

MHPU01-017615-2018



Received on : 29/12/2018

Registered on : 30/12/2018

Decided on : 02/05/2026

Duration : Y M D
07 04 03**Special (Child Prot.) Case No. 568/2018****Exh. No. 66****IN THE COURT OF SPECIAL JUDGE, PUNE
AT PUNE**Present : Mohan G. Chavan,
Special Judge (Under POCSO Act), Pune.

FIR DETAILS	F.I.R. No. 351/2018, U/s 354, 376(F), 376(A,B) of the Indian Penal Code and u/s. 3, 4, 5(n), 6, 7, 8, 9, 10 of Protection of Children from Sexual Offences Act, 2012. Police Station – Kothrud, Pune.	
COMPLAINANT		STATE OF MAHARASHTRA Through Police Station – Kothrud, District – Pune
REPRESENTED BY A.P.P.		Smt. J. K. Lakka
ACCUSED		Rahul Tukaram Marathe Age: 28 years, Occ.: Service, R/at : A/B Galli No. 11/12, Near Vitthal Rukmini Temple, Jai Bhavani Nagar, Kothrud, Pune. And At Post – Kule, Tal Mulshi, near Gorakshanath Temple, Dist Pune.

REPRESENTED BY		Adv. Mr. A. R. Gaikwad for accused
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Date of Offence	From 21/09/2018 to 01/11/2018
Date of FIR	01/11/2018
Date of Charge-sheet	29/12/2018
Date of framing of charges	10/10/2023
Date of commencement of evidence	12/03/2024
Date on which judgment is reserved	--
Date of the Judgment	02/05/2026
Date of the sentencing order, if any	--

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on bail	Offences charges with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 of Cr.P.C.
1	Rahul Tukaram Marathe	01/11/18	25/11/19	u/s 354, 376(F), 376(A,B) of Indian Penal Code and u/s. 3, 4, 5(n), 6, 7, 8, 9, 10 of Protection of Children from Sexual Offences Act, 2012.	Acquitted	--	--

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**A. Prosecution :-**

RANK	NAME	EXH	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Victim girl (ABC)	29	Victim
PW-2	Mother of victim	30	Informant
PW-3	Tanaji Bhagwan Netke	48	Panch witness on spot panchanama

B. Defence :- Nil**C. Court witnesses :- Nil****LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS****A. Prosecution :-**

Sr. No	Exhibit Number	Description
1	Exh. No. 31 – PW 2	Birth certificate of victim
2	Exh. No. 32 – PW 1	Statement of victim PW 1 under Section 164 of Cr.PC
3	Exh. No. 33 – PW 2	Statement of informant PW 2 under Section 164 of Cr.PC

B. Defence Exhibits :- Nil

C. Court Exhibits :-

Sr. No.	Exhibit Number	Description
1.	Exh. No. 47	Summons report concern with witness Tanaji Netke and Prvain Gaikwad
2.	Exh. No. 49	Clothes seizure panchanama of victim – admitted by defence
3.	Exh. No. 50	Spot panchanama – admitted by defence
4.	Exh. No. 51	Clothes seizure panchanama of accused – admitted by defence
5.	Exh. No. 52	Report of sexual assault – admitted by defence
6.	Exh. No. 53	Summons report standing on the name of witness Shubhangi Phanase and Jayashree Kendre,
7.	Exh. No. 54	Summons standing on the name of witness Shubhangi Phanase,
8.	Exh. No. 55	Summons standing on the name of Jayashree Kendre.
9.	Exh. No. 57	Copy of order passed by the Hon'ble High Court in WP No. 1691/2025.
10.	Exh. No. 58 to 60	Summons report of Investigating officer
11.	Exh. No. 61	Evidence close pursis on behalf of prosecution.
12.	Exh. No. 62	Statement of accused u/s. 313 of Cr.P.C.
13.	Exh. No. 63	Written notes of argument on behalf of accused.
14.	Exh. No. 65	Copy of Bail order passed by the Hon'ble High Court in Bail Application No. 1064/2019.

D. Material objects :- Nil

1] Accused is facing trial for commission of offence punishable under Section 354, 376(F), 376(A,B) of Indian Penal Code (Hereinafter referred as 'IPC') and u/s. 3, 4, 5(n), 6, 7, 8, 9, 10 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as "the POCSO Act").

