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

CRIMINAL APPEAL NO. 440 OF 2023

Roshan S/o Ruprao Bandre,
Aged about 35 years, Occ. Labourer,
R/o House No. 356, Ward No. 1,
Near Kharabe Company, Wanadongri Hingna
Road, Nagpur ...Appellant

// VERSUS //

State of Maharashtra through Police Station
Officer, Police Station MIDC, Nagpur. … Respondents

Shri Amit M. Balpande, Advocate (appointed) for the appellant,
Shri S.S.Hulke, Addl.P.P. for the respondent/State.

CORAM : **NIVEDITA P. MEHTA, J.**

Reserved on : 15th September, 2025.
Pronounced on : 24th September, 2025.

JUDGMENT :

By the present appeal, the appellant is challenging the judgment and order of conviction dated 17th October, 2022, passed by the Extra Joint District Judge and Additional Sessions Judge, Special Court No.2 (POCSO), Nagpur in Special POCSO Case No. 35 of 2018.

2. By the said judgment, the appellant is convicted for the offence punishable under Section 376 of Indian Penal Code and directed to suffer rigorous imprisonment for a period of 10 years and to pay fine of Rs.3,000/-, in default to suffer simple imprisonment of 3 months.

3. The case of the prosecution, in brief, is that the complainant, Smt. Vanita Kale, the mother of the victim, lodged an oral report on 26th October, 2017 at MIDC Police Station. It was alleged that the complainant was previously residing as a tenant in the house of the accused. Thereafter, she shifted her residence and began residing on rent in the house of one Wasu for the past three months. The complainant has two daughters: the elder daughter, the victim Pooja, aged 17 years, who remained at home as she had discontinued her studies; and the younger daughter, Bhumika, aged 8 years, who is a student of 3rd Standard. It is further the case of the prosecution that on 23rd October, 2017, at around 10:00 a.m., the complainant had gone to Hingna for purchasing vegetables and returned home at approximately 12:00 noon. Upon her return, she found that her younger daughter, Bhumika, was present at home, whereas her elder daughter, the victim Pooja, was not. Upon inquiry, Bhumika informed the complainant that Pooja had left the house with the appellant/accused, Roshan Bandre, on a red-coloured two-wheeler (Scooty). The complainant waited for Pooja to return in the evening; however, when Pooja did not come back, she proceeded to the residence of the appellant and made inquiries with his parents as well as his wife. Thereafter, she also approached the tenants residing in the house of the accused and made similar inquiries. She was informed that the appellant had taken Pooja with him on his vehicle. As Pooja did not return home, the complainant lodged a report of kidnapping against the appellant/accused. The said oral report is at Exhibit 35.

4. Pursuant to the oral report lodged by the complainant, an offense was registered vide Crime No. 454 of 2017 for the offense punishable under Section 363 of the Indian Penal Code. The printed First Information Report (FIR) is exhibited as Exhibit 36. Subsequent to the registration of the crime, the complainant's daughter, Pooja, returned home. The complainant immediately took the victim to the police station, where the police

recorded her statement and referred her for medical examination at Mayo Hospital. After the recording of the statement of the victim, Police added Section 376(2)(j)(n) of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act (in short, POCSO Act). She narrated as to what had happened with her in details to Doctor, which was reduced in writing by the Doctor. Doctor thereafter collected sample of blood and vaginal swab, which was handed over to the police. The medical form is marked at Exhibit 37. The victim, Pooja informed the medical officer that she had been sexually assaulted by the appellant/accused, a person known to her over the past three months. She further stated that the sexual assaults were committed under the threat to her mother's life. She also disclosed that on 23.10.2017 the appellant had taken her to an unknown location where he had sexual intercourse with her two to three times. The last sexual intercourse was on 30th October, 2017.

