



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

CRIMINAL APPEAL NO. 114 OF 2021

Rajesh Murlidhar Lonbale

Aged 41 years, Occupation:- Service

R/o Naginabagh, Near Shubham Mangal

Karyalaya, Chandrapur, Tahsil and District

Chandrapur

... APPELLANT

(In jail)

// V E R S U S //

State of Maharashtra,

Through Police Station Officer,

Police Station Durgapur,

Tahsil and District- Chandrapur

... RESPONDENT

Mr Y.B. Mandpe, Advocate for appellant.

Mrs. Mukta Kavimandan, APP for respondent/State.

CORAM : G. A. SANAP, J.

DATE : 30.07.2024

ORAL JUDGMENT :

1. In this appeal, the appellant/accused has challenged the judgment and order dated 26.02.2021. The learned Special Judge has held the accused guilty of the offences punishable under Sections 376(1), 376(2)(l) of the Indian Penal Code,

1860 (for short, “the I.P.C.”) and under Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (for short, “the POCSO Act”) and sentenced him to suffer rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/-, in default to suffer further rigorous imprisonment for six months.

2. Background facts:-

The First Information Report was registered on the report of the informant (PW-1). Awadta Ramteke (PW-1) is the maternal aunt of the victim. In the report, the informant has stated that at the relevant time the accused was working as a Malaria worker. On 17.11.2014, he along with other health workers had come to village Kitali. In the village, there was death of one person due to dengue. The team of health workers was deputed to carry out the survey and treat the patients. The accused and other health workers visited the house of the victim on 17.11.2014. The victim was examined by the

accused. It is alleged that tablets were given to treat her fever. The victim went inside her house to take tablets. It is stated that the accused went inside the house on the pretext of examining the victim and when the victim was lying on the cot, he caressed his hand on her private part as well as inserted his finger in her private part. He kissed her. The victim narrated the incident to her parents in the evening.

3. As far as the informant is concerned, it was stated in the report that on 19.11.2014 her sister-in-law Sadhna Ramteke told her about the occurrence of the incident. She therefore, made an inquiry with the victim and at that time the victim narrated the incident to her. She has further stated that the victim told her that on the date of the incident she had narrated the incident to Payal Katkar. She lodged the report on 24.11.2014. On the basis of report, the crime bearing No.121/2014 was registered against the accused for the offences punishable under Sections 376(2)(b)(i)(l) of the I.P.C.

and under Section 4 and 10 of the POCSO Act and under Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes Act, 1989.

4. Raju Bhujbal (PW-15) conducted the investigation. The victim was forwarded to the hospital for medical examination. She was examined by Dr. Neha Mahajan (PW-9). PW-15 recorded the statements of the witnesses. According to PW-15, the investigation revealed the commission of the offences by the accused and therefore, he filed the charge sheet against the accused.

5. Learned Special Judge framed the charge against the accused. The accused pleaded not guilty to the charge. It is the defence of the accused that PW-1 was working as a health worker on behalf of an NGO at village Kitali. She would give medicines and tablets to the villagers being a health worker. At that time, one person in Kitali had died due to dengue. He and

his team had gone and done survey in the village. They questioned the informant (PW-1) as to why she had not informed them about the death. She was informed that the dengue patient died due to her mistake and she was giving medicines without authority. She was told by the accused that he would make a complaint against her. It is stated that therefore, the false report was lodged by PW-1 against him. Prosecution in order to bring home the guilt against the accused examined 15 witnesses. Learned Special Judge, on consideration of the evidence, found the accused guilty of the charge and sentenced him as above. Being aggrieved by the judgment and order, the appellant has come before this Court in appeal.

6. I have heard Mr. Y.B. Mandpe, learned Advocate for the appellant and Mrs. Mukta Kavimandan, learned APP for the State. Perused the record and proceedings.

