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

CRIMINAL APPEAL NO. 625 OF 2022

APPELLANT : Pravin @ Tushar Janu Chavan,
Aged about 27 years, Occu. Agriculturist,
R/o Warud, Tq. Mehkar, Dist. Buldhana.

VERSUS

RESPONDENTS : 1] State of Maharashtra,
through Police Station Officer,
Police Station, Dongaon,
Tq. Mehkar, Dist. Buldhana.

2] A B C (Victim) through
complainant in Crime No. 210/2020
registered under Police Station, Dongaon,
Tq. Mehkar, Dist. Buldhana.

Mr. M. P. Karia, Advocate for the appellant.
Mr. H. D. Futane, A. P. P. for the respondent no.1
Mrs. S. P. Giratkar, Advocate appointed for respondent no.2

CORAM : G. A. SANAP, J.
DATED : SEPTEMBER 19, 2024.

ORAL JUDGMENT

1. In this appeal, challenge is to the judgment and order dated 16.06.2022, passed by learned Special Judge, Mehkar, whereby the learned Judge held the appellant guilty of the offences punishable under Sections 377 and 506 of the Indian Penal Code and under Section 4 of

the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "the POCSO Act" for short). He is sentenced to suffer rigorous imprisonment for twenty years and to pay fine of Rs.1,000/- (Rupees One thousand only), in default to suffer rigorous imprisonment for one month, for the offence punishable under Section 4 of the POCSO Act ; and to suffer rigorous imprisonment for one year for the offence punishable under Section 506 of the Indian Penal Code. No separate sentence is awarded for the offence punishable under Section 377 of the IPC.

2. BACKGROUND FACTS :-

The informant (PW1) is the uncle of the victim boy, who, as per the prosecution's case, was 13 years old on the date of the incident. The incident occurred on 02.09.2020 at about 7.00 p.m. The report was lodged on 03.09.2020 at 2.10 a.m. at Dongaon police station, Tah. Mehkar, Dist. Buldhana. The case of the prosecution, which can be gathered from the report and other materials, is that on the date of the incident, the parents of the victim had gone to village Shirla-Nemane. The victim had gone to play *Kabaddi* with his friends. The victim boy, after playing *kabaddi* with his friends, was returning to

his house. On the way to the house, the appellant met him. The appellant was proceeding to attend the nature's call. The appellant requested the victim to accompany him to attend nature's call. The victim accompanied him. The appellant showed a porn video to the victim on his mobile phone and asked the victim to allow him to have unnatural intercourse with him. The victim did not agree. The appellant caught hold of the victim and over powered him. The appellant removed the pant of the victim and his own pant and committed carnal intercourse with the victim boy. The appellant thereafter threatened to kill the victim, if he disclosed the incident to anybody. The victim came to the house. His grandmother and uncle were present at the house. He narrated the said incident to his grandmother and uncle. The informant came to the house after some time. The victim narrated the incident to the informant. The informant made a phone call to the father of the victim and informed him about the incident. The father of the informant told him to report the matter to the police.

3. The informant (PW1) carried the victim to the police station. The informant lodged the report (Exh.20). On the basis of the

report, a crime bearing No. 210/2020 was registered against the appellant. The investigation was conducted by PW6. The victim was referred for medical examination. The blood samples and other samples of the victim had been collected at the time of his examination. The appellant was arrested. He was also referred for medical examination. The clothes of the victim and the clothes of the appellant were seized. The samples collected by the Investigating Officer had been sent for analysis to the Regional Forensic Science Laboratory (RFSL), Amravati. PW6 recorded the statements of the witnesses. On completion of the investigation, PW6 filed charge-sheet against the accused.

4. Learned Special Judge framed the charge (Exh.9) against the appellant/accused. The appellant pleaded not guilty. The defence of the appellant is of false implication on account of dispute between him and the maternal uncle of the informant. The prosecution, in order to bring home the guilt against the accused, examined seven witnesses. Learned Judge, on consideration of the evidence, held the accused guilty and convicted and sentenced him as above. The appellant, being aggrieved by the said judgment and order, has come before this Court in appeal.

