



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

CRIMINAL APPEAL NO. 117/2023

Vishal Ashokrao Balbel
Age about 29 years, Occ. Labour,
R/o Pardeshpura, Badnera, Amravati,
Tq. Dist.Amravati. .. **Appellant**

Versus

1. The State of Maharashtra,
Through Police Station Officer,
PS. Badnera,
Tq.Dist.Amravati.
2. XYZ
Crime No.: 561/2020
Through Police Station Officer,
PS. Badnera,
Tq.Dist.Amravati. .. **Respondents**

...

Mr. M.N. Ali, Shahrukh Ahemad and P.L.Dhavsels, Advocates for
Appellant.
Mr. U.R.Phasate, A.P.P for Respondent/State.
Ms. A.S.Mishrikotkar, Advocate (appointed) for Victim.

...

CORAM : NEERAJ P. DHOTE, J.
Date of reserving judgment : 03.02.2026.
Date of pronouncing judgment : 06.03.2026.

JUDGMENT:

1. This is an Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), against the Judgment and Order dated 29.08.2022 passed by the learned Additional Sessions Judge, Amravati in Special Case No.248/2020 convicting and sentencing the Appellant as follows:-

(1) The accused Vishal Ashokrao Balbel is hereby convicted under section 235(2) of the Code of Criminal Procedure for an offence punishable under section 376 AB of the Indian Penal Code.

(2) The accused Vishal Ashokrao Balbel is hereby convicted under section 235(2) of the Code of Criminal Procedure for an offence punishable under section 363 of the IPC and he is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1000/- (Rs. One thousand only), in default of payment of fine, accused shall suffer rigorous imprisonment for two months.

(3) The accused Vishal Ashokrao Balbel is hereby convicted under section 235(2) of the Code of Criminal Procedure for an offence punishable under section 4 the Protection of Children from Sexual Offences Act, 2012 and he is sentenced to suffer rigorous imprisonment for Ten years and to pay fine of Rs.5,000/- (Rs. Five thousand only), in default of payment of fine, accused shall suffer rigorous imprisonment for three months.

(4) The accused Vishal Ashokrao Balbel is hereby convicted under section 235 (2) of the Code of Criminal Procedure for an offence punishable under section 6 the Protection of Children from Sexual Offences Act, 2012 and he is sentenced to suffer rigorous imprisonment for Twenty years and to pay fine of Rs.10,000/-

(Rs. Ten thousand only), in default of payment of fine, accused shall suffer rigorous imprisonment for six months.

(5) In view of Section 42 of the POCSO Act, no separate punishment is awarded under section 376-AB of the Indian Penal Code.

(6) The accused is hereby acquitted under section 235(1) of the Code of Criminal Procedure for an offence punishable under section 323 of the Indian Penal Code and under sections 3 (1) (w) (i) (ii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(7) All the substantive sentences of imprisonment shall run concurrently.

(8) Accused is entitled for set off under section 428 of the Code of Criminal Procedure.

(9) Copy of this judgment be given to Secretary, District Legal Services Authority, Amravati who shall put the matter before the Committee to determine the quantum of compensation under section 357-A of Cr.P.C. to be paid to the victim under the Victim Compensation Scheme”.

2. The Prosecution's case, as revealed from the police report, is as under:-

(a) The Informant was residing with her husband and two daughters. The Victim was her eldest daughter, studying in the 10th Standard. The Informant was the working woman. The Appellant was known to the Informant and her family as he was the friend of Informant's nephew. The Appellant was also residing near the house of Informant. The Informant belonged to the Scheduled Caste. On 11.09.2020, the Informant left for her work in the morning and returned in the evening. The Victim was not in the house. The Informant went to the house of her sister-in-law (wife of husband's brother). The Victim was present there and appeared to be frightened. On inquiry by the Informant, the Victim told her that, while she was returning home in between 3.30 and 4.00 p.m., the Appellant asked her to accompany him to an agricultural field. When the Victim refused, the Appellant forcibly took the Victim with him to an agricultural field. The Appellant raped the Victim. Thereafter the Appellant dropped the Victim near her house. The incident was reported to the Camp Police Station, Badnera and Crime bearing No.0561/2020 came to be registered against the Appellant for the offence punishable under Sections 376(2)(j), 354, 363 and 323 of the Indian Penal Code, 1860 (for short, "IPC"), for the offence punishable under Sections 4, 6 and 8 of the Protection of

Children from Sexual Offences Act, 2012 (for short, “POCSO”) and for the offence punishable under Sections 3(1)(w) and the offence punishable under Section 3(2) (va) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “SC ST Act”).

(b) The Victim was referred for Medical Examination. The Spot Panchanama was drawn. The Appellant came to be arrested. The statement of the Victim was recorded. The Samples of the Victim and that of the Appellant and the seized muddemal were referred to the Chemical Laboratory. The statements of witnesses were recorded. The necessary documents were collected. On completion of investigation, the Appellant came to be Charge-sheeted. The learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 363, 376 AB, 323 of the IPC, for the offence punishable under Sections 4 and 6 of the POCSO and for the offence punishable under Sections 3(1)(w)(i) and (ii) of the SC ST Act below Exhibit-4. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined the following six witnesses:-

(i) Shri Niranjana R. Chaudhari, the Panch for the Spot Panchanama, as PW 1.