5. During the course of the investigation, the spot panchanama was drawn and is exhibited as Exhibit 22. The two-wheeler Scooty, which was used in the commission of the offence, was seized and the seizure panchanama is exhibited as Exhibit 80. The statement of the victim was recorded under Section 164 of the Code of Criminal Procedure by the Judicial Magistrate First Class and is marked as Exhibit 42. Statements of the witnesses were also recorded. The birth certificate and school leaving certificate of the victim were produced and marked as Exhibits 45A and 46A respectively, along with the extract from the admission register. Samples collected during the medical examination were sent to the forensic laboratory for analysis. Upon completion of the investigation, the charge-sheet was filed.

6. After filing the charge-sheet, the learned Special Judge framed the Charge (Exh.13) against the accused for the offences punishable under Sections 363 and 376(2)(j)(n) of Indian Penal Code read with Section 4 of the POCSO Act. The accused pleaded not guilty and claimed trial.

7. At the time of trial, the prosecution examined ten witnesses. These included the victim, P.W.3, whose statement is recorded at Exhibit 41; Tukaram Wadi, P.W.1, a panch witness at Exhibit 21; Vanita Kale, P.W.2, the mother of the victim, at Exhibit 34; Premdas Urkudkar, P.W.4, Headmaster of Gadge Baba High School, at Exhibit 44; Bhumika Kale, P.W.5, the younger sister of the victim, at Exhibit 47; Kalpana Bhoyar, P.W.6, at Exhibit 55, in whose house the accused and the victim had stayed; Dr. Yogesh Gawande, P.W.7, who medically examined the accused, at Exhibit 62; Dr. Smruti Gedam, P.W.8, who examined the victim in the presence of her mother, at Exhibit 67; Savita Nahamurte, P.W.9, who recorded the statement of the victim on 31st October, 2017, at Exhibit 70; and Raju Wankhede, P.W.10, the investigating officer who conducted the investigation and forwarded the request letter to the forensic laboratory, at Exhibit 72.

8. After the closure of the prosecution evidence, the accused was examined under Section 313 of the Code of Criminal Procedure. The accused did not adduce any evidence in his defence and asserted that he was falsely implicated at the instance of the victim prosecutrix.

9. After appraisal of the evidence, the learned Special Judge was persuaded to record findings of guilt against the accused. The learned Special Judge, after a meticulous appreciation of the material and evidence presented, observed that in order to substantiate

the charges under Section 363 of the Indian Penal Code and Section 4 of the POCSO Act, it is incumbent upon the prosecution to first establish the date of birth of the alleged victim. The evidence reveals inconsistencies in this regard, as the mother of the victim has deposed to a date of birth different from that stated by other prosecution witnesses. Further, the prosecution has failed to produce the birth certificate or any concrete documentary evidence to conclusively prove the victim's date of birth. Consequently, the Court is constrained to conclude that the prosecution has not discharged its primary burden to establish beyond reasonable doubt that the victim was a minor at the time of the alleged incident. In light of these findings, the prosecution's case on the crucial issue of the victim's age remains unsubstantiated, thereby undermining the foundation of the charges leveled against the accused.

10. The Special Court held that the prosecution has utterly failed to prove the charge leveled against the accused under Section 363, Section 376(2) (j) (n) of the Indian Penal Code and Section 4 of the POCSO Act. Consequently, the appellant/accused was acquitted of the charges under Section 363 IPC and Section 376(2)(j)(n) of the Indian Penal Code and Section 4 POCSO Act. The learned Special Judge, having considered the medical report of the victim and the testimony of the victim, found the deposition to be credible and inspiring confidence. Accordingly, the Court concluded that the prosecution has successfully established the charge under Section 376 of IPC beyond reasonable doubt. In view thereof, the accused was convicted and sentenced to undergo rigorous imprisonment for a term of ten (10) years and to pay a fine of Rs. 3,000/-. In default of payment of fine, the accused was ordered to undergo simple imprisonment for a period of three (3) months.

It is against this judgment and sentence that the present appeal has been preferred.

11. I have heard Shri Balpande, learned appointed Counsel for the appellant and Shri Hulke, learned Additional Public Prosecutor for the respondent/State. With their helpful assistance, I have gone through the record and notes of evidence.

