



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

**CRIMINAL APPEAL NO. 98 OF 2025**

Shabbir Shaha Mehaboob Shaha,  
aged about 70 Years, Occ.-Labour,  
R/o. Implipura, Ashti, Tq. Ashti,  
Dist. Wardha.

**... APPELLANT**

**...VERSUS...**

1. State of Maharashtra,  
Through Ashti Police Station,  
Dist. - Wardha.
2. Victim in Crime No.182/2020  
of Ashti P. S., Dist. Wardha,  
Though her Complainant Father.  
[Added Respondent No.2 as per Court's Order...**RESPONDENT**  
dated 13.01.2026.]

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Mr. K. G. Rath, Advocate for Appellant.  
Mr. U. R. Phasate, A.P.P. for Respondent/State.  
Mr. S. S. Ali, Advocate (Appointed) for Respondent No.2.  
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**CORAM : NEERAJ P. DHOTE, J.**  
**JUDGMENT RESERVED ON : 06.02.2026.**  
**JUDGMENT PRONOUNCED ON : 17.03.2026**

**JUDGMENT :**

1. 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 03.08.2024 passed by the learned Special (POCSO), Wardha in Special (Child) Case No.16/2021 convicting and sentencing the Appellant as follows :

*“1] Accused Shabbir Shaha Mehboob Shaha is convicted for offences punishable under section 376(AB), 506 of Indian Penal Code and sec.5(m) punishable under section 6 of Protection of Children from Sexual Offences Act vide section 235(2) of Code of Criminal Procedure Code.*

*2] Accused is sentenced to suffer rigorous imprisonment for twenty years and to pay fine of Rs. 25,000/- (Rs Twenty Five Thousand only) for offence u/sec.5(m) p/u/s 6 of POCSO Act. In default of payment of fine, he shall suffer simple imprisonment for one year. In view of sec.42 of POCSO Act, no separate punishment is imposed for offence p/u/s 376(AB) of IPC.*

*3] Accused is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.5,000/- (Rs. Five Thousand only) for offence p/u/s 506 of IPC. In default of payment of fine, he shall suffer simple imprisonment for two months.*

*4] All substantive sentences to run concurrently.*

*5] Out of fine amount, amount of Rs.10,000/- (Rs. Ten Thousand only) be paid to victim as a compensation under section 357(1) of Code of Criminal Procedure. In addition to that District Legal Service Authority may decide the quantum of compensation be awarded to the victim, under the victim compensation scheme, set out in section 357(A) of the Code of Criminal Procedure, 1973 and Rule-9 of Protection of Children Sexual Offences Rules. From*

*6] .....*

*7] .....*

*8] .....*

9] .....

10] .....

11] *Copy of this Judgment be given to accused free of costs."*

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

a] The Informant was residing with his family comprising wife and children. The Victim was his second child aged 10 years and was studying in the school. The Appellant aged 70 years was residing nearby. On 09.12.2020, the Informant's wife informed him that, the Appellant sexually molested the Victim. His wife informed him that, 10 to 12 days before, the Appellant sexually molested the Victim. The said incident was narrated by the Victim to her (mother). The incident took place when the Victim was playing with her friends. The Informant along with the Victim went to the Ashti Police Station, District Wardha and lodged the report against the Appellant. A crime bearing No.0182/2020 for the offence punishable under Section 376A,B, 323, 506 of the Indian Penal Code, 1860 (for short, IPC) and for the offence punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act (for short, "POCSO Act") came to be registered against the Appellant.

b] The Victim was sent for medical examination. The statement of the Victim was recorded. The statement of the witnesses

were recorded. The Appellant came to be arrested. The Appellant was referred for the medical examination. The Spot Panchanama was prepared. The clothes of the Victim and that of the Appellant came to be seized. The necessary documents were collected. The seized articles were sent to the chemical laboratory. 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 A, B, 323, 506 of the IPC and for the offence punishable under Sections 4 and 6 of the POCSO Act below Exhibit-6. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined the following witnesses :