Brief facts of prosecution case is as under :-

2] **Fact of prosecution case is that**, on 1/11/2018 on the basis of statement of mother of victim, crime in question is registered against accused, alleging that, victim girl having age 03 years 11 months is daughter of her, her daughter is under education at MIT School, Kothrud in small group, on 31/10/2018 at about 11.30 a.m. telephonic call from school received to her husband and called for parents meeting, that fact informed by husband to her, thereafter, at about 1.00 p.m. she herself and one Swati Marathe went at school of victim girl, in the process of counselling class teacher of victim girl called to her and Swati toward the side and asked to her who is Rahul Dada, that class teacher also stated to her that, victim girl informed to her that, that Rahul Dada sexually assaulted to her, thereafter, she asked to victim girl about the same, in the response victim girl informed to her that, after returned from Ganpati Festival and thereafter, *tu and pappa kamavar gelear Rahul Dada mala tras deto, gharat koni nase tenva majhe kapade Kadhto, mala tyache mandivar basvun angavarun hat*

firvito, majhya laghvichya jagi bot ghalto v mi ordalyavar mala marto v tumhi ghari naslyavr to nehmi ase karto. Thereafter, discussion taken place in between her with relatives, class teacher, headmistress and counselor. According to informant, by doing so, offence in question committed by accused. Hence, her report.

3] On the basis of report of mother of victim, crime in question is registered. Investigation of crime entrusted to API Dhotre, in the investigation statement of victim girl recorded by her, birth certificate of victim collected by her, clothes of victim seized by her by drawing panchanama, spot panchanama prepared by her, thereafter, on 01/11/2018 she arrested to accused, clothes of accused also seized by her by drawing necessary panchanama, statement of witnesses recorded by her, medical examination of victim girl as well as conducted Sassoon Hospital, statement of witnesses got recorded before Magistrate under Section 164 of Cr.PC, seized articles sent to Forensic Lab for the purpose of analysis, report of sexual assault collected by her, in the investigation it was transpired to her that, offence in question committed by accused, hence, after completion of investigation on 29/12/2018 charge-sheet filed by her against accused in respect of alleged offences. Accordingly, Special Case in question is registered and made over to this Court for disposal according to law.

4] Charge vide Exh. 27 was framed by the then Presiding Officer of this Court against accused in respect of alleged offences. Contents of charge read over and explained to accused in vernacular to which he pleaded not guilty and came to be tried. His statement of denial of charge recorded vide Exh. 28. His defence is total of denial. According to him, he is falsely implicated without having any reason.

5] In order to establish the guilt of accused, oral as well as documentary evidence as described above tendered on behalf prosecution. Thereafter, evidence of prosecution reported close vide pursis Exh. 61. On the basis of incriminating material came on record statement of accused u/s. 313 of Cr.P.C. recorded vide Exh. 62.

6] Heard Ld. APP Smt. J. K. Lakka for State and counsel for accused at length.

7] During the course of argument Ld. APP Smt. J. K. Lakka has submitted that, prosecution tried its level best to establish the guilt of the accused by tendering the evidence of material witnesses i.e. victim, informant. At the same time, she has fairly submitted that, both the material witnesses are not supported to the case of prosecution even panch witness also not deposed before the Court as per the case of prosecution. She has further submitted that, accused is closed relative of

informant due to same, she might have not supported to the case of prosecution. At the same time, she has further submitted that, no reason to police for falsely implicated to accused. Lastly, considering the oldness of prosecution she requested to proceed further.

8] Per contra, counsel for the accused has submitted that, victim girl is closed relative of accused, as per the instigation of teacher from the school report in question lodged by informant against accused under pressure. He has further submitted that soon before filing charge-sheet statement of informant as well as victim were recoded before Magistrate under Section 164 of Cr.PC that are placed on record vide Exh. 32 and 33, in which also not a single word in the nature of incriminating utter by material witnesses against accused. He has further submitted that, even medical evidence also not available to suggest that, victim girl was sexually assaulted, that report is on the basis of presumption and assumption. He has further submitted that, in the oral evidence before the Court also, nothing is came on record from the mouth of material prosecution witnesses. According to him, accused is falsely charge-sheeted without having any reason. By saying so, he claimed acquittal of accused. In support of his submission, he relied on nature of evidence placed on record by prosecution and observation recorded by the Hon'ble High Court while dealing with Bail Application No. 1064/2019 of accused.

9] Considering the fact of prosecution case, rival submission advanced on both, following points arises for my determination and I have recorded my findings thereon for the reasons below :

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Does prosecution prove that, victim girl was child within the meaning of section 2(d) of POCSO Act ?	Yes.
2.	Does prosecution further proves that, in between period from 21/09/2018 to 01/11/2018 in the house of informant, situated at Lane No. 11/12, near Vitthal Rukhmai Temple, Jai Bhavani Nagar, Kothrud, accused outraged the modesty of victim girl and thereby committed an offence as alleged ?	No.
3.	Does prosecution further proves that, on above said day, date, time and place, accused committed rape on victim girl within the meaning of section 376(f), 376(a)(b) and thereby committed an offence as alleged ?	No.
4.	Does prosecution further proves that, on above said day, date, time and place, accused committed aggravated penetrative sexual assault with victim girl, touches to her with sexual intent without penetration and also committed aggravated sexual assault against the victim girl and thereby committed an offence as alleged ?	No.

