

MHRG170008472021



Presented on : 24/05/2021
Registered on : 24/05/2021
Decided on : 16/03/2026
Duration : yy/mm/days
04 09 23

IN THE COURT OF SPECIAL JUDGE AT PANVEL, DISTRICT- RAIGAD

(Presided over by Mr. S. C. Shinde)

SPECIAL CASE (POCSO) NO.67/2021

Exh. No.122/A

Prosecution { **The State of Maharashtra**
Through Police Inspector, Khopoli
Police Station, Tal- Khalapur, Dist- Raigad
(Crime No.78/2021)

Represented by : Ld. Spl. P. P. Smt. P. P. Wade

Versus

Accused { **Lingappa Mallaya Pujari**
Age: 42 yrs. Occupation- -
R/o.- Samtanagar, Khopoli, Tal- Khalapur,
Dist- Raigad,
Permanent R/at. Chatkali, Tal- Shahapur,
Dist- Yadgir, State- Karnataka.

Represented by : Ld. Advocate Mr. Manan Shah & Dipesh Patil

Date of Offence : 24/03/2021
Date of FIR : 26/03/2021
Date of Charge sheet : 21/05/2021
Date of Framing of charges : 19/06/2025
Date of commencement of evidence : 30/10/2025
Date on which judgment is reserved : 12/03/2026
Date of the Judgment : 16/03/2026
Date of the Sentencing Order, if any : 16/03/2026

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 of CrPC
1	Ligappa Mallaya Poojari	26/03/2021	---	u/s.363, 354-B, 376(2)(j), 376(2)(l) & 376(3) of the IPC, 1860 u/s.4, 6, 8 & 12 of the POCSO Act, 2012 and u/s.3(1)(w) (i), 3(1)(w) (ii) & 3(2)(va) of the SC & ST Act, 1989	Accused is convicted for offence punishable u/s. 363, 354-B, 376(2)(j), 376(2)(l) of the IPC	Imprisonment for Five years & to pay fine of Rs.25,000/- for offence punishable u/s.354B of IPC & in default of payment of fine rigorous imprisonment for six months, Imprisonment for five years & to pay fine of Rs.25,000/- for offence punishable u/s.363 of IPC & in default of payment of fine rigorous imprisonment for six months. Imprisonment for Ten years & to pay fine of Rs.50,000/- for offence punishable u/s.363 of IPC & in default of payment of fine rigorous imprisonment for one year.	From 26/03/2021 to 16/03/2026

List of Prosecution Witnesses

Rank	Name	Nature of Evidence
PW No.1	Pushpa Parasappa Daudmani	Informant/Complainant

PW No.2	Vijayalaxmi Santosh Bhosale	Eye Witness
PW No.3	Manojkumar Chandramohan Kolwadikar	Medical Officer
PW No.4	Ekta Eknath Pawar	Headmistress of school
PW No.5	Srushti (Victim)	Victim
PW No.6	Abhijit Anil Pawar	Clothes seizure Panch
PW No.7	Rajashri Naresh Bhosale	Eye witness & injured
PW No.8	Kalyani Vinod Padole	Investigation Officer
PW No.9	Sonali Tukaram kadam	Investigation Officer
PW No.10	Sangita Shivdas Thakur	Medical Officer

List of Prosecution Exhibits

Sr. No.	Exh. Nos.	Description
1	Exh.30	Complaint
2	Exh.31	First Information Report
3	Exh.32	Statement u/s.164 of the CrPC of complainant
4	Exh.33	Out patient record of victim of Alibaug Civil Hospital (referred in cross-examination)
5	Exh.37	Statement u/s.164 of the CrPC of PW No.2
6	Exh.47	Medico-Legal examination report of victim
7	Exh.49	School Leaving Certificate of Victim
8	Exh.51	Statement u/s.164 of the CrPC of victim
9	Exh.58	Seizure Panchanama of clothes of victim
10	Exh.59	Seizure Panchanama of clothes of accused
11	Exh.60	Seizure Panchanama of vehicle
12	Exh.61	Spot panchanama
13	Exh.69	Statement u/s.164 of the CrPC of PW No.7
14	Exh.71	Muddemal receipt of clothes of victim
15	Exh.72	Arrest Panchanama
16	Exh.73	Muddemal receipt of clothes of accused
17	Exh.74	Muddemal receipt about motor cycle seizure
18	Exh.75	Letter dt.26/03/2021 addressed to JMFC Court,

		Khalapur by Khopoli police station for recording statement of victim & complainant.
19	Exh.89	Letter dt.06/05/2021 addressed to Tahsildar, Khopoli by Khopoli police station for providing caste certificate of victim.
20	Exh.90	Letter addressed to Medical officer by Khopoli police station for providing treatment to injured.
21	Exh.91	Letter addressed to CEO, Khopoli Municipal Council by Khopoli police station for providing assessment extract of house of accused.
22	Exh.92	Letter addressed to Tahsildar, Khopoli by Khopoli police station for providing map of spot.
23	Exh.93	Letter addressed to FSL, Kalina by Khopoli police station for providing DNA kit.
24	Exh.94	Letter addressed to Medical officer by Khopoli police station for taking samples of victim.
25	Exh.95	Letter addressed to FSL, Kalina by Khopoli police station for analyzing samples of victim
26	Exh.96	Letter dt.27/04/2021 addressed to FSL, Kalina by Khopoli police station for analyzing samples of victim & accused
27	Exh.97	Letter dt.05/05/2021 addressed to FSL, Kalina by Khopoli police station for analyzing samples of victim & accused
28	Exh.104	Injury certificate of PW No.7

List of Defense Witnesses

Rank	Name	Nature of Evidence
1	Chandrakant Buddhaji Takavale	Employee of IOCL Company

List of Defense Exhibits

Sr. No.	Exhibit Number	Description
Nil		

List of Court Witnesses

Rank	Name	Nature of Evidence
Nil		

List of Court Exhibits

Sr. No.	Exhibit Number	Description
1	117	Caste Certificate of accused
2	118	FSL report of clothes of victim
3	119	FSL report of biological samples of accused

Material Objects

Material Object No.	Description
A	Blue coloured eith pink sleeves kurta of victim
B	Coral Pink Laggings of victim
C	Black Colour nicker of victim
D	Off white colour shirt of accused
E	Grey colour pant of accused
F	Chocolate colour underwear of accused

JUDGMENT

(Delivered on 16th March 2026)

Accused is facing charges for offence punishable u/s.363, 354B, 376(2)(j), 376(2)(l), 376(3) of the Indian Penal Code, 1860 (in short "IPC"), u/s.4, 6, 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act") and u/s.3(1)(w) (i), 3(1)(w)(ii) & 3(2)(va) of the Scheduled Caste And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 (in short "SC & ST Act").

