



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

CRIMINAL APPEAL NO. 84 OF 2022

APPELLANT

: Rahul Gautam Lahase,
Aged about 26 years, Occu. Labour,
R/o Bhokari, Post Karhale,
Raver, Dist. Jalgaon.

VERSUS

RESPONDENTS

: 1] State of Maharashtra,
through Police Station Officer,
Police Station, Anjangaon-Surji,
Dist. Amravati.

2] XYZ (Victim),
through Complainant/informant,
in Crime No. 441/2017 registered with
Police Station, Anjangaon Surji,
Amravati, Dist. Amravati.

Mr. Mir Nagman Ali, Advocate with Ms. Gulfashan Ansari, Advocate
for the appellant.

Mr. H. D. Futane, A. P. P. for respondent no.1/State.

Mrs. Smita P. Deshpande, Advocate appointed for respondent no.2

CORAM : G. A. SANAP, J.

DATED : AUGUST 28, 2024.

ORAL JUDGMENT

1. In this appeal, challenge is to the judgment and order dated 22.11.2021, passed by learned Additional Sessions Judge, Court No.2, Achalpur, whereby the learned Judge held the accused guilty for the

offences punishable under Section 376 of the Indian Penal Code ; under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act” for short) ; and under Section 67 of the Information Technology Act, 2000 (hereinafter referred to as “the IT Act” for short). The appellant has been sentenced to suffer rigorous imprisonment for 10 (ten) years and to pay fine of Rs.10,000/- (Rupees ten thousand only) and in default to suffer further RI for 3 (three) months for the offence punishable under Section 376 of the IPC. The appellant has been further sentenced to suffer rigorous imprisonment for 2 (two) years and to pay fine of Rs.2,000/- (Rupees two thousand only) and in default to suffer further RI for 1 (one) month, on each count, for the offence punishable under Section 8 of the POCSO Act and under section 67 of the IT Act. No separate sentence has been awarded for the offence punishable under Section 4 of the POCSO Act.

2. BACKGROUND FACTS

The victim (PW10), who is the informant, had lodged a report with Police Station, Anjangaon Surji, Dist. Amravati on 19.10.2017. On the report lodged by the informant/victim, the wheels

of the investigation were put into motion. The prosecution case, which can be discerned from the report and the charge-sheet, is that the incident of penetrative sexual assault took place in the month of March-2017. The appellant/accused is resident of Raver, Dist. Jalgaon. The informant/victim, on the date of the incident, was studying in 12th standard (Science) at Jaisingh Junior College, Pathrot. The accused had sent a friend request to the victim on Facebook. She accepted the friend request sent by the accused. They got acquainted with each other through Facebook. The accused sent his mobile No. 9033288552 to her. The victim, on being insisted by the accused, shared her mobile No. 8698268569 and 9975175667 with the accused. They would talk with each other on phone. On the request of the accused, she disclosed him that she was studying at Jaisingh Junior College at Pathrot. One day, the accused came to her college at Pathrot to meet her. He made a phone call to her and asked her to come out of the college to meet him. She came out of the college. She recognized the accused as she had seen his photo on Facebook. She was frightened and on that day she did not talk with the accused and left for her house at Kapustalni.

3. It is stated that thereafter on 22.03.2017, the accused

contacted the victim on phone and informed her that he has come to Anjangaon Surji at Vrundavan Hotel. He called the informant to the said hotel to meet him. The victim went to Vrundavan Hotel and met him. The accused took her into a room of the hotel. The accused took out a new T-shirt from his bag and asked the victim to wear the same. It is stated that while the victim was wearing T-shirt, the accused took her photographs without her knowledge. The accused, thereafter, threatened her that he would make those photographs viral, if she did not allow him to have physical relation with her. The victim fearing defamation kept quiet. It is stated that the accused committed penetrative sexual intercourse with her against her consent. Thereafter, she returned to her house at Kapustalni. She made an inquiry about the accused from her friends. She came to know that the accused did not possess good character. She, therefore, discontinued her contact with the accused on Facebook.