5. I have heard Mr. M. P. Kariya, learned advocate for the appellant, Mr. H. D. Futane, learned Additional Public Prosecutor for respondent no.1/State and Mrs. S. P. Giratkar, learned advocate appointed for the respondent no.2/victim. Perused the record and proceedings.

6. Mr. Kariya, learned advocate for the appellant submitted that the evidence adduced by the prosecution is not sufficient to prove that the victim on the date of the offence was below 18 years of age. The evidence adduced is not sufficient to prove the birth date of the victim. The parents of the victim have not been examined to prove the birth date of the victim. The certified copy of the extract of the school admissions register, issued by the Headmaster (PW4), has been relied upon as the only evidence. In the absence of birth certificate, the extract of the school admissions register cannot be made the sole basis to prove the birth date of the victim.

7. Mr. Futane, learned Additional Public Prosecutor submitted that the victim (PW3), in his evidence, has categorically stated that his birth date is 24.07.2007. On the date of the incident, he was studying in 8th standard. Learned APP submitted that he was

admitted in 1st standard in Zilla Parishad School at Warud on 29.06.2012. Learned APP submitted that the Headmaster of the school has been examined as PW4. The Headmaster (PW4) had produced the original Affidavit register and the school admissions register at the time of his evidence. Learned APP submitted that on the basis of production of the primary evidence of Exh.27 i.e. the certified extract of the school admission register, the birth date has been proved. Learned APP submitted that it is not the case of the appellant that this documentary evidence was brought into existence after the commission of the crime to support the case of the prosecution. Learned APP submitted that in the absence of production of primary evidence i.e. affidavit register of the parents and the school admissions register, the contention of the appellant would have some substance and force. Learned APP submitted that PW1 and PW2 have stated that on the date of the incident, the victim was 13 years old and studying in 8th standard.

8. Learned advocate appointed to represent respondent no.2 has adopted the submissions of the learned APP.

9. PW1 is the uncle of the victim and the informant in this case. He has stated that on the date of his evidence, the victim was 14

years old. He has stated that at the time of the incident, he was 13 years old and studying in 8th standard. Perusal of his cross-examination would show that this part of his evidence with regard to the age of the victim has not been challenged in his cross-examination. PW2 is the another uncle of the victim. He has categorically stated that at the time of the incident, the victim was 13 years of age and was studying in 8th standard. In his examination-in-chief, PW2 has categorically stated that he does not know his birth date. Perusal of his cross-examination would also show that this part of his evidence has not been challenged.

10. The next important witness on the aspect of age/birth date is the victim (PW3) himself. The victim has stated that on the date of the evidence, he was 14 years old and studying in 10th standard. He has stated that his date of birth is 24.07.2007. Perusal of his cross-examination would also reveal that this part of his evidence has not been challenged.

11. The prosecution has examined PW4, the Headmaster of the Zilla Parishad School, Warud, where the victim was studying. The Investigating Officer (PW6) has deposed that during the course of the investigation, he had obtained certified extract of the admission register

from the Z.P. School, Warud. The said extract is at Exh.27. The Headmaster (PW4) of the school had been summoned for production of the original school record to prove the birth date of the victim. PW4 deposed that at the request of the police, he had provided the certified extract of the relevant entry of the school register, wherein the birth date of the victim was recorded. He has stated that as per the school record, the birth date of the victim is 24.07.2007. PW4 has categorically stated that while admitting the victim in 1st standard, his parents had submitted an affidavit with regard to the birth date of the victim. PW4 at the time of his evidence had brought the original Affidavit register as well as the original admissions register. He has categorically stated that this extract (Exh.27) was issued on the basis of the entry made in the register. It is to be noted that the birth certificate of the victim is not available. The parents of the victim have not been examined. PW4 has admitted that at the time of admission of the victim in the school, the parents had not submitted the birth certificate of the victim. The question is whether the certified extract (Exh.27), coupled with the evidence of PW4, is sufficient to prove the age of the victim.

