

**HIGH COURT OF BOMBAY****Bench: Justice Kishore C. Sant****Date of Decision: 13<sup>th</sup> June 2024**

Case No.:

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 595 OF 2023

INTERIM APPLICATION NO. 1677 OF 2023

INTERIM APPLICATION NO. 1679 OF 2023

CRIMINAL APPEAL NO. 595 OF 2023

**APPELLANT: Ramesh Ratan Jadhav .....Appellant/Original Accused****VERSUS****RESPONDENT: State of Maharashtra & Ors. ....Respondents****Legislation:**

Sections 354, 354-A of the Indian Penal Code, 1860 (IPC)

Sections 7 r/w 8, 9©(m)(o) r/w 10, 11 r/w 12 of the Protection of Children From Sexual Offences Act, 2012 (POCSO)

Section 145 of the Indian Evidence Act, 1872

**Subject:** Criminal appeal arising out of convictions in a case involving a primary school teacher committing sexual assault on minor girls. The focus is on the reliability of minor witnesses, procedural delays, and the accused's defense of false implication.

**Headnotes:**

Criminal Law – Sexual Assault Conviction – Appellant, a teacher, convicted for sexually assaulting minor students – Convictions under Sections 354, 354-A IPC and Sections 7, 8, 9©(m)(o), 10, 11, 12 POCSO Act upheld – Trial Court's judgment based on consistent and corroborative testimonies of minor victims and supporting witnesses [Paras 1-16].

Delay in FIR – Appellant contended that FIR was lodged 15 days post-incident – Court held delay was satisfactorily explained by the prosecution – Delay attributed to the initial hesitation of victims' families and subsequent realization of the seriousness of the offenses [Paras 12, 17-18].

Reliability of Minor Witnesses – Defense argued minor witnesses were tutored – Court found minor victims' testimonies credible, consistent, and corroborated by other evidence – Defense's claim of false implication due to animosity was unsupported by cross-examination or Section 313 statements [Paras 14, 18, 30].

Section 145 of the Indian Evidence Act – Court noted no substantial cross-examination to discredit minor witnesses – Minor inconsistencies deemed immaterial – Court emphasized proper examination of minors before accepting their testimonies [Paras 19, 22].

Defendant's Presence and Conduct – Accused's presence at school on the day of the incident and his role as a teacher not denied – Defense's narrative of animosity insufficient to counteract credible accusations by multiple victims [Paras 27, 30-31].

Decision – Appeal dismissed – Convictions and sentences affirmed – Court found no perversity in Trial Court's judgment – All pending interim applications disposed of [Para 32-33].

Referred Cases:

- Pradeep v. State of Haryana 2023 LiveLaw (SC) 501
- Janardan Pandurang Kapse v. State of Maharashtra Appeal No.838 of 2019
- Manvir @ Manish v. State CRL.A. 1056 of 2019
- Nawabuddin v. State of Uttarakhand
- Om Prakash v. State of U.P.
- Rajkumar v. State of M.P.
- Balaji s/o Dashrath Mundhe v. State of Maharashtra & Ors.
- Umesh @ Bali Chotelal Vishvakarma v. State of Maharashtra & Anr.

Representing Advocates:

Adv. Rajesh Khobragade, Adv. Vinay Khobragade, Adv. Raj Gupta, Adv. Sapna Khobragade, Adv. Rahul Yadav, Adv. Akash Tayade & Adv. Ayesha Qureshi, for the Appellant.

Mr. A.R. Patil, APP for the Respondent/State.

Sr. Adv. Sanjog Parab, Adv. Mohan Rao, Adv. Sulabha V. Rane, Adv. Sakshi Baadkar, appointed through Legal Aid for Respondent Nos. 2, 3 & 4.

### JUDGMENT :-

1.This Appeal arises out of the Judgment & Order passed by the Learned Additional Sessions Judge, Ratnagiri, dated 14<sup>th</sup> February, 2023 in Special Case No. 02 of 2022. By way of impugned Judgment & Order the present Appellant/Accused is held guilty of the offences punishable under Section 354, 354-A of the Indian Penal Code, 1860 & under Section 7 r/w Section 8, Section 9(c)(m)(o) r/w Section 10 & under Section 11 r/w Section 12 of the Protection of Children From Sexual Offences Act, 2012 ("POCSO for short"). The sentences awarded are as below:-

Sr. No.	Sections	Punishment	Fine Amount
1.	7 r/w 8 of POCSO Act	3 years	Rs.2000/-, in default, to undergo S.I. for two months.

2.	9(c)(m)(o) r/w 10 of POCSO Act	5 years	Rs.5000/-, in default, to undergo S.I. for five months.
3.	11 r/w 12 of POCSO Act	3 years	Rs.2000/-, in default, to undergo S.I. for two months.

The amount is directed to be given to the victim girls towards compensation.

