



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

CRIMINAL APPEAL NO. 567 OF 2024

Rahul s/o. Banduji Dhekale,
Age 33 years, Occupation – Labour,
R/o. Uttarwadhona, Taluka Ner,
District Yavatmal.

... APPELLANT

...VERSUS...

State of Maharashtra,
Through Police Station Officer,
Police Station Ladkhed, Taluka Darwa,
District – Yavatmal.

...RESPONDENT

Ms. Kirti Deshpande, Advocate for Appellant.
Ms S. S. Dhote, A.P.P. for Respondent/State.

CORAM : NEERAJ P. DHOTE, J.
JUDGMENT RESERVED ON : 12.02.2026.
JUDGMENT PRONOUNCED ON : 27.03.2026

JUDGMENT :

1. This is an Appeal under Section 415(2) of the Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') against the
Judgment and Order dated 14.06.2024 passed by the learned Special
Judge, Darwha in Special POCSO Case No.13/2015 convicting and
sentencing the Appellant as follows :

*“The accused is hereby convicted under Section
235(2) of the Criminal Procedure Code of the offence
punishable under section 4 of the POCSO Act, and sen-
tenced to suffer R.I. for 10 years and to pay fine of
Rs.5000/- I/d he shall undergo further R.I. for 3 months.*

2. The accused is hereby convicted under Section 235(2) of the Criminal Procedure Code of the offence punishable under section 452 of IPC, and is sentenced to suffer R.I. for 7 years and to pay fine of Rs.1000/- I/d he shall undergo further R.I. for 1 month.

3. The accused is hereby convicted under Section 235(2) of the Criminal Procedure Code of the offence punishable under section 354-A of IPC, and is sentenced to suffer R.I. for 1 year and to pay fine of Rs.1000/- I/d he shall undergo further R.I. for 1 month.

4. The accused is hereby convicted under Section 235(2) of the Criminal Procedure Code of the offence punishable under section 506 of the IPC, and is sentenced to suffer R.I. for 1 year and to pay fine of Rs.1000/-I/d he shall undergo further R.I. for 1 month.

5. All the sentences shall run concurrently.

6. Accused was in jail for the period from 12.11.2014 to 12.2.2015, so he is entitled to set off under section 428 of Cr.P.C. for said period.

7. The accused to surrender his bail bonds.

8. Seized property being worthless be destroyed after the appeal period is over.

9. The copy of Judgment be given to the accused free of the cost.

10. Copy of Judgment be sent to Hon'ble District Legal Aid Services Authority Yavatmal for payment of just and reasonable compensation to victim.

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

a] The Victim aged 9 years was residing with her mother and younger sister at the given address. Her mother used to clean the utensils at the house of others and also work as agricultural labour.

The Appellant was residing in the same locality. On 12.11.2014, when the Victim and her younger sister were at home, the Appellant came and gave Rs.10/- to the younger sister and asked to bring eatables from the shop. Accordingly, the Victim's younger sister went out. The Appellant and the Victim were the only person in the house. The Appellant removed the knicker of the Victim, took out his penis, caught hold the hairs of the Victim, made the Victim to lie down, took a bite of the cheek of the Victim, grabbed her breast, and gave his penis into the mouth of the Victim. The Victim felt like vomiting. The Appellant let the Victim free and left by giving threat not to disclose the incident to anybody or else he will kill her. After some time, the Victim's younger sister came home. The Victim was weeping. In the evening when her mother returned, the Victim narrated the incident to her. The Victim along with her mother and maternal uncle went to the Ladkhed Police Station and lodged the report against the Appellant. Crime bearing No.214/2014 came to be registered for the offences punishable under Section 376(1), 511, 354-A, 452, 506 of the Indian Penal Code, 1860 (for short, IPC) and for the offences punishable under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act").

b] The Victim was sent for medical examination. The statement of the Victim was recorded. The Spot Panchanama was prepared. The Appellant came to be arrested and sent for medical examination. The statement of the witnesses were recorded. The clothes of the Victim and that of the Appellant came to be seized. The seized articles were sent to the chemical laboratory. 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 for the offence punishable under Sections 376(1) read with Section 511, 354-A, 452, 506 of the IPC and for the offence punishable under Sections 4 of the POCSO Act below Exhibit-9. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined in all 13 witnesses as follows :

