



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

CRIMINAL APPEAL NO.237/2023

Sandip S/o Sambhaji Kurekar,  
aged about 33 years, Occu. Agriculturist,  
Resident of Village Murdhoni,  
Tahsil Wani, District Yavatmal (in Jail). ... Appellant

- Versus -

The State of Maharashtra,  
through Police Station Officer,  
Police Station Wani, District Wani. ... Respondent

WITH

CRIMINAL APPEAL NO.258/2023

Praful Prabhakar Dhule,  
aged 30 years, Occu. Service,  
Resident of Shivmandir, Murdhoni,  
Wani, Tahsil Wani, District Yavatmal. ... Appellant

- Versus -

1. The State of Maharashtra,  
through Police Station Officer,  
Police Station Wani, District Yavatmal.
2. XYZ, Crime No.92/14,  
P.S. Wani, Tq. Wani,  
District Yavatmal. ... Respondents

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Mr. Rupesh D. Darunde, Advocate for the Appellant.

..(in Criminal Appeal No.237/2023)

Mr. A.S. Mardikar, Senior Advocate a/b. Mr. S.U. Dable, Advocate  
for the Appellant. ..(in Criminal Appeal No.258/2023)

Mr. Ujjawal R. Phasate, A.P.P. for the Respondent/State.

Ms. C.S. Bhute, Advocate (appointed) for the Respondent No.2.

..(in Criminal Appeal No.258/2023).  
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**CORAM: NEERAJ P. DHOTE, J.**

**DATE OF RESERVING THE JUDGMENT: 09.03.2026.**

**DATE OF PRONOUNCING THE JUDGMENT: 13.03.2026.**

### **COMMON JUDGMENT**

Both these Appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") against the judgment and order dated 09.03.2023 passed by the learned Special Judge, Kelapur, District Yavatmal in Special (POCSO) Case No.14/2014 convicting and sentencing the Appellants as follows:-

*"1] Accused No.1 Praful Prabhakar Dhule, is hereby convicted for the offence punishable under Section 376(2)(n) of the Indian Penal Code, as per provisions of Section 235(2) of the Code of Criminal Procedure, and he is sentenced to suffer rigorous imprisonment for Ten years and to pay fine of Rs.5,000/- (Five Thousand only) in default to suffer rigorous imprisonment for Five months.*

*2] Accused No.1 Praful is also convicted for the offence punishable under Section 417 of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for Six months and to pay fine of Rs.1,000/- (One Thousand only) in default to suffer rigorous imprisonment for One month.*

*3] Accused No.1 Praful Prabhakar Dhule and accused No.2 Sandip Sambhaji Kurekar, are hereby convicted for the offence punishable under Section 376-D read with Section 34 of the Indian Penal Code,*

*and they are sentenced to suffer rigorous imprisonment for Twenty years each and to pay fine of Rs.20,000/- (Twenty Thousand only) each, in default to suffer rigorous imprisonment for Twenty months each.*

*4] Accused No.1 Praful Prabhakar Dhule and accused No.2 Sandip Sambhaji Kurekar, are hereby convicted for the offence punishable under Section 506 read with Section 34 of the Indian Penal Code, and they are sentenced to suffer rigorous imprisonment for Six months each and to pay fine of Rs.1,000/- (One Thousand only) each, in default to suffer rigorous imprisonment for One month each.*

*5] All the substantive sentences of imprisonment shall run concurrently.*

*6] Accused No.1 Praful Prabhakar Dhule, No.2 Sandip Sambhaji Kurekar, No.3 Manoj Sambhaji Dubey and No.4 Praful Vinod Dhande, are hereby acquitted of the offence punishable under Section 6, 12 and 14 of the Protection of Children from Sexual Offences Act, so also under Section 66-E and 67-B of the Information Technology Act.*

*7] Accused No.3 Manoj Sambhaji Dubey and No.4 Praful Vinod Dhande, are also hereby acquitted of the offence punishable under Section 376-D and 506 read with Section 34 of the Indian Penal Code, and they are set at liberty. Their bail bonds shall stand cancelled.*

8] *During pendency of the proceedings, accused No.1 Praful Dhule, was in detention since 15/04/2014 to 28/05/2014 and accused No.2 Sandip Kurekar, was in detention, since 15/04/2014 to 29/09/2014, therefore set off is accordingly granted to them for the period already undergone, as per provisions of Section 428 of the Code Criminal Procedure.*