7. Learned Advocate for the appellant submitted that the appellant has been falsely implicated in this case on the report of PW-1. Learned Advocate took me through the record and pointed out that the report of the alleged incident dated 17.11.2014 was lodged on 24.11.2014 after seven days. Learned Advocate would submit that the prosecution has not properly explained the delay. The explanation for delay put forth by the informant is not at all believable. Learned Advocate submitted that there are major omissions and contradictions in the evidence of the witnesses as to the occurrence of the incident and involvement of the accused in the crime. Learned Advocate would submit that evidence on record adduced by the prosecution itself is sufficient to accept the defence of the appellant. Learned Advocate took me through the evidence of Dr. Neha Mahajan-medical officer (PW-9) and submitted that the medical officer has categorically stated that she did not notice any injury to the private part of the victim. Learned

Advocate took me through the report of the medical officer and other documentary evidence to make good his submission that PW-1 took the complete control over the victim and accompanied her to the Police Station as well as to the Doctor. Learned Advocate submitted that the informant is the real sister of the mother of the victim. It is pointed out from the evidence of the victim that victim had narrated the incident to her mother in the evening of 17.11.2014 but mother did not disclose the said incident to the informant. Learned Advocate submitted that the informant is a Health worker attached to the NGO at village Kitali. PW-1 has admitted in her evidence that she is running Creche at village Kitali and the victim would frequently visit the Cretch. It is pointed out that the victim was suffering from partial mental disability and sickle cell and therefore, she was looked after by the informant. Learned Advocate submitted that in this factual situation, if the incident as narrated had really occurred and the mother of the victim

was informed about the same by the victim, on the very same date, the mother would have apprised the informant about the said incident. Learned Advocate took me through the evidence and pointed out various omissions, contradictions and inconsistencies in the evidence of the witnesses. Learned Advocate further submitted that prior to the date of the incident, the victim was not knowing the accused. Learned Advocate submitted that the test identification parade was not conducted. Learned Advocate further submitted that at the time of recording the evidence of the victim the specific identity of the accused through the victim was not established. Learned Advocate would submit that learned Special Judge has failed to consider all the above aspects and as such, has come to a wrong conclusion.

8. Learned APP submitted that the informant had no reason and motive to falsely implicate the accused. Learned APP submitted that in such a case some omissions and

contradictions are bound to occur in the evidence of witnesses. Learned APP submitted that the omissions, contradictions and inconsistencies in the evidence of the witnesses are not material so as to disbelieve their evidence. Learned APP submitted that prosecution by leading oral and documentary evidence has proved that on the date of the incident the victim was below 18 years of age. Learned APP submitted that defence of the accused is not at all probable and therefore, it was rightly rejected by the learned Special Judge. As far as the delay is concerned, learned APP took me through the record and pointed out that the delay has been properly explained. In short, learned APP supported the judgment and order passed by the learned Special Judge.

9. I have minutely perused the oral and documentary evidence adduced by the prosecution to prove the charge against the accused. Learned Special Judge has believed the evidence adduced by the prosecution and held the accused

guilty of the charge. In this case, there was seven days delay in lodging the report. The facts which have been proved on the basis of the evidence need to be stated at the outset for the purpose of proper appreciation of the evidence of the witnesses. The prosecution by adducing oral and documentary evidence has proved that on the date of the incident, the victim girl was below 18 years of age. The documentary evidence is sufficient to prove that the victim was below 18 years of age on the date of the incident.

10. Dr Ghanshyam Patil (PW-11) is a Radiologist. He had examined the victim. He gave his opinion that the result of the ossification test indicated that the age of the victim was between 16-17 years. It needs to be stated that as far as the result of ossification test is concerned, there is always a margin of error of two years on either side. In the absence of concrete documentary evidence with regard to the age of the victim, the report of the radiologist can be made use of by the accused. In

the absence of concrete documentary evidence, the margin of error on higher side of the age has to be accepted and the benefit of the same is required to be extended to the accused. It needs to be stated that when there is concrete documentary evidence to prove that the victim is below 18 years of age, then the margin of error indicating the lesser age of the victim needs to be considered in favour of prosecution. In this case there is concrete documentary evidence of the birth date of the victim. In my opinion when there is a documentary evidence to prove the birth date, the report of the Radiologist cannot be given primacy. In such a situation the report has to be appreciated keeping in mind the documentary evidence.