(ii) The Informant/Victim’s mother, as PW 2.

- (iii) The Victim, as PW 3.
- (iv) The sister-in-law of the Informant, as PW 4.
- (v) Dr. Alka Vijay Kute, the Medical Officer, as PW 5.
- (vi) Sheetal D.Hirode, A.P.I., Investigating Officer, as PW 6.

The relevant documents are brought on record in the evidence of the above referred witnesses.

(c) After the Prosecution closed the evidence, the statement of the Appellant came to be recorded under Section 313(1)(b) of the Cr.P.C. The Appellant stated that, he was falsely implicated. After hearing both the sides and appreciating the evidence available on record, the learned Trial Court convicted and sentenced the Appellant as above.

3. Heard the learned Advocate for the Appellant, the learned APP for the State and the learned Advocate for the Respondent no.2 – Victim. Scrutinized the evidence on record.

(a) It is submitted by the learned Advocate for the Appellant that, the age of the Victim was not disputed. The Appellant was acquitted of the offence punishable under the Section of SC ST Act. Though the incident is claimed to have happened in the agricultural field, there were no injuries on the person of the Victim. The Victim gave inconsistent versions in respect of the incident. The Medical evidence do not corroborate the evidence of

the Victim. The evidence of the sister-in-law of the Informant was unnatural, as she did not report the incident and waited for the Informant to come. The Victim's version of kidnapping and rape was not believable. The Chemical Analysis (C.A.) Reports do not support the case of prosecution. The evidence was not concrete. The suggestion of false implication due to love affair between the Appellant and the cousin of the Victim was given. The learned Trial Court erred in appreciating the evidence on record and the Appeal be allowed. He relied on the Judgments in *Nirmal Premkumar and Anr. Vs. State, in Criminal Appeal No.1098 of 2024 dated 11th March, 2024 by the Supreme Court of India and Mohan Ambadas Meshram Vs. State of Maharashtra, 2018 ALL MR (Cri) 4362.*

(b) It is submitted by the learned APP that, the Victim was examined by the Medical Officer on the very next day. There was no effective cross-examination of the Medical Officer. Though the medical opinion was not conclusive, there was suggestive opinion of sexual act. The exact account of the incident is not expected from the Victim. The omission in the testimony of the Victim do not lend her in the category of unreliable witness. The testimony of the Victim was consistent. The cross-examination could not shake the evidence of the Victim. Nothing impeaching was brought on record by the Appellant. The cousin sister of the Victim was not examined

to show love affair with the Appellant. No fault can be found with the impugned Judgment and Order and the Appeal be dismissed.

(c) It is submitted by the learned Advocate for the Victim that, the heinous crime was committed by the Appellant. The Victim was not tutored. The Informant's testimony corroborate the Victim's testimony. The Charge was proved and the Appeal be dismissed.

4. As regards the date of birth and the age of Victim is concerned, the Informant PW 2, who is the biological mother of the Victim deposed the date of birth as 26/12/2011. The Birth Certificate of the Victim was brought on record in her evidence at Exhibit-20 to corroborate the said date of birth. From the cross-examination, it is clear that, the said Exhibit-20, the date of birth and the age of the Victim was not disputed. Even at the time of argument, the date of birth and age of Victim is not disputed. Thus, on the basis of the evidence on record, it is proved that, the Victim was the 'child', as defined under section 2(d) of the POCSO i.e. below the age of 18, at the time of lodging report which was subsequent to the incident.

5. As regards the Charge is concerned, the Prosecution's case largely rest on the testimony of the Victim - PW 3. The Victim deposed that, she was residing with her parents and younger sister. When she had gone to the house of the sister-in-law of the

Informant (Mothi-aai), the Appellant asked her to come with him on the pretext of giving flower to her. The Victim told him that, she will ask her mother. The Appellant pulled the Victim and took her to an agricultural field. The Appellant made the Victim to lie down. The Appellant removed his clothes and the clothes of the Victim. At the time of rape, the Victim shouted/screamed. The Appellant committed sexual intercourse with the Victim. The Appellant discharged white liquid. Thereafter the Appellant brought the Victim out of the field and the Victim returned home. The Victim deposed that, she narrated the incident to her Mothi-aai and thereafter to her mother. The Victim identified the Appellant before the learned Trial Court. She deposed that, her statement was recorded by the Police and the learned Magistrate.

6. The cross-examination of the Victim shows that, the road in front of her house was the busy road. There were shops surrounding her residence. There is one Dispensary and one School in front of her house. During Corona period, the Dispensary was functioning. Even the evidence of PW 2 - Informant shows that, the road in front of their house was busy road and there are shops surrounding their house. The evidence of PW 4 - Sister-in-law of the Informant shows that, she was residing near the house of the Informant. It is, therefore, clear that, the Victim was near her house

when she was taken by the Appellant. The evidence of the Victim in respect of kidnapping is completely vague. The place was the crowded place and the Victim's testimony is completely silent as to in what manner she was kidnapped. She only deposed that, the Appellant pulled her and took to the agricultural field. It is strange that, the Victim remained silent while she was kidnapped by the Appellant. The evidence of the Victim is far from establishing the offence of kidnapping.

