



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.566 OF 2022

Anna alias Bhaurao Prabhakar Gadale,  
Age : 30 years, Occu. : Labour,  
R/o. Dahiphal Wadmauli, Tq. Kaij,  
Dist. Beed.

... Appellant

Versus

1. The State of Maharashtra,  
Through Police Officer,  
Police Station Kaij,  
Tq. Kaij, Dist. Beed.

2. X.Y.Z.

... Respondents  
(Orig. Complainant)

.....

Mr. Murlidhar S. Karad, Advocate for Appellant.  
Mr. P. P. Dawalkar, APP for Respondent – State.  
Mr Aniruddha S. Awalgaonkar, Advocate for Respondent No.2 (Appointed).

.....

**CORAM : ABHAY S. WAGHWASE, J.**

**RESERVED ON : 27 MARCH 2026**

**PRONOUNCED ON : 01 APRIL 2026**

**JUDGMENT :**

1. A convict challenges the judgment and order passed by the learned Special Judge, Ambajogai dated 22.06.2022 in Special (Child) Case No.30 of 2018 recording conviction for offence punishable under sections 18 r/w section 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) as well as under section 511 r/w section 376(2) of Indian Penal Code (IPC).



## BRIEF FACTS OF THE CASE BEFORE TRIAL COURT

2. Prosecution was launched against the present appellant for offence punishable under sections 376(2)(i) and 376(2)(j) and 376(2)(k) of IPC and under section 4 and 6 of POCSO Act, on the allegations that, on 31.10.2018, minor daughter of complainant had been to catch crabs, and there accused disrobed her, pulled down his own pant and placed his private part on her private part. To the above extent, report was lodged with Kaij Police Station, District Beed, resulting into registration of Crime No.542 of 2018 for above offences.

After investigation was over, accused was charge-sheeted and finally tried vide above special case, during which, prosecution had adduced evidence of in all 6 witnesses and also relied on various documentary evidence, which was duly appreciated and analyzed by the learned Special Court, who was pleased to held accused guilty for offence punishable under 18 r/w section 6 of POCSO Act as well as under section 511 r/w section 376(2) IPC.

Feeling aggrieved by the judgment and order of conviction, above appeal has been preferred.



## SUBMISSIONS

### On behalf of Appellant :

3. Learned counsel for appellant would point out that, prosecution has rested its case on the testimony of six witnesses. Out of them, including victim there is evidence of her parents. That, there is no independent witness. He submitted that, there is no medical examination. That, so called friend of victim, who accompanied victim, was not examined. He further pointed out that, sentence awarded by the learned trial Court is one half of the imprisonment for life i.e. 10 years, and out of it, accused has already suffered four years. That, he is a young boy in his thirties, and therefore, he may be let off with the sentence already undergone.

In support of his contentions, he relied on following rulings :

(i) *Suresh @ Pintya Kashinath Kamble v. The State of Maharashtra in Criminal Appeal No. 272 of 2017 (Bombay High Court);*

(ii) *Sudhir S/o. Govindrao Suradkar and Anr. v. The State of Maharashtra and Anr. in Criminal Appeal No.642 of 2020 (Bombay High Court, Bench at Aurangabad).*

### On behalf of Respondents :

4. While opposing the said appeal, learned APP as well as learned counsel for victim, both pointed out that, victim is a minor i.e. 04 years old



girl. That, testimony of victim is inspiring confidence. That, there is a medical report, which is positive. That, learned counsel for victim pointed out that, had there been no timely intervention, grave offence could have been committed. For above reasons, appeal is opposed and sought to be dismissed.

### **BRIEF ACCOUNT OF EVIDENCE IN TRIAL COURT**

5. It transpires from the papers before the learned trial Court that in all 06 witnesses were examined. PW1 is mother of the victim; PW2 is the panch to spot panchanama at Exh.21; PW3 Santosh is the father of the victim; PW4 is the victim; PW5 Dr. Balasaheb Savant is the Medical Officer and PW6 PSI Kadam is the Investigating Officer.

**PW1** informant deposed at Exh.17/C that, on 31.10.2018, she and her husband were rendering work in sugar factory, at that time, accused had also came there. That, thereafter, accused suggested her husband regarding taking dinner. Accordingly, she and her husband took dinner, that time, their daughter was playing near them. However, when they came out of the house, their daughter and accused were not present, and therefore, she was searched for. At that time, one Pratik told that, accused had taken their daughter towards the river, and therefore, they went there. That time, seeing them arrived, accused left their daughter, and accused was questioned, he admitted committing mistake. On query, her



daughter told that, accused removed her knicker and kept his penis on her private part. Therefore, accused was brought to Police Station and she lodged complaint against him.

On visiting the cross, there are general questions about relations between accused, about work done at the sugar factory, distance of the spot from the house, time taken to reach there, and whether there was darkness at that time. Towards suggestion, complainant answered that when they reached at the spot, clothes of their daughter were already removed, and clothes were found at the spot, and after wearing clothes, she was brought to the house. She denied the suggestion that, her husband and accused had consumed liquor, and they were under influence of the same.