4. It is further the case of the prosecution that the accused uploaded the obscene photographs of the victim on his Facebook account and tagged the same to her sister, Kanchan's Facebook account. The accused sent friend requests to the relatives of the victim. The

accused also sent obscene photographs of the victim on the mobile phones of her relatives and inquired with them whether they knew the victim. The harassment of the accused increased manifold and therefore, she informed her parents about it. They, therefore, decided to lodge the report. The report was lodged with Anjangaon Surji Police Station on 17.10.2017. It was stated in the report that on account of fear of defamation, she did not lodge report with the police. Similarly, her parents had arranged her marriage with Ashish Chabukswar. The accused contacted Ashish and sent the photographs of the victim to him and apprised him that the victim was not possessing good character. On the basis of the report (Exh.58), a crime bearing No. 441/2017 was registered against the accused for the above offences.

5. The initial investigation was carried out by PW12 API Jamil Shaikh. He drew the spot panchanama. He seized the clothes of the victim as well as the accused. PW13 API Girsawale recorded the statement of the victim. The further investigation was carried out by PW14 PI Sudhir Patil. He collected the documents with regard to the birth date of the victim. He forwarded the samples to the Regional Forensic Science Laboratory (RFSL), Nagpur. He recorded the

statements of the witnesses. After completion of the investigation, he filed charge-sheet against the accused.

6. Learned Additional Sessions Judge framed the charge (Exh.2) against the accused. The accused pleaded not guilty. The defence of the accused is of false implication. The prosecution examined 14 witnesses to bring home the guilt against the accused. Learned Judge, on consideration of the evidence, held the accused guilty and sentenced him as above. The accused is before this Court against the said judgment and order.

7. I have heard Mr. Mir Nagman Ali, learned advocate for the appellant, Mr. H. D. Futane, learned Additional Public Prosecutor for respondent no.1/State and Mrs. Smita P. Deshpande, learned advocate appointed for respondent no.2/victim. Perused the record and proceedings.

8. Mr. Ali, learned advocate for the appellant submitted that there was inordinate delay in lodging the report. The reasons for delay in lodging the report have not been stated in the report. The delay has not been properly explained. The facts stated in the report are nothing

but an exaggeration of the incident. The incident and report have been embellished. The alleged incident, as per the prosecution, occurred in the month of March-2017, whereas the report was lodged in October-2017. Learned advocate submitted that admittedly, as per the case of the prosecution, the alleged penetrative sexual assault took place in the month of March-2017. It is not the case of the prosecution that after March-2017, the accused either committed penetrative sexual assault or tried to follow the victim in her college for committing sexual act with her. Learned advocate submitted that the evidence of the victim-girl, even if considered as it is, would create a doubt about the incident of penetrative sexual assault at the hands of the accused, as alleged by her. The delay in lodging report is suggestive of the fact that an imaginary story was concocted to save the marriage of the victim with Ashish (PW2). Learned advocate submitted that the medical evidence, even if considered as it is, would not be sufficient to prove that the accused had committed penetrative sexual assault on the victim. The report of the Chemical Analyser with regard to the analysis of the samples in no manner connects the accused with the commission of the alleged crime. Learned advocate submitted that the basic ingredients of the offence under Section 67 of the IT Act have not been made out on the basis of

the evidence on record. Learned advocate took me through the record and pointed out that the Investigating Officer, in terms of the requisition letter at Exh.94, had forwarded the photographs of the victim and the mobile phones used in the crime to the RFSL, Nagpur. It is submitted that the report of analysis of those samples has not been placed on record by the prosecution. Learned advocate submitted that till date, the prosecution is silent about the report of the RFSL or the analysis of those samples by the RFSL, Nagpur. Learned advocate submitted that without having the report of RFSL on record to prove that any obscene material was published or transmitted in electronic form, the learned Judge convicted and sentenced the appellant under Section 67 of the IT Act. Learned advocate took me through the record and pointed out that even the alleged obscene photographs have not been exhibited. Learned advocate submitted that the learned Judge has convicted and sentenced the accused only by relying upon the oral evidence of the victim (PW10), her father (PW1) and her fiancé Ashish (PW2) with regard to the publication and transmission of the photographs, without the proof of the photographs. In the submission of the learned advocate, in the absence of CA report to record a concrete opinion on this issue, the learned Judge was not right in holding the