11. In this case, the report was not lodged by the parents of the victim, though they were informed by the victim in the evening of the incident. The report was lodged by PW-1, who is the maternal aunt of the victim i.e. the real sister of her mother. On minute perusal of the evidence of the Informant

(PW-1), victim (PW-7), her mother (PW-13), Sunita Katkar (PW-2) and evidence of Prakash Kotnake (PW-4), I am satisfied that there is substance in the defence of the accused and scope to doubt the case of the prosecution against the accused.

12. PW-1, in her evidence, has stated that the incident occurred on 17.11.2014 and she came to know about it after three to four days. She has stated that there was a discussion in the village among the villagers about the occurrence of the incident. PW-1 has categorically stated that her sister-in-law Sadhana Ramteke told her about the incident and the involvement of the accused. She has stated that after receipt of this information from Sadhana Ramteke, she called the victim to her house and made inquiry with her. She has stated that at that time the victim told her that Maleria Worker had come to her house; he obtained blood from her right finger; he provided two white tablets of fever and when she went inside the house

to take water for consuming tablets, the accused followed her in the house and caressed her private part and inserted his finger in her vagina, kissed her and gave Rs.10/-. PW-1, in her report, has stated that on 19.11.2014, Sadhana Ramtake informed her about the incident. It was after two days of the incident. The report was lodged on 24.11.2014. In her report, she has stated that the victim informed her that after the incident, she went to the house of Payal Katkar and informed her about the incident. It is stated in the report that the victim went to the house of Payal and informed Payal Katkar and not to her mother. In the report, no reason has been stated for delay in lodging the report. Even if it is assumed that PW-1 was informed about this incident on 19.11.2014 by Sadhana Ramteke, she was supposed to go and make an inquiry with her parents instead of making an inquiry with the victim. She only made an inquiry with the victim. In my view, this conduct of the informant is not consistent with the conduct of man of ordinary prudence.

She has nowhere stated in her evidence as well as in her report that at any time on being confronted with this incident she made inquiry with her sister (mother of the victim) and her brother-in-law. No reason has been put forth. In the ordinary circumstances, the informant was expected to approach the parents of the victim and apprise them about such a serious incident. She has also not stated that mother of the victim or her brother-in-law informed her about the incident. Sadhana Ramteke has not been examined. PW-1, has not stated in her evidence, the source of information of the incident by Sadhana Ramteke. Sadhana Ramteke is her sister-in-law. The victim, in her evidence, has nowhere stated that she had informed Sadhana Ramteke about the incident.

13. In this context, it would be relevant to peruse her cross-examination. Some of the admissions given by her in the cross-examination are very vital. She has admitted in her cross-examination that up to 24.11.2014 she was not aware of the

incident. This admission shows that her statement in examination-in-chief as well as in her report that on 19.11.2014, she came to know about the incident is not correct and as such doubtful. She has admitted that she is working as Health worker in an NGO at village Kitali. She has admitted that before this incident, one person had died at village Kitali due to fever. She has stated that the accused was not working as a health worker for Kitali area. She has admitted that through NGO, she is running Creche. She has stated that she came to know that Prakash Kotnake (PW-4), who is also Health worker, was with the accused on that day. She has admitted that the victim is a patient of sickle cell. She has categorically admitted in her cross-examination that a blood sample of the victim was collected and at that time the women of the village were present. She has stated that in the presence of the women, the victim was given tablets for consumption and she was asked to visit primary health center along with her parents. She has

