



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

**CRIMINAL APPEAL (APEAL) NO. 730 OF 2022**

**Gajanan S/o. Dnyanba More,**  
Aged about 52 yrs, Occ: Labour,  
R/o. Kavhala, Tah. Chikhli, and  
Dist. Buldana (appellant In Jail)

**... APPELLANT**

**// VERSUS //**

1. **State of Maharashtra,**  
through Police Station Amdapur,  
Tah. Chikhli and Dist. Buldana
2. **XYZ (Victim),**  
Through Police Officers,  
Police Station Amdapur,  
Tah. Chikhli and Dist. Buldana  
Crime No. 100 of 2020

**... RESPONDENTS**

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Mr. P. H. Khobragade, Advocate (appointed) for the appellant  
Mr Amit Chutke, APP for the respondent No.1/State  
Ms Radha Mishra, Advocate (appointed) for respondent No.2

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**CORAM : G. A. SANAP, J.**

**DATE: 26/09/2024**

**ORAL JUDGMENT :**

1            In this appeal, the challenge is to the judgment and  
order, dated 30.08.2021, passed by the learned Additional  
Sessions Judge, Buldhana, whereby the learned Judge,

convicted the accused/appellant for the offence punishable under Section 376-AB of the Indian Penal Code (for short 'the IPC') and Sections 4, 6 and 8 of the Protection of Children From Sexual Offences Act, 2012 (for short 'the POCSO Act') and sentenced him to suffer rigorous imprisonment for twenty (20) years and to pay a fine of Rs.2,000/- (Rupees Two Thousand Only) and in default to suffer simple imprisonment for one month. No separate sentence has been awarded for the offence punishable under Sections 4, 6 & 8 of the POCSO Act.

## 2 Background facts:

The informant (PW-1) is the mother of the victim girl, who on the date of the incident was 8 years old. The report of the incident was lodged on 09.03.2020 by the informant. The case of the prosecution, which can be gathered from the report and other materials, is that on 07.03.2020, the informant with her daughter had gone to the field of one Dattatray Jape for doing labour work. The other women Smt. Alkabai

Dalimkar, Kasabai Kakade, Ujjwala Sonune and Manjulabai More were also with the informant for doing the work on the field. The appellant is the neighbour of the informant. On the date of the incident, the victim was playing with Dhanashri, the granddaughter of the appellant, near one cattle shed of Dattatray Jape.

3           It is stated that the accused/appellant called the victim and requested her to help him in holding the pipes. The victim accompanied the appellant in the field of maize. The appellant, in the field of maize, removed his underwear and the underwear of the victim. He committed sexual intercourse with the victim. The victim started crying. The appellant threatened the victim not to disclose the incident to anybody. He promised to give Rs.15-20 to her after going back home.

4           When the victim came out of the maize field, the informant noticed that her underwear was wet. She inquired

with the victim about it. The victim told her that it was due to urination. In the evening of 07.03.2020, at about 5:30 p.m., the victim returned to home with her mother. The victim at that time complained to her mother that there was a severe pain in her private part. The informant examined her private part. She noticed that the portion of the private part had turned reddish and there was swelling as well. The mother made an inquiry with the victim. The victim at that time narrated the incident that had occurred with her as above. The husband of the informant was not at home. On the next day in the morning, the informant disclosed this incident to her husband. The informant and her husband on account of this serious incident were mentally disturbed. On the next day i.e. on 09.03.2020, they went to the Police Station Amdapur and lodged the report. On the basis of the report of mother, the crime bearing No.100 of 2020 was registered against the appellant.

5           The investigation in the crime was carried out by Pravin Sonawane (PW-9). PW-9 before recording the FIR referred the victim for medical examination. During the course of the investigation, the investigating officer seized the clothes of the victim and the clothes of the appellant. The samples were collected and forwarded to RFSL, Amravati. The investigating officer recorded the statements of the witnesses. The statements of the victim and the informant had been recorded under Section 164 of the Code of Criminal Procedure (for short 'the Cr.P.C.') by the Magistrate. The accused/appellant was arrested. He was examined by the doctor. On completion of the investigation, PW-9 filed the charge-sheet against the appellant.

6           Learned Judge framed the charge against the appellant. The appellant pleaded not guilty. His defence is of false implication on account of enmity with the mother of the victim. There was a dispute between them on account of the construction of a wall on the plot of the informant. In order to

bring home the guilt of the appellant, the prosecution examined nine witnesses. The learned Judge, on consideration of the evidence, convicted and sentenced the appellant as above. The appellant has come before this Court in appeal against this judgment and order.