accused guilty under Section 67 of the IT Act on the basis of oral evidence. Learned advocate submitted that the victim has provided her wrong birth date at the time of her evidence. The documentary evidence adduced by the prosecution to prove her birth date is not reliable. In the submission of the learned advocate, the prosecution has miserably failed to prove that the victim, on the date of the incident, was below 18 years of age.

9. Learned Additional Public Prosecutor submitted that the delay in lodging report (Exh.58) has been satisfactorily explained. It is the submission of the learned APP that in such a crime, the victim as well as her family members are bound to be reluctant in bringing such an incident in the public domain, considering the stigmatic consequence attached to the same. Learned APP submitted that the evidence of the victim girl on the point of penetrative sexual assault is trustworthy and credible. There is no reason to discard and disbelieve her evidence. The first hand account of the incident narrated by the victim is sufficient to accept her testimony. It is submitted that the victim girl otherwise had no reason to falsely implicate the accused in such a serious crime and cause irreparable damage to her future. Learned APP submitted that the evidence of the father (PW1) and the

evidence of her fiancé (PW2), is sufficient to corroborate her evidence on material aspects. The evidence of independent witnesses namely, her father and her fiancé, is sufficient to prove the publication and transmission of obscene photographs of the victim on Facebook and WhatsApp. In the submission of learned APP, the evidence of the victim (PW10), her father (PW1) and her fiancé (PW2) is sufficient to prove the offence punishable under Section 67 of the IT Act. Learned APP pointed out that the Manager (PW6) of Vrundavan Hotel, where a room was booked by the accused, which is the place of the incident, has deposed about the relevant facts. The evidence of PW6 is sufficient to prove the presence of the accused and the victim in the hotel on the given day. Learned APP submitted that the certified copy of birth certificate of the victim at Exh.82, obtained by the Investigating Officer during the course of investigation, is a public document. It is pointed out that an entry of her birth date from the School and College register has been proved by examining PW8 and PW9. Learned APP submitted that the learned Judge has minutely scrutinized the evidence and has recorded the cogent and concrete reasons in support of his findings. In short, it is submitted that the well reasoned judgment and order passed by learned Additional Sessions Judge does not warrant interference.

10. The proof of the age of the victim is a very crucial issue in a case filed under the POCSO Act. The prosecution has to prove the birth date of the victim beyond reasonable doubt and establish that the victim, on the date of the crime, was 18 years of age. The victim has testified before the Court that on the date of the incident, she was studying in 12th standard. She was attending the college. The victim has stated her birth date in her evidence. Perusal of the evidence of the victim (PW10) and her father (PW1) would show that the birth certificate at Exh.82 was not shown to them. The victim and her father in their evidence have stated the birth date. It is seen on perusal of the evidence of victim (PW10) that she has stated her date of birth as 24.02.2001. As per the record, the birth date of the victim is 26.02.2001. It is seen that in place of digit '6', she has stated the digit '4'. The father (PW1) has stated correct birth date of the victim as 26.02.2001. Exhibit-82 is the certified copy of the birth certificate of the victim, issued by the Secretary of Gram Panchayat, Parsapur, Panchayat Samiti, Achalpur. This certificate is a public document. It is not the case of the accused that this entry of the date of birth of the victim with Gram Panchayat was made for the purpose of supporting the case of the prosecution. Perusal of Exh.82 would show that the date

of registration of birth date is 13.03.2001. The registration number from the record of the Gram Panchayat is '11'. The alleged offence occurred in the year 2017. This public record has presumptive value. It is relevant in terms of Section 35 of the Indian Evidence Act, 1872. The accused has not been able to demolish this evidence.