- i] The Victim is examined as PW-1,
- ii] The younger sister of Victim is examined as PW-2,
- iii] Sachin N. Chavhan, the Spot Panch is examined as PW-3,
- iv] Gajanan M. Shelke, the maternal uncle of the Victim is examined as PW-4,
- v] Murlidhar M. Bhagat, the Spot Panch is examined as PW-5,
- vi] Pandit R. Chavan, Panch of seizure of the sample and the clothes is examined as PW-6,

- vii] Raju M. Shelke, maternal uncle of the Victim is examined as PW-7,
- viii] Monoj R. Chaudhary, Police Constable, who carried the muddemal to the laboratory is examined as PW-8,
- ix] Arvind Ingale, Head Master of Primary School is examined as PW-9.
- x] Dilip U. Giri, the Investigating Officer is examined as PW-10.
- xi] Dr. Madhuri J. Patil, Medical Officer, who examined the Victim is examined as PW-11.
- xii] Dr. Gajanan G. Kharode, Medical Officer is examined as PW-12.
- xiii] Shriram T. Hiwarkar, Police Officer, who registered the crime is examined as PW-13.

d] The relevant documents were brought on record in the evidence of the above referred 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. Appreciating the evidence on record and after hearing both the sides, the impugned Judgment and Order came to be passed by the learned Trial Court.

3. Heard the learned Advocate for the Appellant and the learned A.P.P. for the State. Scrutinized the evidence on record.

a] It is submitted by the learned Advocate for the Appellant that, the age of the Victim was disputed. The evidence of the Headmaster of the school was not reliable. The prosecution failed to

prove that, the Victim was a minor at the relevant time. From the evidence of the Victim it becomes clear that, the younger sister and mother were present at home. The Victim's testimony was not corroborated by any another evidence. The maternal uncles of the Victim are hearsay witnesses. Two panch witnesses do not support the prosecution. The reports of the Chemical Analyzer (C.A.) are inconclusive. The medical evidence do not show injury on the Victim and also on the Appellant. The prosecution failed to establish the Charge. Hence, the Appellant is entitled for acquittal. In support of her submission, she relied on the Judgments in *Ravindra @ Ritesh Bapu Nikumb Vs. State of Maharashtra and Anr.* in ***Criminal Appeal No.629/2022*** dated 17.01.2026, in *Nawabuddin Vs. State of Uttarakhand*, [(2022) 5 SCC 419], in *Akula Raghuram Vs. State of Andhra Pradesh*, [(2025) 4 SCC 209], in *P. Yuvaprakash Vs. State*, [(2024) 17 SCC 684] and in *Jarnail Singh Vs. State of Haryana*, [(2013) 7 SCC 263].

b] It is submitted by the learned A.P.P. that, the Victim deposed of the incident. Through the evidence of the Victim, penetrative sexual assault is proved against the Appellant. Minor variations in the evidence of the Victim cannot be fatal. The Victim denied the suggestions in the cross-examination. The Victim's testimony cannot be doubted as it is consistent. The evidence of sister

shows no material omissions and she identified the Appellant. Through the Headmaster of the school, the prosecution proved the date of birth of the Victim. Through the medical evidence, the injuries on the Victim are proved. Through the medical evidence, the prosecution established that, the Appellant was capable of having sexual intercourse. In the statement of 313 Cr.P.C., there is simple denial by the Appellant. The defence of false implication at the instance of the maternal uncle is not put in the cross-examination. The learned Trial Court has rightly convicted and sentenced the Appellant, hence, the Appeal be dismissed.

4. In Ravindra (*supra*), the Appellant therein was acquitted of the offence of rape and sexual assault on the Victim therein on the ground that, the prosecution failed to discharge the initial burden as required to be discharged under Section 101 of the Evidence Act. In Nawabuddin (*supra*), the accused was 65 years of age at the time of commission of the offence and he committed aggravated penetrative sexual assault on the child. Considering the concurrent findings of the Trial Court and the High Court, the Appeal of the Appellant was dismissed. In Akula (*supra*), it was not proved that, the Victim was below the age of 18 years and considering the evidence on record, the conviction recorded by the learned Trial Court, was held, not sustainable and set aside. In P. Yuvaprakash (*supra*), it is observed

that, whenever there is dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the Courts have to take recourse to the steps indicated in Section 94 of the Juvenile Justice Act, 2015. In Jarnail Singh (*supra*), the scheme of Juvenile Justice Rules, 2007 was considered for determining the age for a child in conflict with law and a child who was the Victim of crime.

