



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 181 OF 2022

Shaikh Jamil @ Rahil Khan
s/o Shaikh Abdul Shukkur
Age : 34 years, Occu : Private Service,
R/o : In Front of Ali Masjid,
Ansar Colony, Padegaon,
Taluka and District Aurangabad.

... Appellant
[Orig. Accused]

Versus

1. The State of Maharashtra
Through Police Station Officer,
Chhavani Police Station,
Dist. Aurangabad.

2. X Y Z

... Respondents

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Mr. P. N. Ghadge, Advocate for the Appellant (appointed through
Legal Aid)

Mr. P. P. Dawalkar, APP for Respondent No.1-State

Mr. M. M. Ambhore, Advocate for Respondent No.2

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 16.03.2026

Pronounced on : 17.03.2026

JUDGMENT :

1. Appellant, a Convict in Special Case (POCSO) No. 64 of 2016,
hereby takes exception to the judgment and order dated 13.11.2021
passed by learned Special Judge (POCSO), Aurangabad, convicting
appellant for offence under Section 376(2)(i) of IPC and Section 4(2)

of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

2. Prosecution was launched against present appellant on report Exhibit 22 lodged by victim PW2 who gave her age as 16 years at the time of lodging complaint and further narrated that, her biological father left her mother and thereafter her mother performed second marriage. However, step father expired and her mother again re-married. According to her, while she was studying in 10th Standard, accused used to stalk her, expressed his liking for her and also expressed his desire to marry her by telling her that he was working in Army. She claims that they started meeting each other regularly behind her house. On 30.01.2026, he took her on motorcycle in the vicinity of Khultabad and while returning in the evening, he took her to a remote place where construction was in progress and offered to marry her and assured not to deceive her, and thereafter he undressed her and twice had sexual intercourse with her. She returned home next day and on being questioned by mother, she narrated the above incident and therefore her mother gave call to accused, to verify whether he really wanted to marry her daughter. However he did not turn up. Therefore above report was lodged with police, on the basis of which crime was registered and on

investigation, accused was chargesheeted and tried and consequently held guilty for above charges.

3. Learned counsel for appellant would point out that there is false implication. According to him, there were love relations between accused and victim. That, girl used to meet appellant on her own accord and she readily joined him to Khultabad and even there were consensual relations and that there was no force. He pointed out that, medical evidence does not support prosecution. According to him, pancha to spot panchanama has not supported prosecution. That, evidence of father and mother is hearsay and, according to him, as case was not proved beyond reasonable doubt, its benefit ought to have been extended to the accused. He placed reliance of judgment of this Court in the case of *Gorakshya Arjun Mahakal v. State of Maharashtra*, 2019 SCC OnLine Bombay 520.

4. Per contra, learned APP as well as learned counsel for the complainant both justify the order of conviction as, according to them victim being minor, consent, if any, becomes insignificant. According to them, there is overwhelming evidence that victim was minor and therefore charges were of POCSO were duly attracted and even proved.

5. Re-appreciated the evidence. Prosecution has rested its case on the evidence of five witnesses i.e. PW1 Pancha to spot panchanama, PW2 victim, PW3 mother, PW4 Head Mistress, PW5 Investigating Officer.

6. In the light of nature of charges, it is to be first seen whether prosecution has discharged its burden, including proving victim to be a minor, and as to whether, thus, provisions of POCSO Act were attracted. For this, evidence of victim, her mother and headmaster is crucial.

PW2 victim, in her evidence at Exhibit 21, gave her date of birth as 09.12.2000 and according to her, at the time of lodgment of complaint she was 16 years of age. It is pertinent to note that, while under cross, there is no cross examination on the point of age of victim. There is no suggestion also that she is not minor.

PW3 Mother of the victim at Exhibit 24 stated that at the time of incident, her daughter was 15 to 16 years age and studying in 10th standard. Nothing adverse has been brought in her cross except giving suggestion that in Muslim community, marriage of a girl is

solemnized at the age of 15 to 17 years. Such suggestion shows that there is no serious challenge to the age of the victim.

PW4 Head Mistress, who is examined at Exhibit 35, placed on record school extract. She also placed birth certificate tendered by parents at the time of admission which is at Exhibit 38. According to her, from the school record, date of birth of victim was 09.12.2000. Therefore this witness corroborates testimony of victim on the point of date of birth. Taking the same into consideration and evidence of PW4 having remained intact, a finding can safely be recorded that prosecution has proved that, at the time of FIR victim was minor and therefore, provisions of POCSO Act do get gravitated.

7. There is charge for offence under Section 376(2)(i) of IPC. Again, for the same, evidence of victim is crucial. After narrating that, on 30.01.2016 she met accused behind her house and on the pretext of talking something urgent, he took her on motorcycle to Khultabad, they had lunch and according to her, at 06.00 p.m. while returning towards Aurangabad, opposite to Sarosh High School, he took her to a construction site and told her that he would marry her and would not deceive her and requesting her to keep faith, she claims that, he removed her garments and his own garments and twice he had sexual

intercourse with her. Next day morning when she came home, she was questioned by her mother during which she narrated that she had been with a boy who was willing to marry her and thereafter passed mobile number of accused, over which mother had talks and accused allegedly assured to come within 15 to 20 minutes but he never turned up and therefore police was approached and report was lodged vide Exhibit 22 in which she narrated as deposed.

Victim has faced cross, but it is noticed that she admitted meeting accused regularly and about falling in love with accused. She claims that she also thought that she should marry him and wanted to tell her mother about their affair and to seek her consent. There is a suggestion to which she answered that she is not willing to marry even if accused is willing to marry her. She admitted that, had he come to talk to her mother prior to lodging report, she probably would have married him. She denied lodging false report.

The above tenor of cross categorically shows that there is no denial about victim to be a minor on the date of incident. There is overwhelming evidence about she to be minor. Therefore, even if there is consent, it is of no avail to the accused. She being minor, her consent is immaterial.

8. Second ground of challenge is that scientific/forensic evidence does not support prosecution story. Indeed, from the chargesheet, it is emerging that blood vials, cloths of accused and victim, mobile and sim card of accused were collected on 01.02.2026. However, examination report shows that the same were dispatched to FSL on 02.02.2026, 04.02.2016 and were received by FSL on 01.02.2016, 04.02.2016 and 21.04.2016 respectively. Admittedly, occurrence is of 30.01.2026. Though forensic/FSL reports are negative, it is fairly settled position that DNA reports or FSL reports are merely corroborative piece of evidence and not conclusive one. Consequently, negative DNA report itself does not invalidate a rape charge when sole testimony of the prosecutrix inspires confidence and is found to be truthful, unblemished and worthy of credence. Here, sole testimony of prosecutrix does inspire confidence and there is no need to look for further corroboration.

9. With above quality of evidence, when law is fairly settled that if sole testimony of victim of cases of such nature inspires confidence, there is no need to seek corroboration from independent corner. In the ruling relied by learned counsel, facts were distinct wherein it was noticed that love relations were not approved by the family, and moreover, testimony of prosecutrix itself was not inspiring

confidence. Here is is otherwise. Therefore, there being no merits in the appeal, following order is passed :

ORDER

The Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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