9] *Both accused No.1 and 2 are on bail, they shall surrender to their bonds.*

10] *Accused No.3 Manoj Sambhaji Dubey and No.4 Praful Vinod Dhande, shall execute bail bond of Rs.25,000/- each with surety of like amount each, for the next period of Six months, in compliance to the provisions of Section 437-A of the Code of Criminal Procedure.*

11] *.....*

12] *.....*

13] *.....*

14] *.....*

15] *.....*

16] *.....”*

2. The prosecution's case, as revealed from the Police Report, is as under:-

a) The Victim was residing with her parents and brother. She was taking education in the local school at Murdhoni, Taluka Wani, District Yavatmal. She became conversant with the Appellant Praful Dhule. They used to talk with each other. The love relations

developed between them. The Appellant Praful told the Victim that, as they were going to marry with each other, they should have physical relations. The Victim did not agree. Once, Appellant Praful called the Victim to his house and did sexual intercourse with her. As the visits of Appellant Praful became frequent to the house of Victim, the parents of Victim suspected the love relations between them. The Victim's parents sent the Victim for education to village Borda at the house of the elder sister of Victim's mother. The Appellant Praful started visiting the said place to meet the Victim. The Appellant Praful did sexual intercourse with Victim at village Borda. In 2013, the Victim's father admitted her to 11<sup>th</sup> standard at Wani. From August 2013, she started attending the Junior College at Wani from her native place Murdhoni. The Appellant Praful used to meet the Victim at the outside of college at Wani. In November 2013, the Appellant Praful took the Victim to the room of his friend where did sexual intercourse with Victim. After some days, the Appellant Praful took the Victim to the agricultural field at Borda and did sexual intercourse with the Victim.

b) On 27.03.2014 at about 12 noon the Appellant Praful met the Victim in the Tilak Square, Wani and took her with him on the motorcycle at one place like *Jangal* on Moregaon Road, and did sexual intercourse with the Victim. The Appellant Sandip Kurekar and acquitted accused reached the said place and they did sexual intercourse with the Victim. Appellant Praful threatened the Victim not to disclose the incidence to any one. Due to the threat, the Victim kept silent and did not disclose the incidence to her parents. Thereafter both the Appellants used to come in front of the house of the Victim's house and make gestures inviting her for physical

relations and told the Victim that, they have clicked her photographs and threatened the Victim of posting the said photos on the *Facebook*.

c) On 15.04.2014 at 8 a.m. the Appellant Praful came in front of Victim's house and asked her to accompany him. The Victim told her parents the incident dated 27.03.2014 and approached the Wani Police Station and lodged the Report.

d) The Crime bearing No.92/2014 came to be registered against both the Appellants and others for the offence punishable under Sections 376-D and 506 of the Indian Penal Code, 1860 (for short "I.P.C.") and for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act (for short "POCSO Act"). The Victim was referred for medical examination. The Spot-Panchanama was performed. The statement of witnesses were recorded. The Appellants came to be arrested. The Appellants were sent for medical examination. The documents were collected from the school attended by the Victim. The Test Identification Parade (for short "T.I.P.") was conducted. The seized articles were sent to the Chemical Laboratory. The necessary documents were collected. On completion of the investigation, the Charge-sheet came to be filed.

e) The learned trial Court framed the Charge against the Appellants and two others for the offence punishable under Sections 376(2)(n), 417, 376-D read with Section 34 and 506 read with Section 34 of I.P.C. and for the offence punishable under Sections 6, 12 and 14 of the POCSO Act and for the offence punishable under Sections 66-E and 67-B of the Information Technology Act, 2000 (for short "I.T. Act") below Exh.88. The Appellants and the acquitted accused pleaded not guilty and claimed to be tried. To prove the

Charge, prosecution examined in all following 14 (fourteen) witnesses.

