



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1160 OF 2023

Baliram Sitaram Chavan,
Age: 26 years, Occupation : Education,
R/o. Kadethan Tanda No.3,
Tq. Paithan, Dist. Aurangabad. **.. Appellant**

Versus

1. The State of Maharashtra
2. X – Victim **.. Respondents**

...

Mr. Sudarshan J. Salunke, Advocate for the Appellant.
Mr. V. V. Jahagirdar, APP for respondent No.1/State.
Mr. Amol T. Jagtap, Advocate for respondent No.2 (Appointed through Legal Aid).

...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 18.08.2026

Pronounced on : 19.08.2026

JUDGMENT :

1. Convict for offence under Sections 376-A, 506 of IPC and Section 4(2) and 6(1) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), hereby takes exception to the judgment and order of conviction dated 30.10.2023 passed by learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No. 360 of 2022.

2. In short, prosecution was launched against present appellant on the premise that, informant's minor daughter visited his shop to purchase biscuits and bread. According to prosecution, appellant took victim inside his shop, inserted his male organ in the minor's mouth and after pulling down her undergarment, he also licked her private parts. The girl returned home crying and narrated the incident to her parents. On next day, they lodged report resulting into registration of crime for above offence. On completion of investigation, accused was chargesheeted and tried by Special Judge. At trial, prosecution adduced evidence of three witnesses. Medical papers being admitted, expert was not examined. On appreciation of evidence, learned Special Court recorded guilt of the appellant for above offences. Precisely the said judgment of conviction is the subject matter of instant appeal.

SUBMISSIONS

On behalf of the Appellant-Accused :

3. Learned counsel for the appellant would point out that, there is false implication. According to learned counsel, there is delay of almost 17 to 18 hours in lodging report, leaving room for filing false, afterthought, embellished report. He pointed out that, there was no prompt lodgment of FIR. That, no modes and means like mobile phone were used to inform the police or anybody else. On the point of

effect of delayed FIR, he seeks reliance on the judgment of Hon'ble Apex Court in the case of ***Thulia Kali v. State of Tamil Nadu*** AIR 1973 SC 501.

4. Taking this Court through the testimony of victim, which is in question and answer form, he pointed out that in view of her answers and that she was asked to memorize what has been told to her, clearly indicated that, victim was tutored and therefore, it is his submission that, such evidence cannot be relied for convicting the accused.

5. Learned counsel further submitted that, here, in the light of quantum of punishment, quality of evidence was expected to be of higher degree, but evidence on behalf of prosecution is not of such caliber. In support of such contention, he seeks reliance on the judgment of this Court in the case of ***Sujoy @ Sanjay Laltu Chakravarty v. State of Maharashtra*** 2018 ALL MR (Cri) 2880.

6. He pointed out that, it is emerging from the evidence of informant mother that, before lodging report, inquiry was made by police and there was a typed complaint, but the same is not the part of investigation papers and according to him, there is suppression of

material and on such count, he seeks reliance on the judgment of the Hon'ble Apex Court in the case of ***Sevi and another v. State of Tamil Nadu and another*** AIR 1981 SC 1230. He also urges to draw adverse inference.

7. He pointed out that, there are no injuries on the person or male organ of accused, rendering the very case of prosecution doubtful. On such count, he seeks reliance on the judgment of Allahabad High Court in the case of ***Ram Kala v. Emperor*** AIR 1946 Allahabad 191.

8. It is also his submission that, best evidence is not brought forth by prosecution and the girls accompanying the victim are not examined by prosecution for the best reasons known to it. Consequently he urges to draw adverse inference on such count also.

9. He further pointed out that, it has come in the evidence of informant-mother that, accused had a family and house and shop were in the same premises and therefore, according to him, in presence of family of accused, it was impossible to commit alleged act and on such count also, he questions the story of prosecution.

10. It is his submission that, in spite of victim claiming to have repeatedly vomited, neither informant mother nor her husband (father of the victim) took the victim to the hospital and according to him, it is the most unnatural conduct on their part.

11. He would further strenuously submit that, the testimony of victim is not credible for the simple reason that her testimony before the Court materially differs from the statement recorded before learned Magistrate under Section 164 of Cr.P.C.

12. Questioning the faulty investigation, he points out that, clothes of victim and accused were not dispatched immediately for analysis and as such, it was fatal for prosecution.

13. For all above reasons, he criticizes the judgment of trial court for not considering and appreciating the above circumstances and aspects and he ultimately prays to acquit the accused by setting aside the impugned judgment.

