

MHPU010118712016



Presented on : 23.09.2016
 Registered on : 24.09.2016
 Decided on : 28.07.2025
 Duration : Y M D
 08 -10- 05



IN THE COURT OF SESSIONS JUDGE, PUNE .
(Presided over by A.S. Waghmare Addl. Sessions Judge, Pune)

Form No. XXXII

Part 'A'**(Title page of Judgment)****(Para 44(i) of Chapter VI of Criminal Manual)****Special POCSO Case No. 344/2016****CNR NO: MHPU01011871-2016****Yerwada PS - C.R. No. 464/2016****u/s. 363, 376(2)(n) of I.P.C., u/s.3, 4, 5(I), 6 of POCSO Act****Exh. No. 170**

COMPLAINANT		STATE OF MAHARASHTRA
REPRESENTED BY		Ld. A.P.P. Mr. M.B.Wadekar
ACCUSED	1]	Swapnil Jagannath Salve, Age: 21 Yrs., Occu.: Labour, R/at: Sy.No. 191, Nagpur chawl, Yerwada, Pune.
REPRESENTED BY		Ld. Adv. Mr. S.R. More, (For accused)

Part 'B'**[Para 44(ii) of Chapter VI of Criminal Manual]**

Date of Offence	20.06.2016
Date of FIR	23.05.2016
Date of Charge-sheet	24.06.2016
Date of Framing of Charges	21.05.2017

Date of Commencement of evidence	19.01.2019
Date of which judgment is reserved	23.07.2025
Date of the Judgment	28.07.2025
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 charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr.PC.
	Swapnil Jagannath Salve	29.06.2016	21.04.2017	36, 376(2)(n) IPC, 3,4,5(I), 6 POCSO	Acquitted	-	9M 22D

Part 'C'

[Para 44(iii) of Chapter VI of Criminal Manual] LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE (Eye witness, Police witness, Expert witness, Medical witness, Panch witness, other witness)
PW-1	Amol Atul Randive	Victim's brother- Informant
PW-2	Mangesh Gautam Vidhate	Panch witness
PW-3	Ashok Sharnappa Itkar	Seizure panch
PW-4	Dr.Arun Narayan Ambadkar	Expert medical witness
PW-5	Seema S. Dhakane	Investigating Officer
PW-6	Nandu Sampatrao Yesankar	Victim's school teacher
PW-7	Aarati Malhari Sathe	Spot panch
PW-8	Dr. Krishna Balasaheb Kadam	Expert medical witness (evaluating mental state)

PW-9	Mery Barnat Anthony	Social worker
PW-10	Smita V. Gharage	Police witness

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (Eye witness, Police witness, Expert witness, Medical witness, Panch witness, other witness)
DW1	-	-

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (Eye witness, Police witness, Expert witness, Medical witness, Panch witness, other witness)
CW1	-	-

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS**A. Prosecution :**

Sr. No.	Exhibit Number	Description
1	Exh.60	Spot panchanama
2	Exh.48	Missing complaint of victim
3	Exh.66	Seizure panchanama of clothes
4	Exh.70	Medical certificate of victim
5	Exh.74	Statement of victim
6	Exh.75	Letter to MO Sassoon for medical exam. of victim
7	Exh.76	Spot panchanama
8	Exh.77, 78	Letters to Sr. PI for addition of offence
9	Exh.79	Letter to MO Sassoon for medical exam. of accused
10	Exh.80	Report for station diary entry of arrest of accused

11	Exh.81	Arrest and seizure panchanama of accused
12	Exh.82	Letter for carrying out Potency test of accused
13	Exh.83	Portion marked 'A' of Mangesh Vidhate
14	Exh.84	Letter for medical examination of accused and seeking his samples
15	Exh.85	Letter For medical examination of victim
16	Exh.86	Report for recording statement of victim u/s 164 Cr P. C.
17	Exh.87	Letter to remand home of girls taking custody of victim for recording statement in court.
18	Exh.88	Letter to CA for analysis of seized muddemal
19	Exh.89	Letter for deletion of offence in crime.
20	Exh.90	Covering letter seeking report of mental state of victim.
21	Exh.91	Covering Letter and CA reports No.4977/16
22	Exh.92	CA report No. 16188/16
23	Exh.93	Letter forwarding victim to remand home
24	Exh.96	Progress report of victim
25	Exh.97, 98	Covering letter and Copy of General Register of school of victim
26	Exh.116	Admission/ case paper of Sassoon for victim
27	Exh.117	Case papers collectively
28	Exh.118	Medical papers of victim
29	Exh.119	Psychiatric assessment report of victim dt. 20.09.2021
30	Exh.120	Victim's Discharge card of Sassoon Hospital
31	Exh.121	Psychiatric assessment report of victim dt. 19.08.2016
32	Exh.148	Report by informant giving mental state of victim
33	Exh.152	Report by giving mental state of victim
34	Exh.157	Letter informing about mental state and