11. The prosecution has examined PW8 and PW9. PW8 is a Teacher at Jaisingh Vidyalaya, Pathrot. He was summoned to produce the admission register of the school and junior college to prove the birth date of the victim recorded in the admission register. The certified copy of the relevant entry of the admissions register is at Exh.38. The entry is at page No. 61 of the Register. The original register was produced before the Court. As per the register, the birth date of the victim is 26.02.2001. PW8 has further stated that earlier the victim had attended Nirmala High School, Kapustalni. PW9 is the Assistant Headmaster of Nirmala High School, Kapustalni. He was summoned to produce the admission register of the school. He has stated that the victim was admitted in the school on 25.05.2010. He has stated that as per the admissions register, the date of birth of the victim is 26.02.2001. The relevant entry in the register is on page no. 25 at Entry No. 11407.

The original entry from the register is marked as Exh.41. The certified copy of the extract of the entry is at Exh.43. Perusal of the evidence of PW9 would show that the victim was admitted in 5th standard of Nirmala High School. The entry of birth date in the school register was made on the basis of her transfer certificate of 4th standard. In my view, perusal of the evidence of PW8 and PW9 coupled with the certified copy of the birth certificate at Exh.82, leaves no manner of doubt in my mind that the victim was born on 26.02.2001. As per the case of the prosecution, the incident occurred in the month of March, 2017. On the basis of the proved birth date of the victim, it is crystal clear that the victim on the date of the incident was 16 years of age. In my view, therefore, on this count, the submissions advanced by the learned advocate for the appellant/accused cannot be accepted. In the teeth of the cogent and concrete evidence, the submissions are accordingly rejected.

12. The next important aspect that needs to be considered is whether the evidence adduced by the prosecution is sufficient to prove the charge against the accused. I have minutely scrutinized the evidence adduced by the prosecution. On minute scrutiny and

appreciation of the evidence adduced by the prosecution, I am satisfied that the evidence is not sufficient to prove the charge against the accused on any count. I will now first deal with the evidence of the informant/victim. The victim is PW10. Perusal of the evidence of the victim would show that the accused on 27.02.2017, for the first time, came to her college to meet her. She has stated that the accused made a phone call to her and therefore, she came out of the college. It has come on record in her evidence that she had seen his photo on Facebook and therefore, she identified him from distance. She has stated that on that day, she did not meet him and went home without meeting him. She has stated that the accused was annoyed and told her that he would come to her college again and then she should meet him. The report of the incident was lodged on 19.10.2017. As far as the incident of penetrative sexual assault is concerned, the victim has stated that after a few days of this first incident, she received a phone call from the accused. She has stated that the accused told her to come to Vrundavan Hotel, Anjangaon Surji to meet him. It is to be noted that prior to this, the victim had no acquaintance with the accused. They were meeting for the first time. She has stated that she went to Vrundavan Hotel to meet the accused. They met in the hotel. The

accused told the victim that he had booked a room in the said hotel. He further told her that he had come to tell something urgent to her. She accompanied the accused to the room of the hotel. After entering the hotel room, the accused locked the door from inside. The accused took out a dress from the bag and gave it to her. As per his request, she put on the dress. She has further stated that initially she was reluctant to wear the dress; however, due to insistence by the accused, she wore the dress. She has further stated that the accused then insisted for physical relationship with him, but she refused. She has further stated that due to the sweet talk of the accused, she allowed for physical relationship. She has stated that when she was changing the dress, the accused had taken her obscene photos in his mobile phone. She has further stated that the accused threatened to circulate the obscene photos to her friends and relatives, if she did not consent for physical relationship with him. She has stated that under this threat, he had physical relationship with her. She has stated that the accused frequently touched her at objectionable places. She has stated that after this, they came out of the room and the accused told her to immediately go, otherwise, somebody would see her. Thereafter, she went to her house at Kapustalni. Perusal of the evidence of the victim (PW10) would

show that the alleged incident of sexual assault occurred after a few days of the incident dated 27.02.2017. Perusal of the evidence of the victim and other witnesses in totality would show that this incident had occurred in the month of March, 2017.

