



Presented on : 03.09.2019
Registered on: 03.09.2019
Decided on : 28.07.2026
Duration: 06-Y. 10-M. 25-D.

Exh. 75

Judgment

Part 'A'

	IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, WARDHA, AT : WARDHA. Ms. S.J. Ansari, Special Judge (POCSO Act) (Judgment date 28.07.2026) Spl. Case No.89/2019	
	(FIR No.302/2019, U/s.452, 354 of the Indian Penal Code and U/s.8, 12 of the Protection of Children from Sexual Offences Act, 2012 of Police Station, Seloo.	
Complainant		State of Maharashtra through Police Station of Seloo, Tah. Seloo, Dist. Wardha.
Represented By		Shri. P.P. Soitkar, A.P.P. for State.
Accused		Prakash @ Pakya Babanrao Warkhade, Age – 29 years, Occ- Labourer, R/o Gondpura, Kelzar, Tah. Seloo, Dist. Wardha.
Represented By		Shri N.V. Pawar, Advocate for the accused.

Part - 'B'

Date of offence	On 07-07-2019 at about 5.30 to 6.00 p.m.
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Date of FIR	07.07.2019
Date of charge-sheet	26.08.2019
Date of framing of charges	24.09.2021
Date of commencement of evidence	27.10.2021
Date on which judgment is reserved	09.07.2026
Date of the judgment	28.07.2026
Date of the Sentencing Order, if any	28.07.2026

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 Cr.PC.
1	Prakash @ Pakya Babanrao Warkhad e	08.07. 2019	26.06. 2020	u/s 452, 354 of IPC & U/s.8 of POCSO Act.	Accused is convicted for the offences punishable under sections 452 and 354 of IPC and sec. 8 of the POCSO Act.	For the offence u/sec.452 of IPC he is sentenced to rigorous imprisonment for a period of 2 years and to pay a fine of Rs.1,000/- in default of which he shall undergo S.I. for 2 months. For the offence u/sec.354 of IPC he is sentenced to rigorous imprisonment for 3 years and to pay a fine of Rs.2,000/- in default of which he shall undergo S.I. for 3 months. For the offence p/u/s. 8 of POCSO Act he	08.07.2019 to 26.06.2020

						is sentenced to rigorous imprisonment for 3 years and to pay a fine of Rs.3,000/- in default of which he shall undergo S.I. for 3 months.	
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Part 'C'**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)
PW1	Subhash Raghunathji Kodankar	Spot panch
PW2	Sita Bhogiram Madavi	Witness
PW3	Victim	Victim and first informant
PW4	Rekha Kishor Raut	Witness
PW5	Retired H.C. Manik Gopalrao Raut	Primary Investigating officer
PW6	PSI Dipak Namdeorao Wankhede	Investigating officer

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS,
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		OTHER WITNESS)
CW1	---	---

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS)

A. Prosecution :

Sr.No.	Exhibit Number	Description
1	Exh.31	Letter to Tahsildar, Seloo
2	Exh.32	Letter
3	Exh.33	Intimation letter
4	Exh.34	Spot panchanama
5	Exh.44	Report
6	Exh.45	FIR
7	Exh.59	Arrest form
8	Exh.60	MLC report
9	Exh.70	Letter to JMFC, Seloo for recording statement under section 164 of Cr.P.C.
10	Exh.70A	Letter to the Headmaster asking for the victim girl's bonafide certificate
11	Exh.71	Bonafide certificate of victim
12	Exh.72	Portion marked-A in the statement of witness PW-4 Rekha

B. Defence :

Sr. No.	Exhibit Number	Description

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
1	Exh.74	Statement under section 313 of Cr.P.C. of accused

D. Material Objects :

Sr. No.	Material Object Number	Description
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1	Article-A1 to A4	Photographs
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Offences punishable under sections 452, 354 of the Indian Penal Code, 1860 and under section 8 of the Protection of Children from Sexual Offences Act, 2012.

2] The accused is being tried for having outraged the modesty of a minor girl after committing house trespass and of having even sexually assaulted her.