		treatment of victim
35	Exh.164	State of victim recorded u/s. 164 of Cr. P.C.

B. Defence :

Sr. No.	Exhibit Number	Description
1	Exh.66	Seizure panchanama of victim's clothes

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW1	-

D. Material Objects :

Sr. No.	Material Object Number	Description
1	Article 'A'	Kameez top
2]	Article 'B'	Salvar

JUDGMENT
(Delivered on 28th July 2025)

Accused Swapnil Jagannath Salve has faced the trial for the offence punishable under Section 363, 376(2)(n) of Indian Penal Code (hereinafter referred as IPC) and Section 3 r.w. 4, 5(l) r.w. 6 of Protection of Children from Sexual Offences Act (POCSO for short) as he came to be prosecuted by the State through Yerwada Police Station, Pune.

Facts which gave rise to the prosecution case are that
2] On 23.06.2016 informant Amol Atul Randive lodged a missing complaint/ report of victim his sister stating therein

that victim his sister, aged 17 years, studying in Samata Balak Mandir, Maharashtra Housing Board, Nagpur Chawl, Yerwada, Pune. He further alleged that on 20.06.2016 after returning from his work in the evening at 6.00 p.m., he did not find his sister victim in the home, so he enquired with the neighbours, he took her search in the nearby area, after thinking that she might have gone to her friend, he waited at home. On the next day victim returned home, so, he did not file any complaint on that day. He further alleged that on 22.06.2016 his relative Mangesh Vidhate told him that he saw victim on 20.06.2016 at about 3.00 p.m. at Gunjan chowk, Yerwada, so he thought that some unknown person for unknown reason might have kidnapped the victim and lodged present missing complaint against unknown person. It is further alleged that on 24.06.2016 when victim lodged report that as she was feeling unwell on 20.06.2016 at about 12.30 she went to Bungalow No.2 at Deshprem Garden, Nagpur chawl, stayed there and on 24.06.2016 she came back to home. While coming home at Nagpur chawl Mandai, she met her brother and came to know that he has filed her missing complaint with police. So, she gave report informing therein that she at her own had left home under depression and nobody cheated her nor committed any wrong act with her.

3] On the basis of above report CR No. 464/2014 for the offence punishable under Sections 363, 376(2)(n) of IPC

and Section 3 r.w. 4, 5(l) r.w. 6 of POCSO Act came to be registered with Yerwada police station and its investigation was carried out by API Seema S. Dhakane. During investigation she recorded statement of victim, got her medically examined, carried out spot panchanama of the spot of incident, forwarded letter to Sr. PI for addition of offences, arrested accused, got accused medically examined, seized muddemal articles, sought its chemically analysis report, sought potency test of accused, recorded statement of witnesses, forwarded letter and got recorded the statement of victim u/s. 164 of Cr. P. C., sought mental health report of victim from Sassoon Hospital, sought report card, copy of admission register of victim in her school, sought medical treatment papers and after completion of investigation, she filed charge-sheet against the accused.

4] As the offence punishable under Section 376 of IPC and offences under POCSO Act are exclusively triable by Sessions Court, it came to be assigned to this court.

5] My learned predecessor has framed charge for the offence punishable under Section 363, 376(2)(n) of IPC and Section 3 r.w. 4, 5(l) r.w. 6 of POCSO and recorded plea statement of accused vide Exh.32 and Exh.33 respectively. Accused pleaded not guilty and claimed to be tried. Hence, trial proceeded.

