



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

**CRIMINAL APPEAL NO. 620 OF 2024**

**Harichandra S/o. Shrawan Dahake,**  
Aged 65 years, Occ. Labour,  
R/o. Korambhi, Tah. & Distt. Bhandara. **... Appellant**

**.. Versus ..**

**State of Maharashtra,**  
through its Police Station Officer,  
Police Station Bhandara,  
Tah. & Distt. Bhandara. **...Respondent**

-----  
Shri S.D.Chande, Advocate for appellant.  
Shri B.M.Lonare, APP for respondent/State.  
Ms. Nayana Dobade, Advocate (appointed) for informant  
(mother of victim).  
-----

**CORAM : NEERAJ P. DHOTE, J.**

**DATE OF RESERVING THE JUDGMENT : 05/02/2026**  
**DATE OF PRONOUNCING THE JUDGMENT: 09/03/2026**

**JUDGMENT**

This is an Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the judgment and order dated 13/07/2022 passed by the learned Special Judge, Bhandara in Special Cri. (POCSO) Case No. 44 of 2018, convicting and sentencing the Appellant as follows:-

*“1) Accused Harichandra S/o Shrawan Dahake, R/o Korambhi, Tah. & Dist. Bhandara is acquitted under Section 235(1) of Code of Criminal Procedure, 1973 of the offence punishable under Sections 354-A(1)(i) and 376AB of the Indian Penal Code, 1860 read with Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.*

*2) Accused Harichandra S/o Shrawan Dahake, is hereby convicted under Section 235(2) of the Code of Criminal Procedure, 1973 of the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012, and sentenced to suffer Rigorous Imprisonment for ten years with fine of Rs.5,000/- (Rs. Five Thousand), in default of payment of fine, he shall undergo rigorous imprisonment for one month.*

*3) Set off be given to the accused for the period of detention undergone by him under Section 428 of the Code of Criminal Procedure, 1973.*

*4) ....*

*5).....*

*6) ....*

*7).....*

*8).....*

*9) ..... ”*

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

2.1 On 09/07/2018, the informant - mother of victim

lodged the report with the Bhandara Police Station that, she was residing at Korambhi, Tahsil and District Bhandara with her husband, two daughters including victim and one son. The victim was six (6) years old and use to go at the house of the Appellant to play with his grand-daughter. On 08/07/2018, when she was at home, the victim went to play at the house of the Appellant in the afternoon. As the victim did not return home though substantial time had passed, she went to the house of the Appellant and saw that, the door was half closed. She opened the door and entered inside. She noticed that, the pant of the victim was removed and the Appellant was inserting his finger in the vagina of the victim. She objected for the said act and the Appellant went to other room. She brought the victim home. After her husband came home, she narrated the incident to him. On the report lodged by the victim's mother, the Crime bearing No. 0509/2018 came to be registered against the Appellant with Bhandara Police Station for the offences punishable under Sections 354-B of the Indian Penal Code, 1860 (for short, 'I.P.C.') and for the offences punishable under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

2.2 The victim was referred for medical examination. The statement of the victim was recorded. The spot panchanama was drawn. The Appellant came to be arrested. The statements of the witnesses were recorded. The blood samples of the victim and that of the Appellant were drawn. The clothes of the Appellant and that of the victim came to be seized. The seized articles were referred to the Chemical Laboratory. The necessary documents were collected. On completion of investigation, the Appellant came to be charge-sheeted.

2.3 The learned Trial Court framed the Charge against the Appellant vide Exh.7 for the offences punishable under Sections 354-A(1)(i), 376(a)(b) of the IPC and for the offences punishable under Sections 4, 6 and 8 of the POCSO Act. The Appellant pleaded not-guilty and claimed to be tried. To prove the charge, the prosecution examined the following witnesses:-

- i) Victim, as P.W.-1,
- ii) Dr. Dipti Nikhil Dokarimare, Medical Officer, as P.W.-2,
- iii) Victim's mother/informant, as P.W.-3,
- iv) Minor friend of victim, as P.W.-4,
- v) Pravin Narendra Meshram, Police Patil of the village, as P.W.-5,

- vi) Sharad Gopichand Borkar, Pancha Witness, as P.W.-6,
- vii) Rupali Ashok Fating, Police Sub-Inspector who registered the crime, as P.W.-7 and
- viii) Gajanana Ratan Cheke, Investigating Officer, as P.W.-8.

The relevant documents are brought on record in the evidence of the aforesaid witnesses.