7. As regards the offence of rape is concerned, the evidence of the Victim that, the Appellant discharged white liquid was an improvement/omission, which is proved in the evidence of PW 6 - Investigating Officer. The evidence of the Victim that, she was raped by the Appellant by inserting his private part in her vagina, do not find corroboration from the testimony of PW 2 - Informant and PW 4 - Moth-iaai of the Victim to whom she narrated the incident. According to the mother and Mothi-aai of the Victim, the Victim told them that, the Appellant put his tongue inside her vagina. This shows complete inconsistency in the version of the Victim deposed before the Trial Court and her previous versions narrated to her mother and Mothi-aai. This is materiel inconsistency.

8. There is medical evidence in the nature of the testimony of PW 5, who was the Medical Officer at the Government

Hospital, where the Victim was taken for medical examination. The evidence of PW 5 shows that, the history given by the Victim was that, the Appellant lured her by offering flower, took the Victim to the field and licked her private part. The Medical Officer found congestion and redness at the vagina opening and according to her, the same can be the result of putting the tongue in the vagina. The cross-examination of PW 5 shows that, the congestion and redness on the vagina may be possible due to infection and itching. Her cross-examination further shows that, she cannot express exact opinion, as the Sonography was recommended. The medical examination papers of the Victim are brought on record at Exhibits 33, 34 and 35. Though in Column no.25 of Exhibit 34, the Hymen is shown to be Absent ((broken) in the opinion column no.29 of Exhibit 34, this witness mentioned that, '*exact opinion cannot be given - advised Tests for that*'. The evidence of PW 5 shows that, there was no conclusive opinion in respect of sexual assault. The medical evidence is not conclusive. Though, the Victim deposed of rape by the Appellant on her in the agricultural field after removing the clothes and making her lie down on the ground, there is no iota of evidence to show any marks or injury on the person of the Victim. Therefore, the said version of the rape by Victim is required to be seen with serious doubt.

9. In Nirmal Premkumar & Anr.(*supra*), the term, 'sterling witness' is considered. The evidence of the Victim shows that, she is not the witness of sterling quality. Her evidence in respect of kidnapping is vague. She gave different versions in respect of the sexual assault on her. No injury was found on her person though she deposed of rape on her in the agricultural field by removing her clothes. The findings recorded by the Medical Officer in respect of redness and congestion in the vagina of the Victim, are not conclusive of sexual assault. The C.A. Reports at Exhibits 19 and 20 in respect of the clothes of the Victim and that of the Appellant and vaginal swabs of the Victim are not incriminating as neither blood nor semen were found on the same. With these aspects emanating from the evidence on record, the prosecution's case is required to be seen with doubt.

10. The above discussed evidence on record is not sufficient to draw the presumption under Section 29 of the POCSO Act. Even if it is considered that, there is sufficient evidence on record in support of the prosecution's case, the Appellant have rebutted the presumption, as seen from the cross-examination of the Victim, Victim's mother and sister-in-law of the Informant. The evidence of PW 4 – Sister-in-law of the Informant shows that, the Appellant and Anju (who is her niece) were on talking terms and Anju was the

college going girl. The Appellant has put to the Victim in the cross-examination that, the Victim was the messenger between the Appellant and said Anju and the Victim's mother saw her giving the message and so lodged the report against the Appellant. Suggestions are given that, the family of the Informant was angry with the Appellant and, therefore, false report was lodged. In the statement under Section 313 (b) of the CrPC, it is stated by the Appellant that, there was love affair between him and said Anju and they were to marry, however, this false report was lodged. It is not the requirement under the law that, the presumption is to be rebutted by leading strict evidence. It can be rebutted on the touchstone of preponderance of probability. The defence of the Appellant cannot be said to be improbable. However, in the light of the above discussion, there is no question of raising the presumption. The evidence as discussed above, do not establish the Charge beyond reasonable doubt. With the evidence available on record, it is not possible to maintain the conviction and the impugned Judgment and Order requires interference. Hence, the following Order:-

ORDER

- (i) The Appeal is allowed.
- (ii) The conviction and sentence recorded by the learned Trial Court against the Appellant for the offence punishable under

Sections 363 and 376 AB of the Indian Penal Code, 1860 and for the offence punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 by Judgment and Order dated 29.08.2022 in Special Case No.248/2020 is quashed and set aside.

(iii) The Appellant is acquitted for the offence punishable under Sections 363 and 376 AB of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

(iv) The Appellant is behind bars. He be set at liberty, if not required in any other offence.

(v) The fine amount, if any, paid by the Appellant be refunded to him.

(vi) The record and proceedings be sent back to the learned Trial Court.

(vii) The fees of the appointed Advocate is quantified to Rs.7500/- (Rs. Seven thousand five hundred only) to be paid by the High Court Legal Services Authority, Nagpur.

(NEERAJ P DHOTE, J.)

