

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 814 OF 2025

Ravindra Kisan Ghadge alias Dhum ...Appellant

Versus

1. State of Maharashtra
2. XYZ (Victim), through N M Joshi Marg
Police Station. ...Respondents

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KULKARNI

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**WITH
INTERIM APPLICATION NO. 2640 OF 2025
IN
CRIMINAL APPEAL NO. 814 OF 2025**

Mr. Ajay Talreja, for the Appellant (Appointed Advocate).
Mr. D. J. Haldankar, APP, for Respondent No.1-State.
Miss. Kanchan Pawar, for Respondent No.2 (Appointed
Advocate).

**CORAM: N. J. JAMADAR, J.
RESERVED ON: 9th JULY, 2026
PRONOUNED ON: 23rd JULY, 2026**

JUDGMENT:-

1. This appeal is directed against a judgment and order dated 25th February, 2025 passed by the learned Special Judge in Special Case No. 63 of 2019, whereby and whereunder the Appellant-accused came to be convicted for the offences punishable under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act, 2012") and Sections 354, 363 and 506 of the Indian Penal Code, 1860 ("the Penal Code") and sentenced to suffer imprisonment for four

years and pay a fine of Rs.10,000 for the major offence punishable under Section 8 of the POCSO Act, 2012, and with lesser sentences for the offences punishable under Section 12 of the POCSO Act, 2012 and Sections 363 and 506 of the Penal Code.

2. Shorn of unnecessary details, the background facts leading to this appeal can be stated as under:

2.1 Respondent No. 2-Victim, then 15 years of age, was staying at 'X' Building, situated at Saat Rasta, Mumbai. She was then in the 9th Standard. On the day of occurrence, at 2:30 pm, while the victim was on her way to home, on the road near Lodha Exclusive, the accused, who was also a resident of the 'X' Building, accosted the victim. The accused allegedly caught hold of the hand of the victim. The accused expressed that he was in love with the victim. The accused inappropriately touched the breast of the victim. When the victim remonstrated, the accused forcibly dragged her towards the terrace of the "LP" Building. Despite the resistance and the cries of the victim, the accused threatened the victim to kill her and forcibly took her towards the terrace of the LP Building by the stairs. An unknown person was present on the terrace of the "LP" Building. He confronted the accused. Thereupon, the accused let go of the

hand of the victim. Thus, the victim ran to her house and narrated the incident to her father, who was present in the house. The victim and her parents initially approached Agripada Police Station and lodged the report.

2.2 As it transpired that the offences were committed within the local limits of the jurisdiction of N. M. Joshi Marg Police Station, the FIR came to be transferred to N. M. Joshi Marg Police Station. Investigation commenced. The Investigating Officer visited the scene of occurrence. Panchanama was drawn. The accused came to be apprehended. The statements of the witnesses were recorded, including the statement of the victim under Section 164 of the Code of Criminal Procedure, 1973 before the learned Magistrate.

2.3 Post completion of investigation, the accused was sent for trial. The learned Special Judge framed charge against the accused for the offences punishable under Sections 354, 363, and 506 of the Penal Code, 1860 and Sections 8 and 12 of the POCSO Act, 2012. The accused abjured his guilt and claimed for trial.

2.4 At the trial, to bring home the charge to the accused, the prosecution examined seven witnesses, namely; the victim (PW1), the father of the victim (PW2), Suresh Koli (PW3); the

panch witness, Vaishali Sul (PW4); the then PSI, N. M. Joshi Marg Police Station; who had received the FIR from Agripada Police Station, and recorded the statement of the victim, Yasmine Mulla (PW5); PSI, who was then attached to Agripada Police Station and recorded the FIR lodged by the victim at Agripada Police Station, Rajendra Patole (PW6); the Investigating Officer, and Kiran Patil (PW7), who had arrested the accused from Village Kharde, Taluka Shirur.

2.5 After conclusion of the prosecution evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, came to be recorded. The accused did not lead any evidence in his defence, which was of denial and false implication.

2.6 After appraisal of the evidence and material on record, the learned Special Judge was persuaded to convict and sentence the accused, as indicated above. The learned Special Judge was of the view that there was no reason to disbelieve the testimony of the victim which found requisite support in the evidence of her father (PW2). The discrepancies in the evidence as regards the time of occurrence, and the non-examination of independent witnesses, in the view of the learned Special Judge, did not detract materially from the prosecution case.

3. Being aggrieved, the Appellant has preferred this appeal.

4. I have heard Mr. Ajay Talreja, the learned Counsel appointed to espouse the cause of the Appellant, Mr. D. J. Haldankar, the learned APP for the State-Respondent No.1 and Miss. Kanchan Pawar, the learned Counsel appointed to espouse the cause of Respondent No.2-victim. With the assistance of the learned Counsel for the parties, I have perused the evidence and material on record.