6] Prosecution has examined in all 10 witnesses and closed its evidence by filing evidence close pursis Exh. 165. Thereafter, I have recorded statements of accused under Section 313 of Cr. P .C., which is at Exh.166. While cross examining prosecution witness and while giving answers to the questions put forth under Section 313 of Cr.PC., accused has advanced defence of total denial. Accused has filed written statement u/s. 313 of Cr.PC. vide Exh.167. Thereafter, I have heard arguments of learned APP Mr. Wadekar and defence advocate Mr. S.R. More.

7] Learned APP Shri. Wadekar strongly argued that from the evidence on record prosecution has proved the charge levelled against the accused beyond reasonable doubt. It is argued that prosecution has adduced evidence of 10 witnesses to prove the charge levelled against the accused. PW-1 informant, brother of victim, PW-2 relative of victim have supported the prosecution case and proved the complaint. PW-1 has deposed that victim told him that she was knowing accused Swapnil as he was residing in Nagpur chawl area, she had physical relations with accused Swapnil Salve. PW-1 identified the clothes of victim so also accused in the court. Expert medical witness PW-4 Dr. Ambadkar has also fully supported the prosecution case, he has deposed that victim had told him history of sexual vaginal intercourse with accused for 2 to 3 times. PW-5 has fully corroborated the prosecution by proving the procedure carried out by her at the time of investigation.

PW-6 has proved the age of victim by proving copy of General register of admission of victim in the school.

8] It is further argued that though PW-8 Dr. Kadam has deposed that victim was suffering from mental illness, but he himself has deposed that victim was brought to him for the first time in 2021 that time at the time of alleged offence, victim was not suffering from any mental illness. Further more PW-10 JMFC Smt. Smita Gharage has proved the statement of victim recorded u/s. 164 of Cr.PC., wherein victim had stated about physical relations made by accused with her against her wish. Therefore, according to learned APP accused is necessary to be convicted.

9] I have also heard learned advocate Mr. S.R. More for accused. Learned advocate for accused has argued that first of all victim herself has mentioned in her statement Exh.74 that she, on her own accord, had left home and gone to Bungalow No.2 at Nagpur chawl, Deshprem Garden under depression and as her brother did not find her, he lodged missing complaint, accused had not kidnapped the victim. She further contended that she has no complaint or grudge with anybody It is further argued that accused neither kidnapped victim, nor committed rape on her, so also no physical assault or repeated penetrative sexual assault was made on victim by accused. Whole evidence of PW-1 appears to be hear-say, he personally has no knowledge

about the alleged acts and the victim, though is suffering from mental illness, has herself given in writing that she left the house at her own accord and accused is not concerned with her. He is not knowing victim so also he was knowing about her mental status. He is not at all concerned with the victim. It is further argued that victim is not mentally fit. It is argued that perusal of medical evidence of the prosecution witness shows that on local examination of hymen he found no inflammation but opined that there is evidence of vaginal penetration with no fresh hymenal injury or physical injury. So also, argued that old healed tears can be possible by playing, etc. It is further argued that the evidence of Mangesh Vidhate and informant do not support each other as to seeing of victim with some boy at Gunjan Theatre.

10] It is further argued that CCTV camera is installed near the entry gate of said garden, there is specific timing of opening and closing of garden, security guard is appointed to look after the garden, if victim was really taken to the garden, it might be noticed in the CCTV footage and it was easy for the Investigating Officer to collect said CCTV footage, but no such footage is obtained and filed on record. Further more no statements of security guard of the garden is recorded by Investigating Officer so also Investigating Officer failed to enquire about the owner of the Bungalow No.2 of Nagpur chawl, his statement is not recorded nor filed on record. Further

more no spot panchanama of the spot of said bungalow is drawn by the Investigating Officer. No clothes of accused worn by him at the time of incident were seized by Investigating Officer.

11] Further the CA report of seized clothes of victim shows that there were no stains on the said clothes. As the clothes do not show any stains, it creates doubt about the happening of such incident in fact. It is further argued that perusal of evidence of Dr. Krishna Balasaheb Kadam shows that on 19.08.2016 when she was brought to him, he opinion that she was not suffering from any mental illness but during 04.09.2021 to 15.09.2021 victim was admitted at his hospital for mental treatment. No birth certificate of victim is produced and proved during evidence, which is the key factor in POCSO cases. Hence, according to defence advocate case of prosecution is based on the hearsay evidence of informant, victim, who is the actual sufferer in the present crime has not stepped into witness box to support the version of informant. Medical evidence and forensic reports also do not support the prosecution case. Hence, according to defence advocate prosecution has failed in proving the charge levelled against the accused and to bring home the guilt of the accused beyond reasonable doubt and therefore, accused is entitled for acquittal.