13. The next part of the deposition of the victim is very important. She has stated that from the spot, she went to her village. She has stated that the accused uploaded her photographs, which he had taken in his mobile phone when she was changing the dress, on Facebook. She has stated that he tagged some of her friends and relatives to the said photographs. She has stated that her friends told her about uploading her photos. She has stated that thereafter she found that the accused was not a good person and therefore, she broke her relationship with the accused. She has stated that the accused would frequently make phone calls to her; however, she did not reply to the calls. She has stated that therefore, the accused sent the photographs to her maternal cousin Kanchan Chandekar on WhatsApp. She has stated that her marriage was settled with her fiancé Ashish, who has been examined as PW2. She has stated that the accused obtained the phone number of Ashish and sent the photographs to Ashish on

WhatsApp. She has stated that the accused contacted Ashish and told him that he had physical relation with the victim. She has stated that due to insult and defamation, she did not file the report immediately, but it was filed on 17.10.2017. The victim (PW10) has been thoroughly cross-examined. She has stated vital facts in her cross-examination.

14. It is seen on perusal of the evidence of the victim (PW10) that immediately after the incident in March-2017, the accused uploaded her photographs on Facebook as well as on WhatsApp accounts of her friends and relatives. It is to be noted that the victim is silent about the date of the incident in the room of the hotel. Similarly, she has not stated the month of the said incident. The victim was not acquainted with the accused prior to meeting in the hotel. It was their first meeting. She has stated that on the request of the accused, she accompanied the accused to the room of the hotel. In my opinion, this conduct of the victim is not consistent with the conduct of a person of ordinary prudence placed in a similar situation. The victim has stated that the accused had booked a room for them. A girl meeting a young boy for the first time would not go to a hotel room. Such a conduct on the part of a boy would obviously send the alarming signals to the girl.

This incident narrated by the victim has to be tested on the touchstone of the probabilities. By keeping the probabilities in mind, the credibility and truthfulness of the version of the victim (PW10) is to be appreciated. In my view, the evidence of the victim about the occurrence of the incident is totally unbelievable. It is not the case of the victim that they had sexual intercourse on more than one occasion. It is to be noted that a girl meeting an unknown person for the first time would not accompany him to a secluded place. Even if, on some promise, the girl accompanies an unknown person to a room and if she is put in any trouble, then she is bound to raise hue and cry. It is not the case of the victim that the room of the hotel was far away from the crowded area of hotel. In my view, the occurrence of the incident in the hotel room, therefore, appears to be unbelievable. The subsequent conduct of the victim is not consistent. She has stated that when the trouble meted out to her by the accused became unbearable, she informed about the same to her parents. In my view, the evidence of the father (PW1) shows that when the photographs were uploaded by the accused on Facebook of his relatives, he came to know that the accused was causing trouble to his daughter. Perusal of the evidence of the victim would show that it is silent about the date and month of

circulation of the photographs by the accused.

