



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

CRIMINAL APPEAL NO.563/2025

Sukhlal Yashwant Ghasale,  
aged about 30 Years, Occup.Labour,  
r/o Ghasalitola, Tah.Deori, Dist.Gondia  
(at Present detained in District Prison  
Bhandara as Convict No.1837). .. Appellant

- Versus -

1. State of Maharashtra,  
through Police Station Officer,  
PS Deori, Tq.Deori, District Gondia.
2. X.Y.Z. (Victim)  
in Crime No.161 of 2016  
Registered by Police Station  
Deori, District Gondia. .. Respondents

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Mr.Nikhil Lapalikar, Advocate (appointed)for the Appellant.  
Mr.U.R.Phasate, A.P.P for Respondent No.1/State.  
Ms. Alpana Ingolikar, Advocate (appointed) for Respondent No.2.

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**CORAM: NEERAJ P. DHOTE, J.**  
**DATE OF RESERVING THE JUDGMENT: 21.01.2026.**  
**DATE OF PRONOUNCING THE JUDGMENT: 04.02.2026.**

JUDGMENT

- 1) This is an Appeal under Section 374(2) of the Code of  
Criminal Procedure (henceforth referred to as “Cr.PC.” as short)

against the Judgment and Order dated 11.04.2023, passed by the learned Sessions and Special Judge Gondia, in Special POCSO Case No.05 of 2017, convicting and sentencing the Appellant as follows:-

*a) for the offence punishable under Sections 354, 354-B of the Indian Penal Code and under Section 9(m) punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012.*

*b. Accused Sukhlal s/o Yashwant Ghasle is sentenced to undergo rigorous imprisonment for Three (03) years and to pay fine of Rs.5,000/- (Rs. Five thousand only) for the offence punishable under Section 354 of the Indian Penal Code. In default of payment of fine amount, he shall further undergo rigorous imprisonment for Three (03) months.*

*c. Accused Sukhlal s/o Yashwant Ghasle is sentenced to undergo rigorous imprisonment for Three (03) years and to pay fine of Rs.5,000/- (Rs. Five thousand-only) for the offence punishable under Section 354-B of the Indian Penal Code. In default of payment of fine amount, he shall further undergo rigorous imprisonment for Three (03) months.*

*d. Accused Sukhlal s/o Yashwant Ghasle is sentenced to undergo rigorous imprisonment for Five (05) years and to pay fine of Rs.10,000/- (Rs. Ten thousand only) for the offence under Section 9(m) punishable under Section 10 the Protection of Children from Sexual Offences Act, 2012. In default of payment of fine amount, he shall further undergo rigorous imprisonment for Four (04) months.*

*e. All the sentences shall run concurrently.*

*f. Accused Sukhlal s/o Yashwant Ghasle is entitled for set off under Section 428 of the Cr. P. C. for the period undergone by him in jail.*

*g. Accused Sukhlal s/o Yashwant Ghasle is acquitted of the*

*offence punishable under Section 506 the IPC vide Section 235(1) of the Code of Criminal Procedure.*

*h. The seized muddemal property i.e. memory cards being worthless be disposed of after appeal period is over.*

*i. On realization of fine amount, the compensation of Rs.20,000/- (Rs. Twenty Thousand only) be paid to the victim (name and address as per charge-sheet), vide Section 357(1) (b) of Code of Criminal Procedure. She is also entitled for compensation amount under section 357-A of Cr. P. C.*

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

The Victim was the minor. She was residing with her parents and sister at the address given in the police report. On 23.11.2016, the Victim accompanied her mother and sister to watch sport event in the village Mandai (place of fair). While returning home around 6.00 p.m., the elder sister of the Victim expressed the desire to purchase the food items. Therefore, the Victim's sister and the Victim stayed in the Mandai and their mother went home. Where both of them were standing near one shop, the Appellant came, caught hold of the hand of the Victim and took her to the forest. The Appellant pulled down the Victim's slack. The Victim pushed the Appellant and rescue herself. The Victim's sister went home and informed their mother that, some one took the Victim in the forest. After some time, the Victim came home weeping and narrated the incident to

her mother. The Victims mother took the Victim to the Mandai. The Appellant came to be apprehended. The report was lodged by the Victim's mother with the Deori Police Station and Crime No.161 of 2016, came to be registered against the Appellant for the offence punishable under Section 354 and 506 of the Indian Penal Code (for short IPC) and for the offence punishable under Section 12 of the Protection of Children From Sexual Offences Act, 2012 (for short POCSO Act).