- i] Panch for the Spot Panchanama Dnyaneshwar Abhimanji Sarode as PW-1,
- ii] Kisna Bapuraoji Dudhkavare, the panch for seizure of 2 bottles of blood sample as PW-2,
- iii] The father of the Victim, as PW-3,
- iv] The Medical Officer who examined the Victim, as PW-4,
- v] Nilesh Mahadeorao Johri, the Panch for Spot Panchanama, Seizure Memo, Memory Card of video recording, the clothes of the Victim and the clothes of the Appellant, as PW-5,
- vi] Dr.Arshiya Maksud Sheikh, Medical Officer who examined the Appellant, as PW-6,
- vii] The Victim, as PW-7,
- viii] The friend of the Victim, as PW-8,

ix] Vandana Ashok Sonule, Investigating Officer, as PW-9.

d] The relevant documents such as the First Information Report, Panchanamas, Medical Reports, Birth Certificate of the Victim etc. are brought on record in the evidence of the above referred witnesses. On closure of the evidence by the prosecution, the statement of the Appellant came to be recorded under Section 313(1) (b) of the Cr.P.C. The Appellant stated that, the Informant was residing with his family in his house and he did not pay the electricity bill of his share which was around Rs.1700/- and Rs.1800/- and due to dispute on that count, the Informant left his house and the marriage of the Informant's younger brother and daughter of his younger brother was fixed, which was broken and their relations becomes sour and for these reasons, the false case was lodged against him. After hearing both the sides and scrutinizing the evidence on record, the learned Trial Court passed the impugned Judgment and Order.

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

a] It is submitted by the learned Advocate for the Appellant that, the Victim did not disclose the incident to anybody and only when her friend told the Victim's mother, the report was lodged. The

Informant did not know as to with whom the Appellant was residing and therefore, he was not truthful witness. For no reason, the Victim was admitted to hospital after registration of the crime. Though the Appellant was examined for his potency, the report of the same was not brought on record and, therefore, adverse inference needs to be drawn that, the Appellant was not competent to have sex. The age of hymen torn has not come in the medical evidence. The Appellant has taken the defence that, due to the enmity, the false case was registered. He submitted that, the prosecution's case did not find corroboration by the evidence available on record, and, therefore, the charge is not proved. The age of Victim was not established. He submitted that, the Appeal be allowed.

b] It is submitted by the learned A.P.P. that, the Victim was 12 years old at the time of deposition. Her testimony in respect of penetration was consistent. As she was threatened by the Appellant, she remained silent. At the time of the incident, the Victim was 10 years old and, therefore, the delay in reporting the incident to the police is not fatal. The Victim and her minor friend withstood the cross-examination. As the Victim was medically examined after 8 to 10 days from the incident, there was no fresh injury on her person. The medical evidence that, the hymen was torn supports the prosecution's case. The sole testimony of the Victim was sufficient to

maintain the conviction. However, there is corroboration to the Victim's testimony. The vague suggestions about tutoring was given in the cross-examination. The medical evidence shows that, there was nothing to suggest that, the Appellant was impotent. In the totality of the evidence on record, the presumption under Section 29 of the POCSO Act comes into play which is not rebutted. The charge was proved and the learned Trial Court has rightly passed the impugned Judgment and Order and the Appeal be dismissed.

d] It is submitted by the learned Advocate for the Victim that, she adopts the submissions made by the learned A.P.P.

4. When the charge is framed for the offence punishable under the penal section of POCSO, the prosecution is required to establish that, the Victim was the child as defined under Section 2(d) of the POCSO Act i.e. below the age of 18 years. As is seen from the tenor of cross-examination of the witnesses, the age of the Victim is not in dispute. The endorsement on the communication by the Investigation Officer to the Riddhipur Gram Panchayat for Birth Certificate of the Victim (Exhibit-86) and the copy of the Birth Certificate (Exhibit-87) show that, both the said documents were admitted by the defence. The said documents show that, the date of birth of the Informant was 22.09.2011. Therefore, the submissions by the learned Advocate for the Appellant that, the said Birth Certificate was issued after the registration of the crime and so be discarded has

no merits. From the date of the birth of the Victim mentioned in the said Birth Certificate and the date of lodging the First Information Report, it is clearly established that, the Victim was the child at the relevant time.