- i) *The Victim, as PW.1,*
- ii) *The Victim's mother, as PW.2,*
- iii) *Nandkishor M. Tugnayat, the Medical Officer who examined the acquitted accused, as PW.3,*
- iv) *Pralhad N. Chamate, the Panch witness for seizure of the articles, as PW.4,*
- v) *Avinash K. Ladke, the Headmaster of the school, where the Victim was studying, as PW.5,*
- vi) *Sujata B. Sawale, the Lady Police Constable, who took the Victim for medical examination, as PW.6,*
- vii) *Prajwalit P. Gour, the Radiologist who examined the Victim for the age, as PW.7,*
- viii) *Ramesh B. Panghate, the Panch for Panchanama of village Borda, as PW.8,*
- ix) *Vijay D. Matte, the Naib-Tahsildar who conducted the Test Identification Parade (TIP), as PW.9,*
- x) *Gulabrao P. Wagh, the Investigating Officer, as PW.10,*
- xi) *Pradnya R. Wadekar, the Police Sub-Inspector who took the Report and registered the Crime, as PW.11,*
- xii) *Shubhangi D. Dhokne, the Medical Officer who examined the Victim, as PW.12,*
- xiii) *Raju R. Bageshwar, who carried the Muddemal to the Forensic Laboratory, as PW.13 and*
- xiv) *Kavita S. Lanjewar, the Expert in Cyber Forensic, as PW.14.*

f) The relevant documents are brought on record in the evidence of the above referred witnesses. After the prosecution filed the evidence closure pursis, the learned trial Court recorded the statement of the Appellants under Section 313(1)(b) of the Cr.P.C. The Appellants stated that, they were falsely implicated. After hearing both the sides and appreciating the evidence available on record, the learned trial Court passed the impugned judgment and order convicting and sentencing the Appellants as above.

3. Heard the learned Senior Advocate for the Appellant (Praful Dhule), the learned Advocate for the Appellant (Sandip Kurekar), the learned A.P.P. for the State and the learned Advocate for the Victim. Scrutinized the evidence available on record.

a) It is submitted by the learned Senior Advocate for the Appellant (Praful) that, the Appellants are acquitted for the Charge under the POCSO Act and I.T. Act. The evidence of the Victim clearly shows that, there were love relations between her and the Appellant Praful. The Victim was major by age. Her testimony in respect of rape at various places do not inspire confidence. Her evidence in respect of gang rape do not inspire confidence as no one will commit such act at the open place. The medical evidence do not support the Victim's version. There are material omissions in the testimony of the Victim. The evidence of the Victim's mother cannot be accepted as she admitted that, she read the Report before deposing. The evidence in respect of gang rape was not adequate. The learned trial Court recorded contrary findings and shifted the burden on the Appellants under Section 106 of the Indian Evidence Act, 1872 (for short I.E. Act") without the prosecution discharging

the burden of proof as per Sections 101 to 105 of the I.E. Act. The recovery is not relevant as the Reports of Chemical Analyzer (C.A.) are not incriminating. The prosecution failed to establish the Charge and the Appellants were entitled for acquittal. He relied on the decisions in respect of his submissions, which would be considered in the later part of the judgment.

b) It is submitted by the learned Advocate for the Appellant (Sandip Kurekar), that, the Appellant (Sandip) was a mediator for the marriage between the Appellant Praful Dhule and one another girl. There was no evidence to connect the Appellant (Sandip) with the incident dated 27.03.2014. The conviction was recorded only on the sole testimony of the Victim which do not inspire confidence. The evidence on record do not prove the Charge and the Appeal be allowed.

c) It is submitted by the learned A.P.P. for the State that, the principle of '*falsus in uno, falsus in omnibus*' is not applicable in India. Only on a residue of testimony of the Victim, conviction can be based. Nothing has come in the cross-examination to discredit the testimony of Victim in respect of gang rape. The cross-examination was in the nature of denials. Even if the omissions are considered, the other evidence of the Victim proves the case of the prosecution. The Victim's evidence shows that, the act was against her wish. Even though the love aspect of the Victim's testimony is accepted, the sexual relations between the Appellant Praful and the Victim was 3 to 4 years prior to the F.I.R. and at that point of time, the Victim was minor. No interference was warranted in the impugned judgment and order and the Appeal be dismissed.

d) It is submitted by the learned Advocate for the Victim that, the Victim was raped repeatedly and due to threats she kept mum. Nothing has come on record as to why the Victim will falsely implicate the Appellants. As the Victim was medically examined after a period of one month, there were no injuries found on her person. The Appellant Sandip was called by the Appellant Praful and the Victim was raped. In support of his submissions, he relied on the decision in *Wahid Khan V/s. State of Madhya Pradesh (2010) 2 SCC 9*. The Appeal be dismissed.