12. Perusal of the cross-examination of PW4 would show that there is no suggestion to this witness that this evidence of the birth date

of the victim was brought into existence after registration of the crime. It needs to be stated that the Headmaster of the School (PW4) otherwise had no reason to prepare any such document after registration of the crime. PW4 has produced on record the original admission entry of the victim, wherein the birth date of the victim was recorded in the school on 29.06.2012. PW4 had produced the affidavit register of the parents of the victim as well as the admission register. It is to be noted that if the birth certificate is not produced at the time of admission of a child in the school, then the parents are required to submit an affidavit. The birth date of the child is required to be stated on affidavit. The affidavit is a part of the school record. The original affidavit register containing the affidavit of parents of the victim was produced. The birth date mentioned in the affidavit filed by the parents of the victim, is 24.07.2007. Similarly, the admissions register was produced to prove the relevant entry of the admission of the victim in the school. The birth date of the victim mentioned in the school admissions register is 24.07.2007. PW4 has categorically stated that the document at Exh.27 was prepared on the basis of the school admissions register. It is, therefore, evident that the primary evidence i.e. affidavit of the parents of the victim, was brought before the Court by PW4.

13. It is noticed in a number of matters that the learned Judges, who are recording the evidence in such serious matters, are not taking proper care. The record shows that the witness (PW4) was summoned to depose as well as to produce the original records. There was no failure on the part of PW4. It appears that there was a procedural error on the part of the learned Special Judge. The learned Judge was duty bound to take the original affidavit register as well as the original school admission register on record. He was required to give exhibit numbers to the affidavit of the parents of the victim as well as separate exhibit number to the admission entry of the victim from the admission register. The learned Judge was then required to return the original registers to the witness by taking the usual undertaking from the witness for production of the original record as and when required by the Court. In my view, this is a rudimentary procedural requirement. This procedural requirement was not complied with by the learned Judge. Learned Judge failed to appreciate that the entry of the birth date of the victim from the register was the primary evidence. Exh.27 is secondary evidence. The learned Judge, being a designated Special Judge, was required to take proper care. If the birth date/age of the victim is not proved, then the accused can get the benefit of doubt. If it

is proved that the victim was not below 18 years of age on the date of the incident, then the provisions of the POCSO Act would not apply. I am constrained to observe that this is a high time to devote attention towards such procedural niceties. It needs to be stated that recording of the evidence must be very meticulous. The evidence is the heart and soul of the case. The learned Judge, recording the evidence, cannot afford to commit a mistake. The mistake committed by the learned Judge, while recording evidence, cannot be rectified and corrected in the future. The mistake committed while writing the judgment or passing an order can be corrected on the basis of the available evidence. So, this is a very important aspect while recording evidence in a trial of any case.

14. As stated above, the accused has not challenged the evidence of PW1, PW2 and PW3 with regard to the age of the victim stated by them. The evidence of the Headmaster (PW4) of Z.P. School is sufficient to prove the birth date of the victim. PW4 had no reason to maintain a false record with regard to the birth date of the victim. The certified copy of the admission register (Exh.27) was obtained at the stage of the investigation. It was exhibited on the basis of the original

record, which was brought by PW4 at the time of his evidence. In my view, this evidence is sufficient to prove the birth date of the victim i.e. 24.07.2007. It is further pertinent to note that the victim, on the date of the offence, was 13½ years old. Even if it is assumed for the sake of the arguments that there was any mistake on the part of the parents of the victim in mentioning the birth date, even in that situation also, the victim could not be said to be above 18 years of age on the date of the incident. The evidence on record is sufficient to prove that the victim on the date of the incident was below 18 years of age and as such, is a child as defined under Section 2(1)(d) of the POCSO Act.

