



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 122 OF 2025

Kachru Narhari Sarode

Age: 65 years, Occu.: Labour,

R/o.: Galli No.4, Jaibhimnagar,

District Nanded.

....Appellant

Versus

1. The State of Maharashtra

2. XXX

....Respondent

.....

Advocate for Appellant : Mr. Santosh C. Bhosle

APP for Respondent no.1 : Mr.V.M.Jaware

Advocate for Respondent no.2 : Ms.Deepali S. Patil (Appointed)

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26 MARCH, 2026

PRONOUNCED ON : 10 APRIL, 2026

JUDGMENT :

1. Convict for offence under Sections 375(b) and (d), 376(3), 376AB and 506 of the Indian Penal Code (IPC) as well as under Sections 3(b) and (d), 4(2), 5(m), 6, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), hereby takes exception to judgment and order of conviction rendered by learned Sessions Judge, Nanded in Special (POCSO) Case No.157 of 2023.

BRIEF FACTS OF THE CASE

2. In short, prosecution was launched by Shivajinagar Police Station, Nanded, on accusation that, accused asked the victim, aged 12 years, to go to upper floor room of his house and bring his money purse and after following her, there, after disrobing the girl, he felt her body through his hand and inserted his finger in her private part and thereby committed above offence under aforesaid Sections of the IPC as well as the POCSO Act.

At trial, prosecution adduced oral evidence of as many as eleven witnesses and relied on voluminous documentary evidence in support of age, medical evidence and various panchanamas.

Accused also adduced evidence of one defence witness.

After appreciating evidence adduced by both the sides, learned trial Court was pleased to hold that prosecution has proved the charges and passed judgment and sentenced accused as reflected in the operative part of the order.

Feeling aggrieved by the above, convict has preferred instant appeal challenging the sustainability of the above judgment.

SUBMISSIONS

ON BEHALF OF APPELLANT :

3. Learned counsel for accused would point out that, there is false implication. That, infact accused and victim are relatives. That, alleged occurrence is of 14-09-2023, but FIR is lodged on 16-09-2023 and as such, there is delay, which is not properly explained and consequently, story put-forth is concocted and fabricated. That, moreover, implication is in the backdrop of previous disputes.

4. Learned counsel would further point out that, here, there is no convincing evidence about age of victim. According to him, it was fundamental duty of prosecution to prove the age as there were charges under the POCSO Act also. He pointed out that, there is no convincing legally acceptable evidence. That, trial Court has appreciated available evidence and determined age on the basis of documents like Transfer Certificate, which is not a valid piece of evidence to establish age and as such, he criticizes judgment of trial Court for holding victim to be a minor and for further applying the provisions of the POCSO Act.

5. It is his further submission that, here, there was no supportive medical evidence also. That, medical expert has opined that, there was old tear and there were no fresh injuries and therefore, the story of prosecution was apparently falsified by its own evidence.

6. He pointed out that, the statements of victim and informant in the Court are distinct than the narration given before learned Judicial Magistrate First Class while recording statements under Section 164 of the Code of Criminal Procedure. According to him, moreover, victim herself before Magistrate had submitted that she never wanted to prosecute the accused.

7. It is also his submission that, here, surprisingly history was not narrated by the victim to the Doctor, rather it was narrated by mother of the victim, who had mere hearsay information.

8. Lastly, he submitted that, though it is alleged that incident had taken place when victim had been to purchase tea powder and while she was returning, accused allegedly took her inside the house, investigating machinery failed to seize the tea powder rendering the very case of prosecution doubtful.

For all above reasons, legality and maintainability of the impugned judgment is questioned.

ON BEHALF OF STATE AND VICTIM :

9. Both learned APP as well as learned counsel appointed for victim would support the judgment and order. Substance of their argument is that, victim, who was barely 12 years of age, was lured initially by accused in the morning by assuring to pay money and in the evening, when she had been to shop to purchase tea powder, he had directed the victim to go to upper room to bring his money wallet and thereafter, had followed her and had committed the above acts. That, victim has narrated entire evidence in the witness box. That, her version is inspiring confidence and therefore, learned trial Court committed no error whatsoever in convicting the accused. According to them, there is sufficient corroboration from medical experts.

STATUS OF WITNESSES IN TRIAL COURT

10. The status of witnesses are **PW1** informant/mother of victim, **PW2** victim, **PW3** Ananda Gangaram Shinde, pancha to spot panchanama; **PW4** father of victim; **PW5** Gautam Tulse, Grocery shop

owner, **PW6** Dr.Sharad Kumar P, medical expert, **PW7** child witness, **PW8** Santosh Bhagwanrao Kadam, Head Master, **PW9** Shivkumar Shankarrao Tale, Head Master, **PW10** Gautam Laxman Kamble, Carrier, **PW11** Umakant Vaijinath Pune, Investigating Officer.

Defence witness **DW1**, is sister of accused.

SUM AND SUBSTANCE OF EVIDENCE OF CRUCIAL WITNESSES

Relevant evidence is of PW1 informant, PW2 victim and PW4, father of victim followed by that of PW6 medical expert and PW8 and PW9 School Authorities.

