IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 1068 OF 2023**

Kiran s/o Rajebhau Sherekar
Age 24 years, Occu. Agril. and Driver,
R/o Dongar Pimpla,
Taluka Ambajogai, District Beed.
(Currently in District Central Prison,
Latur, Class-II, District Latur). … Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Ambajogai Rural,
Taluka Ambajogai, District Beed.

2. X … Respondent

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Mr. Akash D. Gade, Advocate for the Appellant.
Mr. Pravin M. Kulkarni, APP for Respondent No.1-State.
Ms. Sunita G. Sonawane, Advocate (appointed) for Respondent No.2.

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**CORAM : ABHAY S. WAGHWASE, J.**
Reserved on : 12.06.2026
Pronounced on : 15.06.2026

**JUDGMENT :**

1. Instant appeal challenges the judgment and order of conviction dated 21.08.2023 passed by learned Special Judge, (POCSO Act), Ambajogai in Special (POCSO) Case No. 41 of 2022 by which present appellant has been held guilty for offence under Sections 376-AB and 506(II) of IPC as well as Section 4 of the Protection of Children From Sexual Offences Act, 2012 [POCSO Act].

2. In short, case of prosecution in trial court is that, PW1 victim aged 9 years, who was put up with her grandparents and uncle, on 19.03.2022 went out to play with her friends. As she had left her footwear at the house of one of her friends, she went to that friend's house to pick up the same and at that time, accused called her inside the house, removed her pant as well as his own pant and then inserted his penis in her vagina. When she raised alarm, he gagged her with his hand. After reaching home, she reported the incident to her aunt and made use of phone of said aunt to make a phone call to her uncle and told him the incident. When he returned from the field, they all approached police station and victim was referred for medical examination and also admitted for three to four days. Her statement was recorded. Her uncle PW2 set law into motion resulting into registration of crime which was investigated by PW8, who on gathering sufficient evidence, chargesheeted the appellant-accused.

There being charges for both, rape as well as commission of offence under the POCSO Act, case was tried by the Special Judge, Ambajogai who, on appreciating the oral and documentary evidence, accepted the case of prosecution as proved and finally convicted the accused. Hence, instant appeal by the convict.

## SUBMISSIONS

**On behalf of the Accused :**

3. Learned counsel for the accused, at the outset, clarified that there is no serious challenge or dispute on the point of age or minority of the victim. However, according to him, there is serious challenge to the alleged occurrence of rape or sexual assault. Initially he took this court through the FIR and would submit that, therefrom it is emerging that there was first disclosure to the aunt Kalinda, but surprisingly prosecution has not examined her. Even phone of said aunt was put to use by victim, but neither phone is seized nor CDR is collected to demonstrate any conversation with PW2 uncle.

4. He next submitted that, victim's evidence fails to inspire confidence. It is his case that victim being a minor, was thoroughly tutored to depose and accordingly she has done so. According to him, however, as there is no distinct evidence that victim went to play with her friends, as none of her such friends are examined and as none from the thickly populated vicinity had seen the victim, including she being playing, he raised serious doubts about victim being taken by accused in his house. He took this Court through the cross of victim and would submit that, from there it is apparent that accused, who was driving a goods rickshaw, was not available in the village and

therefore there is no question of he committing offence in question. He pointed out that victim has admitted that, she had performed her daily routines as usual and there was nothing unusual that day and this itself falsifies story of sexual assault. He pointed out that, Investigating Officer has admitted that footwear of the victim for which she allegedly returned to the house of her friend were never seized and according to him, this also contributes to the suspicion of victim's version. According to him, statement of the victim under Section 164 Cr.P.C. is full of variances and also her testimony before the Court is apparently an improvised version. According to him, throughout i.e. since visit to police station as well as to the medical officer, aunt was accompanying the victim and as such, possibility of victim being tutored cannot be ruled out.

5. Taking this Court through the testimony of complainant PW2, it is his submission that he has hearsay information and therefore, much reliance cannot be placed on his testimony.

