



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

CRIMINAL APPEAL NO.176/2024

Chintu Ramesh Patil,
aged about 27 Years, Occup.Labour,
R/o Ramji Ambedkar Nagar
Zopadpatti, Eighth Mile, Nagpur
(Presently Central Prison at Nagpur).

Appellant

- Versus -

The State of Maharashtra,
through Police Station Officer,
Police Station Wadi, Nagpur.

Respondent

AND

CRIMINAL APPEAL NO.177/2024

Imran Sheikh Rehaman Sheikh
aged about 21 Years, Occup.Labour,
R/o Ganesh Nagar Zopadpatti,
Eighth Mile, Wadi, Nagpur
(Presently Central Prison at Nagpur).

Appellant

- Versus -

The State of Maharashtra,
through Police Station Officer,
Police Station Wadi, Nagpur.

Respondent

AND
CRIMINAL APPEAL NO.178/2024

Dinesh Govindrao Pawar,
aged about 27 Years, Occup.Labour,
R/o Plot No. 122, Hill Top Colony,
Eighth Mile, Nagpur
(Presently Central Prison at Nagpur).

Appellant

- Versus -

The State of Maharashtra,
through Police Station Officer,
Police Station Wadi, Nagpur.

Respondent

Mr. C.R.Thakur, Advocate for the Appellant in Cri.Appeal No.176 of 2024 and in Cri.Appal No.177 of 2024.
Mr. A.V. Bobde Advocate h/f Ms. Shubhangi A. Jadhao with Adv. A.G.Nandanpawar for the Appellant in Cri.Appeal No.178 of 2024
Ms. Sneha Dhote, A.P.P. for Respondent/State.

CORAM: NEERAJ P DHOTE, J.

DATE OF RESERVING THE JUDGMENT: 28.01.2026.

DATE OF PRONOUNCING THE JUDGMENT: 27.02.2026.

COMMON JUDGMENT:-

1) These Appeals are under Section 374(2) of the Code of Criminal Procedure (henceforth referred to as "Cr.PC." for short) against the judgment and order dated 01/03/2024 passed by the learned Additional Sessions Judge, Nagpur in Special (POCSO) Case

No.60 of 2017, convicting and sentencing the Appellants as follows :-:-

- i) *The accused No.1 Imran Sheikh Rehaman Sheikh, No.2 Chintu Ramesh Patil and No.3 Dinesh Govindrao Pawar are hereby convicted under Section 235(2) of Cr.P.C. for the offence punishable under Section 376-D of the Indian Penal Code, for committing gang rape on the victim girl 'P', arising out of Crime No. 21/2017 registered by Wadi Police Station, Nagpur and sentenced to suffer R.I. for a period of 20 (Twenty) years each and to pay a fine of Rs.5,000/- each I/d to suffer R.I. for six month.*
- ii) *The accused No.1 Imran Sheikh Rehaman Sheikh, No.2 Chintu Ramesh Patil and No.3 Dinesh Govindrao Pawar are hereby convicted under Section 235(2) of Cr.P.C. for the offence punishable under Section 354-A R/w Section 34 of the Indian Penal Code, for outraging modesty of the victim girl 'P' and sentenced to suffer R.I. for a period of 3 (Three) years each and to pay a fine of Rs.2,000/- each I/d to suffer R.I. for three month.*
- (iii) *The accused Nos.1 to 3 are hereby acquitted under Section 235(1) of the Cr.P.C. from the offence punishable under Section 6 of the POCSO Act, 2012 for want of proof of minority.*
- iv)
- v)
- vi)
- vii)
- viii)
- ix)
- x)
- xi)
- xii)
- xiii)
- xiv)
- xv)
- xvi)

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

a) The Victim was residing with her parents and siblings. She was studying in the 10th Standard. She used to attend the classes for ICT in the evening between 7.00 to 8.00. On 30th December 2016, while the Victim and her friends reached near the Nala on the way to home at around 8.00 pm, the Appellants and the Juvenile came on two different motorcycles. The Appellants and the Juvenile started beating her friends. The Appellants- Imran and Dinesh took the Victim towards the dilapidated wall. They both raped her. Thereafter, the Appellant Chintu raped her. The Appellants asked the Victim's friends to leave the spot and they dropped the Victim at some distance from her house and threatened her not to disclose the incident to her family members or else they will kill her. Due to the threat, the Victim remained silent. After some days, there was the programme in the Victim's school under the banner '*Beti Bachao*'. The girls were made aware of the sexual assaults, good and bad touch etc.. At that point of time, the Victim told her teacher about the incident which took place with her. She also informed the incident to her friends. After that, the Victim

informed her mother about the incident. Initially, she did not disclose the entire incident to her mother and told her that her modesty was outraged. The Victim's mother lodged the report with the concerned Police Station.