4. As is clear from the impugned judgment and order, the Appellants are acquitted for the offence punishable under the POCSO Act and I.T. Act. The learned trial Court in para 100 of the impugned judgment observed that, the prosecution utterly failed to establish and prove that, the Victim was a '*child*' within the meaning of POCSO Act.

5. The prosecution's case largely rests on the testimony of the Victim who is also the Informant. Her evidence shows that, she was residing with her parents and brother at Murdhoni, Taluka Wani, District Yavatmal. She was taking education. The Appellant Praful was residing near her house. She became conversant with the Appellant Praful. They became friendly. The Appellant Praful sent love letter to her and expressed his wish to marry her. The Appellant Praful asked for sexual favours. Though she refused, the Appellant Praful did forceful sexual intercourse with her at his house. As their love affair became the talk of the town, her parents shifted her for education to another village Borda at the house of her mother's elder

sister. The Victim took education at the said place Borda. The Appellant Praful did forceful sexual intercourse with her at Borda. The Appellant Praful used to come near her college. Appellant Praful took her to one room of his friend and did sexual intercourse with her at various places. The Victim deposed that, on 27.03.2014 in the afternoon, the Appellant Praful made her to forcibly sit on his motorcycle in the Lokmanya Tilak Square, Wani which was the crowded place and took her behind one *Darga* at Nimbala-Phata Road. It was the stony surface having thorny bushes. Appellant Praful did forceful sexual intercourse with her. After 10 to 15 minutes the acquitted accused and the Appellant Sandip came there and they also did the sexual intercourse with her. The Appellants told her that, they were having her video clip while having the sex with the Appellant Praful and asked her not to disclose to anybody or else they will make the video viral. She became unconscious. After regaining consciousness, the Appellant Praful dropped her to her house and threatened her not to disclose the incident to anybody. As on 15.04.2014 the Appellant Praful came near her house and asked her to meet him or else he will viral the video clips, she narrated the incident to her parents and they lodged the Report with the Police Station, Wani below Exh.117. She further deposed that, she showed the spot of incident to the police. She identified her clothes shown to her. She was sent for medical examination. In the Test Identification Parade (T.I.P), she identified the acquitted accused.

6. The Victim's testimony that, while she was studying at Saikrupa Mahavidyalaya at Murdhoni in 8<sup>th</sup> standard the Appellant

Praful used to come near the school, the Appellant Praful sent love letter to her, the Appellant Praful did forceful sexual intercourse with her at Borda, the Appellant Praful used to talk with her and demanded sexual favours, on 27.03.2014 he took her on the motorcycle by the Yavatmal Road behind the *Darga* at Nimbala-Phata which was the place with thorny bushes where he committed *forcible* sexual intercourse with her and the Appellants threatened her to make the video clip viral of her sexual intercourse, she felt unconscious and after regaining consciousness, the Appellant Praful dropped her to her house and on 15.04.2014 the Appellant Praful asked her to come or else he will make the video viral, are the omissions which are proved through P.W.11 Police Officer who recorded her statement.

7. The evidence of Victim's mother who is examined as P.W.2 shows that, the Victim was sent for the education at Borda since they came to know of the love affair between the Victim and Appellant Praful. She admitted in her cross-examination that, there was love affair between the Victim and the Appellant Praful. The Appellant Praful was from well to do family. Her cross-examination shows that, the Victim did not inform her anything prior to 15.04.2014 about any of the acts. Her cross-examination shows that, before deposing before the learned trial Court she went through the file containing her statement and the Report so that, there would not be any mistake in her evidence.

8. From the above evidence of the Victim and her mother it is crystal clear that, the Victim and the Appellant Praful were in love

relations. It has come in the cross-examination of the Victim that, she did not made hue and cry when the Appellant Praful made her forcibly to sit on the motorcycle at the Lokmanya Tilak Square. The Victim remained silent though Appellant Praful committed forcible sexual intercourse with her on several occasions at difference places. Her testimony of forceful sexual intercourse by the Appellant Praful, on so many occasions is not believable. The evidence clearly goes to show that, the Victim was the consensual partner in whatever acts done by the Appellant Praful.

