is evidence of PW-8 (Rashmi M. Paraskar), who was the volunteer of Bhumkal Sanghatna, which was working in the tribal areas of Gadchiroli, that, after getting knowledge of the incident, she visited the village of Victim and met the family of the Victim. This evidence of visiting the persons from the organization gets corroboration from the cross-examination of PW – 2 (Mother). This evidence on record clearly shows that, the Prosecution has brought on record the circumstances leading to delay in lodging the report. The delay caused in lodging the report is explained by the Prosecution and the reasons

for the same are acceptable. Thus, the delay in lodging the report is not fatal for the Prosecution.

8. The evidence on record goes to show and there is no dispute that, the Appellant was residing near the Victim's house. The evidence of PW – 1 (Victim) shows that, the incident took place in the month of January. She was residing with her parents, brother, uncle, aunt and their children. On the day of incident, she had gone to the School at 10:00 a.m. Around 02:00 p.m., the Appellant came to the School and told her that, her mother was calling. She came out of the School. The Appellant asked her whether she will have something to eat from the vendors outside the School and she responded in the negative. They went together for some distance. The Appellant asked her whether he should give Rs.10/-, to which she declined. Thereafter, she went home. Her mother asked her to go to the lake for washing the clothes and accordingly, she went there. She was alone. The Appellant came there and called her towards him. She refused to go near him. The Appellant threatened her and so she went to the Appellant. The Appellant took her towards the fencing of Sangawadi. The Appellant undressed her.

When she refused, the Appellant threatened her. The Appellant removed his clothes. The Appellant slept on her, pressed her breasts and committed peno-vaginal intercourse. For four (4) to five (5) times, the Appellant tried to insert his penis in the vagina. She experienced pain in her private part. In the meantime, grand-mother - Pungati (PW-4) came there and saw the incident. The Appellant fled by wearing his pant. On asking by the grand-mother - Pungati, she told that, the said person was the Appellant. While coming back home, the Appellant again came and threatened her not to disclose the incident to her mother or else, he will kill her. When she reached home, she saw the Appellant inside her house. She came outside. In the meanwhile, her grand-mother (PW-6) came home. Her grand-mother asked the Appellant to go out and the Appellant left. She narrated the incident to her mother. She was experiencing pain in her breast and private part. She went to the Police Station with her mother and the Police recorded her statement. Her statement was also recorded before the learned Magistrate.

9. The Victim was subjected to cross-examination. There is nothing in the cross-examination to show that, the Victim's

testimony was inconsistent with her previous statements. Most of the cross-examination are the suggestions, which are denied. The cross-examination could not dilute her testimony. Some inconsistency in respect of timings in no way affects her testimony as she deposed after a period of more than twenty three (23) months, i.e. little short of two (02) years. Her evidence remained unshaken. Nothing has come in the cross-examination to create any doubt in respect of her testimony. Her evidence supports the Prosecution's case. She being the Victim, her testimony is vital. It is unsuccessfully tried to be brought that, she received injury due to fall while riding the bicycle.

10. The evidence of PW – 2 (Mother) corroborates the Victim's testimony that, the Victim narrated the incident to her on coming home after washing the clothes. The mother's evidence also corroborates the Victim's testimony that, the Appellant came to her house before the Victim returned after washing the clothes and her mother-in-law, i.e. grandmother of the Victim, asked the Appellant to go out and accordingly, the Appellant left. The mother's evidence further shows that, she saw the breast and private part of the Victim

and noticed swelling on the same. She gave warmth to the said body part of the Victim by warm water. The evidence of PW – 2 (Mother) remained unshaken in respect of the said discussed evidence. The evidence of PW – 6 (grandmother of the Victim) shows that, the incident took place two (2) to (3) three years ago and on the day of incident, when she returned home from the field at 04:00 p.m., she saw the Appellant sleeping on the bed in her house. She drove him out of the house. This evidence supports the above discussed evidence of PW – 1 (Victim) and PW – 2 (Mother) in respect of coming of the Appellant to their house in the evening. Further, there is evidence of PW – 7 (Sukhdev K. Gahane), the Teacher of Zilla Parishad, where the Victim was studying, that, in the recess, on 17.01.2018, he noticed the Appellant on the play ground of the School and also noticed the Victim on the play ground and he asked the Victim to inform her class teacher to give the application for leave. This evidence corroborates the Victim's testimony that, the Appellant had come to her School.

11. There is evidence of PW – 5 (Sonali A. Deshmukh), the Medical Officer of the Government Hospital, Gadchiroli,

which shows that, on 25.01.2018, the Victim was brought to her by the woman police constable at 09:00 a.m. The Victim narrated the incident, which was recorded. On examination, she found the injuries on the Victim. The relevant Paragraphs from the evidence of this Medical Officer are reproduced below :

"4] On external medical examination of victim, I found that there were three scratch lenial marks on her right arm. There was swelling and tenderness on her right breast. On her genital examination, I found that there was tenderness on her external genital area i.e. vulva. There was nucoid discharge on her labia minora and also near her hymen and on her labia minora, tenderness was present. I found that her hymenal opening was intact. However, tenderness was present in urethral meatus and vestibule tenderness. There was tenderness on labia majora.