5. The star witness of the prosecution is the Victim, who is examined as PW-7. Her evidence shows that, the learned Trial Court found that, the Victim was giving rational answers. Her evidence shows that, she knew the Appellant as “Bade Abbu”. She was residing with her parents. She was studying in 4<sup>th</sup> standard. At the time of incident, she along with her parents was residing in the house of the brother of the Appellant. On the day of incident, she was playing with her friend (PW-8) in the afternoon in front of the house of the Appellant. The Appellant drove her friend from that place. The Appellant caught hold her hand and brought her inside his house and closed the door. The Appellant made her to lie on the bed and remove her leggings. The Appellant removed his Payjama. The Appellant inserted his private part into her private part and made inside and outside movements. Due to the said act, she suffered and shouted. The Appellant pressed her mouth by his hand. Thereafter, the Appellant left her and threatened to beat if she disclosed the incident to anyone. Due to the threat, she did not disclose the incident to anyone at her house. 10 days after the incident, her friend

(PW-8) came to her house and narrated the incident to her parent. When her mother enquired with her, she disclosed the incident to her parent. Her father lodged the report with the Police Station. She was hospitalized for 4 days. The spot of incident was shown by her to the police along with her father. She identified the article B(1) and B(2) as the same clothes she was wearing at the time of incident.

6. The Victim was subjected to the cross-examination. It has come in her cross-examination that, the Appellant was having 4 sons, out of which, 2 sons were married. The 2 sons of the Appellant were residing nearby. The suggestions are given that, due to the dispute on account of electricity bill, false report was registered. As per the Victim, she did not disclose the incident to anyone due to threat by the Appellant. It appears strange that, despite rape in the manner deposed by the Victim, she was physically and psychologically normal and strangely the parents did not notice anything. If the incident as narrated by the Victim had taken place, and considering the Victim's age, it is highly improbable that, Victim's condition will not be noticed by the family members. Though the evidence of PW-4 Medical Officer found the Victim's hymen torn, there is absolutely no evidence that, the Victim bled after the rape on her. In absence of that, whether the hymen got torn prior to the date of incident or after the incident is not known. The cross-examination of PW-4 Medical Officer shows

that, age of hymen injury was not mentioned in the report. The cross-examination of PW-4 Medical Officer further shows that, there are other causes of hymen rupture and after sexual intercourse, the symptoms of bleeding, injury, tearing of private part cannot be ruled out. The cross-examination of this Medical Officer further shows that, no such symptoms were found in Victim at the time of examination. The Medical Officer volunteered that, as the Victim was examined after 12 days of incident, she did not get such type of signs on her. These are the serious infirmities in the prosecution's case, which makes the Victim's testimony doubtful. The note at the bottom of the Victim's evidence shows that, her father was present at the time of recording her evidence.

7. PW-8 was the Victim's friend, who was playing with the Victim on the day of incident. She deposed that, she used to play with the Victim. The incident took place prior to 3 years. She and the Victim were playing in front of the Appellant's house between 1.00 p.m. and 2.00 p.m.. The Appellant showed Rs.10/- to the Victim and held the hand of the Victim and took the Victim inside his house and closed the door from inside. The Appellant told her to go away and so she went to her house. She further deposed that, she learnt that, the Victim was taken to hospital. Police came to the house of the Victim. Police enquired with her and recorded her statement.

Her statement was also recorded before the learned Magistrate. At the relevant time, her father was with her. In the cross-examination of this witness it has come that, on the day of alleged incident, police met her, police enquired with her and later-on also police enquired with her, when later-on police enquired with her, police read over the statement of the Victim to her and police explained her how to state. It has further come in the cross-examination that, at the time of recording the statement under Section 164 of the Cr.P.C., her father was with her, one police was with them and prior to that, she was read over the statement of the Victim. Even if the said cross-examination of this witness is ignored, her evidence nowhere shows that, 10 to 12 days after the incident, she informed the Victim's mother about the incident. The Victim's mother is not examined. As per PW-3 father of the Victim, his wife told him that, the Victim's friend told her about the incident. This is vital inconsistency. Moreover, the evidence of PW-8 nowhere shows that, she was threatened by the Appellant. It is only after the Victim was admitted to the hospital, her statement was recorded. The evidence on record nowhere shows as to why the Victim was hospitalized and that too after 10 to 12 days from the incident. The evidence of PW-4 Medical Officer do not show the cause or reason for admitting the Victim in the hospital. In the light of the cross-examination, the evidence of

PW-8 is required to be seen with doubt. The note at the end of the evidence of PW-8 shows that, her father was present at the time of recording her evidence.