15. Learned advocate for the appellant submitted that the evidence of the victim and his two uncles, PW1 and PW2, does not inspire confidence. There are major inconsistencies and discrepancies in their evidence. The place of occurrence, according to the victim, was near the hillock, but the spot panchanama (Exh. 29) does not show existence of any hillock near the spot. The learned advocate submitted that the victim was tutored to depose against the appellant. The learned advocate submitted that the CA reports as well as the DNA report do not fortify the case of the prosecution and the version of the victim as to

the occurrence of the incident. Learned advocate submitted that the evidence of the Medical Officer (PW7) is not sufficient to conclusively prove that the victim was subjected to carnal intercourse. Learned advocate submitted that the medical examination report of the accused does not suggest carnal intercourse by the appellant in the recent past. Learned advocate submitted that the learned Judge has failed to properly appreciate the evidence and has come to a wrong conclusion.

16. Learned APP submitted that the victim on the date of the incident was 13 years old and he was subjected to carnal intercourse by the accused. Learned APP took me through the evidence of the victim boy (PW3) and pointed out that the account of the incident placed on record by him is cogent, concrete and credible. There are no omissions and improvements in the evidence of the victim and his two uncles (PW1 & PW2). The defence of the appellant that he was falsely implicated in this case on account of his enmity with the distant relative of the victim, is neither probable nor acceptable. The medical evidence is the most important corroborative piece of evidence. The Medical Officer (PW7) found multiple injuries to the anus of the victim boy. The doctor has mentioned the age of the injuries. It is submitted that

the medical evidence lends an assurance to the testimony of the victim as well as the testimonies of PW1 and PW2. Learned APP submitted that there was no delay in lodging the report, when the victim informed his uncles and his grandmother about the forcible carnal intercourse committed with him by the appellant. Learned APP submitted that the learned Special Judge has recorded cogent reasons in support of his finding of guilt against the accused.

17. Learned advocate appointed to represent respondent no.2/ victim has adopted the submissions advanced by the learned Additional Public Prosecutor for the State.

18. I have minutely perused the oral and documentary evidence adduced by the prosecution. There was no delay in lodging the report of the incident. It has come on record that the parents of the victim had gone out of village and therefore, his father was informed on his mobile phone about the incident by the informant. The incident occurred at about 6.30 to 7.00 p.m on 02.09.2020. The report was lodged at 02.10 a.m. on 03.09.2020. On the very same day, the victim was referred for medical examination and he was examined by the Medical Officer (PW7) at 02.55 a.m. The conduct of the informant in

reporting the matter to the police, without wasting any time, is consistent with the conduct of a man of ordinary prudence, placed in a similar situation. The blood samples and other samples were collected at the time of medical examination of the victim as well as examination of the accused. The CA report and the DNA report do not lend any support to the case of the prosecution. The semen was not detected in the anal swab. The parents of the accused have not been examined.

19. In this case, the victim boy (PW3) is the most important witness. The case of the prosecution revolves around the testimony of the victim. The learned Special Judge, on analysis of the evidence of the victim, has recorded a finding that it was trustworthy and reliable. In this appeal, the learned advocate for the appellant has assailed the evidence of the victim on multiple grounds. In this backdrop, it is necessary to scrutinize and re-appreciate the evidence of the victim.