11. **PW1** Mother of victim deposed at exh.14 that, she had two daughters and a son. That, victim daughter was 12 years of age. That, incident took place eight months back. That day the victim went to school in the company of her siblings. That, on the way, accused was sitting in his flour mill and he called victim and abused her but she proceeded to the school. She claims that, accused offered Rs.20/- to her victim daughter and asked her to come near him. Witness states that, her daughter informed in the evening that when she was returning after purchasing tea powder, accused, who was sitting, in front of his house, called her and sent her to upper room of

his house and asked her to bring his money Wallet and when her daughter went, accused followed, made her lay on ground, pressed her chest and entire body, removed her leggings, pressed her private part and also had bitten her private part and thereafter, he inserted his finger into her private part and maintained physical relation with victim against her will. That, her daughter returned home weeping and she threw away the tea powder and on enquiry, reported the above incident. She specifically deposed that, her father-in-law was ill and therefore, they went to Police Station on 16-09-2023 and lodged report exh.15. She also added that her father-in-law had died the day on which she had lodged report.

Witness is extensively **cross-examined** and therefore, relevant cross on the occurrence is reproduced. In initial paragraphs 6 and 7, questions are posed upon timing of school, its distance, location of Police Station, location of shop etc. In paragraph 8, she denied that her father-in-law died in the morning of on 16-09-2023 and volunteered that, he died in the evening. She answered that when her daughter returned, she had brought the tea powder and that time she found mark of teeth near the private part of the victim, but answered that there was no bleeding from private part nor there were blood stains on legging. She admitted that, she did not give

clothes of victim to Police nor she witnessed the incident and she learnt about incident from victim. Paragraph 9 of the cross is devoted on family information of witness. Every suggestion is denied by her. In paragraph 10, she answered that victim daughter did not inform for which purpose accused was giving Rs.20/- to the victim. She admitted that, she did not handover birth certificate of the victim to the Police at the time of filing of report. She denied all suggestions about the actual incident to have not been informed by her daughter and that she filed false complaint.

12. **PW2** Victim gave her age as 12 years, gave the name of her school and also gave her date of birth as 19-11-2011 and deposed that, she was 12 years of age and to be studying in 7th standard and that she would attend 8th Standard from June. She identified accused as husband of her paternal aunt and she addressed him as “Baba”. She narrated that while she was going to School with her sisters at 12:00 noon, at that time, accused who was sitting near his flour mill, flashed Rs.20/- and called her in the house, but she did not go and so he abused her and getting scared, she proceeded to the school. In paragraph 3, she narrated that at 07:00 p.m. while she was proceeding home after visiting shop for bringing tea powder as

asked by her mother, accused asked her to bring money purse from the first floor of his house. According to her, when she went, he followed her, nobody was in the room, he made her lie on cot forcibly and started moving his hand on her chest, thereafter removed her legging and took a bite of her private part. She claimed that he should not do like it, but he made her quite and said not to tell anyone or else he would kill her father. Thereafter, he inserted his finger in her private part and again moved his hand over her chest. Thereafter, she ran home and told incident to her mother as well as cousin paternal aunt. She further deposed that, her grandfather was seriously ill, who died on the day on which they had been to Police Station and Police recorded her statement as well as her statement being recorded under Section 164 of the Cr.PC.. That, she was sent for medical examination.

Victim is also subjected to grilling **cross-examination** wherein she answered that, flour mill of the accused is on the main road and that nobody was near her when accused called her. Accused showed her Rs.20/- note from the distance and asked her to come and when she went towards him, he asked her why she does not go to his house. She replied that there was no dispute or quarrel between accused and her father and she flatly denied that because of it, she

did not go to house of accused. She answered that accused would cut her bum and so she was scared and she went to school. She admitted that, she did not inform incident in school to anybody and after returning home at 5:30 p.m., she told her mother but her mother did not pay much heed. Regarding the incident of evening, she deposed that her mother asked her to bring tea powder and accordingly she went to shop of Tulsibai which took 5 minutes to reach the shop. She answered that, there was no rush on the shop and according to her, accused was standing in front of his house at that time. Regarding the actual occurrence, she is questioned in para 7, during which she answered that, she went to the room on first floor, that time, tea powder was in her hand i.e. when accused made her sleep on the cot forcibly. She admitted that, she did not shout. She stated that, she was trying to push the accused and when he was removing her legging, she shouted a little. There was no bleeding when accused had bitten her private part and that she shouted when he inserted the finger into her private part. She is unable to give timing when she returned home. In paragraph 8, she answered that she did not tell incident to her mother that time, but she volunteered that she told it afterwards and further answered that she had told her cousin paternal aunt whatever she had told to her mother. She

answered that at Police Station, she herself and her mother both told the incident to the Police and they both showed the spot to the Police. She answered that there were no blood stains on her clothes and so she did not give it to Police but answered that Police had referred her for medical examination. In cross in paragraph 9, she again answered that after the incident, when they went to Police Station, there they learnt that her grandfather is serious. He died early in the morning and after the last rituals at 03:00 p.m., they again went to Police Station. All suggestions put in paragraph 10 are denied by her.

13. **PW4** father of victim in his evidence at exh.24 claims to have learnt from his wife about accused asking their daughter to bring the money purse from upper floor room of his house and when she went, accused followed her and that, he removed clothes of his daughter, touched her body, inserted his finger in her private part and took its bite. That they did not go Police Station immediately because his father was seriously ill and therefore, they went to Police Station on 16-09-2023.