On behalf of the Respondents, i.e. State and Informant :

14. In answer to above, both, learned APP as well as learned counsel for the informant, while justifying the judgment and order of

conviction, would point out that, the evidence of victim and her mother has remained unshaken. That, medical evidence in the form of documents is admitted by accused. According to learned APP, in cases of such nature, and taking into account that parents of victim are poor, illiterate villagers and staying far away from police station, there is bound to be delay and as such, the same is properly explained and not at all fatal. According to learned counsel for the informant, but for the threats allegedly given by accused to the victim as well as her father, there was bound to be some delay and there is explanation for the same.

BRIEF ACCOUNT OF THE EVIDENCE BEFORE TRIAL COURT

15. In support of its case, prosecution has adduced evidence of informant-mother, minor victim and the Investigation Officer.

16. **PW1** informant-mother of victim, at Exhibit 21, gave date of birth of her daughter as 03.11.2016. According to her, on 21.09.2022, as her younger son was crying, she sent victim daughter at 5.00 p.m. to the shop of appellant to buy biscuits and bread. According to her, as she did not return for long, her husband made three telephone calls to the accused. Around 6.30 p.m., her daughter returned home crying and on inquiry, she informed that when she went to the shop

of accused to buy articles, she was held by her hand and pulled inside the house and thereafter accused inserted his penis in her mouth two-three times, removed her nicker and licked her urinal organ. Her husband went to question the accused but he issued threats to kill him. Her daughter vomited two to three times and while in sleep, she used to suddenly wake up due to fear and cry. She identified reported lodged by her to be at Exhibit 22 and FIR to be at Exhibit 23.

There is searching cross of above witness on the point as to how much time it takes to reach Pachod from their vicinity, how much time it requires to travel on motorcycle, distance between spot of incidence and her house and details about family of accused. She denied ever visiting shop of accused. She admitted that prior to lodging report, victim daughter was not taken to hospital and that her residential house is surrounded by houses of relatives. She admitted that, she changed clothes of her daughter after she returned and she replied that she was not aware that clothes were required to be handed over to police, but she answered that she did not change her undergarment. She answered that from police station, they went directly to GHATI hospital. She flatly denied about prior to going to police station, having any conversation with police or any inquiry made with them, but she answered that at police station, police made

inquiry with her daughter. She answered that prior to lodging report, her daughter had conversation with male police officer and conversation was typed on a computer over which police took her signature i.e. on the statement of her daughter. That, they were informed that they had to go to Paithan to give statement and they accordingly went there. Rest is all denial.

Statement of informant under Section 164 Cr.P.C. is at Exhibit 24.

17. PW2 is the victim and trial court seems to have verified the age of victim to be seven years and thereafter, her examination-in-chief as well as cross seems to have been recorded in question-answer form.

The relevant questions and answers will be dealt at appropriate stage later.

18. PW3 is the Investigating Officer.

19. Apart from oral account, there is documentary evidence in the form of medical papers, which are admitted by defence, as well as admission extract of the first school where victim was admitted.

ANALYSIS AND CONCLUSION

20. Re-appreciated the above discussed evidence. Here, crucial evidence is of victim PW2 and the same is dealt in its entirety. As stated above, her testimony is in the form of questions and answers.

21. To initial questions about previous residence, victim answered that they resided at Kadethan Tanda and she resided with parents, two sisters and one brother. To a question, whether she was going to school, she has answered in affirmative and stated that at that time, she was in 1st standard. To a question posed by learned prosecutor that, while she was in 1st standard what had happened, she has answered that she had been to the shop of Papa in the evening, and to next question as to whether she would identify him, again she answered in affirmative and stated that he was the same who was appearing on VC. To a question, for what purpose she went to his shop, she answered that she went for biscuits and chocolate. To a question, who was in the shop, she answered that uncle was there. To a next question, which uncle, she answered that, Papa who was on the VC. She was asked who others were their, and she named her friends, namely, Didi, Handri and Chhoti. To a further question, what happened thereafter, she has answered that those girls went. To another question as to what happened thereafter, she has stated that,

Papa held her right hand and took her inside. He inserted his penis in her mouth. He removed her nicker, put his mouth on her urinal organ and to a question as to what happened thereafter, she answered that he said to her to come daily and he would give her chocolates and further said to her to not to tell anybody. Thereafter she returned and informed her parents. To a further question as to what happened, she answered that she vomited.

22. Above witness is subjected to cross, but again in question-answer form. To a question whether she was taken to hospital by her parents after returning home, she answered in negative. She answered that there was conversation with police after two days, and regarding what was the conversation, she answered that she was asked whether she went to school and further added that, at that time police uncle was recording its video. To a question whether police read over the contents written on the paper, she answered in affirmative. She is asked whether she was instructed to keep in memory whatever was read over to her, she also answered in affirmative. Thereafter she is questioned about visiting Paithan Court and she also affirmed whatever she memorized was told to the Court. She answered in affirmative the question whether she was taken to police station. To both questions, whether she had conversation with

her parents after returning, and whether she had talks with medical officer, she answered in affirmative. To a question whether after returning from police station, her parents told her that they had informed police that accused inserted his penis in her mouth and after removing her nicker put his mouth on her private part, she answered in negative. To all further questions she has answered in affirmative except denying that police madam who read over her statement had gave chocolate to her. She also admitted that, her earlier statement was read over to her at that time and she had accordingly given evidence. To a direct question that nothing has happened as stated by her in the examination-in-chief, she answered in negative.