further admitted that thereafter the accused and PW-4 went to another house. The occurrence of the incident narrated by her and the one narrated by the victim is self contradictory. I will refer to this contradiction while appreciating the evidence of the victim (PW-7). She has also stated that she is in-charge of Anganwadi run by the NGO. She has stated that from the date of the incident, she had kept the victim in her Anganwadi to protect her. She has further stated that the victim is working as a helper with her. She has admitted that the victim is studying in Z.P. School and attending the school with normal children. The omission with regard to the confirmation of the incident through the victim on getting the information has been proved to be omissions. On perusal of her evidence, it is seen that she has not stated a single reason for delay in lodging the report. She has not stated in her evidence before the Court that the victim told her that after the incident she had gone to the house of Payal Katkar. This fact has been stated in her report. Payal

Katkar has not been examined. The mother of Payal Katkar has been examined. It appears that in order to cover up this lacuna, PW-1 did not make reference to this fact in her examination-in-chief. The accused, in her cross-examination put his defence to her. She has denied the defence of the accused. In the backdrop of the above factual position emerging from the evidence of informant PW-1, the evidence of other witnesses needs careful perusal and appreciation. PW-1 has stated in her evidence that the members of the team, including the accused, had come to the house of victim and when the victim went inside the house the accused followed her and then committed the offence. In her cross-examination, she has admitted that when the blood sample of the victim was obtained, the women from the village were present. Similarly, she has admitted that PW-4 was also present in the house when the victim went inside the house.

14. PW-13, the mother of the victim has stated that Malaria Babu took the victim's blood sample and gave Malaria tablets to her. The victim girl then came to the house. She has stated that the accused followed her and then committed the alleged act. She has not stated that the victim informed her that the accused caressed her private part. She has stated that the accused inserted his finger in her vagina and kissed her. She has stated in the evidence that her daughter told her about the incident on the day of the occurrence. Evidence of PW-13 is silent about the date and time of the occurrence. She has not stated that she went to the Police Station. She has not stated that the victim told her that after the incident she went to the house of Payal Katkar and narrated the incident to her. In her cross-examination, she has admitted that the informant works for the N.G.O as a health worker. She has admitted that while working as a health worker, informant gives tablets and other medicines to people. Informant also used to inform P.H.C.

Durgapur about epidemic Malaria or dengue. She has admitted that Vijay Khandre from her village had died due to dengue malaria. She has stated that on account of this, Health worker has been deputed to her village for a survey. She has admitted that on the date of the incident the victim girl was studying in Zilla Parishad High School and in 8th standard. She has further admitted that the victim girl used to go to Anganwadi, which was looked after by the informant. She has stated that her daughter informed her about the incident in the evening of the day of occurrence itself. She has admitted that she did not inform the police patil, sarpanch or any other reputed person of the village about the incident. She has admitted that she and her husband did not lodge the report with Police Station. She has categorically admitted that she did not inform PW-1 about the incident at any time. In my view, this inconsistency in the evidence of PW-1 and PW-13 is very material. PW-13 has admitted that the victim used to go to Creche at Anganwadi,

which was looked after by PW-1. The evidence on record would show that the victim was taken care of by the informant. The informant admittedly was working as a health worker at village Kitali. The alleged offence, in this case was against the health worker. In the above stated factual scenario the mother of the victim was expected to inform PW-1 about such a serious incident. Similarly, the mother of the victim, PW-13 and her husband, without wasting any time would have lodged the report against the accused. It has come on record that at the police Station for the purpose of lodging the report and at the time of the medical examination of the victim her parents did not accompany her. The evidence shows that everywhere, from the time of lodging the report till completion of the investigation and at the time of the evidence of the victim, informant (PW-1) accompanied the victim. In my view, this is a very important aspect, which would weigh in favour of the defence of the accused. On material points the evidence of the

PW-1 and PW-13 is not consistent. By applying standard of the person of ordinary prudence placed in a similar situation it would show that the conduct of the informant as well as conduct of PW-13 mother of the victim is not natural.