In **cross-examination** he admitted that he personally did not know about the incident. He answered that he went to Police Station

after demise of his father. Then in cross paragraph 4 suggestions are given that his brother-in-law never visits his house. He denied being taken to another village for de-addiction of liquor. He also denied that accused saw his brother-in-law and his wife together and therefore, he got angry on his wife. He also denied for lodging false report.

14. **PW7** Child witness, who is cousin of victim, deposed at exh.36 about she and victim being cousins and going to school together. According to her, in morning at 11:30 a.m. accused was sitting near the flour mill and he called victim and asked her to come to his house otherwise he would cut her ass. She stated that, he even threatened to kill her father if she does not come. She identified the accused.

In **cross-examination** she answered that when the accused made above utterance, at that time accused was 5-6 feet away from her. She admitted that, incident was not reported to anybody in the School. Rest all suggestions are denied by her.

MEDICAL EVIDENCE :

15. **PW6** Dr.Sharad Kumar claims at exh.34 that, he and one another lady Doctor namely Poonam examined victim on

16-09-2023. That, history was asked to victim, but her mother narrated the history that person namely Kachru Sarode had touched the private part of the victim and had bitten her private part. In para 4, witness narrated that there was hymenal injury but there was no fresh bleeding, no edema and old healed hymenal tears. Samples were taken and they had opined that overall findings are consistent with sexual intercourse. He identified the report exh.35 and on going through the CA report, he again deposed that overall findings are consistent with sexual intercourse. He further stated that bite marks over a person can remain for a day or two depending upon the force used.

While under **cross-examination**, he admitted that only mother of victim told about incident. He further answered that they tried to ask victim, but the victim was not responding and the victim did not state anything to this witness. He admitted that, he did not notice any injury on private part and there were no injury or bite marks over the private part nor there was blood found on the person of victim. He denied issuing false report.

EVIDENCE ON AGE OF VICTIM :

16. **PW8** Santosh Bhagwanrao Kadam, who was Head Master of

Z.P. Primary School, Nanded, in his evidence at exh.40, deposed about carrying school admission record and that victim had taken admission in their school in the first Standard. According to him, admission was given on the basis of admission form tendered by the parents i.e. mother. He placed on record admission application form exh.39. According to him, in school record, date of birth of victim is mentioned as 19-11-2011. In the admission application, same date is mentioned and the contents of the copy filed in the Court is as per school record and original form is correct. That victim took education for four years in their school.

While under **cross-examination** he answered that birth date mentioned in exh.41 is on the basis of Aadhaar Card of the victim and except Aadhaar Card, no other document was submitted in support of date of birth of victim and that, entries in the School record regarding date of birth of the victim is on the basis of exh.41 and Aadhaar Card.

PW9 Shivkumar Shankarrao Tale, Teacher of Rani Laxmibai High School, Nanded, where victim took admission in 5th Standard, carried admission record of the school and he deposed that alongwith application for admission, T.C. of earlier school, Aadhaar Card and

Mark Memo were tendered by father. That, on request, Nirgam Utara is issued which is maintained by School and he identified it at exh.44.

While under **cross-examination** he admitted that date of birth is noted in the school record on the basis of T.C. and no birth certificate of the victim was obtained. He is unable to state on what basis date of birth of victim is 19-11-2011 which is reflected in the school record.

PW10 Gautam Laxman Kamble and **PW11** Umakant Vaijnath Pune are carrier and Investigating Officer respectively.

DEFENCE WITNESS:

17. **DW1** seems to be sister of accused and she claims that victim was her niece. According to her, husband of informant was addicted to liquor and he was taken to other village for de-addiction and treatment. At that time, husband of sister of informant had come to their house on account of illness of her father-in-law. At that time, informant had quarreled with accused and as accused used to go to the house of informant, there was quarrel between informant and accused. According to her, she came to know that informant had

filed false case against accused by taking aid of her daughter and that accused is of good character.

Above witness is subjected to extensive **cross-examination** by learned APP wherein she admitted that for the first time in the Court she deposed about quarrel between informant and accused and she had not given statement to Police. She is unable to give details of the place where informant's husband being treated. She admitted that Police did not record her statement. She admitted that she had good relations with sister of her husband. Rest is all denial.

ANALYSIS

18. The fundamental grounds raised in appeal is that **firstly** prosecution failed to establish minority of the victim. **Secondly**, medical evidence is not supporting fresh injury as there is old tear and thus, prosecution failed to prove sexual assault. **Thirdly**, there is delayed FIR. **Fourthly**, history to medical expert is not reported by victim but by mother of victim and **Fifthly**, no recovery of tea powder.

FIRST GROUND – AGE OF VICTIM :

19. Here, there being charges under the provisions of the POCSO Act, it is imperative for prosecution to first establish age of the victim

to be below 18 years of the age. Therefore, at the outset, it is to be seen whether prosecution has discharged this primary burden.

On the point of age, there is evidence of parents i.e. PW1 and PW4, victim herself as PW2 and two School Authorities i.e. PW8 and PW9.

PW1 Mother of victim, in her evidence at exh.14, gave age of her daughter as 12 years. That, at the time of incident, her daughter was studying in 7th Standard whereas she took admission in first Standard in Z.P. School in Vijaynagar. That, birth of daughter took place in Government Hospital at village Heer, Dist.Latur.