In support of his contentions learned advocate for accused has relied on the following case-laws :-

- 1] Dola @ Dolagovinda Pradhan and another vs State of Odisha - Supreme Court in Cri. Appeal No. 1095/2018 arising from SLP (Cri.) 8578/2017.
- 2] Navin Dhaniram Baraiye vs State of Maharashtra – Bombay High Court Nagpur Bench in Cri. Appeal No. 406/2017
- 3] MD. Babu Ali @ Imran Ali vs State of Aasam – Guahati High Court in Cr. Appeal No. 278/2022.
- 4] Sham Singh vs State of Haryana, Supreme Court in Cr. Appeal 544/2018.

12] From the prosecution case on record and from the arguments referred above which are advanced on behalf of the parties, following points arise for my determination and I am recording my findings against those points for the reasons discussed below -

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Whether prosecution has proved that on 20.06.2016 at about 10-00 hours to 18-00 hours or thereafter at bungalow No.5, Jail road, Post Office. Pune and at Deshpremi garden, Nagpur chawl, Yerwada, Pune, accused kidnapped the minor victim girl aged about 17 years from the lawful guardian ship of her parents, without their consent and thereby committed offence punishable under Section 363 of IPC ?	In negative
2]	Whether prosecution has proved that on the aforesaid day, date, time and place and during the course of same transaction accused repeatedly committed rape on	

- the minor victim girl aged 17 years, and thereby committed offence punishable under Section 376(2)(n) of IPC ? In negative
- 3] Whether prosecution has proved that on the aforesaid day, date, time and place and during the course of same transaction accused committed penetrative sexual assault on the minor victim girl aged 17 years and thereby committed offence punishable under Section 3 r.w. 4 of POCSO Act ? In negative
- 4] Whether prosecution has proved that on the aforesaid day, date, time and place and during the course of same transaction accused repeatedly committed penetrative sexual assault on the minor victim girl aged 17 years and thereby committed offence punishable under Section 5(l) r.w. 6 of POCSO Act ? In negative
- 5] What order ? As per final order.

REASONS

AS TO POINTS NO.1 TO 5 :-

13] All the points are interlinked with each other, hence, those are discussed together.

14] For proving its case prosecution has placed reliance on the documentary evidence, which is referred in the initial part of the judgment. Apart from above documentary evidence prosecution has examined in all 10 witnesses. The witness PW-1

is the brother of victim working as Peon in Cultural Directorate, the victim is his younger sister. As per the evidence of PW-1 the date of birth of victim is 06.07.1999. She was studying in Samata Balak Mandir at Samata Nagar in 8th standard. The duty hours of PW-1 were 10.00 a.m. to 5.30 p.m. PW-1 deposed that on 20.06.2016 he returned home from his job at 5.30 p.m., the victim was not at home. He inquired with neighbours but, could not find her. He thought that she might have gone to her friend, hence, he waited for her. His brother-in-law PW-2 Mangesh told PW-1 on 22.06.2016 that he had seen victim on that day at Gunjan chowk, Yerwada. PW-1 told PW-2 Mangesh that victim was missing and on 23.06.2016 PW-1 gave missing complaint Exh.48 at Shashtrinagar police chowky.

15] With regard to the missing complaint of given by PW-1, it was lodged because since 10.00 a.m. on 20.06.2016 the victim was not found, so said complaint Exh.48 was lodged. But, she was noticed at Gunjan talkies chowk by PW-2. If the evidence of PW-1 and PW-2 is seen together, PW-1 says that PW-2 told him that he has seen at Gunjan Chowk on 22.06.2016, whereas the evidence of PW-2 on record shows that on 23.06.2016 at about 11.30 a.m. to 12.00 noon, he had gone to fill petrol that time he had seen victim and one boy outside 'Gunjan Talkies' and when he returned back that time, they had left from there. Thereafter, PW-2 went to the house of PW-1 and told him that he had seen victim with one boy at Gunjan Talkies.