b) Due to the threat or fear, the Victim went to her native place. After some days, the Victim came back to Nagpur. The Police recorded her statement and she was referred for medical examination. As the Appellants were uttering the names of each others at the time of incident, she came to know their names. The spot of the incident was shown by the Victim. The Appellants came to be arrested and they were referred for medical examination. The Test Identification Parade (TIP) was conducted in the jail, where the Victim identified the Appellants as the rapist. The statement of the witnesses were recorded. The necessary documents were collected. On completion of the investigation, the charge-sheet came to be filed.

c) The learned Trial Court framed the Charge against the Appellants for the offence punishable under Sections 376-D, 354-A r/w 34 of the Indian Penal Code (for short IPC), punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO) below Exh.35. The Appellants pleaded not

guilty and claimed to be tried. To prove the Charge, the prosecution examined in all fifteen (15) witnesses and brought on record the relevant documents. After the prosecution filed the evidence closer pursis, the statement of the Appellants were recorded under Section 313(1)(b) of the Cr.P.C. The Appellants stated that, the false case was lodged against them. Appreciating the evidence on record, the learned Trial Court, passed the impugned judgment and order convicting and sentencing the Appellants as above.

3) It is submitted by the learned Advocates for the Appellants that, the learned Trial Court has acquitted the Appellants for the offence punishable under the POCSO. Though the incident was dated 30th December 2016, the First Information Report (FIR) was lodged on 23rd January 2017 and there was delay in reporting the incident to the Police. When the Victim was present with her mother, the Victim's statement was not recorded immediately. The eye witnesses examined by the prosecution, did not support the case of prosecution. The medical evidence do not support the prosecution's case. The Victim did not inform the Police, who were present at the 'Beti Bachao' programme at the School. Even the teacher who learnt about the incident on 18.01.2017, did not bother to inform the Police. The other teacher Mrs. Musale was not

examined. Had there been no 'Beti Bachao' programme in the school, nothing would have come up. There are material lapses in the prosecution's case. Though, the Victim deposed that, her head was banged against the wall, there was no supporting medical evidence. Initially, the Crime was registered for the offence punishable under Section 354 of the IPC. The Chemical Analysis (CA) reports were inconclusive. The learned Trial Court relied on the evidence of the witnesses, who did not support the prosecution's case. The prosecution's case was speculative. The conviction and sentence be set aside and the Appellants be acquitted. The learned Advocate appearing for the Appellants placed reliance on the judgment in the case of *Rai Sandeep @ Deepu Vs. State (NCT of Delhi) along with other connected matter reported in (2012)8 SCC 21* on the point of sterling witness.

4) It is submitted by the learned APP that, the Victim deposed the incident and nothing had come in the cross examination to show that, her testimony was inconsistent with her previous statement. The Victim deposed that due to the threats, she did not inform the incident immediately to her mother. The Victim was candid in her evidence. The Victim's evidence explained the delay in telling the entire incident to her mother. In such cases, the delay is

not fatal. The Victim identified the Appellants in the TIP. The suggestions were denied. As there was delay in conducting the medical examination of the Victim, there were no recent signs of physical assault. The medical evidence corroborate the Victim's testimony. It is nowhere the case of the Appellants that, they were not capable of having sex. The conviction can be maintained on the sole testimony of the Victim. The learned Trial Court has rightly convicted and sentenced the Appellants and there was no merit in the Appeals and the same be dismissed.

5) Heard both the sides. Scrutinized the evidence available on record. The evidence shows that PW-4 Jyoti Arvind Aadhaoo, who was the class teacher of the Victim was recalled and after recall she was referred as PW-7. Thus, PW-4 and PW-7 are not two different witnesses but one and the same. Thus, the total witnesses examined by the prosecution are fourteen (14). Out of fourteen (14) witnesses, PW-3 Shubham Ramesh Jadhao, PW-10 Ujjwal Sanjay Bhure, PW-11 Sonal Dinesh Shinde, PW-12 Neha Deepak Shinde and PW-14 Bhojraj Dilip Sevatkar, who were the friends of the Victim did not support the prosecution. Even the cross- examination by the prosecution did not yield anything fruitful for the prosecution.