**PW2** Gururaj is the spot panch, who identified spot panchanama at Exh.21.

**PW3** Santosh seems to be the husband of informant and father of the victim, and he also narrated that on 31.10.2018, accused had come while he and his wife were stitching gunny bag, and accused said that they should take dinner, and thereafter, accused went away. Search of his children is taken, but daughter is missing. But, his nephew namely Pratima and Pratik told that, accused had taken their daughter by lifting her by informing that they are going for catching crabs, and therefore, they all went towards the river and noticed accused wearing clothes hurriedly,



whereas undergarment of his daughter was removed and she was crying and on inquiry, his daughter informed that accused used his urinal part on her urinal part.

**PW4** is the victim, who, in her evidence at Exh.28/C, stated that, while she was playing with Pratima, Pratik and Sagar, accused came towards them and told her to come with him for catching crabs and Pratima, Sagar and Pratik were sent by the accused towards their house and he took her to the field of 'Nangartas' and there he removed her undergarment, his own clothes and then accused had put his private part on my private part. At that time, her parents had come by calling to her. At that time, she heard the voice of her parents and then accused wore undergarment to her and accused also wore his underwear. Then accused brought her on road and accused hid himself backside of the bush.

In cross, victim has answered that, she knew the accused prior to the incident. She answered that, she was remembered the field of Nangartas and that accused was brought to her house and even they going to police station. Nothing adverse is brought regarding the actual incident.

**PW5** is the Medical Officer, who opined that, he examined the victim, noted the history, but he did not find any sexual assault upon her.

While under cross, he noted that, on Exh.32 Medical certificate, injuries are not shown to any part.



**PW6** is the Investigating Officer.

### **ANALYSIS**

6. On appreciating the above evidence, there is no challenge to the age of the victim, who is shown to be a minor. Crucial evidence is of parents as well as that of victim. Above discussed evidence of parents show that, on 31.10.2018 in the evening, accused had come to the house of informant and had interacted with them and suggested taking dinner. Thereafter, parents i.e. PW1 and PW3 both claimed that, their daughter was not found and she was searched, and it was learnt from nephew Pratik that accused had taken minor victim towards the river for catching crabs. Therefore, informant and her husband, both claimed to have gone there and they both deposed about personally seeing accused in the company of their daughter in a condition having removed his clothes. Victim on the query had narrated that accused removed her knicker and kept his penis on her private part. Therefore, there is evidence suggesting to attempt to commit rape. As stated above, there is no challenge to the age of victim and therefore provisions of POCSO Act is automatically get attracted. Even Medical Expert has stated that, there is no offence of rape, but in the light of evidence of victim coupled with that of parents, it is an attempt to commit rape.



7. Learned counsel for appellant would point out that, appellant was 26 years of age when the incident took place and he has already spent four years in jail, which according to him, is almost half of the sentence awarded by learned trial Court. The learned trial Court in its judgment has passed following order :-

*“2. Accused Anna alias Bhaurao Prabhakar Gadale, age : 26 years, is hereby sentenced to suffer Rigorous Imprisonment for **one half** of the imprisonment for life and he shall also liable to pay fine of Rs.10,000/- (In words Rs. Ten Thousand) and in default of payment of fine, he shall suffer Simple Imprisonment for two [2] months for the offence punishable under Section 18 r.w. Section 6 of POCSO Act as well as offence punishable under section 511 r.w. section 376(2) of IPC vide section 235[2] of Criminal Procedure Code.”*

It is a settled position and even this Court in the case of **Suresh @ Pintya Kashinath Kamble** (Supra) in Criminal Appeal No.272 of 2017 has held that it has been clarified and crystallized the position under section 57 of IPC that, in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years and based on the same, it has been held that, half of the life imprisonment would mean imprisonment of ten years.

Adopting a similar view, here, when admittedly half the term of



life imprisonment is awarded, ten years imprisonment was meant by the learned trial Court.

8. Now, in this appeal, statement is made across the bar that, the appellant, who is 30 years of age, has already suffered four years in jail. Therefore, it is pointed out that there are no criminal antecedents and considering his young age, he be set at liberty for sentence already undergone i.e. of four years.

9. As stated above, learned trial Court has awarded half of life imprisonment i.e. ten years. There is no dispute that, age of victim on the date of incident is shown to be 04 years. On the date of conviction, accused was 26 years of age. Therefore, he is a young man in his thirties, and at the time of incident, he was in his late twenties. There is no adverse remark about his demeanour while undergoing jail for four years. Therefore, here, there being an offence of attempt to rape, keeping reformatory approach in mind, total five years sentence would be justified i.e. he needs to suffer for one more year imprisonment, and accordingly sentence awarded by learned trial Court is modified. Hence, the following order is passed :

#### **ORDER**

- (i) The Criminal Appeal is partly allowed.



(ii) The conviction of the appellant, as recorded by the learned Special Judge, Ambajogai vide judgment and order dated 22.06.2022, is hereby maintained.

(iii) However, the sentence is modified. The sentence of ten years' imprisonment is reduced to five years' imprisonment.

(iv) The period of detention already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure.

(v) As the appellant has already undergone four years of imprisonment, he shall undergo the remaining period of one year.

(vi) Upon completion of the said period, the appellant shall be set at liberty, if not required in any other case.

(vii) The appeal stands disposed of in the above terms.

(viii) Fees of learned Advocate, who is appointed to represent cause of respondent no.2 is to be paid by the High Court Legal Services Sub-Committee, Aurangabad as per rules.

**(ABHAY S. WAGHWASE, J.)**