7           I have heard the learned Advocate Mr P. H. Khobragade, appointed to represent the accused/appellant, the learned APP Mr A. R. Chutke for the State and the learned Advocate Ms Radha Mishra, appointed to represent respondent No.2. Perused the record and proceedings.

8           Learned Advocate for the accused/appellant submitted that the evidence adduced by the prosecution is not cogent, concrete and reliable. There was inordinate delay in lodging the report. The delay in lodging the report reflects upon the credibility and trustworthiness of the evidence of the informant and the victim. On account of the dispute between

the appellant and the informant, after due deliberation, the appellant was falsely implicated in this case. The incident narrated in the report was afterthought and embellished. There is no other independent corroborative evidence. There are number of doubtful circumstances established on record and on the basis of those circumstances, the case of the prosecution cannot be believed. The conduct of the informant as well as the conduct of her husband, who has been examined as a PW-3, is not consistent. It is submitted that if the incident, as alleged, had occurred, then immediately on the next day the informant and her husband would have reported the same to the police. The informant did not even inform her husband about the alleged incident in the night of 07.03.2020. It is submitted that this conduct is inconsistent and therefore creates a doubt. Learned Advocate further submitted that the medical evidence is hardly of any use to substantiate the case of the prosecution. The evidence of the medical officer indicates that the age of the

injury noticed by him was not correctly recorded. It is submitted that such injury could be possible due to insertion of a finger by any person. Learned Advocate submitted that the learned Judge has failed to properly appreciate the evidence adduced by the prosecution and has come to a wrong conclusion. The evidence is not at all sufficient to prove the charge.

9           Learned APP submitted that the delay in lodging the report, *per se* could not be the ground to acquit the appellant. It is submitted that the prosecution has satisfactorily explained the delay. The parents of the victim are rustic villagers. The serious offence was committed with their daughter. The parents were therefore bound to give a second thought to all the surrounding consequences before lodging the report. Considering the fact that their 8 year old daughter was ravished, they gave full thought to the surrounding consequences and ultimately went to the police and lodged the



report. Learned APP further submitted that if the informant wanted to falsely implicate the appellant, then it was not necessary for her to involve her daughter in such an incident. She could have lodged any false report involving herself in such a matter. Learned APP submitted that the medical evidence fully corroborates the version of the victim, the informant and the father of the victim. The evidence of the informant, the victim and her father is natural. They have not exaggerated any fact. Similarly, they have not concealed any fact from the Court. Learned APP submitted that the learned Judge has properly appreciated the entire evidence adduced by the prosecution and convicted and sentenced the appellant.

10            Learned Advocate appointed to represent  
respondent No. 2 has adopted the submissions advanced by the  
learned APP.

11            I have gone through the record and proceedings.

Learned Judge thoroughly appreciated the evidence on record and recorded a finding against the appellant. The Advocate for the appellant had admitted the birth certificate of the victim. It is at Exh. 44. The birth date of the victim is 24.04.2011. The mother of the victim has stated that the victim was 8 years old on the date of the incident. The prosecution, on the basis of this evidence, has proved that on the date of the incident, the victim was below 12 years of age.

12           The submission with regard to the delay in lodging the report has to be considered keeping in mind the evidence adduced by the prosecution and the attending circumstances. PW-1 informant is the mother of the victim. She has stated that on the date of the incident, she had gone for labour work on the field of one Mr Jape. The appellant had also come there to do work on the field. Her daughter and the granddaughter of the appellant were playing near the cattle shed of Mr Jape. She has stated that after some time, the victim came to her. She

asked her where she had gone ? She told her that the appellant had taken her in the field of maize to help him in holding the pipe. She has stated that she found that her underwear was wet and on being questioned, the victim told her that she had urinated. This shows that in the field immediately after the incident, the victim did not narrate the incident to her mother. It is pointed out that the victim later on stated to her mother that when she cried after this incident, the appellant extended threats to her. The appellant promised to pay her Rs.15-20 after going back home. She has further stated that after going home, the victim complained of pain in her private part. She examined her private part. She found that there was a swelling and it had turned reddish. She has stated that she inquired with her about the same and at that time she narrated the incident of penetrative sexual assault on her by the appellant. She has stated that in the night her husband came back from the field late and therefore, she did not narrate the incident to him. She

has stated that in the morning she narrated the incident to him and therefore, her husband was disturbed. She has stated that thereafter they lodged the report on 09.03.2020.