1. In brief case of the prosecution is as follows-

FIR is registered by mother of victim. As per informant, to certain extent victim is differently abled person. Her husband is

expired and she is labourer. On 24th March 2021, in the evening at about 6:00 PM, she returned from work and when she was cooking, victim was not talking with her and she was quiet. After dinner, she took her in confidence and asked reason behind her silence. That time, victim sobbed and narrated that in the afternoon at about 1:00 to 1:30 PM, when after washing clothes on river, she was returning home, accused forcibly made her to sit on his motorcycle and through DP road from the compound of IOCL Company, he brought her in the Forest Area. Then he pulled her in bushes, removed her clothes and when she resisted, he assaulted her on cheek. Thereafter, accused removed his clothes and made her to lie down. Then accused slept over her person and forcibly committed sexual intercourse. When she was screaming, accused threatened not to shout and not to tell anyone otherwise he will see her. Still, she was screaming and after hearing her voice, three ladies who were her neighbours reached there and after seeing them accused ran away from the scene. Thereafter, she was brought by those ladies to her house. Informant did not disclose this incident on that day to anybody and in the next morning, she went to the house of those ladies who had brought victim from the spot. Those ladies also narrated similar facts about incident therefore, she called her cousin brother who reached to her house at about 4:00 PM. Informant narrated the incident happened with victim to him. He also made inquiry with victim about the incident and victim narrated the same story to him. Thereafter, after discussion between them, complaint was lodged.

2. On basis of complaint of mother of victim, FIR No.78/2021 was registered at Khopoli Police Station, Tal- Khalapur, Dist- Raigad for offence punishable u/s.363, 354B, 376(2)(j), 376(2)(l) & 376(2) of the IPC & u/s.4, 8, & 12 of the POCSO Act. In investigation, it was revealed that victim belongs to scheduled caste therefore, sections 3(1)(w)(i), 3(1)(w)(ii) & 3(2)(va) of the SC & ST Act were added.
3. During investigation, spot Panchanama was prepared. Documentary evidence about age & caste of victim was collected. Accused was arrested. Clothes of victim & accused were seized. Biological sample of victim & accused were collected. Clothes as well as biological samples of victim & accused were sent at Forensic Science Lab (in short "FSL") for analysis. Motorcycle used in crime was seized. Statements u/s.161 & 164 of the CrPC of victim, her mother & eye witnesses were recorded. Statements u/s.161 of the CrPC of other witnesses were recorded. Medical reports & FSL reports of accused & victim were collected. Thereafter, charge-sheet is filed.
4. Charge at exh.22 is framed by my Ld. Predecessor for offence punishable u/s.u/s.363, 354B, 376(2)(j), 376(2)(l) & 376(3) of the IPC, u/s.4, 6, 8 & 12 of the POCSO Act & u/s.3(1)(w)(i), 3(1)(w)(ii) & 3(2)(va) of the SC & ST Act. Contents of charge were read over & explained to accused in vernacular to which he pleaded not guilty and claimed trial.
5. Prosecution has examined 10 witnesses. On oral intimation, evidence of prosecution is closed on 25th February 2026.

Accused has examined one witness in his defense. Statement u/s.313 of the CrPC of accused is recorded at exh.108. Defense of accused is of total denial & false implication.

6. Heard Ld. Spl. P. P Smt. Wade for the State & Ld. advocate Mr. Dipesh Patil for the accused.
7. Ld. Spl. P. P submitted that victim has born in the year 2007. On day of incident, she has not told incident therefore, there is delay in lodging complaint. Delay is satisfactorily explained. Accused on his motorcycle had forcibly taken victim and took her in bushes behind IOCL Company where after removing her clothes, he committed forcible sexual intercourse with her. Victim was incapable of giving consent and she is mentally & physically disabled. She has intellectual disability of mild nature.
8. Ld. Spl. P. P further submitted that three witnesses have seen the accused & victim on spot. One of the witnesses had tried to catch the accused but he pushed her and ran away therefore, that witness has sustained injury to her wrist. Accused is resident of same village and he was in a position of trust. He was familiar to victim for last 5 years. Hymen of victim was ruptured. Medical report confirms penetrative sexual assault. Panchanamas are proved. Caste of victim is proved. Offence is proved and offence committed by accused is serious in nature therefore he be punished severely.
9. Ld. Spl. P. P has relied upon judgment of Hon'ble Supreme Court in **Ganesan Vs. State [AIROnline 2020 SC 777] & Shivkumar @ Baleshwar Yadav S. The State of Chhattisgarh**

[Criminal Appeal No.4502/20205 (@ Special Leave Petition (Criminal) No.14625/2024). These citations are considered while pronouncing judgment.