15. At this stage, it would be necessary to consider the evidence of the victim girl i.e. PW-7. She has stated that she knows the accused. He is a Malaria Babu. She has stated that on the date of the incident, at about noon time when she was sleeping in her house, the accused Malaria Babu gave her a call. She has stated that she came out of her house. He examined her pulse and gave her tablets. She has stated that when she entered the house to take tablets, the accused followed her and inserted his finger in her private part. He kissed her and gave Rs.10/- and told her not to disclose the incident to anybody. She has stated that thereafter she went to the house of Payal and narrated the incident to mother of Payal. This statement of the victim is contrary to the statement made by the informant in

her report that 'the victim has stated that she went to the house of Payal and informed Payal Katkar about the incident'. Her cross-examination is very vital. She has admitted that PW-1 is running Creche in their village. She is also a Health Worker. She has stated that prior to the incident one person had died due to dengue-malaria. She has stated that one team was sent by the government to their village for checking dengue and malaria epidemic. She has stated that prior to the incident she used to visit the Creche of her aunt. She has admitted that on the date of the incident she saw the accused for the first time. She has admitted that she came to the Court to give evidence with her aunt PW-1. The victim has not stated that she informed Sadhana Ramteke about the incident. Her cross-examination would show that she used to frequently visit the Creche run by the informant PW-1.

16. In order to appreciate the evidence of the informant (PW-1) it is necessary to peruse the evidence of

Sunita Katkar (PW-2). PW-2 is the mother of Payal Katkar. She has stated that she is the neighbour of the victim. She has stated that the victim is suffering from sickle cell and she is mentally retarded. She has stated that the incident occurred on 17.11.2014. She has stated that on the date of the incident the accused had come to the house of the victim to take a blood sample of the victim. She was standing on the road. Other women were also present there. She has stated that the accused collected blood samples of all the children. She has stated that the victim went inside her house and the accused followed her to give her tablets so that she should not feel dizzy as well as take her blood sample. She has stated that one male member was also present with the accused. She has stated that the accused did not come out of the house for 15 to 20 minutes. She has stated that the victim after one and half hours, came to her and told her that the accused had kissed her cheek and gave her Rs.10/-. She has stated that she told the victim to narrate

this incident to her maternal aunt and thereafter, the victim went away. The victim has stated in her evidence that outside her house the accused examined her pulse and gave tablets and for taking tablets she went inside in her house and at that time the accused followed her. The evidence of PW-2 on this aspect is contrary to the evidence of the victim. She claims to be an eye witness to the part of the incident. She has stated that the accused went inside the house of the victim to give her tablets so that she should not feel dizzy and also for the purpose of taking her blood sample. In her cross examination, she has admitted that PW-1 is Health Worker in their village. She has stated that their village has separate malaria staff. She has stated that on the date of the incident, Usha Shende and Sangita Bhoyar etc. were present with her. They were sitting upon the platform of Ishwar Katkar. In her evidence, she has not stated that the victim told her that the accused inserted his finger in her private part or caressed her private part with his hand. She

has only stated that the victim told her the accused took her kiss and gave her Rs.10/-. It needs to be stated that the informant being a Health worker to the knowledge of the PW-2 and the alleged offence was committed by Health worker, PW-2, being the neighbour, was expected to apprise the informant or the parents of the victim about the incident. It is not the case of the informant that PW-2 informed her about the incident. Similarly, PW-2 has not stated that she informed about the incident narrated to her by the victim to her parents. This conduct of PW-2 appears to be unnatural. It creates a doubt about her credibility.