There is apparently no **cross-examination** of mother by defence on the point of age of victim.

PW4 Father of victim, at exh.24 testified that, at the time of incident, his victim daughter was 12 years of age.

Even there is no **cross-examination** of father by defence on the point of age or date of birth.

Thus, though parents are the best witnesses on the point of age, both mother and father merely deposed about their daughter to be 12 years of age and mother went to the extent of stating that she was studying in 7th standard at the time of incident.

Victim has deposed as **PW2** at exh.18 wherein she stated that her date of birth is 19-11-2011. That, she studied in school at Yeshwantnagar, Nanded and her earlier school was in Vijaynagar, Nanded. That, at the time of incident, she was 12 years old and studying in 7th standard.

Again, there is no effective **cross-examination** by defence even of the victim on the point of age.

However, law is fairly settled that even if there is no challenge to the age by defence, still prosecution has to discharge its initial burden of proving the age of minor. Consequently, the other evidence adduced by prosecution is visited and analyzed.

20. **PW8** Santosh Bhagwanrao Kadam, at exh.40 gave evidence that he was Head Master of Z.P. Primary School, Nanded. That, victim was a student in their school. That, victim took admission in 1st Standard and the witness was carrying record of admission of victim. That, admission was given on the basis of application tendered by mother. He placed on record certified copy of school record exh.41 and according to him, in school record, date of birth of victim is 19-11-2011. He further deposed that victim studied in the school for four years.

While under **cross-examination**, he has admitted that he was not working in Z.P School when victim took admission in School. According to him, the date of birth mentioned in exh.41 is on the basis of Aadhaar Card of victim and except Aadhaar card, no other document was tendered on the point of date of birth and that entries in the School record regarding date of birth are based on exh.41 as well as Aadhaar Card.

21. Another witness on the point of age adduced by prosecution is **PW9** Shivkumar Shankarrao Tale, Head Master of School, who deposed that, victim was a student of their School, who took admission in 5th standard and at the time of admission of victim, application with T.C., Aadhaar Card and Mark Memo were submitted by father. On the request of Police, Nirgum Utara exh.44 (Admission Extract) was issued.

While under **cross-examination** witness admitted that date of birth in School record is on the basis of T.C. submitted by victim. That, birth certificate was not taken and this witness also claims to be unaware as to on what basis, date of birth of victim is 19-11-2011 which is mentioned in record of earlier school.

22. By plethora of judgments, the Hon'ble Apex Court has time and again reiterated the procedure to be followed in determination of age i.e. application of Rule 12 of Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the JJ Act"). The said Rule is reproduced as under :

"12. Procedure to be followed in determination of age.-- (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining--

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age

of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year; and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

23. The Hon'ble Apex Court while delivering judgment in the

celebrated case in *Jarnail Singh v. State of Haryana* (2013) 7 SCC 263 which has consistently been followed in numerous other cases, reproduced the observations of its earlier judgments in the case of *State v. Charan Singh* and *State v. Mohan*, wherein it has been observed in para “22. *On the issue of determination of age of a minor, one only needs to make reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007*”.

And further in para 23 of the above judgment, it has been observed as under :

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon.

Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion."

24. What is emerging from above discussion is that, Rule 12 of the the Juvenile Justice (Care and Protection of Children) Rules 2007, assigned in descending order the importance and primacy as proof of age i.e. **firstly** Matriculation or equivalent certificate, **secondly**, date of birth as recorded by school first attended and **thirdly**, certificate of birth given by Corporation, Municipal Authority or Panchayat. This is the hierarchy of documents that is expected for determination of age and till recently the above requirement is reemphasized in the case of *P. Yuvaprakash v. State represented by Inspector of Police, 2023 SCC Online 846*, which is a case directly dealing with dispute with regard to age of a person in the context of he or she to be victim of offence

under the POCSO Act.

The above is the settled legal requirement on the point of age determination.

25. Keeping above position of law in mind, evidence in the case in hand is appreciated. As stated above, here parents of victim are consistent about victim to be of 12 years of age.

The best evidence or the best witnesses on the point of date of birth undeniably are parents, but they have not given date of birth and they merely deposed about their daughter to be of 12 years of age. There is other evidence in the form of testimony of PW8 and PW9, who are Head Masters of each of the School where victim allegedly took education. They are speaking about mother of victim tendering application form with copy of Aadhaar Card and father of victim tendering application for admission in 5th Standard alongwith Transfer Certificate, Aadhaar Card and Mark Memo. Admittedly, there is no birth certificate issued by the Local Body. Unfortunately, though victim was born in a Government Hospital, parents do not seem to have bothered to collect birth certificate.

26. Resultantly, here, **firstly** the only documentary evidence in

support of age is Transfer Certificate, **secondly**, Aadhaar Card and **thirdly** Mark Memo. The third category of document i.e. Mark Memo is of no value. Consequently, only documents on behalf of prosecution, which remain for consideration, are Transfer Certificate and Aadhaar card.

27. The Hon'ble Apex Court in the recent judgment in *P Yuvaprakash* (supra) has already declared that School Transfer Certificate is not to be accepted for age determination of victim of POCSO. Therefore, Transfer Certificate is of no avail to the prosecution.