3] Brief facts of the prosecution case are as follows –

On 7-7-2019 the victim girl (who shall now be referred to by the letter 'X' of the alphabet) who was aged 12 years and was studying in the 6th std., returned home from school at about 5.30 p.m. to 6.00 p.m. Her father and brother were not at home at the said time as they had gone to work. The victim 'X's mother being a mentally challenged lady was sitting on the road near their house. A man, who the victim girl 'X' knew by face as Pakya – a relative of one Kusum Kokate who lived in Gondpura near the house of the said girl, then entered her house and asked her for water to drink alcohol. But, she did not give him the same. The said man then told the girl that he would give her Rs.100/- if she allowed him to have sex with her. On hearing this, the victim girl 'X' stepped back at which the man called Pakya caught her from behind and then started pressing her body here and there. He also tried to make the victim girl 'X' fall on the cot. But, the said girl kicked him on his stomach and ran away after which she went to the house of Smt. Sita Madavi – a neighbour and informed her about the incident. The said lady then came out with the victim girl 'X' at which time the man called Pakya was seen leaving the victim's home.

4] Sita Madavi and another lady - Rekha Raut then went to catch the said man at which he beat them with his fists and went home. Thereafter, the victim girl 'X's elder brother came home whereupon she informed him about all what had happened. The victim girl 'X' s elder brother then went along with the said victim and Smt. Sita Madavi to the Seloo Police Station, where a report came to be lodged by the said victim girl 'X' regarding the aforesaid incident. On the basis of the same, an FIR came to be registered against the person called Prakash Warkhade bearing no.302/2019 for the offences punishable under sections 452, 354 of the Indian Penal Code (here-in-after referred to as "the IPC") as also for the offences punishable under section 8 and 12 the Protection of Children from Sexual Offences Act (here-in-after referred to as "the POCSO Act").

5] Subsequent to the registration of the FIR, the Investigating officer executed the spot panchanama and arrested the accused. The statements of the relevant witnesses also came to be recorded after which the bonafide certificate of the victim girl 'X' came to be obtained from her school for the purposes of proving her date of birth. The victim girl 'X's statement under section 164 of Cr.P.C. was also recorded by the JMFC, Seloo. After the completion of the investigation, the charge-sheet came to be filed in the court.

6] The charge (Exh.25) then came to be framed against the accused for the offences punishable under sections 452, 354 of IPC and section 8 of the POCSO Act. The accused pleaded not guilty to the same and claimed to be tried. His defence is one of false implication on

account of a previous dispute between him and the victim girl 'X's' elder brother. He has however, neither examined himself nor any witness in support of his contentions.

7] In view of the material on the record, the following points arise for my determination and I answer the same in the manner and for the reasons as stated herein below.

Sr. no.	POINTS	FINDINGS
1]	Does the prosecution prove that on 07-07-2019 : between 05.30 p.m. to 6.00 p.m. at -----, Tah. Seloo, Dist. Wardha, the accused committed criminal trespass by entering into the house of the victim girl used as a human dwelling, having made preparation for sexually harassing her by assaulting her and thereby committed an offence punishable under section 452 of the IPC ?	In the affirmative.
2]	Does the prosecution further prove that on the : above stated date, time and place, the accused used criminal force to the victim girl by holding her and pressing her body as also by trying to throw her on the cot with the intention to outrage her modesty and thereby committed an offence punishable under section 354 of the IPC ?	In the affirmative.
3]	Does the prosecution further prove that on the : above stated date, time and place, the accused with sexual intent, entered the house of the victim child and touched her all over her body and tried to throw her down on the cot, thus doing an act with sexual intent, which involved physical contact without penetration and thereby committed an offence punishable under	In the affirmative.

section 8 of the POCSO Act ?

- 4] What order ? : The accused stands convicted for the offences p/u/s 452, 354 of IPC and sec.8 of the POCSO Act.

REASONS

As to Point Nos. 1 and 2 :

8] Both these points are concerned with the question as to whether the accused has been proved to have committed house trespass as also the offence of outraging the modesty of the victim girl 'X' after having entered the said house. It is therefore, obvious that both the offences have been alleged to have been committed in the course of the same transaction. Due to this, I am of the opinion that it will be appropriate to discuss the said points together so as to avoid unnecessary repetition.

9] Admittedly, the most important testimony on the record is that of PW-3 the victim girl 'X' (Exh.43). Her testimony will show that therein the fact of she having stated her name, age, residence, the name of her school in an appropriate manner when questioned by the Presiding Officer of the court of the Sessions Judge, Wardha, where the matter was pending at the relevant time. It was however, noted that the said victim girl 'X' had not answered the question pertaining to the name of her teacher. It was further recorded that it did not appear that

the said victim girl 'X' knew the meaning of the word 'oath'. The testimony of the said girl then came to be recorded in a narrative form.