6. Learned counsel for the appellant severely criticized the medical evidence i.e. of PW3 and PW5 by submitting that, their testimonies are not in consonance with the forensic evidence and therefore, it is unsafe to place reliance on their testimonies. He

submitted that their findings regarding which they have deposed, do not tally with the Chemical Analyzer's report. He also pointed out that, at multiple times and at several places name of the accused is written as Rohit which is not that of the accused and it is later on scored, for which no explanation is offered by prosecution. Thus, it is his submission that there is manufacturing of medical papers.

7. He would also submit that medical experts have admitted that when such act is done by an adult person with a minor, then there are injuries not only on the person of the minor, but also on the person of accused and the same is not found in this case and for the more reason, there is doubt about prosecution story. In support of such above submissions, he seeks reliance on Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicoloty (for Classrooms and Courtrooms) as well as 34th Edition of The Essentials of Forensic Medicine and Toxicology by Dr. K. S. Narayan Reddy and Dr. O.P. Murty.

8. Lastly he submitted that investigation was not done by a lady police officer even when it was mandatory and moreover there are several lapses on his part in not examining crucial witnesses like aunt of victim, immediate neighbours etc. It is his submission that,

investigation is carried out with a prejudiced mind and with sole intention to implicate the accused.

9. Learned counsel seeks reliance on the judgment of Hon'ble Apex Court in the case of ***Manojbhai Jethabhai Parmar (Rohit) v. State of Gujarat*** AIR 2026 SC (Cri) 215, as well and the judgments of this Court in ***Kalyan Sudam Ramgude v. State of Maharashtra and another*** AIR Online 2026 Bombay 458 ; ***Vicky Sambhaji Nikam v. State of Maharashtra*** 2026 (1) ABR (Cri) 617 ; and ***Sadhu w/o Motilal Turra v. State of Maharashtra*** [2019 (2) Mh.L.J. (Cri.) 551].

**On behalf of the State as well as the Victim :**

10. Both, learned APP as well as learned counsel appointed for the victim, would justify the judgment and order of conviction and support the impugned order. According to them, victim is proved to be a minor. That, offence of rape and sexual assault is also made out from the testimony of victim and there is support from medical evidence. That, all necessary ingredients for attracting the charges are available in the prosecution evidence and therefore, according to them, learned trial court rightly accepted the same. For want of merits, they both urge to dismiss the appeal.

## EVIDENCE/ANALYSIS

11. Prosecution in trial court has adduced evidence of as many as eight witnesses in support of its case. Their role and status as well as the sum and substance of their evidence can be summarized as under.

12. **PW1** victim, who gave her age as 9 years, deposed that she resided with her grand parents and uncle as her parents resided in Pune, and that she to be taking education in 4th standard at Zilla Parishad school. According to her, incident occurred on 19.03.2022 at 3.30 p.m. in the house of accused. At that time, she was playing with her friends, whose names she has provided, i.e. below a tamarind tree. Then she stated that at that time, she had left her footwear at the residence of one of her friends and so she went there. At that time accused called her inside the house, closed the door, removed her pant, removed his own pant and he penetrated his penis in her vagina. That, she raised alarm, but he gagged her mouth with his hand. Thereafter she went home and reported the occurrence to her aunt. Phone call was made to her uncle over which she disclosed the incident with her uncle and so he returned from the field and again went back to the field to bring her grandmother and thereafter they approached police. She claims to have narrated the incident to the medical officer where she was referred and admitted. That her

statement was recorded under Section 164 of Cr.P.C. She identified the accused. She stated that her birthday comes on 4th September and again reiterated that at the time of incident she was 9 years old.