10. Ld. advocate for accused submitted that delayed FIR is registered and contents of FIR were not verified. When prosecution is alleging that accused has taken victim from the gate of IOCL Company, no CCTV footage at the gate of IOCL Company was collected and produced as evidence. Victim is differently abled person and her statement as expected by law was not recorded before the Special Officer. Nothing is recovered from the spot.
11. Ld. advocate for accused submitted that there is alteration in the school leaving certificate. Medical report shows that no injury was found on person of victim and there was no physical violence. Medical reports of victim are normal. Accused was doing job in IOCL Company. Due to previous enmity, false FIR is registered. Accused belongs to Dhangar community therefore, provisions of SC & ST Act are not applicable to him. No recovery is made from him. On basis of wrong investigation, charge-sheet is filed. There is no evidence against accused. Case is not proved beyond reasonable doubt therefore, accused be acquitted.
12. Perused evidence on record. Points for determination along with my findings thereon are as follows-

Sr. No.	Points	Findings
1.	Does prosecution prove that victim is child under POCSO Act?	Not proved

2.	Does prosecution prove that accused kidnapped victim on his motorcycle?	Proved
3.	Does prosecution prove that accused assaulted/used criminal force to victim with intention of disrobing & compelling her to be naked?	Proved
4.	Does prosecution prove that accused committed rape on victim incapable of giving consent?	Proved
5.	Does prosecution prove that accused committed rape on victim suffering from mental/physical disability?	Proved
6.	Does prosecution prove that accused committed rape on victim under sixteen years of age?	Not proved as age not proved
7.	Does prosecution prove that accused committed aggravated penetrative sexual assault on victim?	Not proved as age not proved
8.	Does prosecution prove that accused committed penetrative sexual assault on victim?	Not proved as age not proved
9.	Does prosecution prove that accused taking advantage of victim's mental or physical disability, committed penetrative sexual on victim?	Not proved as age not proved
10.	Does prosecution prove that accused taking advantage of victim's mental or physical disability, committed aggravated penetrative sexual on victim?	Not proved as age not proved
11.	Does prosecution prove that accused committed sexual assault on victim?	Not proved as age not proved
12.	Does prosecution prove that accused committed sexual harassment of victim?	Not proved as age not proved
13.	Does prosecution prove that accused with sexual intent & without consent of victim intentionally touched her when he was knowing that victim belongs to Scheduled Caste?	Not proved

14.	Does prosecution prove that accused used words acts or gestures of a sexual nature towards victim belonging to scheduled caste?	Not proved
15	What Order?	Accused is convicted as per final order.

REASONS

As To Point No.1-

13. First question arises whether prosecution proves, beyond reasonable doubt, that victim is a “child” (below 18 years) so as to attract the POCSO Act. Victim’s age is a jurisdictional fact for application of POCSO Act. Without proof of minority, provisions of POCSO Act cannot validly be invoked.
14. The Juvenile Justice Act, 2000 & The Juvenile Justice Rules 2007 have been superseded by the Juvenile Justice Act, 2015 (in short “J.J. Act”). Section 94 of the J.J. Act lays down procedure for age determination. First document to prove age is the date of birth certificate from the school or matriculation/equivalent certificate from the examination board failing which birth certificate from a corporation/municipality/panchayat can be considered; failing which, Ossification test or other medical age determination tests are important for determination of age of victim. Whichever of these documents, in order of priority, is available & proved becomes “conclusive proof” of age for the purposes of criminal adjudication.
15. For proving age of PW No.5, prosecution has relied upon oral evidence of PW No.1 & 4 and documentary evidence in nature

of school leaving certificate of PW No.5. PW No.1 is mother of PW No.5. In evidence, PW No.1 has stated that birth of PW No.5 is of the year 2007 but she has not stated the exact date and month. PW No.1 has not stated at what age PW No.5 started going to school and who had given information in the school about birth date of PW No.5. In evidence, PW No.5 has stated that in different schools, she has studied up to 8th standard.

16. In evidence, PW No.4 has stated that PW No.5 was student of her school and PW No.5 left the school as the school has facility of education up to 7th standard. As per school record, date of birth of PW No.5 is 29th April 2007. PW No.4 had brought original school register & previous school leaving certificate of PW No.5 but prosecution has not placed its copy on record. First admission form of PW No.5 is not brought on record by prosecution.
17. As per PW No.4, information in exh.49 was taken as basis of information given in previous school leaving certificate of PW No.5 and birth date & caste mentioned in exh.49 is identical with the previous school leaving certificate. But this could not be verified as copy of school register & previous school learning certificate of PW No.5 is not produced on record. In cross-examination, PW No.4 has admitted that there is correction in the leaving certificate at exh.49 regarding name of mother of PW No.5.
18. Now, question arise whether or not entry relating to date of birth made in school leaving certificate is relevant &

admissible. Parents or near relations having special knowledge are the best persons to depose about date of birth of a person. If entry regarding date of birth in the school register is made on information given by parents or someone having special knowledge of the fact, the same would have probative value.

19. In my opinion, date of birth mentioned in the scholar leaving certificate has no evidentiary value unless the person who made the entry in school register or who gave the date of birth is examined. In case in hand, PW No.1 has not stated that she had given information to the school about date of birth of PW No.5. When entries in school leaving certificate are taken on basis of previous school leaving certificate, it has not come on record that entry taken in school register or leaving certificate about birth date of PW No.5 was taken on the basis of information given by PW No.1 or father of PW No.5 or person having special knowledge of the fact of birth of PW No.5.
20. Next question is whether section 35 of the Evidence Act would help the prosecution to prove the age of PW No.5. Ld. Spl. P. P has not argued as to how age is proved on basis of school leaving certificate and how same is admissible in evidence in view of section 94 of the J.J. Act. It is also not argued that section 35 of the Evidence Act will apply to school leaving certificate.
21. Section 35 of the Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is

itself relevant fact. To render a document admissible u/s.35 of the Evidence Act, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law.

22. Formal proof of a document & probative value thereof is not same thing. Probative value of a document depends on source of information on basis of which entry has been made by public servant in the public record. School Leaving Certificate cannot be said as proved unless all ingredients of section 35 of the Evidence Act are established.
23. In case in hand, prosecution has not satisfied three conditions u/s.35 of the Evidence Act. I am of view that school leaving certificate cannot be the sole evidence in proving the age of PW No.5 as it does not hold any independent evidentiary value. There is correction in name of PW No.1 as Geeta instead of Pushpa. It is not made clear as to who & for what reason has made that correction. It would be unsafe to rely merely upon school leaving certificate as conclusive proof of date of birth of the PW No.5.
24. In evidence, PW No.3 has stated that in his opinion PW No.5 was 13 years old but he has not stated that as to how he came to that conclusion in absence of an ossification test. Medico-legal examination report of PW No.5 shows that radiological examination & x-ray was not done and as per that report,

radiological age confirmation can be done at civil hospital Alibaug, if required.