28. The document on the strength of which PW8 Head Master gave admission and took note of date of birth of the victim in the 1st Standard is Aadhaar Card and there is admission to that extent by this witness in cross. This witness has categorically admitted that except Aadhaar card, no other document is submitted on the point of date of birth.

29. Now, the question here is whether in view of above settled legal pronouncements on the point of age and nature and hierarchy

of documents to be considered while determining age, an Aadhaar Card can be relied or not ? Admittedly, such type of document does not find place in the nature of documents which assume importance and preference while determining age of a victim under the POCSO Act and as held in above rulings.

30. As regards to consideration of Aadhaar card for determining age is concerned, the Hon'ble Apex Court in Civil Appeal arising out of SLP(C) Nos.23939-23940 of 2023 in the case of ***Saroj and Ors. v. Iffco-Tokio General Insurance Co. and Others***, though while dealing with appeal wherein there was challenge to the order of High Court in First Appeal arising out of motor accident claim petition, had occasion to deal with the probative value of Aadhaar Card on the point of age determination. Yet again, in paragraph 9.4 the Hon'ble Apex Court has observed as under :

“9.4. The second aspect is the age of the deceased. The High Court, relied on the age as mentioned in the Aadhar Card of the deceased, i.e., 1st January, 1969. However, as submitted by the claimant-Appellants, the School Leaving Certificate records the date of birth of the deceased to be 7th October, 1970. This will affect the multiplier to be applied. Let us now consider this question.

It has to be noted at the outset that a School Leaving Certificate has been accorded statutory recognition. Sub-section (2) of Section 94 of the

Juvenile Justice (Care and Protection of Children) Act, 2015 reads thus:

“(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining

–

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board...”

(Emphasis Supplied)

*Whether the Aadhar Card is sufficient proof of a person's age, has come up for consideration before some High Courts, albeit in the context of different statutes. We shall refer to a few instances but, prior to doing so, it is also important to take note of the purpose behind introduction of the Aadhar Scheme. In the Constitution Bench judgment in **K.S. Puttaswamy v. Union of India** (5-J.), (2019) 1 SCC 1, Dr. A.K. Sikri, J. wrote as hereinbelow extracted, encapsulating the object and purpose of Aadhar:*

“24. Before adverting to the discussion on various issues that have been raised in these petitions, it would be apposite to first understand the structure of the Aadhaar Act and how it operates, having regard to various provisions contained therein. UIDAI was established in the year 2009 by an administrative order i.e. by resolution of the Govt. of India, Planning

Commission, vide notification dated January 28, 2009. The object of the establishment of the said Authority was primarily to lay down policies to implement the Unique Identification Scheme (for short the 'UIS') of the Government, by which residents of India were to be provided unique identity number. The aim was to serve this as proof of identity, which is unique in nature, as each individual will have only one identity with no chance of duplication. Another objective was that this number could be used for identification of beneficiaries for transfer of benefits, subsidies, services and other purposes. This was the primary reason, viz. to ensure correct identification of targeted beneficiaries for delivery of various subsidies, benefits, services, grants, wages and other social benefits schemes which are funded from the Consolidated Fund of India ...

Summing up the Scheme:

62. The whole architecture of Aadhaar is devised to give unique identity to the citizens of this country. No doubt, a person can have various documents on the basis of which that individual can establish her identity. It may be in the form of a passport, Permanent Account Number (PAN) card, ration card and so on. For the purpose of enrollment itself number of documents are prescribed which an individual can produce on the basis of which Aadhaar card can be issued. Thus, such documents, in a way, are also proof of identity. However, there is a fundamental difference between the Aadhaar card as a means of identity and other documents through which identity can be established. Enrollment for Aadhaar card also requires giving of demographic information as well as biometric information which is in the form of iris and fingerprints. This process eliminates any chance of duplication. It is for this reason the Aadhaar card is known as Unique Identification (UID). Such an identity is unparalleled."

(Emphasis supplied)

9.5. Turning back to the question of whether Aadhaar Card can serve as a proof of age, a perusal of some High Court judgments reveals that this question has been considered on quite a few occasions in the context of the

*JJ Act. Illustratively, in **Manoj Kumar Yadav v. State of M.P.** , 2023 SCC OnLine MP 1919 a learned Single Judge of the Madhya Pradesh High Court held that when it comes to establishing the age, on a plea of juvenility the age mentioned in the Aadhar Card could not be taken as a conclusive proof in view of Section 94 of the JJ Act. Similar observations have been made in **Shahrukh Khan v. State of M.P.**, 2023 SCC OnLine MP2740 holding that if the genuineness of the School Leaving Certificate is not under challenge, the said document has to be given due primacy.*

*The Punjab & Haryana High Court in the context of the Prohibition of Child Marriage Act, 2006, in **Navdeep Singh & Anr. v. State of Punjab & Ors.**, 2021 SCC OnLine P&H 4553 held that Aadhar Cards were not "firm proof of age". Observations similar in nature were also made in **Noor Nadia & Anr. v. State of Punjab & Ors.**, 2021 SCC OnLine P&H 1514, **Muskan v. State of Punjab**, 2021 SCC Online P&H 3649 as well as several other orders/judgments, in various contexts.*