Victim child is subjected to extensive cross. In para 2, she is questioned about timing of the school, names of her friends, about her uncle driving rickshaw. She also admitted that accused drove goods rickshaw and used to go to Ambajogai in the morning. She admitted that on the day of incident, accused had been to Ambajogai with his auto rickshaw. She admitted that after her admission in the hospital, she had no occasion to meet the accused. She admitted there to be houses of several persons, whose names were suggested to her, to be in front of their house. She admitted that grandmother of accused is available in the house. Then she is asked about her aunt and her grandmother, about marks obtained by her in the examination in 3rd standard which she is unable to remember. Further cross is on the point of her hospitalization and examination by doctor. Suggestions are put in para 9 to which she admitted regarding she climbing trees, jumping, running, there to be half day school on Saturdays i.e. up to 12.00 p.m. and thereafter she going to the field and that, so was her routine. She admitted that after she returned home, her aunt took her to the field, but again stated that on that day

every member of the family went to the field. In para 10 questions are put regarding her aunt, but she firmly refused about her aunt instructing her what to state. In same para omissions are brought but they apparently are not material.

13. **PW2** uncle also stated that his niece resided with him for education and about the incident taking place on 19.03.2022. After stating that victim went to the school at 8.30 a.m., he deposed about receiving call from class teacher of the niece complaining about his niece not completing the homework and therefore he suggesting victim to complete it by staying at home. He further deposed that on the day of incident, he received call from his niece at 3.30 to 4.00 p.m. and claims to have learnt that accused-their neighbour called victim in his house, removed her pant and nicker and inserted his penis in her vagina and when she raised alarm, he gagged her. Therefore, he came back from the field. They all went to the field to take his mother and thereafter approached police where he lodged report Exhibit 32.

While under cross, even this witness is asked about accused having goods auto rickshaw but he denied that it was being driven by accused from 8.00 a.m. till evening at Ambajogai. He also denied that

his sister took initiative in giving details to the medical officer, and stated that it was given by victim. Rest are all denials.

14. **PW3** is the doctor who deposed about examining victim on 19.03.2022 and noting history given by the victim. She further deposed that victim was running fever and complaining of abdominal pain as well as difficulty in urination and passing stools. She stated that there were no external injuries, but she referred victim to gynecologist and claims to have received report about there to be hymenal tear at 6 o'clock. She also deposed that as per cytologist report, there was presence of spermatozoa in the vagina of victim.

While under cross, she is questioned about MLC register which she was not carrying. Then in para 4, general questions are put to her by referring to the book authored by Dr. Parikh as well as Dr. K. S. Narayan Reddy. She also admitted that name of the accused in medical papers was written as Rohan, after inviting her attention to medico legal examination report of sexual violence.

15. **PW4** Headmaster of the school where victim studied, testified at Exhibit 37 about carrying school record of the victim and as per record, victim took admission in 1st standard and her date of birth was

04.09.2013. He also placed extract of admission register at Exhibit 38. Though this witness is also cross examined, in the trial court itself defence has admitted birth certificate of the victim.

16. **PW5** is another medical expert to whom victim was referred by PW3, and she also deposed about noting the history given by victim and then carrying out local examination, collecting vaginal swab and testified that on local examination, she coming across hymenal tear at 6 o'clock position and she handing over samples to pathology department. She deposed that on the local examination of victim, possibility of penetrative sexual assault cannot be ruled out.

Above medical expert is also extensively crossed, during which she answered that it is not possible to comment on the age of tear of hymen, but admitted that there are several reasons for tear. She admitted that vagina of child is small but she answered that it is not necessary that in child victim hymen is deeply situated. Then she is asked location of other internal organs of vagina. She also deposed that victim disclosed name of the accused. She denied that when there is penetration of a penis of full grown man, like that of accused, there should be compression of labia minora and labia majora. She also denied that during forceful penetration, there could be bruises,

abrasions, laceration etc. Rest is all denial except admitting that Dr.Modi, Dr. Parekh and Dr. K.S. Narayan Reddy are well known authors on medical science. On being confronted with the text of Dr. Reddy, she admitted that therein it is mentioned that vagina is small and hymen is deeply situated, but she added that she cannot comment on the statement in the book that it is not possible for penetration of adult penis in small victim.

17. **PW6** is the panch to spot panchanama.

18. **PW7** is the doctor who examined the vaginal smear of victim and claims to have noticed presence of spermatozoa which, according to him, indicates sexual intercourse within vagina.

19. **PW8** is the Investigating Officer.