15. The scientific evidence of circulation, publication and transmission of the photographs is not available. It is pertinent to note at this stage that the mobiles of the accused and the victim and other electronic evidence were collected. It was forwarded to RFSL, Nagpur for analysis. Exh.94 is the requisition forwarded by the Investigating Officer to the Director of RFSL, Nagpur for analysis of the above stated articles. The prosecution has not placed on record the report of analysis of these samples/articles. Similarly, the prosecution is conspicuously silent about receipt of the report of analysis of the samples even till date. It is, therefore, evident that there is no evidence to prove the date and month of circulation of the photographs. Similarly, for want of scientific evidence, it is not possible to come to a conclusion that such photos were in fact transmitted, circulated or published. Some photographs have been placed on record. Those photographs have not been proved. The oral evidence of the victim (PW10), her father (PW1) and her fiancé Ashish (PW2) is not sufficient to prove either the photographs or their publication or transmission. In my opinion, the scientific evidence, namely, the CA report of analysis of samples would

have been the best evidence to prove this aspect. It is, therefore, apparent that there is no evidence to corroborate the version of the victim, her father and Ashish on this point.

16. The evidence of the victim (PW10), in my view, is unbelievable on account of certain facts noted by me hereinabove. If the photographs of the victim had been published or transmitted immediately after the incident of March-2017 on Facebook and WhatsApp accounts of her relatives and friends, then the victim was supposed to report this incident to the police immediately. It is not the specific evidence of the victim that on a particular date or in a particular month she informed about this incident to her parents. In order to find out an answer to this important aspect, it would be necessary to consider the evidence of her father. Her father was testified as PW1. PW1 has stated that on the date of the incident, he had received a phone call from his wife, who told him to see the photographs of their daughter on mobile. He has stated that the wife told him that these were obscene photographs of their daughter. He has stated that he went home. He has further stated that he saw the photographs on the mobile phone of his niece Kanchan and fiance of the victim, Ashish. He has

stated that on the same day, he had inquired with his daughter. He has stated that his daughter narrated to him the incident occurred at her college. He has stated in his further evidence about the incident narrated to him by his daughter occurred in the hotel room. Perusal of his evidence would show that on the date of the incident itself, he came to know about the same. The incident, as can be seen from the record, occurred somewhere in March-2017. The father was confronted with 2-3 nude photographs of his daughter. He has further stated that Ashish (PW2) had proposed his daughter for marriage after completion of her education. He has stated that the accused gave a threat to Ashish and disclosed his physical relation with the victim. He has stated that the accused had shown those photographs to Ashish (PW2). Perusal of the evidence of the father (PW1) would show that he is silent as to why he did not immediately lodge the report with the police. He has nowhere stated in his examination-in-chief that a few days prior to lodging the report, this incident was narrated to him by the victim. He has stated that the nude photographs of the victim had been forwarded to Ashish (PW2), the fiancé of his daughter. In my view, this conduct of the father of the victim creates a doubt. If PW1 was informed about the penetrative sexual assault on the victim by the accused, then his natural

reaction would have been totally different. He would have immediately taken the victim to the police station. It is to be noted that the father and the relatives of the victim had seen the photographs, which were published or transmitted on Facebook as well as on WhatsApp. It is, therefore, apparent that they had otherwise nothing to hide. Even they could not hide anything because everything was put in the public domain. This fact would show that the father (PW1) came to know about the friendship of the victim with the accused on Facebook. It has come on record in the evidence that since the accused had published her photographs after settlement of her marriage with Ashish, the report was lodged.

17. In this context, it would be necessary to see the evidence of PW2 Ashish Chabukswar. He has stated that the incident took place in the year 2017. He has stated that at the relevant time the victim was studying at Jaisingh Junior College, Pathrot. He has stated that he knew accused Rahul Lahase. He has stated that the accused was the friend of the victim through Facebook. He has stated that his marriage with the victim was settled and it was to be performed after two years. The date and month of the settlement of the marriage has not been stated by

him. He has stated that the accused transmitted the photographs of the victim on his Facebook account as well as on his WhatsApp account. He has stated that those were obscene photographs of the victim. He has further stated that the accused told him that the victim is of bad character and as such, advised not to perform marriage with her. He has further stated that the accused told him that he had physical relations with the victim. He has also stated that the accused transmitted similar photographs of the victim to his friends. Perusal of his examination-in-chief would show that he is silent about the date and month of settlement of his marriage. He is silent about the publication and transmission of the photographs on his Facebook and WhatsApp accounts. He is also silent about any inquiry having been made by him with the victim to verify the correctness of the information conveyed to him by the accused. In his cross-examination, he has stated that he knew that the accused was the friend of his fiancée (victim). He has stated that despite that, he agreed to marry with the victim. He has further stated that the parents of the victim were not in a hurry to settle her marriage. He has stated that he did not know since how long the victim and the accused were friends through Facebook.