10] At this stage, it is required to be stated that section 118 of the Indian Evidence Act which deals with the question of who can be said to be a competent witness, states that all persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender years etc. Considering this provision as also the fact that Shri Pawar the Advocate for the accused did not raise any objection to the procedure adopted by the then court in only recording it's opinion about the victim girl 'X' being a competent witness by generally stating that it had asked questions to her on various points, without recording the same in a question answer form, no prejudice can be said to have been caused to the accused due to the said procedure having been followed.

11] Turning now to the testimony of PW-3 the victim girl 'X' (Exh.43), a perusal of the same will show that she has deposed about previously living in village [the name of which – though stated in the evidence, is not being mentioned here to protect the victim's identity], along with her parents, sister and brother. She has also deposed about studying in a school of village and of recognizing the accused. With regard to the incident in question, the victim girl 'X' (Exh.43) has stated that the incident had occurred before the pandemic at which time she was studying in the 3rd std., as also that she had returned home from school on the said day at which time nobody else was present at home. Thereafter, this witness has deposed about a boy

coming to ask her for drinking water. But, when this girl was questioned about the name of the said boy, she – as recorded in her evidence, did not answer the question quickly. It has also been recorded therein that when the accused was shown to the witness, she identified him as the same person who had come to ask for water.

12] Going ahead, a perusal of the further evidence of PW-3 the victim girl 'X' (Exh.43) will show that she has then deposed about the accused having asked her for water for enabling him to drink alcohol but that she had not given the same to him. Thereafter, as stated by this girl, the accused told her that he would give her Rs.100/- and that she should allow him to have sex with her [मी शंभर रुपये देतो मला करु दे]. The accused then, as per this witness, caught hold of her hand and tried to throw her down on the cot. At this, the victim girl 'X' (Exh.43) stated that she kicked the said accused and came out of her home and went to Akka – i.e. a lady named Sita, whom she informed about the said incident. This lady i.e. the one addressed by the victim girl 'X' as Akka, then - as deposed by the victim girl 'X', beat the accused subsequent to which she i.e. the victim girl 'X', Akka, another neighboring lady along with the victim's brother had gone to the Seloo Police Station where a report (Exh.44) came to be lodged. The said report (Exh.44) as per the PW-3 the victim girl 'X' (Exh.43) bears her signature. The contents of the same, as stated by the victim girl 'X' were also correct and that she further deposed about even the printed FIR (Exh.45) bearing her signature.

13] Thus, it is clear that even though the testimony of PW-3 the victim girl 'X' (Exh.43) had come to be recorded on 7-10-2023 i.e. after

almost four years of the incident in question, she was able to state the facts regarding the same in a coherent manner. Not only this, but the record will show that the victim girl 'X' also went on to depose about the police having come to her village on the next day for making inquiries, where they had executed the spot panchanama. Further, she stated that her statement had been taken by the police, after which her statement under section 164 of Cr.P.C. had also come to be recorded as per her say, at which time even her brother was present. It however, appears that the victim girl's statement under section 164 of Cr.P.C. was not exhibited for which no reason has been mentioned in the evidence. Even if that is so, the fact remains that PW-3 the victim girl 'X' has, by way of her examination-in-chief, stated the facts of the matter in a clear and cogent way.

14] A perusal of the cross-examination of said witness (Exh.43) will show that she has therein stated the fact of not remembering as to whether she had been educated up to the 3rd std., and that she does not know how to read and write the Marathi language. But, she clearly denied the suggestion that she had not seen the accused on the day of the incident, that the accused had not asked her for water as he wanted to drink alcohol, as also the suggestion that he had subsequently not told her that he would give her Rs.100/- if she allowed him to have sex with her. Even so, it will also have to be noted that this witness has, in her cross-examination, admitted that the contents of the report (Exh.44) had been stated to the police by the neighboring lady and her brother and not by her, as also that the police had not made inquiries with her on the day on which the report had come to be lodged. Not only this, but this witness also stated that she had not shown the spot

of the incident to the police. The other facts as brought forth in the cross-examination of PW-3 the victim girl 'X' (Exh.43) pertain to she admitting the fact of a fight having taken place between her brother and the accused prior to the incident in question, of Rekhabai being aware about the same, and of her brother having told the name of the accused to the police while lodging the report. The record will then show that the fact of the victim girl 'X' not understanding the dates, years and months and of the police not having read over the contents the report (Exh.44) to her, were the other aspects which were brought on the record by the Advocate for the accused.