*Views aligning with the one referred to above have been taken by the High Court of Judicature of Allahabad in **Parvati Kumari v. State of U.P.**, 2019 SCC OnLine All 7085; the Himachal Pradesh High Court in **Kumit Kumar v. State of H.P.** , 2024 SCC OnLine HP 2965 and the High Court of Kerala in **Sofikul Islam v. State of Kerala**, 2022 SCC OnLine Ker 5814.*

*9.6. We find that the Unique Identification Authority of India, by way of its Circular No.08 of 2023, has stated, in reference to an Office Memorandum issued by the Ministry of Electronics and Information Technology dated 20th December 2018, that ***an Aadhar Card, while can be used to establish identity, it is not per se proof of date of birth.*** This office memorandum dated 20th December, 2018 was taken note of by a learned Division Bench of the Bombay High Court in **State of Maharashtra v. Unique Identification Authority of India And Ors.**, in Criminal Writ Petition No.3002 of 2022 in its order dated 28th July, 2023. The Circular is extracted hereinbelow for ready reference:*

*FNo.HQ-13065/1/2022-AUTH-II HQ/8075
Unique Identification Authority of India
(Authentication and Verification Division)*

*UIDAI Headquarter
Bangla Sahib Road, Behind Kali Mandir
Gole Market, New Delhi-110 001
Dated 22.12.2023*

Circular No.08 of 2023

Subject: Accepting Aadhar as a proof of Date of Birth (DoB) - regarding.

It has been observed that AUAs/KUAs are considering and accepting Aadhar card / e-Aadhaar as one of the acceptable documents for proof of Date of Birth (DoB).

2. In this regard, it is pertinent to mention that, Aadhaar is a unique 12 digit ID issued to a resident after he/she undergoes the enrolment process by submitting his/her demographic and biometric information. Once a resident is assigned an Aadhaar number, it can be used to authenticate the resident through various modes as prescribed under Aadhaar Act, 2016 and Regulations framed there under.

3. At the time of enrolment/updation, UIDAI records DoB as claimed by the resident, on the basis of the documents submitted by them, as specified under the list of supporting documents for Aadhaar enrolment, provided on the UIDAI website (<https://uidai.gov.in/images/commdoc/26 JAN 2023 Aadhar List of documents English.pdf>). Further, it is to be noted that Regulations 10(4) and 19A of the Aadhaar (Enrolment and UPDATE) Regulations, 2016, mention that verification of the enrolment and update data shall be performed as provided in Schedule III.

4. In this regard, attention is drawn towards Office Memorandum dated

20.12.2018 issued by MeitY through UIDAI, where it has been stated that "An Aadhaar number can be used for establishing identity of an individual subject to authentication and thereby, per se its not a proof of date of birth" (copy enclosed).

5. This aspect of the Aadhar Act, 2016 has been reiterated/ highlighted/stressed upon by different High Courts in recent judgments. The most recent one is given by the Hon'ble High Court of Bombay, in the case of State of Maharashtra V/S Unique Identification Authority of India And Ors. dated 28.07.2023 (copy enclosed).

6. In view of the above, it is required that use of Aadhaar, as a proof of DoB needs to be deleted from the list of acceptable documents.

7. This issues with the approval of the Competent Authority.

Encl : As above.

(Sanjeev Yadav)
Director
Tel: 011-23478609
Email: dirl.auth-hq@uidai.net.in"
(Emphasis supplied)

Taking note of above circular, it is further observed as under :

9.7. Judicial notice has also been taken of the circular above. Recently, a learned Single Judge of the Gujarat High Court in **Gopalbhai Naranbhai Vaghela v. Union of India & Anr.**, in Civil Special Application No.16484 of 2022, in view thereof directed the release of the Petitioner's pension in accordance with the date as mentioned in the School Leaving Certificate, keeping aside the difference in the date of birth as mentioned in the Aadhar Card, which was not relevant for the purpose of such consideration.

9.8. In *Shabana v. NCT of Delhi*, 2024 SCC OnLine Del 5058 a learned Division Bench of the Delhi High Court in a case where the Petitioner-mother sought a writ of habeas corpus for her daughter, recorded a statement made for and on behalf of UIDAI that "Aadhar Card may not be used as proof of date of birth."

31. Above discussion thereby settles the issue of validity and sufficiency of an Aadhaar Card to decide on the age. It is merely an identity document and nothing beyond. It is thus categorically emphasized that Aadhaar Card cannot be used to determine age.

Here, as discussed above, PW8 the Head Master of the first school where victim took education, in his cross-examination, has candidly admitted that except Aadhaar Card, no other proof was supplied to record date of birth of victim in the school record.

For above reasons, prosecution could not discharge its fundamental burden of proving victim to be a "child" i.e. below 12 years of age. But definitely she was below 16 years of age.

SECOND GROUND ON THE POINT OF SEXUAL ASSAULT :

32. Now, let us move to the other equally crucial aspect i.e. whether further prosecution has also succeeded in establishing charges of rape and sexual assault.

On above charges, indeed, it is the only evidence of victim

followed that of her parents and medical experts. Here, both parents who have testified as PW1 and PW4, are obviously reported by their victim child. Hence, it would be appropriate to deal with evidence of **PW2** victim, who is examined at exh.18.