25. Prosecution has not shown that ossification test of PW No.5 was carried out at civil hospital at Alibaug to determine her age. X-rays & ossification test reports are not produced on record and if any test is conducted then doctor who conducted such test is not examined by prosecution. There is no evidence about radiological age of PW No.5.
26. In case in hand, oral & documentary evidence produced by prosecution fails to prove birth date of victim PW No.5 therefore, in absence of corroborative piece of evidence, it cannot be held that, on day of incident, PW No.5 was 'child' within meaning of section 2(d) of the POCSO Act. For this reason, point No.1 is answered in affirmative.
27. As point No.1 is answered in negative, application of provisions of the POCSO Act to present case are out of preview but that does not mean that provisions of the IPC would not be applicable to case in hand.

As To Point No.2 -

28. To attract section 363 of the IPC, kidnapping from lawful guardianship is necessary element. As per story of prosecution, on day of incident PW No.5 had gone on river to wash clothes. In evidence, PW No.1 has stated that on day of incident, PW No.5 was not talking with her therefore, she had asked reason behind it and PW No.5 narrated what happened with her. As per PW No.1, it was informed to her by PW No.5 that on day of

incident she had gone to river to wash clothes and while returning accused came there on his motorcycle. Then he forcefully took her on his motorcycle and through D.P road from the gate of IOCL Company, brought her in forest area. In cross-examination of PW No.1, it has come on record that before the day of incident, PW No.5 used to go to wash clothes.

29. In evidence, PW No.5 has stated that in the month of March 2021, she had gone to wash clothes. That time accused forcefully took her on his motorcycle. Through D.P road, he brought her in bushes behind IOCL Company. In her cross-examination, it has come on record that since last two years, she used to go on river to wash clothes and no one has seen her when accused was taking her away on motorcycle.
30. Evidence of PW No.2 & 7 shows that on day of incident, they had gone at backyard of IOCL Company to collect forest produce and there, they saw accused & PW No.5 on spot.
31. If overall evidence of PW No.1, 2, 5 & 7 is considered then it becomes clear that as usual, on day of incident, PW No.5 had gone on river to wash clothes. PW No.5 & accused were seen in forest area behind the IOCL Company. When on day of incident, PW No.5 alone had gone to wash clothes, she was in lawful guardianship of PW No.1. Accused without permission of PW No.1 had taken away PW No.5 on his motorcycle toward the forest area of IOCL Company. These facts shows that accused had taken PW No.5 on his motorcycle without consent of PW No.1. In statement u/s.313 of the CrPC, it has come on record that accused has taken victim on his motorcycle.

32. Motorcycle used in commission of the crime has been seized. Prosecution has not brought on record as to who is the owner of that motorcycle and owner is not examined as witness. From evidence of PW No.1, 2, 5 & 7 it becomes clear that PW No.5 was seen with accused in bushes of forest area behind the IOCL Company and presence of accused & PW No.5 there is proved. Thus, prosecution has proved that accused kidnapped PW No.5 from lawful guardianship of PW No.1. For this reason, point No.2 is answered in affirmative.

As To Point No.3 to 14 -

33. On point of rape & assault or use of criminal force with intent to disrobe PW No.5, it is to see what evidence has come on record. In evidence, PW No.1 has stated on 24th March 2021 in the evening when she returned home from work, PW No.5 was quiet and did not speak anything therefore, after dinner she asked reason behind it. PW No.5 narrated her that in the afternoon at about 1:00 AM when she had gone on river to wash clothes, accused came, kept washed clothes there and forcibly made her to sit on motorcycle. Thereafter, through DP road & from the gate of IOCL Company, he brought her in forest area where he removed her clothes. As she was not removing her clothes, he assaulted her and thereafter forcibly committed sexual intercourse with her. She was screaming and that time, three ladies who were her neighbours & who had gone there to collect forest produce reached on spot. After seeing them, accused ran away.

34. In evidence, PW No.5 has stated that in the month of March 2021, she had gone to wash clothes. Accused forcefully made her to sit on motorcycle. Through DP road, he brought her in bushes behind IOCL Company. He removed her clothes and forcibly committed sexual intercourse with her. She was screaming and that time, three ladies came there who had come there to collect forest produce. When those ladies came, accused was present there and thereafter, he ran away. Those ladies then brought her to her house.
35. In evidence, PW No.2 has stated that on 24th March 2021 at about 1.00 PM, she along with PW No.7 & mother-in-law of PW No.7 had gone to collect forest produce behind IOCL Company. She heard screaming of a girl therefore they went there and saw that PW No.5 had no clothes on her person. When they went ahead, accused worn his pant. PW No.7 tried to catch the accused but he pushed her and ran away whereby PW No.7 sustained injury to her hand.
36. In evidence, PW No.2 has further stated that they asked PW No.5 as to what happened and she narrated that when after washing clothes she was coming home, accused said that he has some work and made her to sit on her motorcycle. Then he brought her on spot and forcefully committed rape on her. Thereafter, they brought PW No.5 to her house.
37. In evidence, PW No.7 has stated similar facts and her evidence corroborate to evidence of PW No.2 & 5. In evidence of PW No.7, it has come on record that when she, PW No.2 & her mother-in-law reached on spot, PW No.5 was wearing her top

while accused was wearing his pant. PW No.5 was fully naked. She tried to catch the accused but he pushed her whereby she fell down and sustained injury to her right wrist. PW No.5 was scared therefore, PW No.2 & her mother-in-law robed PW No.5.