20. On analyzing above evidence, it is clear that here, PW1, who is a victim, was proved to be a minor. There is cogent, reliable and conclusive proof in support of age of the victim. Even otherwise, defense has not challenged minority of the victim.

21. As regards to sexual offence is concerned, there is testimony of victim which has remained virtually unshaken and undisturbed. She has narrated the sequence of events that happened after accused called her in the house when she had been there to collect her footwear which she had left while playing. Act of accused narrated by her is not disturbed or shaken in cross. Victim has immediately reported it to her aunt. She has also used the phone of aunt to inform her uncle PW2-informant, who had rushed home and had taken victim to the police station from where she was referred to the hospital. Obviously being child, wife of PW2 was accompanying the child. Ground raised in appeal is that, child was tutored. But, medical experts are speaking about history being narrated by victim and not by aunt and therefore, point raised by learned counsel for appellant that, aunt was accompanying her throughout and she is not examined but she must have tutored victim, has no force. Uncle has also, though heard from victim, has deposed on the similar lines as that of victim. Therefore, victim and her uncle-informant are consistent on the point of act of accused. Victim had identified accused.

22. Here, there are two medical experts i.e. PW3 and PW5, and both these doctors who had occasion to physically examine the victim,

have categorically deposed that on their examination they have noticed hymenal tear at 6 o'clock position. PW3 also confirmed that as per cytologist report, there was presence of spermatozoa. PW5, a gynecologist to whom PW3 referred victim, has also stated about noting the history given by victim and on local examination noticing the above, and she also confirms about penetrative sexual assault. Though both above medical experts are extensively cross-examined, on the relevant point, they have not given anything adverse or any answer which creates doubt. Rather, both of them unanimously confirm sexual assault on the minor. Therefore, here, there is corroboration from medical witnesses.

23. Defence of accused is that, as there were telephonic talks between accused and mother of victim, out of suspicion, there is false implication. Such defence has no foundation and it is not probabilized in any manner whatsoever.

24. In the judgment of the Hon'ble Apex Court, relied by the learned counsel for the accused, i.e. in the case of ***Manojbhai*** (supra), the case was based on circumstantial evidence, more particularly on the point of last seen together and for commission of offence under Sections 302 and 376 of IPC. Here it is not so. Here, there is immediate reporting by the victim, prompt lodgment of complaint

and there is supportive medical evidence. There is no reason to disbelieve victim's version, who was 9 years of age, that she went to play with her friends, whom she had even named. No purpose could have been served by examining friends, as occurrence is after victim left to collect her foot-wear.

As regards to second judgment in the case of ***Kalyan*** (supra) is concerned, there were multiple and material inconsistencies, testimony of prosecutrix was not itself found to be reliable and also there was no medical corroboration. There was hopelessly inordinate delay in reporting alleged rape in spite of multiple occurrences taking place. Here, it is not so. Here, victim's evidence does inspire confidence.

In the case of ***Vicky Sambhaji Nikam*** (supra) also, there were major discrepancies in the evidence of prosecutrix. Evidence of prosecutrix was not found to be of sterling quality to connect the accused without corroboration and moreover, family of victim and accused were on cross terms and therefore, this court acquitted the accused therein. Here it is not so.

Similarly in the case of ***Sadhu w/o Motilal Turra*** (supra) very testimony of victim did not inspire confidence and therefore it was

held that it was not open for invoking presumption under Section 29 of the POCSO Act.

All in all, above citations, does not come to the rescue of the appellant herein for above reasons.

25. Therefore, in the light of above material, essential ingredients for attracting both, Section 376-AB of IPC and Section 4 of the POCSO act as well as Section 506(II) of IPC for issuing threats after committing the act are definitely proved by the prosecution. Trial court has thereby committed no error whatsoever in applying and acting on the testimony of victim, her uncle and medical experts for returning guilt of the accused. The Judgment being in consonance with the evidence on record and a reasoned one, needs no interference. Hence, the following order :

**ORDER**

I. The appeal is dismissed.

II. Fees of the learned counsel appointed to represent respondent no.2-victim, be paid by the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

**[ABHAY S. WAGHWASE, J.]**

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