12. Learned Counsel for the appellant contended that the appellant has been falsely implicated in the present case. It was submitted that the victim girl willingly accompanied the accused, a fact which, according to counsel, is reflected in her own testimony. The learned Counsel pointed out that during cross-examination, the victim herself admitted to voluntarily accompanying the appellant.

13. Learned Counsel further submitted that the victim remained in the company of the accused for a period exceeding three to four days without raising any alarm or hue and cry. Moreover, the victim did not state anything about the use of violence or coercion by the accused, nor did the prosecution produce any independent witness to corroborate the allegations of force or kidnapping. It was also argued that the evidence of the victim, her mother, and the headmaster are inconsistent, particularly with respect to the victim's date of birth, which was variously stated on different dates and years. The learned counsel emphasized that the trial court correctly observed that the prosecution failed to establish the victim's age and, consequently, failed to prove that she was a minor at the time of the alleged incident. The conduct of the victim, as well as her examination-in-chief, clearly demonstrates that she accompanied the appellant voluntarily and with free will.

14. In support of these submissions, learned Counsel drew my attention to the evidence of prosecution witness Kalpana Bhoyar (P.W.6), who deposed that the victim and the accused allegedly resided together for two to three days. On inquiry, the accused informed P.W.6 that he had performed marriage with the victim. The victim was seen wearing a Mangalsutra and other articles traditionally worn by a married woman, leading the family to permit her to stay at their residence. It was only after the victim's mother lodged a report alleging kidnapping that the accused was handed over to the police. Upon learning that the victim was a minor, PW6 asked her to produce proof of her age, but she absconded and did not return. Further, Bhoomika (P.W.5), the victim's younger sister, stated that the victim had willingly left on the accused two wheeler. Learned Counsel, therefore, submitted that the conduct of the victim clearly indicates voluntary companionship with the accused. In support of these submissions, reliance was placed on the decisions in ***Manak Chand Alikas Mani Vs. State of Haryana*** reported in ***AIR 2023, SC 5600***; ***Rajkumar Biralal Chakravarti Vs. State of Maharashtra*** reported in ***2019 ALL M.R. (Cri) 1753***; ***Abhishek Ganpat M Nunankar Vs. State of Maharashtra and another*** reported in ***2022 ALL M.R. (Cri.) 1209; Pramod Dattatraya Jadhav Vs. The State of Maharashtra*** reported in ***2019 ALL M.R. (Cri.) 1742 and Sujoy @ Sanjay Laltu Chakravarty Vs. State of Maharashtra*** reported in ***2018 (3) Mh.L.J (Cri.) 321.***

15. Per contra, the learned Additional Public Prosecutor submitted that the victim was a minor at the time of the incident, and therefore, the question of her consent or voluntarily accompanying the appellant/accused does not arise in law. It was submitted that consent, even if assumed to have been given, is legally immaterial when the victim is below the age of majority, particularly in offences punishable under Section 376 of the Indian Penal Code. The learned Addl.P.P. further submitted that the medical examination

report of the victim corroborates the prosecution's case, revealing abrasions on the private parts, redness in the vaginal area, and multiple tears noted at the 1, 3, 6, and 10 O’clock positions, all indicative of non-consensual sexual intercourse and physical trauma. It was also brought to the Court's attention that the victim’s mother had lodged a missing report immediately upon her disappearance, which lends promptitude and credibility to the prosecution's case.

16. Further, reliance was placed on the testimony of Vanita Kale (P.W.2) and Bhoomika (P.W.5), who supported the prosecution version and deposed that the accused had taken the victim away under the threat of murdering her mother. This, it was contended, completely negates the theory of voluntary companionship as alleged by the defence. On these grounds, the learned Additional Public Prosecutor prayed for dismissal of the appeal, submitting that the judgment of conviction and sentence passed by the learned Special Judge does not suffer from any legal infirmity and warrants no interference by this Court.