20. The victim (PW3), as per the case of the prosecution, was subjected to carnal intercourse. It was suggested to the victim in his cross-examination that while playing *kabaddi*, accidentally, a stump had pierced into his anus and therefore, he sustained the injuries. It, therefore, goes without saying that the injuries sustained by the victim

to his anus have not been seriously disputed. The victim boy, who at the time of his evidence, was 14 years old, has placed on record the first hand account of the incident. He has stated that on 02.09.2020 at 7.30 pm, the incident had occurred. He has stated that he played *kabaddi* at the ground and after that he was proceeding to his house. On the way, the appellant met him, who was coming from the opposite direction, with a tumbler, to attend nature's call. He requested the victim to accompany him. He has stated that he accompanied the appellant. He has stated that on the spot, the appellant showed him a porn video and asked him to allow him to commit carnal intercourse with him. He has stated that he did not agree to the said act. He has stated that the appellant thereafter, overpowered him. The appellant removed his pants and his own pants, as well. He gagged his mouth and committed carnal intercourse with him. He has further stated that the accused threatened to kill him, if he disclosed the incident to anybody. The victim has stated that he came back to the house and narrated the incident to his uncle Samadhan. After some time, his other uncle (PW1) came to the house and he narrated the incident to him as well. He has stated that thereafter, they went to Dongaon police station and reported the incident to police. The account of the incident placed on

record in his examination-in-chief is consistent with the facts recorded in the report lodged by his uncle (PW1). The report, in fact, contains the account of the incident narrated to the informant by the victim. There is consistency in his evidence and the facts recorded in the report (Exh.20).

21. The victim (PW3) was subjected to grueling and searching cross-examination. As stated above, the victim, on the date of the cross-examination, was about 14 years old. Perusal of his cross-examination would show that he has successfully withstood the searching and grueling cross-examination. His cross-examination would show that he has, in fact, reiterated the case deposed by him in his examination-in-chief. He has denied the suggestions put to him consistent with the defence of the appellant. Perusal of his cross-examination would show that he has not given any admission to suggest that he was tutored. Similarly, he has not given any admission of significance to cause dent to the statement made in his examination-in-chief. The victim had no reason to falsely implicate the appellant. The appellant has failed to probablize his defence of enmity with the distant relative of the father of the victim. The appellant, at the time of the incident, was 28 years

old, having three children. The appellant took advantage of the tender age of the victim and overpowered him. Perusal of his evidence in entirety shows that his evidence is credible and trustworthy. It is necessary to state that if the victim had been tutored or made to narrate the imaginary incident, then he would have been caught in searching cross-examination of the defence advocate. A boy of tender age is bound to commit a mistake, if he is tutored or the narration of the incident is on the basis of sheer imagination. The evidence of the victim is sufficient to conclude that he was subjected to carnal intercourse.

22. The evidence of the Medical Officer (PW7) is the most vital piece of evidence to lend an assurance to the overall case of the prosecution and the testimony of the victim. The victim was medically examined by PW7 on 03.09.2020. The Doctor found abrasion on the left side of neck, on the front side and also on the right side of neck of size 1 x 5 cm each. It was simple in nature. The Doctor (PW7) has stated that on examination of the perineal anal, he found bleeding with tears in the 6', 8', and 12' O'clock positions. He has stated that on perineal anal orifice, the injuries were approximately 3 x 0.5 x 0.5 cm.

He has stated that the injuries were caused within 24 hours. The Doctor has opined that it was a case of unnatural sexual intercourse with the victim. He has stated that such type of injuries can be possible in unnatural sexual intercourse. On these aspects, the Medical Officer was cross-examined. The Doctor has denied the suggestion that anal injuries, as mentioned in the medical report of the victim, could be caused, if a person falls on a stump or stone while playing. The Doctor has admitted that the injuries noticed over the neck could be caused while playing *Kabaddi*. The medical certificate of the victim is at Exh.47. The history of the assault was narrated by the victim to the doctor. The victim has categorically stated while narrating the history of assault that the appellant had committed carnal intercourse with him and after this incident, he came to the house and narrated the incident to his grandmother. The victim was examined by the Doctor after about eight hours of the incident. The doctor has given a candid opinion on the basis of his findings of the examination of the victim. I do not see any reason to discard this evidence. The doctor has reported that a perineal tear was having bleeding. The doctor (PW7) is an independent witness. The doctor had no reason to give false report. The evidence of the Doctor is the most important corroborative piece of

evidence. The testimony of the victim has been fully corroborated by the evidence of the Medical Officer (PW7).