3) The Appellant was taken in custody by the police. The Victim was referred for medical examination. The Appellant was also medically examined. The statement of the Victim was recorded. The Spot Panchnama was prepared. The statement of witnesses were recorded. Necessary documents were seized. On Completion of the investigation, the Appellant came to be charge-sheeted.

4) The learned Trial Court framed the charge against the Appellant for the Offence punishable under Sections 354, 354-B and 506 of the Indian Penal Code and for the offence under Section 9(m) punishable under Section 10 of the Protection of Children From Sexual Offences Act, 2012 below Exh.13. The Appellant pleaded not guilty and claimed to be tried. To prove the charge, the prosecution examined in all eight (8) witnesses and brought on record the

relevant documents. After the evidence closure pursis was filed by the prosecution, the learned Trial Court recorded the statement of the Appellant under Section 313(1)(b) of the Cr.PC. The Appellant denied the prosecution's case and evidence on record. After hearing both the sides and appreciating the evidence available on record, the impugned judgment and order came to be passed.

5) Heard the learned Advocate for the Appellant, the learned APP for the State and the learned Advocate for respondent No.2. Scrutinized the evidence available on record.

6) According to the learned Advocate for the Appellant the spot panch signed the panchnama in the Police Station. The video recording of the spot was not proved. When the Appellant was unknown to the Victim, she did not raise any alarm, though the place of the incident was a public place. No independent witness was examined. The incident narrated by the Victim was unbelievable. The Medical Officer opined of sexual assault on the Victim, though the Victim nowhere deposed of the sexual assault. The other evidence on record did not prove the charge and the learned Trial Court committed an error in convicting and sentencing the Appellant. The Appeal be allowed.

7) It is submitted by the learned APP that, the case is based on the testimony of the Victim. Her testimony was consistent with her previous statement. The identity of the Appellant was not disputed. The testimony of the PW-5 shop owner, who is the independent eye witness, corroborates the Victim's testimony. There was prompt lodging of the First Information Report (FIR). Nothing has come in the Cross examination so as to discard the testimony of the Victim. The learned Trial Court rightly convicted and sentenced the Appellant and the Appeal be dismissed.

8) It is submitted by the learned Advocate for the Victim that, from the evidence on record, the intention of the Appellant has been established. The Appellant was in a drunken state. The learned Trial Court has rightly convicted the Appellant and no interference was called for in the impugned judgment and order.

9) It is the case of the prosecution that, at the time of incident, the Appellant was drunk. As no defence under Section 85 of the IPC is raised by the Appellant, as is clear from the cross examination, there is no need to discuss the six(6) judgments cited by the learned APP dealing with the said aspect.

10) As regards the age of the Victim is concerned, it is not disputed by the Appellant. Even in the cross examination, there is no challenge to the age of the Victim.

11) The Victim is examined as PW-1. According to the Victim, the incident took place in the year 2016, when she had gone to the Mandai along with her mother and elder sister. Her mother went home. She and her elder sister went to bring some eatables. When they were near the shop of one father of Nirjala, the Appellant caught-hold her hand and took her to the forest. The Appellant fell her down and pulled her slack. The Victim pushed him and the Appellant fell down. The Victim managed to escape and came home. She narrated the incident to her mother. According to the Victim, the Appellant was residing in her village and he was in drunken condition. She deposed that, her mother went to the Police and lodged the report. Her evidence in the cross examination shows that, her evidence that the person, who caught-hold her hand was from her village was an improvement.

12) The Victim's mother is examined as PW-2. Her evidence shows that on 23.11.2016, she went with the Victim and another daughter to the Mandai, which was near her house. In the evening around 5.00 p.m., they watched the sports Kho-Kho and Kabaddi,

thereafter they started returning home. Her daughters stayed back for purchasing the eatables. She returned home alone. After some time, her elder daughter came and told her that, the Victim was taken by one person. She did not pay any attention. After some time, the victim came home crying and in a frightened condition. When she asked the Victim reason for the same, the Victim informed her that, one person caught-hold her hand and took her in the village and narrated the incident. The evidence of this witness that, the Victim told her that the said person was having a girl child with him and the said girl was kept by the Appellant at the shop, is not corroborated by the testimony of the Victim.