5. Mr. Talreja, the learned Counsel for the Appellant, mounted multi-fold challenge to the impugned judgment. Firstly, there was a material discrepancy in the testimony of the victim and her father (PW2) as regards the time of the alleged occurrence, which bears upon not only the probabilities of the case but also the veracity of the testimony of the victim and her father (PW2). Secondly, there was infirmity in the prosecution case as regards the identity of the person who allegedly molested the victim (PW1). Before the Court, the victim (PW1) deposed that, an unknown person had accosted and sexually assaulted her. Whereas, in the cross-examination, the victim (PW1) conceded that she had known the accused, who is a resident of the same Building. This admission, according to Mr. Talreja, betrays an intent to falsely implicate the accused, in the

wake of the quarrel between the victim and the wife of the accused.

6. Thirdly, Mr. Talreja would submit, the version of the victim (PW1) is unworthy of credence as there is no corroboration thereto. Amplifying the submission, Mr. Talreja submitted that, firstly, the identity of the person who allegedly confronted the accused while the latter was allegedly dragging the victim to the terrace of the LP Building remained a mystery. No effort was made to ascertain the identity of the said person and examine him as a witness. Secondly, the initial incident of molestation had allegedly occurred on a busy public road and that too in a broad daylight. Yet, the Investigating Officer did not examine a single independent witness. Had the victim been allegedly molested as deposed to by the victim and her father (PW2), the incident must have been seen by a number of persons and it defies comprehension that nobody would come forward to rescue the victim while she was allegedly raising alarm. All these factors, according to Mr. Talreja, lead to an inference that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt.

7. Mr. Haldankar, the learned APP, stoutly countered the submissions on behalf of the Appellant. It was submitted that

the victim was then barely 15 years of age. The fact that the victim was a child has not been contested. The report about the commission of the offence was lodged instantaneously. The FIR and the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 fully corroborate the version of the victim. There is no reason to discard the testimony of the victim, who has withstood the test of cross-examination. The learned APP submitted that, the non-examination of independent witnesses, in a case of the present nature, does not erode the value of the testimony of the victim. In any event, it is not a rule of law that the testimony of the victim of a sexual offence requires corroboration.

8. Miss. Pawar, the learned Counsel for Respondent No. 2-victim, supplemented the submissions of the learned APP. It was urged that there was no reason for a 15 year old girl to falsely implicate the accused and put her life at stake. Thus, the appeal deserves to be dismissed, submitted Miss. Pawar.

9. The aforesaid submissions now fall for consideration. From the evidence on record, by and large, the following facts emerge as rather incontrovertible. First, the victim was a child. The Birth Certificate of the victim (Exhibit-21) came to be proved in evidence. No endeavour was made on behalf of the accused to

assail the testimony of the victim (PW1) and her father (PW2), or for that matter, the correctness of the entries in the Birth Certificate (Exhibit-21). Resultantly, the fact that the victim (PW1) was a child on the date of the alleged occurrence can be said to have been established beyond the pale of controversy. Secondly, it is pertinent to note, the thrust of the defence of the accused was that the victim (PW1) and the accused were residents of the same Building, nay the same floor. On account of the quarrel between the victim (PW1) and the wife of the accused, the latter came to be falsely roped in. Thus, the fact that, the victim (PW1) and the accused had known each other from before is not in contest. Thirdly, the incident had allegedly occurred on the public road in front of the Lodha Exclusive Building. In fact, the veracity of the version of the victim (PW1) was sought to be questioned on the premise that, since the incident had occurred on a public road, the non-examination of the independent witnesses, (who would have witnessed the alleged occurrence, had it taken place) was fatal to the prosecution. Fourthly, though the victim (PW1) has deposed that the accused had dragged her towards the terrace of the LP Building by stairs, no resident of the said Building or any other witness could be examined to lend corroboration to the version

of the victim (PW1). Lastly, the victim (PW1) specifically asserted that she declined to have herself medically examined.

10. Keeping in view the aforesaid facts, a brief resume of the evidence, especially that of the victim (PW1) and her father (PW2), becomes apposite. The broad tenor of the evidence and the deposition of the victim (PW1) is that, while she was on her way to home at about 2:30 pm., on the road near Lodha Exclusive, one boy, caught hold of her hand and moved his another hand over the breast of the victim. The accused asked her to accompany him to the terrace of the LP Building. She raised an alarm. The accused threatened to kill her, if she shouted. While the accused was taking her towards the terrace of the LP Building, one unknown person confronted the accused. The latter got scared and left her. She ran away and reported the incident to her father.