6) PW-1 informant is the mother of the Victim. There is no dispute on this aspect. Her evidence shows that, she lodged the report on 23rd January 2017 for the incident dated 30th December 2016. Her evidence shows that, the Victim was frightened and she did not tell her anything. After some days, the Victim informed her that, her modesty was outraged by the Appellants and so she lodged the report below Exh.42. Her evidence shows that, eight (8) days thereafter, the Victim told her that, she was raped by the Appellants on that day. Again, the Victim's mother went to the Police Station on 6th February 2017. The police enquired with the Victim. The Victim was referred for medical examination. Her statement was also recorded. Her cross examination shows that, they were native of Chhattisgarh. She and the Victim were not knowing the Appellants before the incident. The suggestion that, false report was lodged was denied. This witness set the criminal law in motion. The evidence of this witness goes to show that, on learning from the Victim about the incident, she immediately approached the Police and lodged the report and subsequently also, immediately approached the Police when the Victim told her about the rape. The evidence of this witness clearly goes to show that, there was no

delay in reporting the matter to the police after it came to her knowledge.

7) The Victim is examined as PW-2. The Prosecution's case largely rests on her testimony. Her evidence shows that, she was studying in the 10th standard in the Drugdhamna high school, Dawalameti. She used to attend the ICT classes in the evening between 7.00 to 8.00. The incident was dated 30th December 2016. Around 8.00 p.m after the class, she along with above referred witnesses (friends), who did not support the prosecution, was on her way to search Bhojraj Sevatkar (PW-14). Bhojraj Sevatkar met them near the Nala of Navneet Nagar. All her four (4) friends proceeded with her to drop her at her house. On their way, the Appellant Imran and Dinesh came on one motorcycle and the Appellant Chintu and Akshay (Juvenile) came from Navneet Nagar side. The Appellants and the Akshay, who had come with them started beating her friends. There was one dilapidated wall of MSEB (Electricity Board). The Appellants Imran and Dinesh took her towards the said dilapidated wall. They removed her clothes. Appellant Imran kissed her on lips. Appellant Imran raped her. Thereafter, Appellant Dinesh raped her. Appellant Dinesh gave his private part in the mouth of the Victim. Thereafter, Appellant Chintu raped her. The other person

Akshay touched her body parts and told her that, Appellant Imran was 'Dada' and all listens to him and asked the Victim not to inform the incident to her friends. He threatened the Victim with dire consequences. The Appellants asked the Victim to put on the clothes and accordingly, Victim put on her clothes and came near her friends. The Appellants asked her friends to go home and told them that, they will drop the Victim at her home. The Victim was dropped at some distance from her house by the Appellants and gave threats not to disclose the incident or else, she will be killed. The Victim came home.

8) The Victim's evidence goes to show that, due to the threatening by the Appellants, she did not inform the incident to anyone at home. Her evidence further shows that, there was a programme of 'Beti Bachav' (save the daughter) in her school, in which the information in respect of the sexual assault was provided. At that time, she informed about the incident to the teacher Mrs. Musale and also to her friends. The sister of her friend Ujjawal told the Victim to inform the incident to her family members. Thereafter, the Victim disclosed the incident to her mother. The evidence shows that, she did not inform about the complete incident to her mother and informed that, her modesty was outraged. Her mother lodged

the report. On the next day, they went to their native place as she thought that, she would come out of the fear. After some days, she told the entire incident to her mother. They came to Nagpur and went to the Police. The police recorded her statement. The police referred her for the Medical examination. She gave the history to the Doctor. The Doctor examined her. The doctor took her samples. Her evidence shows that, as the assaulters were taking each others name, at the time of the incident, she came to know their names. She showed the spot of the incident to the Police. Her statement was recorded before the learned Magistrate. The TIP was arranged in the jail and she identified the Appellants in the TIP. She identified the Appellants before the trial Court.

9) The Victim was subjected to the cross-examination. She candidly admitted that, she did not inform the police about the rape on 23.01.2017, when the report was lodged. It is clear from her cross-examination that, the TIP was conducted after one month from lodging the report.