18. In my view, the evidence of these three witnesses, if read together, would show that it is not sufficient to clear the blurred case of the prosecution. It is rather seen that their evidence, instead of clarifying certain things, has further blurred the case of the prosecution. The conduct of the parents is unnatural. No date, time or month of the incident has been categorically stated. Similarly, no date and month of circulation of the photographs has been categorically stated. The scientific evidence is not on record. No explanation has been placed on record for non-production of such vital evidence. It is to be noted that in such a matter, the Court has to carefully scrutinize the evidence. The evidence on record should not leave any doubt in the mind of the Court as to the occurrence of the incident and the overall case of the prosecution against the accused. In this case, the evidence of the victim (PW10), her father (PW1) and her fiancé Ashish (PW2) is not sufficient to clear the clouds of suspicion cast over their truthfulness and veracity.

19. In this context, it would be necessary to see the evidence of an independent witness PW6. He claims to be the Manager of Hotel Vrundavan at Anjangaon Surji. It is the case of the prosecution that in a

room of Hotel Vrundavan, the accused committed sexual assault on the victim. The evidence of this witnesses, at its face value, does not deserve consideration. He has stated that for 15 years, he has been serving as a Manager in the said hotel. He has stated that two years back the accused had visited Vrundavan Hotel for lunch. He has stated that one girl had come with him. He has stated that both of them were sitting in the corner of the garden. He has stated that the accused had given order for lunch. They were waiting for service of the order. He has stated that the accused had brought some clothes as a gift. In my view, this is a total exaggeration. The victim (PW10) in her evidence has stated that the accused had opened the bag carrying clothes inside the room. PW6 has further stated that the accused inquired with him about the availability of a room for changing the clothes and thereafter he had given one room to them. He has stated that they went inside the room and after some time came out of the room. In my view, certain facts admitted by PW6 in his cross-examination have demolished his version. In his evidence, he has not narrated the description of the girl. The victim was not seen by him either at the stage of investigation or at the time of his evidence. Similarly, the photographs of the girl were not shown to him. His evidence that he had given one room to the accused

without paying any money, is highly unbelievable. He has stated in his cross-examination that before allotting room, the record in respect of the name, address and identity of the person is obtained. He has stated that it is a hotel with a beer bar. There are many employees in the hotel. There are attendants to the rooms. He has categorically stated that the record in respect of the bill of each guest is maintained in the hotel. He has stated that he had not given to the police the bills in respect of that particular date. His further cross-examination would show that there are material improvements in his evidence. He has further stated that as long as the girl and boy were in the hotel, the girl did not make any complaint. He has stated that their appearance was normal. It is to be noted that the hotel people are totally professional. They know how to run their hotel. Without payment of charges for booking the room, the Manager would not allow a stranger young boy and girl to enter the room in this situation. In my view, therefore, this evidence is totally unbelievable. It is seen on perusal of the record that the Investigating Officer has tried to fill up the lacunae in the case of the prosecution with the assistance of such evidence. The evidence of this witness cannot be believed.

20. The prosecution has relied upon the evidence of the Medical Officer as a corroborative piece of evidence. The Medical Officer is PW7 Dr. Prashant Kalbande. He has stated that on 21.10.2017, he had examined the victim girl. He has stated that on her local examination, he found a small tear over the forchette area. It was an old healed tear. He has not stated the age of the same. His report is silent about any injury to hymen. He has admitted in his cross-examination that the forchette is the external part of vagina and it is visible. He has admitted that the tear noticed by him to forchette is possible due to itching or due to unhygienic condition. He has categorically stated that except this, there was no other injury to her private part. He has nowhere stated that the hymen of the victim was torn. He has further stated that there were no other injuries on her body. In the facts and circumstances, in my view, on the basis of such evidence of the Medical Officer (PW7), it is not possible to conclude that the victim was subjected to sexual intercourse. PW7 has opined that the possibility of sexual intercourse cannot be ruled out. He did not give any candid opinion.