13) In her evidence PW-2 further deposed that, after the Victim narrated the incident, she along with her husband went in search of the assailant. They caught-hold the Appellant on suspicion. Thereafter, the Victim came and she identified the Appellant as the same person. It has come in her evidence that, it was dark at that point of time. Her evidence further shows that, she was knowing the Appellant prior to the incident.

14) There is evidence of PW-5 Bhaulal F. Bhagat to show that, he knew the Victim and her family. On the day of the incident, he had put the stall of balloons in the Mandai. In between 5.30 p.m.



and 6.00 p.m. the Appellant came to his shop with his small daughter and he kept his daughter at his shop and went away. After 15 to 30 minutes, the Appellant came, took his daughter and left.

15) The above evidence of the aforesaid three witnesses show that, there is material inconsistency in their evidence. The mothers evidence clearly go to show that, after she came to know about the incident from the Victim, she left with her husband in search of the said person and caught-hold the Appellant on suspicion and thereafter, the victim came and identified the Appellant as the same person. This go to show that on suspicion, the Appellant was caught-hold and thereafter, the Victim identified him as the assailant. Further the evidence of Victim's mother nowhere, shows that, the Appellant was accompanied by his daughter as, the evidence of PW-5 shows that, the Appellant left his shop by taking his daughter. It has clearly come on record in the evidence of above referred witness as that it was an evening time and it was dark. In the light of this evidence on record, the identity of the Appellant as the person, who committed the above referred act with the victim comes in doubt. The Victim nowhere deposed that, the Appellant was apprehended by her parents after she narrated the incident to them. The suggestion is given to the Victim in the cross examination

that on the say of her mother she identified the Appellant. From the cross examination of the Investigating Officer, who is examined as PW-8 goes to show that the Victim's statement was recorded on 04.12.2016 i.e. after a period of 11 days. His cross examination further show that after 23<sup>rd</sup> November 2016, i.e the date of offence, he had gone to Wadegaon for investigation 4 to 5 times and during that visit he met the informant and the Victim. There is no explanation in respect of delay in recording the statement of the Victim. This delay, is certainly fatal for the prosecution in the light of the above discussed evidence. The Victim being the child, her testimony is required to be assessed very cautiously as the children are prone to tutoring.

16) Though, the prosecution examined the sister of the Victim as PW-4 who deposed that, the Appellant caught-hold the hand of the Victim and took her to the forest, her evidence shows that her testimony was a material omission in her previous statement. Therefore, the testimony of this witness is not of any assistance to the prosecution.

17) There is evidence of the Medical Officer, PW-7, Dr.Girish who examined the Victim on 23.11.2016. His evidence shows that there were no external or internal injury on the victim. His evidence

shows that, the history given to him at the time of medical examination was the attempt to sexual assault. It can therefore, be safely observed that, the medical evidence is of no consequence.

18) The above discussed evidence available on record falls short of conclusively establishing the identity of the Appellant as the Assailant. There is material variance in the testimony of the prosecution witnesses. As the evidence in respect of the involvement of the Appellant in the incident is doubtful and not concrete, the Appellant is entitled for the benefit of doubt. Thus, the conviction and sentence accorded by the learned Trial Court against the Appellant needs to be quashed and set aside. Hence the following order:-

### **ORDER**

- i) The Appeal is allowed
- ii) The conviction and sentence recorded by the learned Trial Court against the Appellant for the offence punishable under Sections 354, 354-B of the IPC and under Section 9(m) under Section 10 of the POCSO Act is hereby quashed and set aside.
- iii) The Appellant is acquitted for the offence punishable under Sections 354, 354-B of the IPC and under Section 9(m) punishable under Section 10 of the POCSO Act .

- iv) The Appellant is behind bars and he be released forthwith if not required in any other offence.
- v) R and P be sent back to the learned Trial Court.
- vi) Fees of the learned appointed Advocate for Appellant is quantified at Rs.15,000/- (rupees fifteen thousand only). The same be paid accordingly by the High Court Legal Services Authority.
- vii) Fees of the learned appointed Advocate for Respondent No.2 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*