17. In the above backdrop, it would be necessary to peruse the evidence of Prakash Kotnake (PW-4). PW-4 is the Health Worker, who, on the date of the incident, had accompanied the accused to village Kitali. He has stated that he and the other five persons went to village Kitali for a survey and health check-up. They reached Kitali at 12 noon. He has stated

that the accused was with him. They formed the team of two persons and paid the visit to the houses. He has stated that the accused went to the house of the victim and he went to the adjoining house. He has stated that the accused came out of the house with the victim. He has stated that the accused told him that the victim was suffering from fever. He has stated that he obtained the blood sample and gave Paracetamol tablets to her. He has categorically stated that with the victim, two to three women were present. He has stated that thereafter they went to other house. This evidence shows that, the accused had brought the victim outside of the house and outside the house victim's blood sample was collected and the paracetamol tablets were given to her. He has stated that thereafter they left the said place. It is the case of the prosecution that after giving tablets and after collecting the blood sample the victim went inside the house and the accused followed her and then committed the alleged act. He has stated that women told them that the victim

was suffering from sickle cell. He has stated that the accused was inside the house of victim for one to two minutes. His cross-examination is very vital. He has stated that after visiting the house of the victim they had been to the Anganwadi run by N.G.O. He has stated that said Anganwadi was run by the informant. The informant was working there as a Health Worker for NGO. He has admitted that the accused told the informant that without any authority she was working as Health Worker and administering pills, to people which has resulted in death of one person. He has admitted that the accused told her that he would lodge a complaint against her and thereafter they went away. He has admitted that when the accused approached the house of the victim, he did not go inside the house. He has stated that incident did not occur in his presence.

18. The appreciation of the evidence of the witnesses would show that there are major omissions and inconsistencies

in their evidence. It is evident that PW-1 was more interested in taking the matter to a logical end than the parents of the victim. There was no communication between the informant and the parents of the victim. The informant had taken complete control of the victim. The informant accompanied the victim to the hospital as well as to the Police Station. Her parents did not accompany her. This fact would show that the informant, being sister of her mother, the victim had full faith in her. Even if it is assumed that, on account of such a faith, parents did not accompany the victim to the Police Station, as well as to the hospital, but the fact that the parents did not inform PW-1 about the incident sounds unnatural. Similarly, after getting knowledge of the incident from Sadhana Ramteke, the informant did not meet the parents and apprise them about the same. Her evidence would show that she directly interacted with the victim behind the back of her parents. In my view, this conduct of the informant to vigorously pursue this matter alone

without taking the parents of the victim in confidence is sufficient circumstance to fortify the defence of the accused. Admittedly, she was administering the medicines to the patients in the village. She was not qualified Health Worker. One person had died due to dengue. It was made an issue and therefore, the team had come to the village to carry out the survey.

19. Prakash Kotnake (PW-4) has stated that the accused questioned the informant as to why she had been providing medicine to the patient when she was not a authorized medical helper. He has admitted that the accused told the victim that he would make a complaint against her. It is the defence of the accused for preventing the report by the accused to his superiors against the informant, the report was lodged. In my view, the evidence on record is full of omissions and inconsistencies. There are material inconsistencies in the evidence of the witnesses. The minute scrutiny of the evidence

would show that the credibility and trustworthiness of the witnesses has been shaken. The evidence does not inspire confidence. The evidence leaves a scope to doubt the case of the prosecution.

20. In the above backdrop, it would be necessary to consider the evidence of medical officer as well as the consequences of delay in lodging the report. Dr. Neha Mahajan (PW-9) is Medical Officer. She had examined the victim on 24.11.2014. The informant had accompanied the victim. Parents of the victim had not accompanied the victim to the Police Station as well as hospital. The history of assault was narrated by the informant to the Doctor. It needs to be stated that the victim on the date of the incident was 16 years old. She was admitted to Zilla Parishad School. She was not admitted to a school meant for mentally disabled children. She was taking education with normal children in Zilla Parishad School. In this context, the narration of the history of assault by

her relative, who is informant and as observed above, interested in the prosecution is doubtful circumstance. Doctor has not stated that the victim girl was either unable to narrate the history or was facing difficulty in any manner on account of any disability to narrate the history of assault. The incident occurred on 17.11.2014. The First Information Report was lodged after seven days on 24.11.2014. Medical Officer, on local examination of the victim did not find injuries on the genitals of the victim. There was no evidence of bleeding. The hymen was ruptured and there was no evidence of injuries on any part of the body of the victim. A specific opinion of the medical officer was sought by the Investigating Officer at Exh.36. A query report is at Exh.38. The doctor in her evidence has stated that no sexual intercourse had taken place with the victim. The doctor further stated and answered to the query that there was no marks of the injuries on the genitals or any part of the body of the victim. The evidence of the medical

officer therefore, does not corroborate the evidence of the victim and other evidence led by the prosecution to establish that the accused had inserted a finger in the vagina of the victim.