11. The father of the victim (PW2) sought to lend support to the version of the victim (PW1). He deposed that, the victim narrated the incident as she narrated before the Court. The father of the victim (PW-2) testified to the fact that the victim had told him that after she raised shouts, two to three persons came thereat, and, thereupon, the accused ran away.

12. The manner in which the victim (PW1) and her father (PW2) fared in the cross-examination assumes significance to judge the trustworthiness of their testimony. The victim (PW1) conceded that the road in front of Lodha Exclusive leads to the main road, on which Arthor Road Prision is located. There was pedestrian and vehicular traffic on the said road. The victim (PW1) further conceded that the LP Building is at a distance of five minutes walk from Lodha Exclusive. The victim (PW1) was shouting from Lodha Exclusive upto the LP Building, which is an eight storeyed Building with flats on each floor. The accused took her by the staircase. CCTV cameras were installed on each floor of the LP Building. She had not known the person who confronted the accused, though the said unknown person was a resident of the said LP Building.

13. In the cross-examination of the father of the victim (PW2), it was elicited that the victim had returned home around 4.00 to 4.30 pm. After the mother of the victim returned from work, they approached the Agripada Police Station and lodged report at around 6.00 to 6.30 p.m. Though the father of the victim (PW2) conceded that the accused is a resident of the same Building and has a wife, yet, he did not cave in to the suggestion

that there was a quarrel between the wife of the accused and the victim (PW2) and, thus, a false report was lodged.

14. The learned Special Judge was of the view that the discrepancy as regards the time of the occurrence in the testimony of the victim (PW1) and the father of the victim (PW2), was not material. This Court is also of the view that, the submission of Mr. Talreja that the discrepancy as to the time when the victim returned home renders the testimony of both the victim (PW-1) and her father (PW-2) unworthy of credence, cannot be readily acceded to. It is pertinent to note that the victim has categorically deposed that at about 2.30 pm., the accused had allegedly accosted and sexually assaulted her. The father of the victim (PW2) was not a witness to the occurrence. The discrepancy as to the time when the victim's father (PW2) returned home from work, in the context of the short interval of time, does not detract materially from the prosecution case.

15. The challenge to the reliability of the testimony of the victim (PW1), on account of non-examination of independent witnesses, canvassed with tenacity by Mr. Talreja, is required to be appreciated in two distinct parts. First, the non-examination of the potential witnesses to the occurrence on the road in front of the Lodha Exclusive. Second, the non-examination of the

witnesses who would have had the opportunity to witness the incident at or near the LP Building.

16. On the first segment of the alleged incident, the non-examination of the witnesses who, at the time of the occurrence, were passing on said road, or did not come to the rescue of the victim, when she allegedly raised alarm, is required to be appreciated keeping in view the judicially recognised reluctance of general public to get involved in the matters, on even though the offences are committed at a public place and in a broad daylight, considering the same to be a private affair between the accused and the victim. (*Appabhai and another vs. State of Gujarat*¹).

17. Moreover, in a situation of the present nature, where a fleeting body of persons could have witnessed the incident, the testimony of the victim of a sexual assault cannot be thrown overboard for non-examination of such persons who might have had the opportunity to witness the occurrence.

18. The non-examination of the residents of the LP Building and the inhabitants of the lane leading to the LP Building, however, stands on a different footing. It is pertinent to note, the victim (PW1) conceded during the course of cross-examination that, the unknown person who confronted the accused, was a

1 AIR 1988 Supreme Court 696.

resident of the LP Building. Yet the identity of the said person remained a mystery, as rightly submitted by Mr. Talreja. Secondly, the victim (PW1) wants the Court to believe that she was shouting all the way from Lodha Exclusive to the LP Building, which was at a distance of about five minutes walk and that the accused took her to the terrace of the LP Building, which has eight floors with residential flats on each floor. It does not appeal to human credulity that no resident of the LP Building would have had the opportunity to observe the incident. The residents of the LP Building were not a fleeting body of pedestrians. It defies comprehension that, the accused would have been able to drag the victim to the terrace of the LP Building while she was continuously raising alarm, without being noticed or confronted by the inhabitants of the lane and the LP Building.

19. In the considered view of this Court, that part of the testimony of the victim (PW1), on the aspect of the accused having dragged the victim (PW1) from in front of Lodha Exclusive to the terrace of the LP Building while she continued to raise alarm, appeared to be an exaggerated version. Not only the identity of the person who allegedly confronted the accused not ascertained, but even electronic evidence in the nature of

CCTV footages which would have lent unwavering corroboration to the claim of the victim (PW1), could not be adduced. Thus, this Court finds it rather difficult to believe the testimony of the victim on the aspect of the accused dragging the victim forcibly to the terrace of the LP Building.