In paragraph 2, after deposing that she knew accused, who was present in the Court to be husband of her paternal aunt and after stating that she addressed him as “Baba”, she deposed that on the date of incident, while she was going to School with her real sister and cousin sister at 12:00 Noon, at that time, on the way, accused was sitting near the flour mill and he flashed a Rs.20/- note to her and called her in the house and even abused her in filthy language if she does not come. She testified that she got scared and went to the School with her sisters.

In paragraph 3, she has deposed that her mother had sent her to fetch tea powder from grocery shop at 07:00 p.m. and therefore, she went, purchased the tea powder and was returning home. That, accused, who was present in his house, called her and told her that his money purse is on the first floor of his house and asked her to bring it. She claims that she went to the said room. Accused followed her and he also came into the room where nobody was there. That time accused forcibly made her lie on the cot, started

feeling his hand over her chest, then removed her legging, and had bitten her private part. She testified that, she said that he should not do like this, but he asked her to keep quite and further said that if she tells to anybody about it then he will kill her father. Accused thereafter inserted his finger into her private part and again moved his hand over the chest. Thereafter, she ran home and reported the incident to her mother as well as to her paternal aunt.

Defence has **cross-examined** witness on the above occurrence and in paragraph 7, she has answered that she went to the room on the first floor when accused asked her to go there, when tea powder was with her. She was much scared when she went in the said room and when accused was making her sleep on the cot forcibly. She answered that she did not shout. Again she answered that tea powder was in her hand only. Then she answered to further question that she was trying to push the accused. She answered that while accused was removing her legging, she shouted a little. She answered that there was no bleeding when accused had bitten her private part. To further question, she again answered that she shouted when accused inserted his finger into her private part and for the third time, she answered that tea powder was in her hand till then. She answered that, she is unable to remember at what time

she returned home.

33. Both parents i.e. firstly mother PW1, who is the first person to whom the victim confided about the occurrence with her and secondly, her father PW4, who had learnt from his wife i.e. mother of victim, have also narrated the occurrence on almost similar lines to that of the child. Consequently, there is corroboration. There is no effective cross-examination either of mother or of father on the point of sexual assault.

34. Here, prosecution has examined medical expert PW6, who was said to be a Resident Doctor in Government Hospital on 16-09-2023 and after deposing about receiving requisition from Shivajinagar Police Station for examining victim in crime registered at Shivajinagar Police Station, he claims that he and his colleague Dr. Poonam had examined the victim in presence of staff Nurse and after noting identification marks, he claims to have asked for the history, which was supplied by mother of the victim that, one person by name Kachru Sarode had touched the private part of the victim and had bitten her private part. Accordingly, this medical expert noted the history and she has narrated in paragraph 4 of the examination-in-

chief that on examination of private part, it was found that the hymenal injury was present but there was no fresh bleeding. There was old healed hymenal tears and those were in 5, 7 and 9 O'clock position. He deposed that, on examination of the victim, they opined that overall findings are consistent with sexual intercourse. After going through CA report, witness answered that, opinion expressed in exh.35 is final and overall findings are consistent with sexual intercourse. He further deposed that bite marks over the person can be there for a day or two depending upon the force used.

While under **cross-examination** at the hands of defence, it is brought on record that victim had come with her mother to Government Hospital. Only mother of the victim had told about the incident. That victim did not state anything. He answered that except hymenal tear, they did not notice any injury on private part of the victim. That, there were no marks of injury of bite over the private part of the victim. That, there was no blood on the clothes of the person of the victim. Rest is all denial.

35. In the light of above discussion, here, there is testimony of very victim about acts of the accused. She had mustered courage to depose before the Court the entire episode, which took place in the

house of accused after he had asked her to go to the first floor of his house to bring his purse. She has clearly deposed the pervert acts indulged into by accused to whom she used to address as “Baba” (in vernacular as an elderly person). The manner of cross-examination of victim reproduced above, clearly shows that there is absolutely no challenge to the occurrence. Rather the manner of cross-examination clearly shows that occurrence got reaffirmed even while under cross-examination. Coupled with testimony of victim, there is evidence of medical expert PW6, who had also confirmed about hymenal tears.

36. Here, PW6 medical expert has not noticed any bleeding or bite marks. However, it needs to be borne in mind that examination of victim is not done in the same evening or night and rather it is done after FIR was lodged by mother on 16-09-2023 i.e. after 2-3 days and therefore, obviously there may not be fresh marks of injury. Even otherwise, it is to be noted that the act is shown to be done by accused by putting victim in fear. Both in examination-in-chief as well as in cross-examination, victim had stated that she had shouted out of pain when finger was inserted in her private part. She herself has stated that there was no bleeding. But PW6 medical expert has already confirmed and corroborated victim’s evidence.

37. It is fairly settled law that even in absence of medical corroboration, conviction can be returned for offence of rape provided sole testimony of the victim inspires confidence. On this count, law has been propounded by the Hon'ble Apex Court in the case of ***State of Himchal Pradesh v. Manga Singh (2019) 16 SCC 759*** and the relevant paragraph for ready reference is borrowed and quoted hereunder :

“10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basis infirmity and the “probabilities factor” does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.”

38. The above discussion also puts to rest the controversy raised in

appeal by accused that there is no convincing medical evidence. On the contrary, here, the testimony of the victim is of sterling quality and it does inspire confidence and said sole testimony can safely be relied as it seems to be natural account reproduced by the victim of the ordeal faced by her. Hence, occurrence of sexual assault is also substantiated by the prosecution in the trial Court.