10) The Victim's evidence clearly shows that, only after the programme in the school, where information about the sexual assault was given, she opened up and informed her teacher about the incident. This is quite natural for the girl of her age. This gets

corroboration with the evidence of PW-4 Jyoti Adhaoo, who was the teacher in the School where the Victim was studying. Her evidence shows that, on 18.01.2017, there was a programme of 'Beti Bachav' in the school in which the information regarding sexual assault, good-touch and bad-touch was explained to the girls and the girls were asked to share the experience, if any. She noticed that, the Victim was talking with her friend and so she asked her about the matter. At that time, the Victim informed her about the incident. This is the indication that the said programme in the school was fruitful. Non reporting of the incident to the Police by the teacher to whom the Victim disclosed the incident, though appears unnatural, can be no ground to discard the testimony of the Victim. There were in all four (4) assailants. They all came at one time and ravished the Victim and the Victim was also threatened with dire consequences. Getting frightened by such incident and not disclosing the incident to her family members for some days, cannot be said to be unnatural. This shows the impact of the incident on the psyche of the Victim. Her evidence clearly shows that, the information in the said programme in the school gave her the required courage to speak up. The defence tried to bring on record from the cross examination of PW-15 Dhanashree Kutmate the Investigating Officer that, the

statement of the Victim was recorded by the then Investigating Officer, however, the attempt went unsuccessful as the said witness volunteered that, the statement of the Victim was not recorded on 23.01.2017. She even showed the spot of the incident to the Police. The spot being on her way to home from the Class, was not new to her.

11) The identification of the Appellants by the Victim before the learned trial Court is corroborated by the identification in the TIP. There is nothing in the evidence of the prosecution witness that, the Appellants were shown to her prior to the TIP after arrest. Assessing the testimony of the Victim in the light of the above referred judgment cited by the learned Advocate for the Appellants, the Victim fits into the category of sterling witness. She withstood the cross-examination. The testimony of the Victim clearly shows that, she was the truthful witness. Her testimony inspires confidence. The account of the incident deposed by the Victim is such that, it will leave severe scar on the mind of the Victim and her silence for some days is not fatal for the prosecution. There is nothing to show that, the Victim had any reason to falsely implicate the Appellants. Considering the humble background to which the Victim belonged, it is not expected that she will immediately report the incident to the

Police or her family members. The testimony of the Victim is free from doubt and can be accepted without any corroboration. Nothing has come in the cross examination of the Victim so as to discard her testimony or to view her testimony with doubt. Nothing has come in her evidence to show that, her testimony was inconsistent with her previous statements. Her evidence is consistent.

12) The above evidence of the Victim and that of her mother shows that, when the Victim disclosed her mother about the happening, her mother, immediately approached the Police and lodged the report. It is therefore, clear that on learning by the Victim's mother, about the incident, immediate action of reporting the Police about the same was taken. There is no delay on the part of the Victim's mother in reporting the incident to the Police. The medical evidence shows that, her hymen was found old healed corrugated torn (edges of hymen were elevated). The evidence of PW-5 Dr. Surekha N. Khandale, the medical officer shows that, the Victim was examined after 38 days from the incident and therefore, no marks on the genital regarding recent sexual intercourse will not at all be fatal. The medical opinion was consistent with the Victim's testimony of sexual assault. The history disclosed by the Victim to the medical officer also corroborates the Victim's testimony. No head

injury to the Victim will not be fatal for the prosecution as there was gap of 38 days between the incident and her medical examination.

13) The evidence of PW-8 Bhimrao Jasudkar panch for the TIP and PW-9 Sarita Patil the Executive Magistrate who conducted the TIP shows that, the TIP was conducted in accordance with rules. It is natural that, some minor discrepancies may occur during the TIP. However, unless the discrepancy is vital in nature, the TIP does not get vitiated. Nothing of that sort, has come in the evidence even remotely show that, the TIP suffers from serious infirmity. As held earlier, the identification of the Appellants by the Victim before the learned Trial Court gets corroboration in the form of identification of the Appellants in TIP.

14) The above discussed evidence of the Victim, her mother and the medical evidence corroborate each other. Nothing has come in their evidence to create even slightest doubt about the prosecution's case. The Prosecution's case is firmly established through the testimony of the Victim. As discussed above, the evidence is trustworthy, cogent and acceptable. No fault can be found with the impugned judgment and order of convicting and sentencing the Appellants. The contention of the learned Advocate for the Appellants that, the case was out of vengeance has no

substance. Resultantly, the Appeals fail and hence the following order.

ORDER

- (i) The Appeals are dismissed.
- (ii) R and P be sent back to the learned Trial Court.
- (iii) Criminal Appeals stand disposed of.

(NEERAJ P. DHOTE, J.)

Kavita