Here PW-2 mentions about the date 23.06.2016. But PW-1 stated that PW-2 told this fact to him on 22.06.2016. PW-2 Mangesh did not meet him. PW-1 also deposed that PW-2 is not visiting his house. Thus, there is large variation and inconsistency in the evidence of PW-1 and PW-2 on this aspect to believe their testimonies. At the same time PW-2 in his missing complaint Exh.48, mentioned that unknown person kidnapped victim. So also PW-2 is not sure whether the boy with victim seen at Gunjan chowk is accused. PW-2 also deposed that he cannot identify the said boy. As such, the evidence of PW-1 and 2 does not corroborate each other on this point.

16] It is pertinent to note that the defence admitted the spot panchanama conducted at Gunjan Chowk, Yerwada, Pune i.e. Exh.60. The perusal of spot panchanama Exh.60 shows that on the said spot on 20.06.2016 at about 3.00 p.m. PW-2 has seen victim along with one boy. Therefore, even the spot panchanama is admitted by defence, through the inconsistent evidence of PW-1 and PW-2 and difference in the date and timing, the prosecution failed to prove the fact that the victim was seen with accused on the alleged day of incident of her missing from her house.

17] In order to prove the seizure of clothes of accused prosecution has examined panch witness PW-3 Ashok Itkar. However, the said witness only identified his signature on the

seizure panchanama of clothes of accused conducted on 29.06.2016, but he denied that the said clothes were seized in his presence. Though the said seizure panchanama Exh.66 is admitted by the defence, but the prosecution failed to prove the seizure panchanama through independent witness.

18] It is pertinent to note that in the present case in hand the victim was not examined by the prosecution due to her mental health. In this regard the prosecution has brought on record the evidence of PW-8 Dr. Krishna Kadam, who examined the victim as per the order of court. He deposed that on 22.06.2021 the victim was brought to him by police constable along with case-papers and she was examined by Dr. Deepika Patil and Dr. Devika for IQ assessment. At that time victim did not co-operate for IQ test, hence, some medications were started. PW-8 identified the case-papers Exh.116 being in handwriting of Dr. Devika and Dr. Deepika Patil. As per his deposition the patient was again brought to the hospital on 20.08.2021. She was taking medicine but there was no improvement. The said medical papers Exh.117(1) to 117(5) were also identified by the witness PW-8. It has further come in the evidence of PW-8 that on 04.09.2021 the victim was admitted in the hospital, every time she was brought by LPC of Yerwada Police Station. He also identified the admission form Exh.118.

19] PW-8 further deposed that in between 04.09.2021 to 15.09.2021 the victim was admitted in Psychiatric ward of Sassoon Hospital under the surveillance of police officer. After admission details of her illness, medication etc. were noted down and that information was given by her brother. During admission her daily mental status was examined, she was not co-operative for examination. She was withdrawn, occasionally she was smiling for herself for no reason, her speech was irrelevant, her psycho motor activity was decreased, her reaction time was increased. It was noticed that she was not in a position to tell alleged incident of sexual assault took place with her. When he has examined the victim, she was not in a position to report that incident to him. Her IQ assessment was done, it was 72, which is suggestive of border line intellectual functioning with psychosis. In view of the said conclusion he prepared psychiatric assessment report Exh.119. PW-8 also admitted that the discharge card Exh.120 bears his signature.

20] As per the deposition of PW-8 it was noticed that previously in 2019 also the victim was admitted in Sassoon Hospital and her medication was not continuously taken, it was suddenly stopped. Therefore, her problem again restarted. PW-8 also deposed that if continuously medication was taken for 2 to 3 years, her mental health may improve. As on today she is not in a position to give deposition about the incident. PW-8 further deposed that at least 6 months period will be required for giving

deposition before the court. In view of such evidence of PW-8 Dr. Krishna Kadam, the court after 6 months again issued letter to Sassoon Hospital to carry out medical examination of the victim. Again on 07.01.2025 the medical report of Dr. Sachin Mahajan of Sassoon Hospital Exh.157 was obtained by the court regarding psychiatric assessment of the victim. But the said report also shows that the victim is suffering from border line intellectual functioning with psychosis at present. She requires adequate and regular treatment for her behavioural complaints. At present she is not fit to stand trial. Accordingly the matter proceeded further and the other witnesses were examined.