13           Sau Shilabai Kadam (PW-1) has been subjected to searching and gruelling cross-examination. It is apparent on perusal of her cross-examination that no material has been elicited in her cross-examination to cause a dent to the core of her evidence *vis-a-vis* the incident with her daughter. Perusal of her cross- examination would show that she is a simple rustic villager. She has not even attempted to hide anything from the Court. She has not given any evasive answers or avoided answering any question. She has admitted that there was a programme at Pandav Temple, which is adjoining to this field. It has come on record that this field is adjacent to the village. She has stated that 500-600 people had gathered for the programme at the temple. She has stated that this field is at a distance of 20 feet from the temple. She has stated that she did

not hear the hue and cry made by the victim. She has admitted that in the night she did not narrate the incident to her husband but narrated it to him on the next day. She has admitted that her relatives are residing in the same village, but she did not narrate the incident to them. She has stated that on the next day, after narrating the incident to her husband, they did not take their daughter to the hospital. On the next day, as usual, she and her husband went to the field for labour work. She has stated that on the next day in the field, the appellant, his wife and other women taken their lunch together. She has admitted that she did not narrate this incident to the wife of the appellant. She has stated that for two days without narrating the incident to anybody, they and their relatives deliberated on this incident and then they decided to lodge the report. As far as the defence of the appellant is concerned, she has admitted that there was a common wall between her house and the house of the appellant. She has admitted that the appellant, without

their permission, has constructed the common wall on their property. She has stated that therefore they did not pay the money for the construction of the wall. She has stated that therefore they were hurt. It is to be noted that there is no specific question as to the month and year of the construction of the wall. It has not come on record whether it was immediately prior to the occurrence of the incident or 2-3 years prior to the occurrence of the incident. The informant has not concealed anything from the Court.

14 PW-2 is the victim girl. In her evidence before the Court she has narrated the first hand account of the occurrence of the incident. It is to be noted that her statement under Section 164 of the Cr.P.C. was recorded by the learned Judicial Magistrate First Class, Chikhli, on 13.03.2020. The statement is at Exh. 10. Perusal of her statement would show that she narrated the entire incident before the learned Magistrate. The incident narrated by her before the learned Magistrate and the

narrated before the Court at the time of her evidence is consistent. I do not see any inconsistency in her evidence recorded before the Court as well as the statement recorded before the Magistrate.

15           The victim at the time of the incident was 8 years old. The victim and the granddaughter of the appellant, before the occurrence of the incident, were playing near the cattle shed of Mr. Jape. In her evidence, she has stated that the appellant took Dhanashri towards the women and took her alone with him under the pretext of holding the pipes. He took her in the field of maize and committed intercourse with her. She has stated that after this incident, he threatened her. He promised to give her Rs.15-20 after going back home. She has stated that her mother made an inquiry with her as to where she had gone. She told her that she had accompanied the appellant to help him lift the pipes. She has further stated that her mother found that her underwear was wet and on being questioned by the

mother, she told her that she has urinated. She has stated that after coming back home she narrated the incident to her mother. She has been cross-examined. She has stated that while plucking the tomatoes in the field, the women could not see them. She has stated that in the field she did not narrate the incident to her mother. She has stated that in the night when her father came from the field, they did not narrate the incident to him. It was narrated to him in the morning. Perusal of her cross-examination would show that she has given rational answers to all the questions put to her in the cross-examination. Her conduct at the time of her evidence is also very material. It is to be noted that a child witness is prone to tutoring. I have already observed that the parents of the victim are rustic villagers. The victim has been raised in a company of the rustic parents. The firmness while answering the questions in the cross examination by the victim indicates that there is a ring of truth to her version. It does not remotely suggest the ring of



falsehood. She has stated that except for her parents, she did not narrate this incident to any third person. She has stated that she has not even narrated this incident to her sister Durga. It is to be noted that if the victim was tutored to make a concrete statement against the appellant before the Court, in my view, she could have been easily caught in the cross-examination. The tutored witness, narrating the incident before the Court on tutoring and with sheer imagination, is bound to commit a mistake on certain material facts. Perusal of her evidence in entirety would show that her evidence has no ring of falsehood. The statement made by her before the Magistrate with regard to the incident is consistent with what she has stated about the incident at the time of her evidence. The evidence of the victim as to the occurrence of the incident and involvement of the appellant in the incident has not at all been shaken. The evidence on minute scrutiny is found to be credible and trustworthy. I do not see any reason to discard and disbelieve

the evidence of the victim. The evidence is natural. The victim has narrated the first hand account of the incident before the Court as well as before the Magistrate, when her statement under Section 164 was recorded. The evidence of the victim, therefore, fully corroborates the evidence of her mother PW-1.