17. With the assistance of the respective learned Counsel for the parties, this Court has carefully examined the entire evidence and material available on record. At the very outset, it is pertinent to note that the prosecution has utterly failed to establish that the victim was a minor at the time of the alleged incident.

18. A bare perusal of the record discloses glaring inconsistencies in the evidence regarding the victim’s date of birth. The victim’s mother deposed that the date of birth of the victim was 4th June, 2002, whereas the victim herself stated her date of birth as 21st January, 2004. Furthermore, Premdas Urkudkar (P.W.4), the Headmaster of Gadge Baba

High School, deposed that as per the school records, the date of birth of the victim is 21st January, 2004. The prosecution has placed heavy reliance on a purported birth certificate issued by the Municipal Authority, dated 15th January, 201*8*, which reflects the date of birth as 4th April, 2002. However, upon a close examination of the said birth certificate (Exhibit 39), it is evident that the document does not bear the name of the child. Further, the certificate records the mother's name as Mrs. Vanita Prakash Deurkar and the father's name as Mr. Prakash Pundalik Deurkar.

19. This Court finds that the victim's mother is Vanita Maroti Kale, not Vanita Prakash Deurkar as mentioned in the birth certificate. The father's name also appears to be incorrect, the discrepancies in the mother as well as father's name and the absence of the victim's name in the certificate render the document unreliable and incapable of conclusively proving the age of the victim.

20. In view of these material inconsistencies and lack of cogent, credible, and legally admissible evidence, this Court is constrained to hold that the prosecution has utterly failed to prove, beyond reasonable doubt, that the victim was a minor on the date of the alleged incident.

21. The conduct of the victim and her deposition before the Court have been carefully considered. In her testimony, the victim categorically stated that the appellant/accused came to her residence and informed her that he had approached her mother with a proposal for marriage. However, upon her mother's refusal, the appellant threatened the victim, stating that if she did not accompany him, he would kill her mother. It is in this context that the victim stated she accompanied the appellant to a bank, where he

withdrew a sum of ₹500/-. Thereafter, he took her to the residence of a friend. The accused placed a Mangalsutra around her neck, symbolically solemnizing the marriage, and thereafter took her to a room in Hingana, where the appellant had sexually intercourse with the victim four to five times. The victim did not recollect the name of the family at whose residence the appellant had taken her; however, she stated that she and the appellant lived together as husband and wife. The appellant allegedly made the victim to consume liquor. Subsequently, the victim received a phone call from the appellant's wife, who informed her that the victim's mother had lodged a complaint against the appellant. Thereafter, the appellant assaulted the victim, gave her money for transportation, and instructed her to return to her house alone. The victim hired an auto-rickshaw and returned home, where she informed her mother about the incident. Following this, a report was lodged with the police. The victim's statement was recorded, and she was referred for medical examination with the consent of her mother. During the medical examination, the victim narrated the incident to the doctor, who collected various forensic samples, including nail clippings, pubic hairs, vaginal swabs, vulval swabs, and blood samples. Subsequently, the victim was produced before the Magistrate, and her statement was recorded under Section 164 of the Code of Criminal Procedure, marked as Exh. 42. The police seized the victim's clothes, the seizure panchanama, is marked as Exh. 38. The seized Articles are Golden-colored top with pink stripes, Maroon-colored leggings, Brown-colored undergarment (knicker), Brassiere and a bed sheet. In addition, the police also seized the *Mangalsutra* and *Jodve* worn by the victim.

22. During her cross-examination, the victim introduced a materially different version of events. She deposed that the accused had given her some substance after consuming which she was unable to comprehend what was happening around her. She

further stated that the accused had provided her *samosa* and *kadhi*, and upon consuming the same, she became semi-unconscious. She also admitted that while leaving her house, she had taken one dress along with her. Moreover, certain omissions and contradictions in her testimony have come on record. Notably, she stated: *"I went to the police station with my mother. I had stated to the police that the accused gave me samosa and after eating the same, I could not understand [what happened], but why this fact is not mentioned in my FIR I cannot say."* She further admitted that this specific version was not stated in her statement before the Magistrate recorded under Section 164 of the Code of Criminal Procedure, nor was it mentioned in her examination-in-chief before the Special Court. She also admitted during cross-examination that she did not remember the date on which the alleged threat was given by the accused. These material omissions and inconsistencies cast serious doubt on the credibility of the version presented by the victim, especially in light of the fact that the allegations have undergone significant variation at different stages of the proceedings.