5. When the charge is for the penal sections under the POCSO, it becomes necessary for the prosecution to establish that, the Victim was a child as defined under Section 2(d) of the POCSO i.e. below 18 years of age. To prove the date of birth and age of the Victim, the prosecution relied on the testimony of PW-9 Arvind Ingale, who was the Headmaster of the Zilla Parishad Primary School, Uttarwadhona. He issued the Bonafide Certificate at Exhibit-60 showing the date of birth of the Victim as 03.10.2005. The said Bonafide Certificate was issued on the basis of Admission and Discharged Register maintained by the school. However, his cross-examination shows that, he was not serving in the school when the said entry was made. He did not know as to who made the entry. He did not brought the original documents on the basis of which the entry was made. This evidence falls short of establishing the source of entry of said date of birth in the school record. The suggestion is

given in the cross-examination that, the Victim was not studying in the said school. Worth noting, the Victim nowhere deposed that, she was studying in the said school of which this PW-9 was the Headmaster. The evidence of PW-10, Investigating Officer nowhere shows that, he sought the said Bonafide Certificate or document in respect of the date of birth of the Victim from the said school. There is no iota of evidence in that regard. His evidence shows that, he handed over the investigation to another Officer Shri Kshirsagar, who is not examined by the prosecution. Though the Victim deposed her date of birth, it would be inadmissible, being hearsay. Specific suggestion is given to the Victim that, she was about 18 years of age at the time of incident. In this view of the matter, the evidence brought on record by the prosecution falls short of establishing that, the Victim was the child.

6. The star witness of the prosecution in support of the charge is the Victim, who is examined as PW-1. Her evidence shows that, the incident took place on 12.11.2014 around 10.00 a.m. in her house. She and her younger sister PW-2 were present in the house. Their mother had gone for work. The Appellant, who was the resident of same village came to her house. The Appellant handed over Rs.10/- note to PW-2 and asked her to bring eatables from the grocery shop. PW-2 went to the shop. The Victim and the Appellant

were only present in the house. The Appellant removed her knicker, took out his penis, caught hold her hairs, fell her down on the floor, sat on her, bite her cheek and scratched her breasts and inserted his penis into her mouth. The Victim felt the sensation of vomiting. The Appellant released her and left her house by threatening to kill her if she disclosed the incident to anyone. She started crying. PW-2 returned home. She did not inform anything to PW-2. She went to school and returned home at 5.00 p.m.. In the evening, she narrated the incident to her mother. The report was lodged by the mother with the Police Station. She was taken to the hospital for medical examination. Her statement was recorded by the police and also before the learned Magistrate. She identified her clothes at Article-A to C.

7. The Victim was subjected to cross-examination. Though she was not knowing the Appellant, she knew that, the Appellant was the resident of the same village. It has come in the cross-examination that, her mother used to leave home at 7.00 a.m. and returned in between 9.00 a.m. and 9.30 a.m. and again used to go to the field at about 11.00 a.m. on the date of incident, her mother came home at 9.30 a.m. and after preparing food left for the field at 11.00 a.m. It has further come in the cross-examination that, she had seen the Appellant in the Court for the first time, her parents insisted to lodge

the report and her maternal uncle accompanied her to the Police Station. The above cross-examination will not affect her core testimony in respect of the incident. As seen from her cross-examination, her father was not alive on the day of the incident, therefore, her admission that, her parents insisted to lodge the report, is of no consequence to create any dent in her testimony. The incident was of November, 2014 and her testimony was recorded in September, 2019 i.e. two (2) months short of five (5) years and, therefore, the inconsistency in respect of the timing of her mother going for work and coming home will have no effect on her testimony. The omission was in respect of asking by PW-2 to her as to whether she should call the mother and she responded in negative, is not material. The overall evidence of the Victim shows that, her core testimony in respect of the incident remained unshaken. Her testimony in respect of incident is found to be consistent with her previous statement. She reported the incident to her mother in the evening when she came home. Her evidence is natural and nothing has come so as to view her testimony with doubt.

8. The evidence of PW-2, sister of the Victim shows that, on the day of the incident, she and the Victim were present at home as their mother had gone out for work. The Appellant came to their house and gave Rs.10/- to her to bring the eatables. Accordingly, she

went to the shop. After she returned home, she found Victim crying. She enquired with the Victim the reason. The Victim did not tell her anything. Thereafter, she and the Victim went to the school. After returning from school, the Victim narrated the incident to her mother. The omission was only in respect of her evidence that, the incident had taken place at 10.00 a.m. and the Victim narrated the incident to their mother. There is consistency in her evidence and evidence of the Victim in respect of their presence in the house, coming of the Appellant, giving Rs.10/- note to her and asking to bring eatables, she leaving for the shop and noticing the Victim weeping after she returned home. This testimony of PW-2 further strengthens the evidence of the Victim.