2. The story of prosecution in short is that the accused, a teacher in the primary school, committed sexual assault on the victim girls PW-2, 5 & 6. in the class room by touching their vagina and chest with his hands by making them to lie down on the table and floor. The FIR was registered on 24<sup>th</sup> December, 2021 with Ratnagiri Rural Police Station. After the offence was registered investigation was conducted, charge sheet was filed and the accused was tried. After trial, the learned Court held the accused guilty of the offences and awarded sentences as stated above.
3. The prosecution in support of its case examined 13 witnesses. PW-1 is mother of PW-2.
4. PW-2, 5 & 6 are the victim girls who were then studying in 2<sup>nd</sup> standard.
5. PW-7 & 8 are the children taking education in same school who have deposed that at the time of incident they were asked to stand out of the classroom. When they were asked to stand outside the classroom the accused called the girls inside the classroom.
6. PW-3 is the Gramsevak who acted as panch.
7. PW-9 is the Village Development Officer cum Registrar of Birth and Death who proved the age of the girls.

8. PW- 10 is the Medical Officer who proved that PW-2 victim was born on 14/11/2015 in Civil Hospital, Ratnagiri.
9. PW-11 is Lady Police Naik who had taken photographs of spot of the incident and recorded panchnama and also carried investigation.
10. PW-12 is the Extension Officer, Education Department who proved that the accused was working there at the relevant time.
11. PW-13 is the lady PSI who carried the investigation.
12. PW-1 mother of the PW-2 in her evidence deposed that the incident took place on 24/12/2021. PW-2 told that her teacher touched her inappropriately. She however did not take it seriously. She thought that the teacher may have warned victim for some mischievous behaviour in the school. On 25/12/2021 when she asked the victim girl go to school, victim did not go. On asking she told that the accused had touched her, by taking her frock upward. He did the same with other two victim girls. After sometime two other victim girls also came to her house. On asking these girls they also told that the accused lifted their frock and also the slake down and thereafter touched their vagina. One victim girls was made to lie on the table. The another victim was made to lie on the chatai and then the accused touched the other victim also. On that she made complaint to the school authorities, however, no FIR was filed. It is 15 days thereafter the FIR was lodged with the police on 08/01/2022. She also stated that the victim girls told that by asking the male students to stay outside the classroom, accused had called girls in the classroom and committed the alleged act.
13. In cross-examination of this witness, it is taken that this witness was a President of School Management Committee. It was tried to suggest that

because of certain disputes the complaint is filed to harass the accused. Certain questions were asked that on 25/12/2021 there was holiday on account of Christmas day and there was no question of girls going to the school.

14. PW-2, 5 & 6 are the victim girls. All these witnesses are consistent on the point of the alleged incident. Their evidence is corroborated by the evidence of PW-7 & 8 i.e. the male students. . In cross-examination of these witnesses nothing much is asked except trying to suggest that on 25/12/2021 there was holiday.
15. PW-9 who proved the birth date of victim PW-5 & PW-6 as 01/05/2015 and 03/03/2015 respectively, there is no much dispute about the date. The age of victim girl PW-2 is proved by the doctor who stated that the mother of victim PW-2 had delivered the female child on 14/11/2015. In the cross it was tried to suggest that he did not see the labour room register. However, there is no serious dispute about the age.
16. The learned Court below thus considered the evidence and recorded that the prosecution has proved that the accused has committed an offence beyond doubt.
17. Learned Advocate for the appellant vehemently argued that in this case the FIR was lodged 15 days after the incident. It is the case of the accused that he is falsely implicated by PW-1. The mother of the victim PW-2 is the President of School Management committee and still she did not lodge complaint immediately. No parent of other victim girls are examined. PW-2, 5, 6, 7 & 8 are minor children of 8/9 years years of age. There evidence could

not have been relied as they are prone to tutoring. No sufficient questions were asked to them to verify as to whether they understand the sanctity of oath. It is further submitted that the entire story of the prosecution is doubtful as there was no question of calling students on holiday i.e. 25/12/2021. He pointed out some contradiction in the evidence. He relied upon the following judgments.

- (1) Pradeep V/s The State of Haryana<sup>1</sup>
- (2) Janardan Pandurang Kapse V/s State of Maharashtra<sup>2</sup>
- (3) Manvir @ Manish V/s State<sup>3</sup>

18. Learned Senior Advocate Mr. Parab for the Respondent No.2 to 4 vehemently opposes the Appeal. He submits that in this case the age of the victim girls is clearly proved. They are all minors. The Accused was working as a teacher and still has committed such an act with PW-2, 4, 5, 6 & 7, who are minor girls. Their evidence is consistent and corroborative. The learned Judge has verified that they are able to depose before the Court. Except raising the doubt that the witnesses have been tutored, there is nothing to show that the victims were tutored. The delay is rightly explained by the prosecution. The so called contradictions and omissions are not material. No attempt is made by the defence to confront the witnesses with earlier statement as required under Section 145 of the Evidence Act. There are five minor witnesses whose evidence is completely reliable and consistent. The Accused has not even challenged his presence.

The victim girls have proved their statements recorded under Section 164.

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There is no variance between 164 statement and deposition in the Court.

PW-7 & 8 are natural witnesses. He relied upon the following judgments.