38. In evidence, PW No.7 has further stated that she asked PW No.5 as to why she is scared? what happen to her? That time PW No.5 narrated that when after washing clothes, she was returning home, accused said that he has some work and made her to sit on his motorcycle. Thereafter, he brought her in bushes, removed her clothes and made her to lie down. Thereafter, accused removed his clothes, slept over her body and committed sexual intercourse with her. Thereafter, she, PW No.2 & her mother-in-law brought PW No.5 to her home.
39. PW No.2 & 7 are the eye witnesses who actually not have seen actual sexual intercourse but they have seen PW No.5 naked and accused wearing his pant. Presence of PW No.2 & 7 on the spot was natural as they had gone in area of IOCL Company to collect forest produce. They are not brought up witnesses. Their evidence shows presence of accused on spot. PW No.7 had tried to catch the accused but he pushed her and ran away whereby PW No.7 sustained injury to her right wrist. Injuries on person of PW No.7 are proved in evidence of PW No.10. In evidence, PW No.10 has stated that she has examined PW No.7 and found injury to her right wrist.
40. If physical appearance of PW No.5 & accused when PW No.2 & 7 saw them is considered then it becomes very clear that

accused had disrobed PW No.5. There may not be another intention of accused except to satisfy his lust. Disrobing PW No.5 by accused is an incriminating circumstance against accused. If accused had done nothing with PW No.5, then he had no reason to ran away from the spot. Accused had not made it clear as to why he was present on spot, why PW No.5 was present with him on spot and why PW No.5 was in naked condition.

41. If medico-legal evidence is considered then in evidence, PW No.3 has stated that on 26th March 2021, he examined PW No.5. Upon examination, he noticed that penetration by penis was positive. Kissing, licking or sucking any part of body of PW No.5 was positive. Touching & fondling was positive. Ejaculation occurred outside body orifice was positive. Upon examination of genital parts, he noticed that hymen of PW No.5 was ruptured. PW No.5 was referred to psychiatrist as she was minor. As per his opinion, PW No.5 had undergone penetrated sexual intercourse. In cross-examination, PW No.3 has admitted that no injuries were found on person of PW No.5 and he cannot say about physical violence. Medical report of PW No.5 shows that her hymen was ruptured.
42. In evidence, PW No.6 has stated that spot was shown by PW No.1 & 5. Spot Panchanama is proved in evidence of PW No.6. Photograph of spot is filed in charge-sheet and being secondary evidence, prosecution has filed certificate u/s.65B of the Evidence Act but that witness is not examined by the prosecution to prove that certificate therefore, photograph of

spot cannot be read in evidence. From spot Panchanama, it becomes clear that spot is in the bushes in the forest like area of IOCL Company and it is surrounded by trees.

43. As per accused, there is no injury on person of PW No.5 therefore no offence is committed. Now, question arise whether absence of any injury on body can be ground to rule out any sexual assault or intercourse. There is no straight jacket formula in every sexual assault that injury should be present on body of victim. There may be various reasons whereby victim may not have sustained injury or accused may have taken precaution that no injury should be caused to the victim so that he can take advantage of it. I am of the view that absence of injury should not be sole ground to discard testimony of victim of crime. Therefore, absence of injury on PW No.5 does not make her testimony unreliable.
44. In evidence of PW No.6, 8 & 9, it has come on record that clothes of PW No.5 & accused were seized. These witnesses have identified those clothes. Clothes of PW No.5 & accused were seized after two days of incident i.e. on 26th March 2021. It is alleged that those clothes were worn by PW No.5 & accused at the time of incident. Seized clothes and biological samples of accused & PW No.5 were sent for forensic analysis. Prosecution has placed on record attested copy of FSL report but it is not made clear by prosecution as to why original FSL report is not produced on record.
45. Attested copy of FSL report is secondary evidence. For purpose of identification same is marked as exh.118 & 119. FSL report

shows that neither blood nor semen is detected on inner garments of PW No.5 & accused. Report further shows that neither semen or vaginal fluid was detected on genital part or pubic hair of accused. It is not the case of prosecution that clothes were washed by accused or PW No.5 after the incident.

46. Correspondence made by PW No.8 & 9 shows that stiff stain was found on nicker of PW No.5 but as per FSL report no semen is detected in analysis of nicker. Being secondary evidence FSL report cannot be read as prosecution has not taken permission (Oral or written) to produce the same by establishing the fact that original reports have been lost. Thus, evidence in the nature of FSL report is not much helpful to prosecution.
47. So far as delay in lodging FIR is considered then PW No.5 had not told the incident to PW No.1 immediately. It has come on record that PW No.5 has mild intellectual disability. It is seen that a child does not disclose immediately about sexual abuse. Telling someone about sexual abuse is very hard for children. Children often don't tell anyone when they've been sexually abused. But when they do tell, they almost never lie about it. There are many reasons why children don't tell anyone about sexual abuse. Reason may be that they have been threatened by the offender to keep it a secret and they may be scared to tell or they are ashamed to tell or they are confused because the offender is someone they know & trust.
48. It should not be ignored that children who experience sexual abuse can suffer a range of psychological and behavioural

effects, from mild to severe, in both short & long term and there is no straight jacket formula that every child will open up himself/herself immediately after experiencing sexual abuse. Therefore, testimony of child should not be discarded merely for reason that child has not disclosed incident to her/his friend or parents or teachers immediately.

49. Mere delay should not be a ritualistic formula for doubting the prosecution case and it should be seen that whether or not delay is satisfactorily explained. Minors & their guardians often grapple with trauma, shame or fear. Parents may deliberate on implications of reporting such unpleasant incident.
50. PW No.5 has disclosed the incident to PW No.1 in the night and as it was night, PW No.1 did not take any action. On next day, PW No.1 had gone to the house of PW No.2 & 7 and inquired about the incident. After verifying facts with them, she had called her cousin brother who came in the evening. He had also after making inquiry with PW No.5 verified about happening of the incident. Thereafter, PW No.1, 5 & brother of PW No.1 had gone in the police station.
51. It should not be ignored that delay in sexual offences is quite normal. In present case, delay is properly explained and its reason has come on record therefore, I am of the view that that delay is not inordinate and it will not adversely affect the case of prosecution.
52. So far as identification of accused is considered then identity of accused is not much disputed. Accused is identified by witnesses as he is resident of their village. In evidence, PW

No.5 has identified the accused. In statement u/s.313 of the CrPC, accused has stated that witnesses identify him as he is resident of their village. He has further stated that PW No.5 was familiar to him and she had made request to drop her therefore, he dropped her to her house. This statement of accused shows that PW No.5 knows him.