5.	What order ?	As per final order.
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REASONS

AS TO POINT NO. 1:-

10] According to prosecution, on the day of alleged incident victim girl was child within the meaning of section 2(d) of POCSO Act. It is matter of record that, accused is charge-sheeted for the commission of offence coupled with the section of POCSO Act. Certainly, to invoke the provisions of POCSO Act, it is for prosecution to prove that, on the day of alleged incident victim was child within the meaning of section 2(d) of POCSO Act and as per section 2(d) of the day of alleged incident, age of victim child must be below than 18 years. Informant being a mother of victim deposed vide Exh. 30 as PW 2. So also, victim girl deposed vide Exh. 29 as PW 1.

11] PW 1 victim girl has stated that, her birth date is 15/11/2013. PW 2 who is mother of victim has stated that, birth date of victim is 15/11/2013 and her birth certificate is placed on record vide Exh. 31. Upon perusal of birth certificate in which birth date of victim is reported 15/11/2013. As per the case of prosecution alleged incident occurred with victim girl since from 21/09/2018. Considering the birth date of victim and date of alleged incident, it is clear that on the day of alleged

incident age of victim was 4 years 10 month and 6 days i.e. prima facie below than 18 years. Considering the consistent testimony of PW 1 and 2 coupled with contents of birth certificate Exh. 31, it can be safely concluded that, prosecution succeed in establishing that, on the day of alleged incident victim girl was child within the meaning of section 2 (d) of POCSO Act. Hence, my answer as to point no.1 in the affirmative.

AS TO POINTS NO. 2 to 4 :-

12] According to prosecution, in between 21/09/2018 to 01/11/2018 time to time, accused outraged the modesty of victim girl by removing her clothes, by compelling her to sit on his thigh, by moving his hand over the person of her body, and committed rape coupled with penetrative sexual assault, aggravated penetrative assault by inserting his finger in the private part of victim girl. Considering the nature of accusation leveled against the accused, PW 1 being a victim girl and PW 2 being an informant and mother of victim girl, were material star witness for prosecution to prove alleged guilt of accused. Let us see, the nature of evidence came on record from the mouth of them and whether on the basis of it alleged offences constitute against the accused or not.

13] PW 1 victim girl deposed vide Exh. 29, she has stated that, she used to reside with her father, mother, sister and accused at Jai Bhavani Nagar. She has further stated that, accused is her cousin brother. She has further stated that, she do not remember that accused done anything with her, she do not remember accused undressed to her, sat to her on his thigh, move his hand over her body and inserted his finger in her vagina and beat to her. As such from the mouth of victim girl nothing is came on record as alleged by prosecution. Ld. APP cross examined to victim girl at length. But in the cross examination also as such nothing is came on record in favour of prosecution. Even she has denied the narration of contents of portion marked 'A' of her statement. In the cross examination from the side of accused, she has smoothly admitted that, she has not stated anything to doctor about harassment at the instance of accused to her.

14] PW 2 who is informant and mother of victim, deposed vide Exh. 30, she has stated that, it did not happen that, teacher of victim girl stated to her that, accused sexually assaulted to victim girl. She has further stated that, it did not happen that, when she asked to victim girl by taking to her towards side, victim girl narrated to her that, in absence her and her husband, accused used to gave trouble to her, remove her clothes, sat to on his thigh, move his hand over her person and inserted finger in her vagina. In the examination-in-chief

as such nothing is came on record from the mouth of PW 2 as alleged against accused. APP cross examined to PW 2 at length.

15] In the cross-examination PW 2 has denied that, complaint was given by her against accused, alleging that, accused sexually assaulted to victim girl, she has simply admitted her signature over complaint but she is not aware about its contents. She has denied that, as per her narration contents of complaint recorded by police. She has also denied that, as per consent of her medical examination of victim girl was conducted and victim girl narrated the history of sexual assault to doctor concern. In the cross-examination as such nothing is came on record from the mouth of informant against the accused as alleged.

16] PW 3 Tanaji who is panch witness over spot panchanama. He has simply admitted his signature but is not aware about its contents. APP cross examined him at length. But in the cross-examination he has denied that, spot panchanama prepared by police by visiting the spot. Even panch witness also not supported to the case of prosecution.