2.4 After the prosecution filed the evidence closure pursis, the learned Trial Court recorded the statement of the Appellant under Section 313(1)(b) of the Cr.P.C. The Appellant stated that, due to inimical terms with the informant and her husband on account of arrears of electricity & water bills and also quarrel between the Police Patil and his son, he was falsely implicated. On appreciating the evidence available on record, the learned Trial Court passed the impugned judgment and order convicting and sentencing the Appellant as above.

3. Heard the learned Counsel for the Appellant, the learned APP for the State and the learned Counsel for the victim. Scrutinized the evidence available on record.

(a) It is submitted by the learned counsel for the

Appellant that, there was no dispute in respect of the age of the victim. The cross-examination of the informant, which is brought on record shows that, the relations between informant's family and the Appellant were not cordial. The neighbourers are not examined. The friend of the victim who is examined as P.W. 4 deposed nothing. The Police Patil was on inimical terms with the Appellant. Though the clothes are seized, the Chemical Analyzer's Reports (CA reports) are not incriminating. There was delay in lodging the report. The Medical Officer did not find the redness on the private part of the victim as deposed by the informant. The Appellant was 70 years old. The Appellant was acquitted for the offences punishable under Sections 354-A(1)(i) & 376AB of the IPC and for the offences punishable under Sections 4 & 8 of POCSO Act. The charge was not proved and therefore, the Appeal be allowed by setting aside the impugned judgment and order. He relied on the judgments in *Narendrasinh Keshubhai Zala V/s. State of Gujarat* {(2023) 18 SCC 783} and *Amar Singh V/s. State (NCT of Delhi)* {(2020) 19 SCC 165} on the point that, the solitary witness can be believed only when the witness is found to be reliable, trustworthy and the case is proved beyond reasonable doubt.

(b) It is submitted by the learned APP for the State that, the testimony of the victim was corroborated by the medical evidence and the evidence of the informant. The medical evidence shows that, the Hymen of the victim was ruptured. The testimony of the victim was trustworthy. The learned Trial Court has rightly convicted the Appellant and therefore, the Appeal be dismissed.

(c) It is submitted by the learned Advocate for the victim that, as it was not a case of extreme urgency, the victim was taken to the Police Patil and incident was informed to him. The learned Trial Court rightly found the Appellant guilty and no interference was required in the impugned judgment and order.

4. When the charge is for the penal Sections of the POCSO Act, it becomes necessary for the prosecution to establish that, the victim was a child as defined under Section 2(d) of the POCSO Act i.e. below the age of 18 years. As regards the age of victim, the same is not disputed by the Appellant as seen from the cross-examination of the witnesses. Though the date of birth of the victim is not deposed by the informant, her evidence shows that, at the relevant time, the age of the victim

was six (6) years. The evidence of P.W. 7 - Police Officer who recorded the FIR and did initial investigation shows that, she had given letter to the Gram Panchayat, Bela for the birth certificate of the victim and received the birth certificate of the victim vide Exh.53. There is no challenge to the said aspect in the cross-examination. As there is no challenge to the age of the victim, there is no hesitation to hold that, the victim was the child at the relevant time.

5. The evidence of the victim shows that, the learned Trial Court administered the oath to the victim by nothing that, she understood the sanctity of oath. The victim in her testimony deposed that, she had been to the house of her friend for playing. They were playing in the courtyard of her friend's house. Thereafter, she went to watch the Television (TV) in the house of her friend. The parents of her friend went out and Baba (Appellant) was at home. While she was watching the TV, the Appellant came and caught hold of her hand and took her on the cot. The Appellant told that, he will give the chocolate and opened her pant and inserted his finger in her vagina. She experienced pain and so cried. Her mother came and scolded the

Appellant. Her mother took her to the other room and wore her pant. Thereafter, she went along with her mother at home. Her mother saw her private part. Her father came in the evening. She was taken to the Hospital where the Doctor examined her. They went to the Police Station where she narrated the incident. She deposed the name of the Appellant who was called 'Baba'. The victim was subjected to the cross-examination. It has come in her cross-examination that, she was having tablets for cough and cold. She told the Appellant that, she had abdominal pain. She further told the Appellant that, she had itching around her vagina. The Appellant had not asked her to remove her Clothes. The suggestions are given that, the Appellant had not opened her pant, and had not inserted his finger in her vagina.