53. Accused has taken plea of alibi. As per accused, on day of incident he was working in IOCL Company and to prove this fact, he has examined DW No.1. In evidence, DW No.1 has stated that accused was working in his Company on temporary basis. One watchman remains on the gate of the Company. DW No.1 had not brought attendance sheet of accused to prove attendance of accused in the Company on day of incident. In cross-examination, he has admitted that on day of incident at about 9: 00 AM accused had come on work but at about 12:00 PM accused left.
54. In cross-examination, DW No.1 has admitted that he has no evidence to show that on day of incident accused was on duty. He has admitted that behind the building of the Company, there is an area equivalent to cricket ground and in that area, there are bushes & grass. That area is near to DP road and ladies from slum area used to visit that area to collect forest produce.
55. Accused has tried to brought on record that on day of incident, he was on duty but if evidence of DW No.1 considered then it has not come on record that when incident occurred accused

was on duty. Accused has failed to establish the fact that he was absent on spot when incident occurred.

56. In statement recorded u/s.313 of the CrPC accused has stated that on day of incident in the afternoon he was proceeding to his house and PW No.5 was coming from Mulgaon. She asked him to drop her therefore, he dropped her to her house. This shows that on day of incident PW No.5 was on motorcycle of the accused and if the time of alleged incident is considered then accused was not present on work. He has not examined any witness to show that he & PW No.5 was seen near the house of PW No.5 when he dropped her. Thus, accused had failed to prove plea of alibi.
57. On point of disability of PW No.5, in evidence of PW No.1, it has come on record that PW No.5 is differently abled person. In cross-examination of PW No.1, out patient record report dt.3rd April 2021 of PW No.5 was shown to her. As that report was referred in cross-examination, same was exhibited. As per that report, on 3rd April 2021, PW No.5 was brought for IQ test. As per opinion of medical officer who examined her, IQ of victim is 50% with mild deficient intellectual functioning and she is unable to recognize shapes & body parts.
58. As per that report, PW No.5 has temporary mild intellectual disability. Nothing has come on record which will show that PW No.5 has full intellectual disability. Prosecution has not produced on record disability certificate of PW No.5 when it is case of prosecution that PW No.5 is mentally & physically disabled whereby she was not able to give consent. But from

aforesaid report, fact has come on record that to certain extent PW No.5 is differently abled person having mild intellectual disability therefore, inference can be drawn about her incapacity to give consent for sexual intercourse.

59. It is argued by defense that statement of PW No.5 is recorded by police in absence of special officer. If evidence, in this regard is considered then in evidence, PW No.8 has stated that statement of PW No.5 was recorded in presence of her mother & social worker.
60. As per section 24 of the POCSO Act, statement of child shall be recorded at residence of the child or at a place where he/she usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector. As per proviso to section 157 of the CrPC, in relation to an offence of rape, recording of statement of victim shall be conducted at the residence of victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.
61. Record shows that statement of PW No.5 was recorded at police station by PW No.8 who is woman police officer but it was not recorded at the residence of PW No.5 or in the place of choice of PW No.5. Now, question arise whether non recording of statement of PW No.5 at her residence or in the place of her choice will cause any prejudice to accused and adversely affect the case of prosecution.

62. As per PW No.1 when her cousin brother came, she had gone to lodge complaint. In every case, prompt FIR is expected. In case in hand there was already delay and when PW No.1 & 5 had gone in the police station then it was not expected that they should be asked to go home as FIR will be registered in their house. I am of the view that error on part of police should not be ground to discard the substantive evidence of victim of crime.
63. In cross-examination, PW No.8 has admitted that he had not taken permission of IOCL Company while entering in its premises. She has admitted that she has not made inquiry as to in whose name motorcycle was registered. If admissions of PW No.8 are considered then those admissions does not adversely affect the case of prosecution as not taking permission to enter in the premises of the Company does not make any effect. So also, investigation officer should have investigated about ownership of motorcycle but that will also not adversely affect case of the prosecution if version of the eye-witnesses about presence of accused & PW No.5 on spot is considered. So far as argument of collection of CCTV footage is considered then nowhere it has come on record that CCTV cameras were installed on gate of IOCL Company.
64. If evidence of PW No.9 is considered then she has stated about the investigation carried out by her. PW No.9 has not taken pains for collecting Caste Certificate of PW No.5 to prove that she belongs to Scheduled Caste. Only making correspondence is not sufficient and positive action was expected from her.

65. Neither PW No.8 nor PW No.9 has taken pains to make investigation about ownership of the motorcycle when the same was used in commission of crime. No explanation is given for not making investigation on that aspect. So also, efforts were not taken to collect birth certificate of PW No.5 and to carry out her ossification test. PW No.8 & 9 have not given proper explanation about defective investigation on these aspects. When crime was committed against a woman when she was suffering from mild intellectual disability, serious lethargy is seen in the investigation. Even the pains are not taken to produce the original FSL report when the trial was at flag end.
66. For applying provisions of SC & ST Act, it is essential that victim should be member of Scheduled Caste or Scheduled Tribes and accused should not be members of same community. As per prosecution, PW No.5 belongs to scheduled caste and accused was aware about the caste of PW No.1 & 5 therefore, in view of Shivkumar Yadav (Supra) case presumption u/s.8 of the SC & ST Act will be applicable.
67. In evidence of PW No.1, 2, 5 & 7 it has come on record that accused is resident of their village and for that reason they know him. There is presumption u/s.8 of the SC & ST Act that if accused has personal knowledge of victim or his/her family, the Court shall presume that accused was aware of the caste or tribal identity of victim. Acquaintance with a person or family & having personal knowledge of caste are two different things. Here, prosecution has brought on record that PW No.1, 2, 5 &

7 know accused but it has not come on record that accused had acquaintance with family PW No.5 prior to incident and he used to visit their house frequently. PW No.1 has also not stated as to how accused has personal knowledge about her family. I am of the view that being resident of same village cannot be sole ground for drawing presumption unless there is of other cogent evidence.