23. Relying on above answers, learned counsel for the appellant would point out that victim was tutored as she has admitted that she had memorized what to depose. In the considered opinion of this Court, on taking into account the age of victim and the above reproduced questions and answers, she has stood steadfast in her cross and her material testimony on the point of accused inserting his male organ in her mouth, and further licking her private part, has remained intact.

24. Her answer that, she memorized her statement, in itself cannot be said to be tutored one. Events about she visiting the shop for purchasing biscuits show that, she is corroborating her mother's testimony who has deposed that she was asked to bring biscuits and bread for her younger brother who was crying.

25. Informant mother as well as victim have stated that, after returning home, victim had repeatedly vomited. This itself shows that victim was so traumatized due to the incident that she vomited two to three times, and also according to mother she woke up while in sleep and started crying. Unfortunate incidences are experienced by the victim causing ill health to her.

26. Though she named the friends accompanying her to the shop, to the next question, she has answered that those three girls went away and when she was asked as to what happened thereafter, she has narrated in answer form that accused held her hand, took her inside the house, inserted his penis in her mouth, he removed her nicker and put his mouth to her private part and she further stated that, he asked her to come daily as he would offer her chocolate and further asked her not to tell anybody. The above answers has remained undisturbed.

27. At appropriate times, she is found to have answered the questions in negative like, her parents informing her about conversation with police and police madam offering her chocolate. At the end, she has flatly denied that, she has falsely deposed in chief.

28. Consequently, from the evidence of victim, occurrence and act of accused is substantiated. Though learned counsel attempted to question the prosecution case as medical examination did not reveal any injuries, going by the nature of accusation, it is but obvious that there would not be any injuries on the person of either victim or even accused. Moreover, in trial court, defence has admitted medical papers and therefore, now it is not open to question the same in appeal.

29. As regards to the grounds raised in appeal about delay, it is fairly settled position that in cases of such nature, delay is always considered to be insignificant. Moreover , as pointed out by learned APP, parents of the victim seem to be illiterate villagers and they may not be aware of the legal requirement of promptness of complaint. Further, they stay 18 kms. away from the police station. Therefore, delay of 17 to 18 hours cannot be said to be fatal.

30. On the ground that there is non-examination of friends of victim, it is evident from the very answers given by victim that, prior to the event in question, the girls had parted company of victim and she was alone and therefore, no purpose would have been served by examining those girls.

31. As regards to the ground of impossibility of the offence being committed as accused had a family who resided in the same premises, there is no evidence by accused in the trial court to show that his family members were also present in the house. He having taken said defence, was expected to discharge the burden at least by probalizing it, but no such effort has been done.

32. Learned counsel has relied on above referred several rulings. Apparently, it is a settled law, but furthermore, facts in those cases are distinct than the facts in the case in hand and therefore, with due respect, the same cannot be taken recourse to.

33. Learned counsel for appellant vehemently submitted that, it has come in the evidence of informant mother that at police station prior to lodging report, there was inquiry by police with her daughter and the same was computerized. Indeed, no such statement is finding place but that itself would not be sufficient to overshadow the

evidence of victim discussed above. It is not a case that any different version was reported during such inquiry. Moreover, here, statement of victim is also recorded under Section 164 Cr.P.C. before learned Magistrate. There are no variances in the said statement and the testimony before the Court so as to cast doubt on the prosecution story or to hold that there is suppression of material so as to draw adverse inference. To a direct question that nothing has happened as stated by her in the examination-in-chief, she has answered in negative.

34. Perused the judgment impugned herein. It is noticed that trial court has meticulously appreciated entire evidence. Going by the standard in which victim studied, coupled with date of birth provided by mother as well as admission extract of 1st std., learned trial court rightly held victim to be a minor falling in the definition of child. Learned trial court has also considered and appreciated the evidence of informant mother as well as that of the child, including the answers given by them in cross and thereafter findings have been recorded which are apparently in consonance with the evidence on record. No perversity is noticed in the above manner of appreciation or findings reached at by learned trial court so as to interfere. Hence, following order :

ORDER

- I. The Criminal Appeal is hereby dismissed.
- II. Fees of the learned counsel appointed to represent respondent no.2 be paid by the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

[ABHAY S. WAGHWASE, J.]

vre