21] As the victim was not examined by the prosecution due to her mental health, through the evidence of Investigating Officer PW-5 Seema Dhakane the statement of victim was exhibited as Exh.74. PW-5 deposed that after the victim was found, she recorded her statement on 24.06.2016. It bears signature of victim and the signature of Gitanjali Rithe, member of Dakshata Committee. The perusal of statement of victim Exh.74 shows the signature of victim and Gitanjali Rithe. However, it is interesting to note that the contents of said statement Exh.74 shows that on 20.06.2016 she (victim) was getting bored so she left the house without telling anyone and stayed in bungalow No.2 and Deshprem Garden of Nagpur chawl and returned back home on 24.06.2016. As she left the house without informing, her brother PW-1 lodged missing

complaint at Police Station. So also, as per the contents in statement Exh.74, she stated that no one has kidnapped her nor any untrue incident occurred with her, she left the house on her own accord. Thus, in the present case the victim is not examined as well as the contents of statement of Exh.74 are contrary to the allegations against the accused as per prosecution case.

22] It is therefore, the prosecution examined the Judicial Magistrate, Pune PW-10 Smita Ghorage, who at the relevant time had recorded the statement of victim u/s. 164 of Cr. P. C. PW-10 deposed that on 05.07.2016 she received a letter of H.N. Bhosale CJM, Pune to record the statement of victim u/s. 164 of Cr. P. C. After receipt of said letter, she called the victim to record her statement on 12.07.2014, accordingly victim came and she recorded statement of victim Exh.164. PW-10 also deposed that after recording the statement it was given to victim for reading. During her cross examination by defence, PW-10 admitted that for recording statement of witness u/s. 164 of Cr. P. C. Police used to call the witness by issuing letter and some usual question and answers were not asked by her while recording the statement Exh.164. Thus, apart from this nothing material was brought on record to discard the testimony of PW-10. The perusal of statement of victim u/s. 164 of Cr. P. C. Exh.164 shows that victim has specifically stated that she knows accused Swapnil Salave, he was liking her, in that year in February when

she went to the shop at some distance from her house, he called her and took her to Deshprem Garden at Nagpur chawl, Yerwada. After reaching there he took her in bushes, removed her clothes and in spite of her refusal, the accused committed sexual intercourse with her. Thereafter, he took her to Deshprem Garden several times and he used to have sexual intercourse with her and used to threaten her if she will refuse to do so, he will tell her brother.

23] The contents of Exh.164 also shows that on 20.06.2016 when the victim had been to Deshprem Garden at 12.30 p.m., accused Swapnil Salve came there near her and told her that “he loves her and asked her to come with him, to that she denied but he pleased her and committed sexual intercourse with her. Thereafter, she got frightened and remained there in the garden for long time. Prior to that, as she was scared, so, she has told police and her brother that nothing had happened with her. Thus, the contents of Exh.164 shows specific acts of accused committed by him with the victim since February 2016 till 20.06.2016, which supports the allegations against accused as per prosecution case and the charge levelled against him. But, it is settled principle of law that the statement u/s. 164 of Cr. P. C. is used only for the purpose of corroboration. However, in the present case in hand, the victim is not examined, thus there is no substantive evidence of victim in that respect. So also, the contents of statement of victim Exh.74 recorded by Investigating

Officer PW-5 are contrary to the contents of statement u/s. 164 of Cr. P.C. i.e. Exh.164. Hence, in absence of substantive piece of evidence and there is no corroboration in the documentary evidence Exh.74 and Exh.164, the prosecution failed to establish and prove the charge levelled against the accused u/s.363 and Section 376(2)(n) of IPC.