68. In Shivkumar Yadav (Supra) case Hon'ble Apex Court in para No.24 has observed that acquaintance of the accused with family of victim is enough to presume that accused was aware of the caste & identity of the victim. I have gone through this decision but facts in that case are different. Therefore, that citation is not much helpful to prosecution.
69. For attracting provisions of SC & ST Act prosecution has to prove the fact that PW No.5 belongs to scheduled caste and intentionally offence was committed by accused for reason that victim was belonging to scheduled caste. Knowledge about caste is important factor. Intention is also necessary ingredient.
70. In evidence, PW No.1 has stated that she belongs to Bouddha community. PW No.5 has not stated about her caste. In evidence, PW No.9 has stated that letter at exh.89 was sent by her to Tahsildar, Khopli for providing caste certificate of PW No.5. During trial prosecution has produced caste certificate of PW No.5 which is in Kannad language. In evidence, PW No.9 has stated that she can produce, translated copy of caste certificate and she need two days' time. It is not made clear by

PW No.9 as to why this exercise was not done by her during investigation.

71. During trial, Ld. Spl. P. P has placed on record correspondence made by the Police to Competent Authority for providing caste certificate of PW No.5. Accused has taken objection for production of such correspondence but that correspondence was not incriminating against accused therefore, production of correspondence was allowed.
72. Caste certificate of PW No.5 produced on record by prosecution is in Kannada language and its translated copy is not on record. For best reasons known to prosecution, caste certificate of PW No.5 was not collected during investigation. In evidence, PW No.1 has stated that she is Bouddha but it is not clear whether she is Navbouddha or Bouddha. SC & ST Act is not applicable to Navbouddhas. To attract the provisions of SC & ST Act, burden to prove caste of PW No.5 to is on prosecution but prosecution has failed to bear this burden.
73. It is defence of accused that he belongs to scheduled caste and his caste is 'Dhanagar' which fall within category of scheduled caste therefore provisions of ST & ST Act are not applicable to him. He has produced verified copy of caste certificate which is marked as Exh.117. This document is issued by Tahsildar of Shahpur of Karnataka State. In this document caste of accused is mentioned as "Kuruba" Accused has not clarified as to how his caste is falling under category of scheduled caste.
74. 'Kurubas' in the State of Karnataka are classified as an Other Backward Class (OBC), specifically under Category 2A.

Although there is strong long-standing demand and movement to reclassify them as a Scheduled Tribe (ST), they are not currently listed as ST. They previously had held ST status until 1977. Burden was accused to prove the fact that he belongs to scheduled caste but accused has failed to prove that fact therefore, it cannot be said that accused belongs to scheduled caste.

75. To held an accused guilty under the provisions of SC & ST Act mere knowledge of victim's caste or a generic dispute is insufficient and crime must be driven by caste-based prejudice or aimed at humiliation. There is no evidence on record to show that accused has any caste-based prejudice against PW No.1 or PW No.5 which drove him to commit the crime. There is no evidence to show that act of sexually touching was intentional only for reason that PW No.5 belongs to Scheduled Caste.
76. Sine qua non for application of Section 3(1)(w)(i), 3(1)(w)(ii) & 3(2)(va) is that an offence must have been committed against a person on ground that such person is a member of Scheduled Castes or Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not the case of prosecution that rape was committed on PW No.5 since she was a member of a Scheduled Caste. No particular words or gestures of sexual nature are narrated by PW No.5. Mere fact that PW No.5 happened to be a girl belonging to a Scheduled Caste does not attract the provisions of the SC & ST Act.

77. If an accused committed rape on a woman belonging to a Scheduled Caste only to satisfy his sexual lust, without any prejudice of caste to which women belonged or if sexual intercourse was committed by accused without consent of Scheduled caste girl, he would be guilty of an offence of rape but he would not be guilty of offence u/s.3(1)(w)(i), 3(1)(w)(ii) & 3(2)(va) of the SC & ST Act, as he did not commit sexual intercourse with girl on the ground she was a Scheduled caste girl. Similarly, mere knowledge that victim belongs to Scheduled Caste or Schedule Tribe community is not sufficient to constitute an offence under that Act.
78. To attract the provisions of SC & ST Act mere knowledge that victim belonged to a Scheduled Caste or a Scheduled Tribe community or mere intention to commit an offence against a member of a Scheduled Caste or Scheduled Tribe is not sufficient but something more is needed i.e. a graver kind of mens rea denoted by the phrase "on the ground" in the provision, is required. It must be demonstrated that if victim had not belonged to a Scheduled Castes or Scheduled Tribe, crime would not have been committed and target of crime was selected 'on the ground' that he/she belonged to a Scheduled Caste or Scheduled Tribe.
79. As per accused, there was previous enmity between him and PW No.2 & 7 therefore, they have lodged false case against him but no such suggestion was given to PW No.1, 2, 5 & 7 during their cross-examination. Through evidence, accused has not brought on record any incident to show his previous enmity

between him and PW No.1, 2, 5 & 7. Mere argument to that effect is of no use when there is no evidence to establish such fact.

80. From evidence of prosecution witnesses it becomes very clear that sexual intercourse was committed with PW No.5 by accused against her will & consent. He has committed sexual intercourse with PW No.5 when he was aware that she has mild temporal intellectual disability whereby she is unable to give consent. Accused has kidnapped her and assaulted/used criminal force to her with intention of disrobing & compelling her to be naked to satisfy his lust. There is nothing on record to disbelieve testimony of PW No.5. There is no rule of law that her testimony cannot be accepted without corroboration in material particulars. Observations of Hon'ble Apex Court in Ganesan (Supra) will be applicable to present case.
81. As per section 114A of the Evidence Act in a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by accused is proved and question is whether it was without consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent. If present set of facts are considered then nowhere it has come on record that sexual intercourse was committed with consent & will of PW No.5, therefore,

presumption u/s.114A of the Evidence Act will be applicable to present case.