5] I had collected blood sample, vulval swab. She was suffering from severe pain, She did not allow me to take other samples. On final examination, I observed that her hymen was intact, tenderness was present on her right breast and abrasions were present on her right arm According to me, there was possibility of sexual assault on victim and its confirmation was subject to chemical analysis. Accordingly, I had issued medical Certificate and it is shown to me through video conferencing. It is the same. It bears my signature. Its contents are correct. It is marked is Exh. 86."

12. Though the Medical Officer was cross-examined, her evidence in respect of examination of the Victim and noticing the above-referred injuries remained unshaken. The suggestion in respect of the said injuries due to fall on the rough surface is denied. The evidence of the Medical Officer

is corroborated by the Medico-Legal Examination Report below Exhibit – 86. True it is that, in the history narrated by the Victim, it has come that, the Appellant slept on her. The same will not affect the Victim's testimony in respect of peno-vaginal intercourse in the light of the evidence of this Medical Officer showing the injuries on the Victim. Though the hymen which was found intact, the aforesaid injuries on the private part of the Victim corroborate the Victim's testimony. The Victim's evidence clearly shows that, there was insertion of penis by the Appellant in her vagina. It is needless to state that, slightest insertion amounts to rape. The medical evidence fully corroborates the testimony of the Victim.

13. The above-discussed evidence on record proves the Charge of rape and penetrative sexual assault by the Appellant on the PW – 1 (Victim) and also threatening by the Appellant to her. Except denial, there is no defence from the Appellant. All the suggestions are denied by the Victim and the Victim's mother. For the offence of rape and penetrative sexual assault, the learned Trial Court awarded the imprisonment for twenty (20) years and heavy fine of

Rs.75,000/-. The learned Trial Court has rightly awarded one punishment for the offence of rape and for the offence of penetrative sexual assault pursuant to the provisions of Section 42 of the POCSO Act. As regards the submissions of the learned Advocate for the Appellant in respect of punishment is concerned, sub-section 3 to Section 376 of IPC providing minimum twenty (20) years Rigorous Imprisonment and fine for rape on a woman under sixteen (16) years of age was inserted / introduced in the statute on 21.04.2018 by the Amendment Act, 22 of 2018 and similarly, by the said Amendment Act, the Clause (i) in sub-section 3 of Section 376 of IPC was omitted, which was in respect of rape on a woman when she was under sixteen (16) years of age. Undisputedly, the offence in the present matter is dated 17.01.2018, which was prior to the said amendment. At the time of commission of offence, i.e. 17.01.2018, the minimum punishment for the offence under Section 376(2)(i) of IPC was ten (10) years. The minimum Rigorous Imprisonment for twenty (20) years for the rape on the woman under sixteen (16) years of age was not provided in the statute at that point of time. Similarly, for the offence punishable under

Section 4 (punishment for penetrative sexual assault) under the POCSO Act, the minimum punishment as on 17.01.2018 was seven (07) years and sub-section 2 of Section 4 of the POCSO Act providing minimum sentence of twenty (20) years was brought in the statute on 16.08.2019, which was after the incident in question. The minimum sentence of twenty (20) years for the offence punishable under Section 6 (punishment for aggravated penetrative sexual assault) of the POCSO Act was substituted for minimum sentence of ten (10) years by the Amendment Act 25 of 2019 with effect from 16.08.2019.

14. It is needless to state that, under the settled position in law, the punishment provided under the statute at the time of commission of the offence would be applicable and not the punishment, which is introduced later on. Therefore, the sentence of twenty (20) years imposed by the learned Trial Court for the offence punishable under Section 376(2)(i) of IPC is not in consonance with law and needs interference. Similarly, the fine amount imposed for the offence punishable under Section 506-II of IPC is optional as per the statute. The Appellant's occupation is shown as labourer. Thus, the

sentence is required to be appropriately modified to bring it in consonance with law. Hence, the following order :

ORDER

- [a] The Appeal is partly allowed.
- [b] The conviction recorded by the learned Trial Court against the Appellant for the offence punishable under Sections 376(2)(i), 506-II of IPC and under Sections 4 and 6 of the POCSO Act, is maintained.
- [c] The sentence awarded by the learned Trial Court against the Appellant for the offence punishable under Sections 376(2)(i) of IPC and Sections 4 and 6 of the POCSO Act is modified to Rigorous Imprisonment for ten (10) years and fine of Rs.5000/- (Rupees Five Thousand), in default to pay the fine, to suffer Rigorous Imprisonment for two (02) months.
- [d] The sentence for the offence punishable under Section 506-II of IPC to suffer Rigorous Imprisonment for five (05) years and fine of Rs.25000/- is modified to sentence of Rigorous Imprisonment for five (05) years.
- [e] All the substantive sentences of imprisonment shall run concurrently.
- [f] The Appellant would be entitled for set off under Section 428 of Cr.PC for the period of imprisonment already undergone.

- [g] The fee of learned Advocate Mr. R. D. Hajare appointed for the Victim is quantified at Rs.7,500/- (Rupees Seven Thousand Five Hundred only) to be paid by the office of High Court Legal Services Sub-Committee, Nagpur.
- [h] The Record and Proceedings be sent back to the learned Trial Court.

[NEERAJ P. DHOTE, J.]

Sameer/-