21. As far as delay is concerned, keeping in mind the defence of the accused and the fact that no explanation has been put forth for delay in lodging the report, in my view, seven days delay is fatal to the case of the prosecution. The Apex Court in the case of State of *State of Rajasthan Vs. Om Prakash* reported at (2002) 5 SCC, 745 has observed that the object of insisting upon prompt lodging of a report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. It is observed that the delay in lodging FIR quite often results in embellishment, which is a creature of

an afterthought. It is further observed that on account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is settled legal position that delay *per se* is not the ground to throw the case of the prosecution over board.

22. It needs to be stated in the backdrop of the above stated legal position that in case of delay in lodging the report, the explanation must be placed on record for the delay. The delay must be properly explained by leading the evidence. The evidence adduced by the prosecution must be beyond doubt to accept the explanation. Whether the delay is inordinate and fatal to the case of the prosecution is a question of fact and has to be addressed keeping in mind the facts and evidence brought on record in each case. In this case, on appreciation of the evidence, I am satisfied that the reasons for delay have not been

stated in the report. The delay has not been properly explained. The conduct of the informant, who is the maternal aunt of the victim, is doubtful. The lead role played by her in this matter, by keeping the parents of the victim away from this matter throughout, indicates that she wanted to implicate the accused on account of the objections raised by the accused to her activities as Health Worker in providing medicines to the patients, without having proper licence or authority. The delay of seven days, in the facts and circumstances and more particularly in the backdrop of the shaky and doubtful evidence, is fatal to the case of the prosecution. The delay has not been properly explained. In view of this, I conclude that delay in lodging the report and that too without any explanation would fortify the defence of the accused.

23. In view of the above, I conclude that the prosecution has failed to prove the charge against the accused. Learned Judge has failed to properly appreciate the evidence. It

needs to be stated that presumption under Section 29 of the POCSO Act which has been invoked in this case by the learned Judge was not in accordance with law. As far as Section 29 of the POCSO Act is concerned, the presumption under Section 29 of the POCSO Act is not an absolute presumption. It is a rebuttal presumption. The presumption gets triggered only when the foundational facts are established by the prosecution beyond reasonable doubt. The evidence on record must be sufficient to believe the case of the prosecution and thereby support the very foundation of the case of the prosecution. In this case, the very foundation of the case of prosecution *vis-a-vis* the charge against the accused is shaken. Therefore, in my view, the presumption under Section 29 of the POCSO Act would not automatically get attracted to base the conviction of the accused.

24. In view of the above, I conclude that there is sufficient doubt about the involvement of the accused in this

crime. The accused is entitled to the benefit of doubt. Accordingly, the appeal deserves to be allowed.

25. The Criminal Appeal is **allowed**.

(i). The judgment and order dated 26.02.2021, passed by the learned Special Judge, Chandrapur, in Special (POCSO) Case No.7/2015, convicting the appellant for the offences punishable under Sections 376(1), 376(2) (l) of the Indian Penal Code, 1860, and under Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012, is set aside.

(ii). The appellant/accused – Rajesh Murlidhar Lonbale is acquitted of the offences punishable under Sections 376(1), 376(2) (l) of the Indian Penal Code, 1860, and under Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012.

(iii). The appellant/accused is in jail. He be released forthwith, if not required in any other case/crime.

26. The Criminal Appeal stands **disposed of**. Pending application, if any stands disposed of.

(G. A. SANAP, J.)