82. Law also recognizes that if victim's testimony is consistent, cogent & natural then it may be treated as that of a "sterling witness" and can sustain conviction even without corroboration. In many sexual offence cases, absence of independent witnesses is understandable and it is not fatal.
83. It is now a well-settled principle of law that conviction can be founded on testimony of victim alone unless there are compelling reasons for seeking corroboration. Evidence of a victim is more reliable than that of an injured witness. Testimony of victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.
84. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on testimony of victim is not a requirement of law but a guidance of prudence under the given circumstances. Even minor contradictions or insignificant discrepancies in statement of victim should not be a ground for throwing out an otherwise reliable prosecution case.
85. In present case, evidence of Prosecution witnesses is credible, reliable & trustworthy. Minor discrepancies in their evidence does not affect the case of the Prosecution and such minor discrepancies bound to occur. There is no reason to disbelieve

or discredit testimony of prosecution witnesses. Evidence of eye-witness also poses reliance about commission of offence by accused.

86. Prosecution has proved that accused kidnapped PW No.5, brought her at lonely place, disrobed her by using criminal force and committed sexual intercourse when she was suffering from mental disability and not in position to give consent. Prosecution has proved essential ingredients of section 363, 354B & 376(2)(j)& (l) of the IPC. As discussed earlier, age is not properly proved therefore, accused could not be held under POCSO Act & u/s.376(3) of the IPC. Prosecution has failed to prove that accused committed offence only for the reason that PW No.5 belongs to scheduled caste. For these reasons point No.3 to 6 are answered in affirmative while point No.7 to 14 are answered in negative.
87. As accused is held guilty for the offence punishable u/s. 363, 354B & 376(2)(j)(l) of the IPC in view of section 235(2) of the CrPC, accused, his advocate & Ld. Spl. P. P needs to be heard on point of sentence. Fort this reason, I defer judgment till next date.

Panvel
Date - 13/03/2026

(Mr. S. C. Shinde)
Special Judge, Panvel,
Dist.-Raigad.

88. Ld. Spl. P. P submitted that accused has committed offence against the victim who is differently abled person and

considering age of victim punishment of life imprisonment be awarded.

89. Ld. advocate of accused submitted that minimum punishment be awarded. Accused submitted that he is bread winner of the family. He is married man having two daughters aged 6 & 11 years therefore, sympathy be showed to him.
90. After, hearing accused, his advocate & Ld. advocate for the accused, no doubt, offence committed by the accused is serious in nature but considering the family background and absence of antecedents, I am of the view that there is no need to impose the maximum punishment upon him and sentence of five years for offence punishable u/s.354A & 363 while minimum punishment of Ten years prescribed u/s.376(2) of the IPC, will serve the purpose. PW No.1 & 5 have not asked for any compensation for alleged crime but considering their financial condition I am of the view that it is necessary to consider issue of compensation to PW No.1 & 5.
91. There is no record to show that motorcycle seized in crime is handed over to its registered owner therefore, same need to be handed over to its registered owner. Clothes & other Muddemal needs to be disposed of after appeal period is over. Considering evidence on record and nature & gravity of the offence, I pass following order.

ORDER

1. Accused **Lingappa Mallaya Pujari** is convicted vide section 235(2) of the CrPC for offence punishable u/s.363, 354B & 376(2)(j)(l) of the IPC .

2. Accused is acquitted vide section 235(1) of the CrPC for offence punishable u/s.376(3) of the IPC, u/s.4, 8, 12 of the POCSO Act & u/s.3(1)(w)(i), 3(1)(w)(ii) & 3(2)(va) of the SC & ST Act.
3. Accused is sentenced to suffer rigorous imprisonment for five years & to pay fine of Rs.25,000/- (Rupees Twenty Five Thousand) for offence punishable u/s.354B of the IPC and in default of payment of fine further to suffer rigorous imprisonment for six months.
4. Accused is sentenced to suffer rigorous imprisonment for five years & to pay fine of Rs.25,000/- (Rupees Twenty-Five Thousand) for offence punishable u/s.363 of the IPC and in default of payment of fine further to suffer rigorous imprisonment for six months.
5. Accused is sentenced to suffer rigorous imprisonment for Ten years & to pay fine of Rs.50,000/- (Rupees Fifty Thousand) for offence punishable u/s.376(2)(j)(l) of the IPC and in default of payment of fine further to suffer rigorous imprisonment for one year.
6. Whole fine amount, if recovered, be applied as payment of compensation to PW No.5 & her family.
7. Further recommendation is made to District Legal Services Authority, Raigad-Alibag for granting

compensation u/s.357A of the CrPC to PW No.5
(Victim) as per rules.

8. All sentences shall run concurrently.
9. Set off be given to accused for period undergone in jail.
10. Motorcycle seized in present crime be returned to its registered owner. If it is returned to him then its custody is made confirm.
11. Marked & unmarked muddemal property be disposed of as per rules after appeal period is over.
12. Copy of this judgment be given free of cost to accused.
13. Copy of this judgment be forwarded to District Magistrate, Raigad-Alibag as per section 365 of the CrPC & DLSA, Raigad-Alibag.
14. Accused is apprised of his right to file appeal against this judgment before the Hon'ble High Court of Judicature at Bombay.
15. Accused is apprised of about his right to avail free Legal Aid for filing the appeal.

(Dictated & pronounced in open Court)

Panvel

Date - 16/03/2026

(Mr. S. C. Shinde)
Special Judge, Panvel,
Dist.-Raigad.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/order are same, word to word as per the original order.

Name of the Stenographer	:	Dipak B. Pawar
Name of the Court	:	Mr. S. C. Shinde Special Judge, Panvel, Dist.-Raigad.
Judgment/Order dictated declared & typed on	:	13/03/2026
Judgment/Order signed by Presiding Officer on	:	16/03/2026
Judgment/Order uploaded on	:	16/03/2026