23. In order to assess the veracity of the prosecution’s case and to determine whether the accused is entitled to the benefit of doubt, the primary factor requiring careful scrutiny is the testimony of the victim. It is not in dispute that the accused and the family of the victim including her mother, father, and younger sister were residing in close proximity and shared cordial relations. The evidence on record further reveals that the victim remained in the company of the appellant/accused for a period of approximately three to four days. Despite this prolonged duration, there is no material to suggest that the victim made any attempt to escape, raise an alarm, or seek help from any person during that period.

24. The conviction of the appellant/accused is solely under Section 376 of the Indian Penal Code, while he stands acquitted of the charges under Section 363, 376(2) (j) (n) of IPC and Section 4 of the POCSO Act. In light of this, the core issue that arises for determination in the present appeal is whether the prosecution has succeeded in proving the offence of rape under Section 376 IPC beyond reasonable doubt, particularly in view of the defence of consensual relationship and the disputed age of the prosecutrix.

25. The foundation of the prosecution's case rests on the allegation that the appellant committed forcible sexual intercourse with the victim who, according to the prosecution, was a minor at the time of the incident. However, the learned Special Judge, after a careful appreciation of the evidence on record, found that the prosecution failed to prove that the victim was a minor at the relevant time.

26. The issue, therefore, is whether the appellant can still be held guilty of the offence punishable under Section 376 IPC in the absence of proof that the victim was below 18 years of age. Under the Indian Penal Code, Section 375 defines rape, and Explanation 2 thereto makes it clear that consent obtained through fear of injury or under coercion is not valid consent. At the same time, sexual intercourse with a girl below 18 years of age constitutes rape irrespective of consent, due to the statutory bar. Since the POCSO charge has not been sustained and the trial court has found that the victim being a minor girl is not proved, the case must now be evaluated on the basis of whether there was lack of consent in fact, as opposed to statutory rape.

27. In the instant case, the prosecution has relied heavily on the sole testimony of the victim to establish the allegation of rape. It is now well-settled that the testimony of

the victim of a sexual offence, if found to be reliable and trustworthy, does not require corroboration, and conviction can be sustained solely on such evidence.

28. However, in the present case, the testimony of the victim is riddled with material inconsistencies, omissions, and contradictions, which raise serious doubts about the veracity and reliability of her version. A comparative reading of the FIR, the statement recorded under Section 164 Cr.P.C. (Exhibit 42), and the deposition before the Special Court reveals that the victim's narrative has substantially varied at different stages.

29. While in her examination-in-chief, the victim alleged that she was threatened by the accused and accompanied him out of fear, during cross-examination she introduced a new version that the accused gave her samosa and kadhi laced with some substance which rendered her semi-conscious, and that she was unable to understand what was happening to her. This new version was neither part of her FIR nor her 164 Cr.P.C. statement, and she herself admitted that she could not explain why this material fact was omitted earlier.

30. Further, she remained in the company of the accused for three to four days, during which she did not make any attempt to escape or raise any alarm. The witness (P.W.6), at whose house the accused and the victim stayed, also stated that the victim wore a Mangalsutra and was introduced as the wife of the appellant. There is nothing in the evidence to suggest that the victim expressed any resistance or disapproval during this period. The conduct of the victim, therefore, does not support the allegation of forcible sexual assault.

31. The medical evidence, though showing signs of recent sexual activity and minor injuries, does not conclusively prove forcible intercourse. The medical officer did not depose that the injuries were necessarily caused due to non-consensual intercourse. Mere presence of abrasions or redness, without accompanying evidence of resistance or trauma, is not sufficient to conclusively prove the absence of consent.