- (1) Nawabuddin Vs. State of Uttarakhand<sup>1</sup>
- (2) Om Prakash Vs. State of U.P.<sup>2</sup>
- (3) Rajkumar Vs. State of M.P.<sup>3</sup>
- (4) Balaji s/o Dashrath Mundhe Vs. The State of Maharashtra & Ors.<sup>4</sup>
- (5) Umesh @ Bali Chotelal Vishvakarma Vs. The State of Maharashtra & Anr.<sup>5</sup>

19. Learned APP also vehemently opposes the Appeal. He submits that no case is made out to show that the child witnesses were tutored. The delay is properly explained. In this case there are three minor girls who are victims. About the incident there is no discrepancy in the evidence of any of the witnesses. He submits that presumption under Section 29 is rightly invoked in this case.

20. In the case of Pradeep Vs. The State of Haryana (supra) the Apex Court has held that before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions with a view to ascertain as to whether the minor is capable of understanding the questions and depose before the Court.

21. In the case of Janardan Pandurang Kapse (supra) there was no evidence to show that the Appellant had inserted his finger in the vagina of the child. It was further considered that while giving statement under Section 164 Cr.P.C. parents of the victim were present and on that ground the acquittal was

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<sup>1</sup> (2022) 5 SCC 419

<sup>2</sup> (2006) 9 SCC 787

<sup>3</sup> Cri.A. Nos.1419-1420 of 2013

<sup>4</sup> Cri.A.Nos.1249 of 2019

<sup>5</sup> Cri. A. No.1152 of 2023

recorded by setting aside the conviction under Sections 4 & 8 of POCSO Act and Section 376 and 354(A)(1)(i) of the IPC.

22. In the case of Manvir @ Manish (supra) the Delhi High Court recorded that a false case was registered and the accused was acquitted by giving benefit of doubt. It was held that no sufficient questions were asked to the child witness to ascertain that the said witness is capable of answering questions in the Court. This Court finds that in the present case proper questions were put to the minor witnesses as is clear from the evidence of all these witnesses.
23. The judgment in the case of Pradeep (supra) is not applicable to the present case. So far as the case of Janardan (supra) is concerned, the accused was acquitted as the offence was not proved. The Trial Court rightly did not believe in the evidence of the victim holding that the witness was tutored and her 164 statement was not voluntarily recorded. It was recorded in presence of parents of the victim.
24. So far as the judgments relied upon by the Respondent Nos.2 to 4 are concerned, those are considered below:-
25. In the case of Nawabuddin (supra) the Apex Court had considered the provisions of POCSO Act and the object behind the Act. It was held that the Act is special enactment for protection of children in view of article 39 of the Constitution of India. The provisions are to achieve the goal as per Articles 15 and 39 of the Constitution. It is held that the act of sexual assault or sexual harassment to the children should be viewed very seriously and needs to be dealt in stringent manner.



26. In the case of Om Prakash (supra) the Apex Court considered that the offence falling under the POCSO Act are to be taken seriously. A prosecutrix of a sexual offence cannot be put at par with an accomplice. As in such process prosecutrix herself is as victim of crime and no corroboration is therefore required.
27. In the case of Rajkumar (supra) the Apex Court considered that the eye witness, a child of 10 years of age was found to be worthy of reliance as he had understood the questions put to him and he was able to answer the same. It was further considered that the accused had not taken any defence while making his statement under Section 313, except stating that he was falsely implicated in the crime without giving any reason why he was falsely implicated. The Appellant had also not denied his presence at the time of incident. In the present case this Court finds that the judgment is squarely applicable to the facts of the case. In this case also the accused has not specifically denied his presence in the school on 24.12.2021 and that he was working as a teacher in a school.
28. So far as the case Balaji S/o Dashrath Mundhe (supra) is concerned, this Court at Aurangabad Bench has observed that the deposition of the victim clearly established the act of the accused and nothing was brought on record in support of theory of the defence of false implication. It was further considered that merely because no specific time, date or place of alleged incident is given by the witnesses that by itself would not be sufficient to raise doubt about the prosecution case. It was further considered that the evidence of the witnesses was sufficient to hold the accused guilty, when the foundational facts have been proved beyond reasonable doubt.

29. In the case of Umesh @ Bali Chotelal Vishvakarma (supra) it was the case of oral evidence. The Trial Court on finding the oral evidence to be acceptable and worthy of credence had recorded conviction. The same was affirmed by this Court.
30. This Court finds that in the present case all the judgments relied upon by the learned Sr. Counsel are applicable. The evidence of the victim girls is found to be reliable. The presence of the accused is not denied. Though the defence is taken of animosity as a motive for false implication, the same does not appear to have been taken from the cross-examination & statement under Section 313. This Court finds substance in the arguments and submissions of Learned Senior Counsel for Respondent Nos.2 to 4.
31. So far as submissions of the learned APP are concerned, this Court is fully in agreement with his submissions. Thus for all the reasons this Court finds that no case is made out pointing out perversity in the judgment of the Trial Court. The Trial Court had rightly appreciated the evidence and rightly recorded the conviction. No interference is called for.
32. The Appeal thus deserves to be dismissed and the same is dismissed.
33. In view of the dismissal of the Appeal, pending Interim Application, if any, stands disposed of.

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