16           It is to be noted that there is no dispute with regard to the presence of the appellant in the field. Similarly, there is no dispute with regard to the presence of the informant, the victim and the granddaughter and other women in the field on the given date. The victim had no reason to falsely implicate the appellant. The appellant on the date of the incident was 52 years old. He was doing labour work on the field of Mr Jape. There is one important fact which in my view, reflects upon the credibility and truthfulness of the evidence of the victim. The victim did not narrate the incident to her mother in the field. The victim has stated that the appellant told her not to disclose the incident to anyone and threatened her. She has also stated

that the appellant had promised to give Rs.15-20 to her after going back to the house. The victim at the time of the incident was 8 years old. She was subjected to a very serious incident of sexual assault. She must be horribly terrified. She would have taken a long time to come out of this shock and trauma. The child is bound to get lured by such a promise. Similarly, a threat given by elderly person is bound to make an impact on the psyche of a child. In my view, therefore, the failure on the part of the victim to disclose the incident to her mother immediately will not reflect on the credibility of her evidence.

17           Rameshwar Kadam (PW-3) is the father of the victim. He has stated that his wife narrated this incident to him in the morning of 08.03.2020. He has stated in his evidence the incident narrated to him by his wife. It is consistent with the incident narrated by the informant and the victim. He has stated that on being apprised of this incident, he was mentally disturbed. He therefore sent his wife on the field for work on

08.03.2020. He has stated that in the evening, after coming back from the field, they deliberated upon this serious crime committed with their 8 year old daughter and then decided to take it seriously and lodged the report against the appellant. I have gone through his cross-examination. No admission of any significance has been elicited in his cross-examination to doubt his veracity. His evidence is not direct evidence on the occurrence of the incident or some of the events that occurred on the field. In the evidence of the informant as well as in the evidence of the father PW-3, they have categorically stated the reason for not lodging the report on 08.03.2020. The reason for the delay therefore deserves appreciation, keeping in mind the fact stated by them and the attending circumstance.

18            I have already observed that the defence is silent about the construction of the common wall between the house of the informant and the house of the appellant. The informant has admitted that on that count there was a dispute between

them. The question is, when did the dispute arise ? Whether it was immediately prior to the occurrence of the incident or 2-3 years prior to the occurrence of the incident ? Even if it is assumed for the sake of argument that there was a dispute on this count between the informant and the appellant, the informant would not have involved her daughter in such an incident. It is not out of place to mention that the reporting of such a crime to the police invites stigmatic consequences not only for the victim but for the family. The reporting of such a matter to the police and placing the same in the public domain can cause irreparable damage to the future of the victim as well as to the reputation of the family. Reporting of such a crime has a tendency to harm the reputation of the family as well as prejudicially affect the future of the victim. If the informant wanted to take revenge on account of the dispute she could have lodged a false report by creating some imaginary story. The conduct of the mother and father is consistent with this

position. They did not go to the police on 8.03.2020. They were bound to get mentally disturbed after this incident. There is no reason to discard and disbelieve the statement made by them. Such an incident affects the psyche of the person. Person would take time to come out of a shock and trauma of such an incident. The victim would have obviously been traumatized. The incident would have caused shock and mental stress to the informant and the father. Due to the shock and trauma suffered by them, they would have taken some time to settle. They deliberated upon it and lodged the report. It is to be noted that delay *per se* can't be a ground to discard the otherwise cogent, concrete and reliable evidence. The delay can create a suspicion in the mind of a Court if it is not properly explained. The Apex Court in the case of ***State of Rajasthan Vs. Om Prakash***<sup>1</sup> 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

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1 (2002) 5 SCC 745

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.

19           In this case, the parents are rustic villagers. They are illiterate. Their evidence shows that they had no backing from the village. Their daughter was subjected to penetrative sexual assault. It was therefore natural for them to give a second thought to the idea of lodging the report with the police. They

ultimately went to the police on 09.03.2020 and reported the matter to the police. In my view, in this case, the delay has been satisfactorily explained.