32. It is also a well-settled principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt, and if two interpretations of the evidence are possible, the one favouring the accused must be adopted. In the present case, the possibility of a consensual relationship between the appellant and the victim cannot be ruled out, especially considering their prior acquaintance, the victim's stay with the accused without protest, and the surrounding circumstances.

33. Additionally, as already observed by the learned Special Judge, the prosecution failed to prove the age of the victim. The birth certificate (Exhibit 39) relied upon does not bear the victim’s name, the father and mother’s name mentioned therein is different from the actual mother of the victim. In the absence of any admissible or corroborative evidence proving that the certificate relating to the prosecutrix, the said document cannot be accepted as conclusive proof of age.

34. Thus, in the absence of credible evidence to prove that the victim was below 18 years of age and in view of the serious doubts surrounding the lack of consent, the essential ingredients of the offence under Section 376 IPC are not proved beyond reasonable doubt.

35. The Hon'ble Apex Court in Criminal Appeal No(s). 595 of 2016 with Criminal Appeal No(s). 596 of 2016 ***State of Himachal Pradesh vs. Sanjay Kumar & Chaman Shukla*** dated 23.04.2025, upheld the acquittal of the accused after noting material contradictions in the statement of the prosecutrix with regard to the date of commission of the rape. In particular, the prosecutrix in her recorded statement under Section 164 CrPC said the rape was on the night of 31.03.2012 at one house, whereas in her Court statement she said it was on night of 30.03.2012 at a different house. This contradiction was held to be material because the accused was not at the prosecutrix's location in one of the versions.

36. The Hon'ble Apex Court in Criminal Appeal No. 94 of 2025 ***State (GNCT of Delhi) vs. Vipin @ Lalla*** (7th January 2025, SC) held in paragraphs 10, 11 and 12 which read thus:

> *"10. Although it is absolutely true that in the case of rape, conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness which is given a very high value by the Courts. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the Court.*
>
> *The testimony of the prosecutrix in the present case thus has failed to inspire absolute confidence of the Trial Court, the High Court and this Court as well.*
>
> *11. It is not believable that when the prosecutrix was caught by the accused who is known to the prosecutrix, she went with him quite a distance in the Bazaar and then to a shop, she never raised any alarm. The only reason she gave is that there was a knife with accused and he had threatened her that if she raises an alarm her brother and father would be killed.*
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> *12. In any case as we have already stated above that the testimony of the prosecutrix does not inspire confidence, under these circumstances, we*

are not inclined to interfere with the well considered order of the Trial Court and the High Court."

In view of the foregoing discussion and detailed analysis of the evidence on record, this Court is of the considered opinion that the prosecution has failed to establish the essential ingredients of the offence punishable under Section 376 of the Indian Penal Code beyond reasonable doubt. The material inconsistencies in the testimony of the victim, the unexplained omissions in her various statements, the absence of corroboration from independent witnesses, and the failure of the prosecution to prove the age of the victim conclusively all cumulatively render the prosecution's case unreliable.

37. As a result, the conviction of the appellant under Section 376 of the Indian Penal Code as recorded by the learned Special Judge cannot be sustained in law and deserves to be set aside.

i. Criminal appeal is allowed;

ii. The judgment and order dated 17th October, 2022 passed by the learned Additional Sessions Judge, Special Court No.2 (POCSO), Nagpur in Special POCSO Case No.35 of 2018 is hereby quashed and set aside.

iii. The appellant/accused is hereby acquitted of the offence punishable under Section 376 of Indian Penal Code.

iv. Appellant be set at liberty forthwith, if not required in any other cases. Fine amount, if any, paid by the appellant be refunded to him.

v. Fees of the learned appointed Advocate Shri Amit M. Balpande, be quantified as per the Rules and be paid to him within four weeks from today.

[NIVEDITA P. MEHTA, J.]