8. There is evidence of PW-6 Medical Officer, who examined the Appellant after his arrest. On 11.12.2020, she was on duty at Rural Hospital, Ashti. The Appellant was brought by the Police Constable. She conducted general and local medical examination of the Appellant. On local examination, no deformity was detected. Under observation *circumcision was done. Cremastric Reflex – absent. Smegma – loose skin no secretion. Scrotum – right scrotal swelling seen.* After medical examination, the Appellant was referred to the department of physiology for precise opinion regarding the ability to do sexual intercourse. She collected the blood and urine samples of the Appellant. The said condition was possible due to mental disturbance, stress and sexual intercourse. During examination, it was not found that, Appellant was impotent and not capable of performing sexual intercourse. The cross-examination of this Medical Officer creates severe dent to her above evidence. It has come that, due to the said observations, the Appellant was referred for physiological department for further examination and opinion about his ability to do sexual intercourse. To the question, *the patient was not fit to do sexual interconnect*, this Medical Officer

responded that, *for that reason she referred patient to department of physiology, right scrotum swelling may appear due to other reasons also*. Undisputedly, the report from the physiology department is not brought by the prosecution on record. In view of the evidence of this Medical Officer, the medical examination report of the Appellant by the physiology department where he was referred was relevant and material. By not bringing on record the said report, adverse inference needs to be drawn against the prosecution. Undisputedly, the documents on record shows that, at the relevant time, the Appellant was 70 years old. The evidence on record is not sufficient to establish that, the Appellant was capable of having sexual intercourse.

9. As seen from the evidence on record, the Appellant was having 4 sons. As seen from the Victim's evidence, 2 sons of the Appellant were residing separately. This indicates that, the Appellant was not residing alone at his house. The evidence of PW-3 father of the Victim shows that, at the time of the incident, he was residing in the same area where the Appellant was residing and the Appellant was residing adjacent to the house of the Appellant's brother where the Informant and his family members were residing. He resided near the house of the Appellant for about 2 years. However, strangely, the Victim's father did not know whether the wife of the Appellant was residing with the Appellant or not. He did not know

that, at the relevant time, the wife, the sons of the Appellant and their families were residing with him. Though he volunteered that, sons of the Accused/Appellant were residing separately with their family adjacent to the house of the Appellant, the said cross-examination of the informant shows that, he was not the reliable witness.

10. In absence of establishing the foundational facts of the case in support of the charge, there is no question of drawing presumption under Section 29 of the POCSO Act. From the cross-examination and the statement under Section 313(1)(b) of the Cr.P.C. of the Appellant, it is the defence that, the informant was residing in the house of the Appellant's brother and they had taken the electric connection from the Appellant's house and Rs.1700/- to Rs.1800/- towards electricity bill was due. The Appellant demanded the same to the informant which resulted in dispute. Having seen the totality of the evidence on record, the prosecution utterly failed to establish the charge against the Appellant. The suggestion of tutoring is given to the Victim, the Victim's father and the Investigating Officer. It has come in the cross-examination of PW-9 Investigating Officer that, in Corona period, people were not coming on main road. As the prosecution failed to establish the charge, the Appellant is entitled for acquittal. Hence, the following order :

**ORDER**

- i] The Appeal is allowed.

- ii] The conviction and sentence recorded by the learned Trial Court against the Appellant by the impugned Judgment and Order dated 03.08.2024 in Special (Child) Case No.16/2021, is quashed and set aside.
- iii] The Appellant is acquitted for the offence punishable under Sections 376(A)(B), 506 of the Indian Penal Code, 1860 and for the offence punishable under Section 6 of the POCSO Act.
- iv] The Appellant is behind bars. He be released, if not required in any other offence.
- v] As fine amount is not paid, there is no question of directing refund.
- vi] Muddemal articles 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] Fees of the appointed Advocate for the Respondent No.2 is quantified to Rs.7,500/- to be paid by the High Court Legal Services Sub-Committee, Nagpur.

**(NEERAJ P. DHOTE, J.)**