THIRD GROUND :

39. Yet another ground raised by accused before this Court is that there is delayed FIR.

It is tried to be submitted that alleged occurrence is of 14-09-2023 but FIR is of 16-09-2023. There is already animosity between informant and accused and therefore, there is possibility of false implication.

40. Indeed, here, occurrence is of evening of 14-09-2023 and FIR is lodged on 16-09-2023 i.e. after 2-3 days. However, there is plausible explanation for the delay and both victim and informant mother have supplied the same. Explanation is that, on the very fateful day faced by the victim, her grandfather i.e. father-in-law of PW1 mother of victim, was seriously ill. PW1 informant in paragraph

4 of the examination-in-chief itself has stated that on that day, her father-in-law was suffering from illness and therefore, she visited Police Station on 16-09-2023. She further testified that her father-in-law died on the same day on which she filed report.

PW2 Victim also in paragraph 4 of the examination-in-chief stated that her grandfather was seriously ill during that period and he died on the day on which they had been to Police Station. Again in paragraph 9 of cross-examination, victim has confirmed that when they were at Police Station after the incident, there they came to know that her grandfather is serious and he died early morning next day. His last rites were performed in the afternoon and they again went to Police Station in the evening. Consequently, there is ample evidence for the delay caused in lodging report. Even otherwise, it is settled position that delay in cases of such nature cannot be given undue importance as it is natural for the victim and informant to prevent themselves from being shamed by society. Hence, delay so caused is of no significance.

FOURTH GROUND :

41. History to medical expert not reported by victim but by mother.

Learned counsel for appellant would vociferously submits that victim has not given the history to the medical expert and narration is by mother and as such even on such count story of prosecution comes under shadow of doubt,.

Admittedly, here, as usual mother has accompanied victim for lodging report and on referral, had been to medical expert PW6. Even this medical expert deposed that history was given by mother. Admittedly, the girl is of tender age and therefore, she may not be comfortable in disclosing the history of occurrence, which had befallen on her. The Hon'ble Apex Court in the recent judgment of *State of Rajasthan v. Chatra, 2025 INSC 360* has held that "*child witness' silence not detrimental to the prosecution's case*". In this case Hon'ble Rajasthan High Court had acquitted accused due to silence of witness, but in appeal the Hon'ble Apex Court set aside the said judgment of the High Court making above observations. Taking the same into account, above submission made by learned counsel for appellant cannot be allowed to be sustained, more particularly, when there is cogent, reliable, substantive evidence of the victim before the Court.

FIFTH GROUND :

42. No recovery of tea powder.

The above ground has no much force. Mere failure of investigating machinery to collect tea powder for which the child had left the house and had returned after having experienced the shocking incidence, it is not fatal, more particularly, when mother has stated that victim returned home weeping and she threw away the tea powder. Therefore, the reaction of the child is obvious. Under such circumstances, when the FIR itself is lodged after 2-3 days for which there is plausible explanation, mere failure of investigating machinery to collect tea powder, entire case of prosecution, which otherwise is found convincing, cannot be said to be doubtful.

SUMMATION

43. To sum up, here, though there is no cogent and reliable evidence that victim was of 12 years of age, however, under no circumstances, she was beyond 16 years of age. Act of accused of penetrating finger in the private part of victim is proved by prosecution beyond reasonable doubt. Similarly, allegation of victim that accused had taken bite of her private part is also proved. Consequently, offence under Sections 375(b) and (d) punishable

under Section 376(3) of the IPC, offence under Section 506 of the IPC as well as offence under Sections 3(b) and (d) punishable under Section 4(2) of the POCSO Act, are shown to be committed by the accused. Similarly, even charge under Section 7 punishable under Section 8 of the POCSO Act, is brought home. However, as victim is not proved to be below 12 years, conviction for offence under Section 376AB of the IPC and under Section 5(m) punishable under Section 6 of the POCSO Act, cannot be maintained.

44. Perused the judgment under challenge. Except conviction under Section 376AB of the IPC and under Section 5(m) punishable under Section 6 of the POCSO Act, all charges are held to be proved by assigning cogent and sound reasons. Accordingly, following order is passed.

ORDER

(i) The Judgment and order dated 16-01-2025 passed by the learned Sessions Judge, Nanded in Special (POCSO) Case No.157 of 2023, thereby convicting and sentencing appellant for offence under Sections 375(b) and (d) punishable under Section 376(3) of the IPC, for offence under Section 506 of the IPC as well as for offence under Sections 3(b) and (d) punishable under Section 4(2), and for offence under Section 7 punishable under Section 8 of the POCSO Act, is maintained.

(ii) The Judgment and order dated 16-01-2025 passed by the learned Sessions Judge, Nanded in Special (POCSO) Case No.157 of 2023, to the extent of convicting appellant for offence under Section 376AB of the IPC and under Section 5(m) punishable under Section 6 of the POCSO Act, is set aside.

(iii) Rest of the judgment and order of the trial Court is kept intact.

(iv) Fees of learned counsel appointed for respondent no.2 is to be paid through the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

(v) Criminal Appeal is disposed of in above terms.

(ABHAY S. WAGHWASE)
JUDGE