17] During the course of argument counsel for accused tried to convince that, accused is closed relative of informant and he falsely implicated on account of household dispute. He has further submitted that, during the course of investigation,

statement of victim girl as well as informant was recorded before Magistrate, but in that statement also nothing was narrated by them against accused as alleged. In support of his submission he drawn my attention towards statement Exh. 32 and 33.

18] In the cross-examination informant has admitted that, statement Exh. 32 and 33 bears signature of her and its contents are correct. Upon perusal of statement Exh. 32 i.e. standing on the name of victim. During the process of statement question No. 8 was asked to victim girl that, in whose house Rahul Dada (i.e. Accused) resides. Victim girl replied to that question that, Rahul Data (i.e. accused) resides at her house and on account of mobile he beat to her. In the statement of victim girl as such nothing is came on record or narrated by her against accused. Assuming that, answer to question No. 8 accepted as it is, though that is not fulfilled the requirement of sexual assault within the meaning of the POCSO Act. Consequently, I found substance in the submission advanced on behalf of accused.

19] Upon perusal of statement of informant vide Exh. 33, while giving statement informant narrated that, she was called at school, where police also called, she was under fear, she has narrated that, accused is troubling to her daughter, but it did not happen. To the contrary, while giving statement she

certified that, behaviour of accused is heavily good, in the school itself she has stated that, she is not intended to lodge report against accused. Absolutely in the statement Exh. 33, as such nothing is came on record as alleged by prosecution.

20] During the course of argument Ld. APP tried to convince that, medical examination report vide Exh. 52, is in favour of prosecution. Upon perusal of clause No. 12-H of Exh. 52, in which it is reported that, there is no evidence of recent hymenal tear however, possibility of attempt of vaginal penetration cannot be ruled out. Though above said fact is contended in report Exh. 52, but as stated above when victim girl herself totally keep mum about alleged act of accused with her. In addition to that, from the mouth of informant also nothing is came on record in favour of prosecution as alleged against accused. In presence of said facts, above said contents of Exh. 52, cannot be said linking in nature to connect the accused with commission of crime. Hence, I do not find much more force in the submission advanced on behalf of Ld. APP.

21] As discussed above, though prosecution succeed in establishing that on the day of alleged incident victim girl was child within the meaning of section 2 (d) of POCSO Act, but from the mouth of material witnesses i.e. victim girl and informant as such nothing is came on record against accused as alleged. In addition to that, panch witness is not supported to

the case of prosecution. As PW 1 and 2 are totally keep mum in their testimony about the alleged act of accused, medical evidence vide Exh. 52, cannot be said helpful and linking in nature to connect the accused with commission of crime. Whatever evidence tendered by prosecution is not sufficient and adequate to hold that, offence within the meaning of section 354, 376(f), 376(a)(b) of IPC and section 3 to 10 of POCSO Act, committed by accused. Hence, my answer to points no.2 to 4 in the negative.

22] In view of above said discussion and my negative finding as to points No. 2 to 4, I have come to conclusion that, whatever evidence tendered by prosecution is not sufficient and adequate to hold guilty to the accused in respect of alleged offences. In the result, accused is entitled for acquittal. Hence, I proceed to pass following order :

:- ORDER :-

1. Accused viz. **Rahul Tukaram Marathe** is hereby acquitted for the offence punishable under Section 354, 376(F), 376(A,B) of the Indian Penal Code and u/s. 3, 4, 5(n), 6, 7, 8, 9, 10 of Protection of Children from Sexual Offences Act, 2012, vide Section 235 of Cr.P.C.
2. Bail bond of accused shall stand cancelled.
3. Accused shall furnish the PR and SB of Rs. 25,000/-, within the meaning of compliance of Section 437-A of Cr. P. C for the period of six months from today.

4. Muddemal property vide PR No. 530/2023 and reported seize vide panchanama Exh. 49 i.e. dark blue and sky colour frock, chocolate colour Chaddi and reported seize vide panchanama Exh. 51 i.e. white colour full sleeve shirt, slight blue colour jeans pant being worthless be destroyed after appeal period is over.

Dictated on PC directly, delivered and pronounced in open Court.

Place - Pune.
Date - 02/05/2026

(Mohan G. Chavan)
Special Judge (under POCSO Act),
Pune.

CERTIFICATE

I affirm that the contents of the PDF file Judgment are same word for word as per original Judgment.

Name of Steno	A. S. Shivapurkar Stenographer Grade I
Name of Court	Shri. M.G. Chavan, Special Judge (under POCSO Act), Pune.
Date of Order	02/05/2026
Order signed by PO on	02/05/2026
Order uploaded on	02/05/2026