21. The evidence of the victim (PW10) ambiguous on material

aspects. The victim, according to the case of the prosecution, was subjected to sexual intercourse. She was required to clarify all these facts with broad details. In this case, even broad details are lacking. The accused is a resident of Raver village. It is in Jalgaon district. The victim is a resident of Anjangaon Surji. It is in Amravati district. The victim and the accused became friends on Facebook. The evidence of the father (PW1) is also conspicuously silent about all the necessary details. In my view, on the basis of this evidence, there is a scope to suspect the implication of the accused in the crime. Merely because of the publication of the photographs, it is not possible to accept the version of the victim as to penetrative sexual assault.

22. It is to be noted that there is inordinate delay in lodging the report. The delay has to be properly explained. In the report, the victim has stated that fearing defamation, the report was not lodged. If the incident, as stated, had occurred in March-2017, then in that event the victim and her parents were expected to report the same to the police. It has come on record that the parents came to know in the month of March-2017 itself about the publication of obscene photographs of the victim on Facebook and WhatsApp accounts of the

friends and relatives. It is, therefore, apparent that the victim and her family was sufficiently defamed. As per the victim, the photographs were transmitted to Facebook and WhatsApp accounts of her fiancé (PW2). The victim and her father are silent as to why, despite publication of the photographs in March-2017, the report was lodged in October, 2017. It is evident that the victim, after noticing the attitude of the accused, discontinued her relationship with him. It is, therefore, possible that the accused might have decided to trouble them and therefore, on repetitive publication of the photographs of the victim in social media, the parents would have lodged the report.

23. It is further pertinent to note that the learned Additional Sessions Judge has convicted and sentenced the accused under Section 67 of the IT Act. As stated above, the prosecution has not adduced cogent and concrete evidence in the form of CA report to prove either transmission or publication of such photographs. The learned Judge appears to have believed the oral testimony of the victim, her father and her fiancé to convict the accused under Section 67 of the IT Act. In my view, the learned Judge was not right in relying on the oral evidence of the witnesses. The photographs, which are produced on record, have

not been proved. The photographs have not been exhibited. The learned Judge has not taken this material aspect into consideration.

24. In the facts and circumstances, I conclude that the evidence adduced by the prosecution is not convincing, cogent and reliable. The credibility and trustworthiness of the evidence has been shaken. The evidence is not sufficient to prove the case beyond reasonable doubt. Therefore, the accused, in my view, is entitled to the benefit of doubt. The submissions advanced by the learned advocate for the appellant deserve acceptance.

25. Accordingly, the Criminal Appeal is allowed.

(i) The judgment and order of conviction and sentence passed against the appellant by learned Additional Sessions Judge, Court No.2, Achalpur, dated 22.11.2021 in Special Case No. 11/2018 is quashed and set aside.

(ii) Appellant – Rahul Gautam Lahase is acquitted of the offences punishable under Section 376 of the Indian Penal Code, under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 and under Section 67 of the Information Technology Act,

2000.

(iii) Appellant – Rahul Gautam Lahase is in jail. He be released forthwith if not required in any other crime/case.

(iv) Mrs. Smita P. Deshpande, learned advocate, who represented respondent no.2/victim in this appeal, is entitled to receive her fees. The High Court Legal Services Sub Committee, Nagpur shall pay the fees to the learned appointed advocate as per the Rules.

(v) The appeal stands disposed of in the aforesaid terms.

(G. A. SANAP, J.)

Diwale