6. The informant-mother of the victim in her evidence deposed that, on 08/07/2018, when she was at home, the victim went to play with the grand-daughter of the Appellant at his house. As much time had lapsed, she went to the house of the Appellant around 01.00 p.m. There was nobody at his home. The front door was open and inside door was partially closed. She pushed the inside door and saw the Appellant on bed with the

victim. The pant of the Appellant was half removed. The Appellant was touching the private part of the victim and inserting the finger. She told the Appellant that, it was not good and scolded him. The Appellant went to the other room. She wore the pant of the victim. She brought the victim back home. She saw the private part of the victim and noticed redness and swelling. In the evening, her husband returned home and she informed the incident to him. Her husband went to the house of the Police Patil and informed him about the incident. On the advice of the Police Patil, the police were informed and the report was lodged against the Appellant. On the next day, the victim was taken for medical examination. She identified the Articles-Clothes as that of the victim. In the cross-examination of the informant, it has come that, the neighbours had come. The quarrel had taken place with the Appellant on account of the electricity bill. They had taken the electricity supply from the house of the Appellant.

7. The above evidence of the victim and of her mother show variance. The victim nowhere deposed that, the pant of the Appellant was half removed. The cross-examination of the victim

shows that, the Appellant did not ask her to remove her clothes. The evidence of the informant that, she noticed redness and swelling on the private part of the victim, was an omission, which has been proved through the evidence of P.W.-7 Police Officer who recorded her statement. The neighbours who according to the informant had come, are not examined. Though the prosecution examined the grand-daughter of the Appellant as P.W.-4 with whom the victim had gone to play, nothing has come in her evidence so as to corroborate the prosecution's case. It is strange that, when the victim and P.W.-4, her friend were playing together in the house of P.W.-4, the victim alone went to watch the TV in the house of P.W.-4. There is no evidence as to where P.W.-4 had gone. The victim nowhere deposed that, her friend P.W.-4 accompanied her parents who had gone out of their house. When the victim and P.W.-4 were playing together, they would in all probability go together inside the house of P.W.-4 for watching TV. The evidence of P.W.-4 nowhere corroborates the testimony of the victim.

8. Though the evidence of P.W.-2 Medical Officer shows that, the Hymen of the victim was ruptured and the rupture

of Hymen is possible by fingering, there is no iota of evidence that, there was bleeding from the private part of the victim. The C.A. report at Exh. 51 in respect of the Clothes shows, no blood was detected on the clothes of the victim, which were the Top (Half), Slacks and Knicker. The medical evidence do not show the age of rupture. Though the victim's Hymen was ruptured, there is absolutely no evidence as to when the rupture took place. The possibility of rupture of the Hymen prior to the incident cannot be ruled out.

9. The above discussed evidence do not establish the charge beyond reasonable doubt. The Appellant has rebutted the presumption under Section 29 of the POCSO Act by way of cross-examination of the victim's mother that, there was quarrel between her and the Appellant on account of the Bill as she had taken the electricity connection from the Appellant's house. In the statement under Section 313(1)(b) of the Cr.P.C., the Appellant stated that, due to inimical terms with the victim's parents on account of arrears of electricity and water Bills, the false case was lodged against him. The above discussed evidence on record is not concrete and do not give the required assurance

in respect of the incident deposed by the victim and mother of victim and requires one to see the prosecution's case with doubt. The other evidence in respect of Panch witness, the Police Patil of village and the Police Officer do not take the prosecution's case any further in proving the charge. The CA report in respect of clothes of the Appellant though shows the blood stain on his Kurta & Half Baniyan (Bandi), and semen on his Underpant, the result is inconclusive and therefore, it will not be incriminating in nature. There cannot be any dispute in respect of the principles laid down in the above referred judgments relied upon by the learned counsel for the Appellant. In view of above discussions, the charge framed against the Appellant fails and the impugned judgment and order needs interference. Hence, the following order:-

### **ORDER**

- I) The Criminal Appeal is **allowed**.
- II) The conviction and sentence recorded by the learned Special Judge, Bhandara against the Appellant in Special Cri. (POCSO) Case No. 44 of 2018, by the impugned judgment and order dated 13/07/2022, is hereby quashed and set aside.

III) The Appellant is acquitted for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012.

IV) The Appellant is behind the bars. He be set at liberty, if not required in any other offence.

V) The fine amount, if any, paid by the Appellant, be refunded to him.

VI) The Muddemal Properties be dealt with as per the operative order of the impugned judgment.

VII) Record and Proceedings be sent back to the learned Trial Court.

VIII) The fees of the learned Advocate appointed to represent the Informant (mother of victim) is quantified at Rs. 7,500/- [Rupees Seven Thousand Five Hundred Only], which shall be paid by the High Court Legal Services Sub-Committee, Nagpur.

**[NEERAJ P. DHOTE, J.]**

*B.T.K.*