9. There is medical evidence on record in the nature of testimony of PW-11, Medical Officer, who examined the Victim on 14.11.2014. On medical examination of the Victim, following injuries were found.

“a. Abrasion over 6O’Clock position of size 0.1 x 0.6 cm, red in colour.

b. Abrasion over 9O’Clock position of size 2 x 1 cm, reddish in colour,

c. Abrasion over 3O’clock position of size 1.5 x 1 cm, reddish in colour.

d. Hymen injury was present. Position in tear in 12 O’clock.

Oedema was present. The victim was approximately 8

years old.

There were injuries on her body parts.”

10. It has come in the evidence of Medical Officer that, all the injuries were on the private part of the Victim. She collected the swab and blood samples for grouping. She opined that, forceful sexual intercourse cannot be ruled out and the final opinion was reserved for the report of the Chemical Analyzer (C.A.). The medical examination report is brought on record at Exhibit-73, which corroborates the testimony of this Medical Officer. The cross-examination shows that, hymen was not torn. The said Exhibit-73 shows contusion on both the nipples and the left cheek. This medical evidence showing the injury on the Victim further corroborates the Victim's testimony. The history given to the Medical Officer also corroborates the Victim's version. Nothing is brought in the cross-examination to create any doubt in respect of the medical evidence. True it is that, the final opinion was reserved for C.A. and there is no final opinion on record. However, the injuries found on the Victim during medical examination further fortifies the Victim's testimony.

11. The other evidence is that, of the panch witnesses, maternal uncles of the Victim, carrier of samples, the Medical Officer, who examined the Appellant and found him to be capable of having sexual intercourse and the Police Officers, who recorded the First Information Report and who conducted the investigation. Not

supporting of the panchas will not affect the prosecution's case which primarily rest on the testimony of Victim and corroborated by the testimony of PW-2 and PW-11, the Medical Officer.

12. With the above discussed evidence of the Victim corroborated by the testimony of her sister PW-2 and the medical evidence, the essential ingredients for the offence punishable under Sections 376(1), 354-A, 506 and for the offence punishable under Section 451 of the IPC (house trespass in order to commit offence punishable with imprisonment) is made out. In absence of evidence of preparation for hurt, assault or wrongful restraint before house – trespass, the offence punishable under Section 452 of IPC is not made out. Insertion of penis in the mouth of the Victim falls within the definition of rape defined under Section 375(a) of the IPC. As the prosecution failed to establish that, the Victim was the child, the conviction for the offence punishable under POCSO will not sustain. At the time of the offence i.e. in the year 2014, the minimum punishment for the offence punishable under Section 376(1) of IPC was seven (7) years rigorous imprisonment with fine. From the papers, it is seen that, at the time of the offence, the Appellant was 23 years old. There is nothing to show that, the Appellant had criminal antecedents. In the light of the above, the following order is passed :

ORDER

- i] The Appeal is partly allowed.
- ii] The Appellant is acquitted for the offence punishable under Section 4 of the POCSO.
- iii] The conviction of the Appellant for the offence punishable under Section 376(1), 354-A, 506 of IPC is confirmed.
- iv] The conviction of the Appellant for the offence punishable under Section 452 of the IPC is converted to offence punishable under Section 451 of the IPC.
- v] The sentence of ten (10) years rigorous imprisonment awarded by the learned Trial Court is modified to rigorous imprisonment for seven (7) years with fine of Rs.1000/- and in default, to suffer imprisonment for one (1) month for the offence punishable under Section 376(1) of IPC.
- vi] The sentence for the offence punishable under Section 354-A and 506 of the IPC awarded by the learned Trial Court is maintained.
- vii] The Appellant is sentenced to suffer rigorous imprisonment for six (6) months with fine of Rs.1000/- in default, to suffer further rigorous imprisonment for one (1) month for the offence punishable under Section 451 of the IPC.
- viii] All the sentences shall run concurrently.
- ix] The Appellant shall be entitled for set off under Section 428 of the Cr.P.C. for the period of incarceration already undergone.
- x] Muddemal property be dealt with as per the directions of the learned Trial Court.
- xi] Record and proceedings be sent back to the learned Trial Court.

(NEERAJ P. DHOTE, J.)