20           Minute scrutiny of the evidence of the informant (PW-1), the victim (PW-2) and father of the victim (PW-3) would show that their evidence can't be discarded. Their credibility in their cross-examination has not been shaken. The attending circumstances are sufficient to conclude that there is no ring of a falsehood to their evidence. Their evidence is credible and trustworthy, The evidence, which is credible, cogent, reliable and trustworthy cannot be discarded and disbelieved only on the ground of delay in lodging the report. I do not see any reason to discard and disbelieve the evidence of these witnesses.

21           The next important piece of evidence is of the medical officer, who had examined the victim. Dr. Rudhira



Jadhav (PW-7) is the medical officer. It is seen that when the informant went to the police with the victim and reported the matter orally to the police before recording the FIR, the investigating officer sent the victim to the medical officer for examination. The victim was examined by the medical officer on 09.03.2020 at about 5:30 p.m. The report was lodged on 09.03.2020. But the FIR was registered on 10.03.2020 at about 1:27 a.m. The medical officer, on examination of the victim, found injury to her hymen. The doctor has stated that the hymen was torn at 7:00 o'clock and 2:00 o'clock positions. The age of the said injury was between 24 and 36 hours. It is true that the victim was examined after about 45 hours. It is submitted that the age of injury mentioned by the medical officer therefore creates a doubt about the age of the injury. It is to be noted that the doctor has nowhere stated that the injury was fresh. The submission made on behalf of the appellant would have substance if the doctor had stated that the injury

was fresh or it was 50 hours old at the time of examination. It was suggested to the doctor that such an injury could be possible while playing, cycling or by inserting the finger. The doctor has denied this suggestion. The doctor has stated that such an injury could not be possible in the case of a small girl. The doctor has stated that if the intercourse is committed with 8 year old girl, then two injuries namely perineal and oedema (edema) are possible. The evidence of the doctor with regard to the injury to her genitals has not at all been shaken. In my view, therefore, this evidence fully corroborates the evidence of the victim, the informant and the father of the victim. I do not see any reason to discard and disbelieve this evidence.

22           As far as the CA reports and DNA reports are concerned, nothing material has been noticed in the same. The statement of the informant was recorded by the learned Magistrate under Section 164 of the Cr.P.C. The record shows that this statement was not exhibited. It was a procedural error

on the part of the learned Judge. This statement is a part of the record. Perusal of this statement would show that the incident narrated by her before the Magistrate is consistent with the one narrated before the police at the time of lodging the report. On going through the record, I am satisfied that there is no mistake or error committed by the learned Judge. The learned Judge, on the basis of the evidence, has observed that in this case the presumption provided under Section 29 of the POCSO Act would get triggered against the appellant. The learned Judge has observed that the appellant has not adduced any evidence in rebuttal to dispel this presumption. It is to be noted that in order to invoke the presumption under Section 29 of the POCSO Act, the prosecution is duty bound to establish the foundational facts *vis-a-vis* the charge framed against the appellant. In this case, the evidence adduced by the prosecution is sufficient to prove the foundational facts as to the charge framed against the appellant. The presumption under

Section 29 of the POCSO Act would trigger with full force. There is no evidence in rebuttal adduced by the appellant. I do not see any reason to discard and disbelieve the evidence of the prosecution. Similarly, I do not see any mistake or error on the part of the learned Judge so as to set aside the well reasoned judgment and order. The appeal, therefore, deserves to be dismissed. Accordingly, the criminal appeal is **dismissed**

23           Before parting with the matter, I must acknowledge the efforts put in by the learned Advocate Mr. P. H. Khobragade, appointed to represent the accused/appellant, the learned APP Mr Amit Chutke, for the State and the learned Advocate Ms Radha Mishra, appointed to represent respondent No.2. The learned Advocates extended the able assistance to this Court. I therefore put my appreciation on record for the advocates.

24           Mr P. H. Khobragade, learned Advocate appointed

to represent accused/appellant and Ms Radha Mishra, learned advocate appointed to represent respondent No.2 in this appeal, are entitled to receive the fee. The High Court Legal Services Sub Committee, Nagpur is directed to pay the fee of the learned appointed Advocates, as per the rules.

25           The criminal appeal stands disposed of accordingly.  
Pending applications, if any, also stand disposed of.

(G. A. SANAP, J.)