23. It is to be noted that the conviction in such a case can be based on the sole testimony of the victim of a crime. There is no need of any independent corroboration. The victim of such a crime is equated with an injured witness. The victim cannot be equated with an accomplice. The corroboration in material particulars, therefore, cannot be insisted. The Court has to see the quality of the evidence and not the quantity. In such a crime, the independent witness is seldom available. The victim has stated that the appellant took him to a secluded place and committed the offence. The spot of the incident has been proved on the basis of the panchanama (Exh.29). At the spot of the incident, the soyabean crop and grass had been sufficiently trampled. It is suggestive of the fact that some incident had occurred at the said spot. The spot of the incident was shown by the victim to the police. The facts recorded in the panchnama (Exh.29), as to the position on the spot, also corroborate the evidence of the victim.

24. The conduct of the victim was natural. After occurrence of the incident, he went to the house and narrated the incident to his

grandmother and uncle. The conduct on the part of his two uncles (PW1 and PW2) is also consistent. PW1 is the informant. He has stated that when the victim narrated the incident occurred with him to them, he made a phone call to his brother, who was out of the village and apprised him. He has stated that his brother told him to go to the police station and report the matter to the police. PW1 has narrated the incident occurred with the victim. His evidence is consistent with the evidence of the victim. PW2 is the another uncle of the victim. He has stated that the victim narrated the incident to him, his brother and his mother. He has also reiterated the incident narrated by the victim. PW1 and PW2 had been subjected to searching cross-examination. An attempt was made in their cross-examination to bring on record the admissions with regard to their enmity with the appellant. They have denied the suggestions put to them consistent with the defence of the appellant. Perusal of their evidence would show that they have not either exaggerated or embellished the incident. Their conduct in reporting the matter to the police, without wasting any time, is consistent. I do not see any reason to discard and disbelieve their evidence. Their evidence corroborated the version of the victim. The grandmother of the victim has not been examined. In my view, it will

not go against the case of the prosecution. The Court has to see the quality of the evidence and not the quantity of the evidence. The evidence adduced by the prosecution is credible and trustworthy. The evidence has been corroborated by the medical evidence. On the basis of this evidence, the prosecution has proved the charge against the accused.

25. It needs to be stated at this stage that the presumption under Section 29 of the POCSO Act would also trigger in this case against the accused. The evidence adduced by the prosecution is sufficient to prove the foundational facts viz-a-viz the case of the prosecution. The burden was on the accused to rebut the presumption, in view of the proof of the foundational facts. The appellant has not adduced any evidence to make good his defence on the basis of the available material on record to rebut the presumption. It is evident that the act committed by the appellant was highly deplorable. The appellant took advantage of the tender age of the victim. The appellant is a married man having three children. The appellant, in order to satisfy his lust, ravished a young boy of 13 years. The intercourse was against the order of nature. This reflects on the mindset of the appellant. The appellant lured the victim to accompany him. The

victim believed him and accompanied him. The accused misused his faith and trust in him. The accused overpowered the victim and subjected him to carnal intercourse. It was inhuman and diabolic act committed by the appellant with the victim. The scar created on the mind of the victim would be everlasting. It would not be possible for him to erase it. He would have to carry this scar and trauma throughout his life.

26. The maximum sentence awarded to the appellant is to suffer imprisonment for twenty years for the offence punishable under Section 4 of the POCSO Act. In the facts and circumstances discussed above, I conclude that there is no substance in this appeal. The appeal deserves to be dismissed, and it is accordingly dismissed.

27. Mrs. S. P. Giratkar, learned advocate appointed to represent respondent no.2/victim in this appeal, is entitled to receive the fees. The High Court Legal Services Sub Committee, Nagpur is directed to pay the fees to the learned appointed advocate, as per the Rules.

(G. A. SANAP, J.)

Diwale