9. As regards the incident dated 27.03.2014, it has come in her cross-examination that, the place where she was taken by the Appellant Praful was the place having thorny bushes and stony surface. Her cross-examination shows that, she did not sustain injury on any part of her body during the incident dated 27.03.2014. It is strange that, despite the Victim was raped by other two persons including the Appellant Sandip at the place having stony surface and thorny bushes, she did not receive any injury on her person much less on her backside of the body. The evidence of P.W.12 Medical Officer who examined the Victim on 16.04.2014 shows that, she did not find any injury on the person of Victim. The Medical Officer in the cross-examination has deposed that, it is possible that, if a girl is made to lie on land having thorny bushes and stone and forcefully raped, there would be injuries on her back and dorsal side of the body coming in contact with the land. He admitted that, if there are penetrative laceration though healed, their marks are visible after 15 days. She did not find any symptom of any sexual transmitted disease or infection to the Victim and mental condition of the Victim

was good. She could not give opinion if the intercourse with the Victim was recent though she found that, there was sexual intercourse with the Victim. It has come in the cross-examination of the Medical Officer that, she opined in the report that, “*non-consistent with recent sexual intercourse*”. Her cross-examination further shows that, the hymen tear was old and it means that, the Victim was habitual to sexual intercourse.

10. The above medical evidence do not corroborate the Victim’s testimony about gang rape on 27.03.2014. The manner in which the Victim deposed of the rape on her and the place of incident, the medical evidence falsifies her testimony. The suggestion is given to the Victim that, the Appellant Praful was going to marry with one girl Shital and the Appellant Sandip was the mediator and as the Victim learnt about the same, the false case was registered on 15.04.2014. Considering the omissions in the evidence of the Victim and non-corroboration by the medical evidence, it is not possible to rely on the testimony of the Victim. The evidence of the Victim’s mother shows that, the Appellants belong to different caste. The suggestion is given to the Victim’s mother that, since the Appellant Praful was from well to do family, she was in favour of love affair and marriage between the Victim and the Appellant Praful. There cannot be any dispute in respect of the legal position in *Wahid Khan (supra)* that, the evidence of the Victim of rape stands on equal footing with that of injured witness and if her evidence inspires confidence, corroboration is not necessary. The evidence on record do not show that, the Victim’s evidence can be accepted. The Victims testimony do not inspire confidence so as to rely on her.

Even the corroborative evidence do not support the Victim's version. The learned trial Court has rightly observed that, the Reports of Chemical Analyzer (Exhs.188 to 193) do not support the case of prosecution. Though the evidence of Panch Witness P.W.4 shows that, three (3) used condoms were seized from the spot on 16.04.2014 under the Panchanama below Exh.130, the C.A. Report below Exh.189 shows that, neither blood nor semen were detected in the said three (3) condoms. The prosecution's evidence falls short of establishing the Charge for which the Appellants are convicted.

11. The other co-accused Manoj S. Dubey and Praful Dhande are acquitted by the learned trial Court. The observations made by the learned trial Court shows that, it based the conviction on the sole testimony of the Victim. Surprisingly, the learned trial Court in para 114 of the impugned judgment observed that, admittedly, the Medical Officer did not notice any injury on the person of the Victim, so also on her genitals and further went on to observe that, the prosecution's case was corroborated by the testimony of PW.2 mother and the PW.12 Medical Officer. As discussed above, the prosecution's evidence falls short of maintaining the conviction recorded by the learned trial Court against the Appellants. Under such circumstances, the Appellants are entitled for acquittal. Though the learned Senior Advocate for the Appellant (Praful) relied on seven (7) judgments in the support of his submissions, I do not feel it necessary to burden this judgment by discussing the said decisions. Hence, the following order.

## ORDER

- i) The Appeal is allowed.
- ii) The impugned judgment and order dated 09.03.2023 passed by the learned Special Judge, Kelapur, District Yavatmal in Special Case No.14/2014 convicting and sentencing the Appellants for the offence punishable under Sections 376(2)(n), 417, 376-D, 506 read with Section 34 of I.P.C. is quashed and set aside.
- iii) The Appellants are acquitted for the offence punishable under Sections 376(2)(n), 417, 376-D, 506 read with Section 34 of I.P.C.
- iv) The Appellants be released forthwith, if not required in any other offence.
- v) Record and proceedings be sent back to the learned trial Court.
- vi) The fees of the learned Advocate appointed for the Respondent No.2 is quantified at Rs.7,500/-. The same shall be paid by the Legal Aid Services Sub-Committee, High Court, Nagpur.

(NEERAJ P. DHOTE, J.)