20. The question that comes to the fore is, whether the testimony of the victim (PW1) is required to be jettisoned away in its entirety? I am unable to accede to the submissions of Mr. Talreja that, on account of the version of the victim (PW1) in regard to the incident that transpired at the LP Building being rendered improbable, the entire testimony of the victim (PW1) deserves to be discarded. The Court is required to make an endeavour to separate the truth from falsehood. It is well recognised that the maxim *falsus in uno, falsus in omnibus* has not received judicial imprimatur in our criminal justice system.

21. On the first part of the incident deposed to by the victim (PW1), there is ample corroboration in the form of the narration in the FIR, the statement of the victim recorded under Section 164 of the Code, the testimony of the victim's father (PW-2) and the instantaneous lodging of the FIR. The version of the victim (PW1) that the accused accosted her and caught hold of her hand, touched her breast inappropriately, and thereby used

criminal force to her with sexual intent, could not be impeached during the course of her cross-examination. The suggestion in the cross-examination that the victim (PW1) had a quarrel with the wife of the accused and, thus, the victim (PW1) falsely implicated the accused appeared to be a gratuitous one.

22. Even if the testimony of the victim's father (PW-2) is eschewed from consideration, it is trite, conviction for a sexual offence can be sustained on the sole testimony of the victim, if it inspires confidence. Corroboration of the testimony of the victim of a sexual offence is not the requirement of law but a matter of prudence. (*State of Himachal Pradesh vs. Manga Singh*², *State of Himachal Pradesh vs. Sajay Kumar alias Sunny*³, and *Ganesan vs. State Represented by its Inspector of Police*⁴).

23. Applying these principles to the facts of the case at hand, this Court is inclined to hold that the prosecution has succeeded in establishing the commission of the offences punishable under Sections 8 and 12 of the POCSO Act, 2012, and Section 354 of the Indian Penal Code, 1860. However, the evidence on record does not sustain the guilt of the accused for the offences punishable under Sections 363 and 506 of the

2 (2019) SCC 759.

3 (2017) 2 SCC 51.

4 (2020) 10 SCC 573.

Penal Code. Resultantly, the order of conviction for the offences punishable under Sections 363 and 506 of the Indian Penal Code is required to be reversed.

24. On the aspect of sentence, in the backdrop of the nature of the occurrence, in the considered view of this Court, a sentence of four years rigorous imprisonment for an offence punishable under Section 8 of the POCSO Act, 2012, slightly errs on the side of severity. Having regard to the nature of the occurrence and the situation in life of the accused, the minimum sentence of three years, prescribed under Section 8 of the POCSO Act, appears to be a condign punishment. Since the learned Special Judge has awarded compensation to the victim, this Court considers it appropriate to enhance the quantum of fine for the offence punishable under Section 8 of the POCSO Act. No interference is warranted in the sentence imposed for the offence punishable under Section 12 of the POCSO Act.

25. For the foregoing reasons, the appeal deserves to be partly allowed. Hence, the following order:

: O R D E R :

- (i)** The appeal stands partly allowed.
- (ii)** The impugned order of conviction for the offences punishable under Sections 8 and 12 of the POCSO Act,

2012 and Section 354 of the Indian Penal Code, 1860, stands affirmed.

- (iii) The impugned judgment to the extent of conviction for the offences punishable under Sections 353 and 506 of the Indian Penal Code, 1860, stands quashed and set aside.
- (iv) The accused stands acquitted of the offences punishable under Sections 363 and 506 of the Indian Penal Code, 1860.
- (v) The sentence stands modified as under:
 - (a) For the offence punishable under Section 8 of the POCSO Act, 2012, the accused is sentenced to suffer rigorous imprisonment for three years and pay fine of Rs.15,000/- and, in default of payment of fine, the accused shall suffer simple imprisonment for the period of two months.
 - (b) The sentence for the offence punishable under Section 12 of the POCSO Act, 2012 stands affirmed.
 - (c) The substantive sentences shall run concurrently.
 - (v) The rest of the order, including the direction to pay the compensation to the victim, stands affirmed.
- (vi) The accused is entitled to set off under Section 428 of the Code of Criminal Procedure for the period he was in

custody as an under-trial prisoner i.e. 19th December, 2018 to 23rd April, 2019.

- (vii) A certified copy of this judgment be furnished to the appellant-accused through the Superintendent of Prison.
- (viii) A copy of this judgment be sent to the trial Court.
- (ix) R&P sent back.
- (x) The appeal stands disposed.
- (xi) In view of disposal of the appeal, IA/2640/2025 also stands disposed.

[N. J. JAMADAR, J.]