24] Even in this regard if the evidence of Medical officer PW-4 Dr. Arun Ambadkar is seen, he deposed that he examined the victim aged 17 years on 27.16.2016 by obtaining her consent. The alleged history of sexual assault is that the accused by name Swapnil met the victim at some shop and the victim left with the accused on 20.06.2016 and was roaming here and there with him, spent night at Nagpur chawl. The victim gave history of sexual vaginal intercourse with the accused, there was no physical injury on her body surface. On local examination of hymen, old healed tears of 10 O'clock position, with no peri hymenal inflammation. Accordingly, PW-4 issued medical certificate Exh.70 with opinion that "there is evidence of vaginal penetration with no fresh hymenal injury, no physical injury." However, the perusal of the medical certificate Exh.70 shows the name of accused in the history stated by victim as "Sopnil". PW-4 also admitted that surname of said boy was not told by victim in the history. Thus, from said medical evidence on record it appears that there is evidence of penetrative sexual assault, but the name of accused is not matching with the name of

accused as “Sopnil”, so also the surname accused is not mentioned in Exh.70. Therefore, it creates serious doubt about the sexual intercourse being committed with victim by the present accused Swapnil Salve.

25] In order to prove the age of the victim the prosecution examined teacher of the school Samata Balmandir of victim i.e. PW-6 Nandu Yesankar. He deposed that he has been shown the progress report card of 8th standard of the victim of the year 2015-16. As per the said progress card the date of birth of victim is 06.07.1999. The perusal of progress report card Exh.96 also shows the date of birth of 06.07.1999. PW-4 further deposed that when the victim took admission in the school at that time from the birth certificate, her date of birth is mentioned in the register. But, he has brought with him the photocopy of said register, while deposing. In his cross examination PW-4 admitted that on the progress report card Exh.96, the date of birth of victim is written in different ink. The perusal of Exh. 96 clearly shows the date of birth is written in green ink whereas, the other contents are filled / written in blue ink. Thus, from the said document Exh.96 and evidence of PW-4 the date of birth of victim appears to be doubtful. No doubt the brother of victim also deposed the date of victim as 06.07.1999, but in absence of birth certificate and concrete authentic proof of date of birth of victim, it is difficult to admit or consider that the date of birth of victim is 06.07.1999.

Ultimately the prosecution failed to establish the fact that the date of birth of victim is 06.07.1999 and on the alleged date of incident, the victim was minor below the age of 18 years.

26] On analysing the entire oral, documentary, and medical evidence on record, the prosecution failed to prove the foundational facts i.e. date of birth of victim and the alleged act of accused on the date of incident, so also, there is lack of substantive evidence showing that the accused kidnapped the victim from her lawful guardians and had taken her to the spot of incident i.e. Deshprem Garden and other places wherein he committed sexual intercourse with her. The medical evidence is deficit to prove the facts that the accused committed forcible sexual intercourse on the victim. From the evidence of prosecution witnesses and the medical evidence brought on record by the prosecution, it shows that the foundational facts necessary in the present case to raise presumption u/s. 29 of the POCSO Act, have not been established beyond reasonable doubt by the prosecution. The defence has been able to demonstrate why the prosecution story cannot be disbelieve, therefore, the presumption u/s. 29 will not operate. In the backdrop of such evidence brought on record by the prosecution it would be unsafe to hold that the prosecution has proved its case against the accused u./s. 363, 376(2)(n) of IPC and u/s. 3 r.w 4 and 5 r.w. 6 of POCSO Act, hence, I answer point No. 1 to 4 in negative and in result pass the following order :-

ORDER

- 1] Accused Swapnil Jagannath Salve is acquitted under Section 235 of Cr.P.C., of the offences punishable under section 363, 376(2)(n) of IPC, Section 3, 4, 5(l), 6 of POCSO Act.
- 2] His bail bond stands cancelled and sureties are discharged.
- 3] Seized muddemal property viz– Clothes seized in this crime being worthless be destroyed after appeal period is over; and if appeal is preferred, then as per the directions of the appellate court.
- 4] Accused in compliance of Section 437-A of the Criminal Procedure Code, shall execute PR and SB of Rs.15,000/- for the period of six months from the date of this order.

Pune.

Date : 28th July 2025

(A.S. Waghmare)
Additional Sessions Judge, Pune.

CERTIFICATE

“ I affirm that the contents of this PDF file are word to word as per the original order.”

Name of the Steno	: Smt. S.M. Khisti (Grade I)
Name of the Court	: Shri. A.S. Waghmare, District Judge 1 & Additional Sessions Judge, Pune
Date of Order	: 28.07.2025
Order signed by PO on	: 12.08.2025
Order uploaded on	: 13.08.2025