15] The other important testimony on the record is that of PW-2 Sita Madavi (Exh.39). Therein this witness has deposed about the victim girl 'X' being her neighbour, of the said girl's mother being mentally challenged, as also of she knowing the accused who was present in the court on the day on which her testimony came to be recorded i.e. on 6-7-2023. With regard to the incident dtd.7-7-2019, PW-2 Sita Madavi (Exh.37) has stated that the same occurred in the evening between 5.00 to 5.30 p.m. at which time the victim girl 'X' had come to her when she was at home and told her that the accused had come and asked her for being given water for drinking alcohol. This witness further stated that the victim girl 'X' had also told her that the accused had then further said that he would give the victim girl 'X' Rs.100/- and she should then allow him to have sex with her.

16] Thereafter as per PW-2 Sita Madavi (Exh.39), she came out of her home and saw that the accused had come on the road, at which she questioned him about his behaviour. Thereupon he i.e. the accused

according to this neighbour, said that he would behave as per his wish and also told her that she was nobody to say anything to him after which he abused her. Not only this, but PW-2 Sima Madavi (Exh.39) then deposed about she having then called one Rekha Raut, who also tried to make the accused understand, but that he did not listen even to the said lady and pushed her away. Even Rekha's husband according to this witness, tried to make the accused understand the folly of his ways but he i.e. the accused was not willing to understand. This therefore, as per this witness, resulted in the victim girl 'X' lodging a report regarding the incident with the help of her brother after which the police had recorded her i.e. Sita Madavi's statement on the next day.

17] The cross-examination of the aforesaid neighbour of the victim girl 'X' will show that she has therein only admitted the fact of she being an illiterate lady, of she being able to write, but having a limited ability to read, and of she previously going to work with the victim's mother. All the other suggestions as given to her i.e. about the victim girl 'X' not residing in the said village, of there being many cases against this witness in the court at Wardha, of all the people residing near the house of the victim girl 'X' being engaged in the business of alcohol due to which fights use to take in the said area, of the victim girl 'X' not having informed her about the incident in question and of she having given a false statement to the police after she had been told to do so by the parents of the victim girl 'X', were denied by her. While admitting that she was a worker of the MNS political party, PW-2 Sita Madavi (Exh.39) clearly denied that the victim girl 'X's father was also a worker of the same party. Lastly this

witness denied the fact of having falsely deposed about having seen the accused on the road after she had come out of her home and of having deposed in a false manner in her examination-in-chief. It is therefore, clear that this witness has supported the case of the prosecution, at least regarding the fact of the victim girl 'X' having – on the day of the incident come to her home and of she then immediately telling Sita Madavi about the accused having entered her house on 7-7-2019 and of he having asked her for water, after which he had told her that he would give her Rs.100/- if she would allow him to have sex with her.

18] In order to support the case of the prosecution, the other lady residing in the area i.e. PW-4 Rekha Raut (Exh.56) also came to be examined. In her evidence, this witness stated the fact of the family of the victim girl 'X' residing near her house, of she knowing the victim girl 'X' and her brother who is elder to the said girl. Though this witness further stated that, she was not well acquainted with the accused, she said that he resided away from her house, in spite of which she clearly identified him in her testimony as Prakash Warkhade. With regard to the incident however, PW-4 Rekha Raut (Exh.56) only stated that the same had occurred many years ago at about 5.00 p.m. to 6.00 p.m. when she was present in her house. But, she denied the fact of having come to know about the incident which had occurred with the victim girl 'X' and of she having made a statement to the police regarding the same.

19] Even if this is so, the testimony of PW-6 PSI Dipak Wankhede (Exh.69) – the Investigating officer will show that he has

therein deposed about the statement dtd.8-7-2019 of PW-4 Rekha Raut having been recorded by him as per her say vide Exh.72. It is true that it is only the statement of a witness as recorded in the court which can be considered to be substantive evidence. Due to this, the mere exhibition of the statement of PW-4 Rekha Raut through PW-6 PSI Dipak Wankhede (Exh.69) will be of no value to the prosecution as it cannot be read in the evidence. But, even then the fact remains that PW-4 Rekha Raut has deposed about the accused i.e. Prakash Warkhede being known to her and of some incident having occurred in the evening many years ago at which time she was present at home. This witness not having been cross examined by Shri Pawar the Advocate for the accused, the prosecution in my opinion, can definitely rely upon the part of her testimony mentioned here-in-above to show that the incident which had resulted in the prosecution of the accused, was not a figment of the victim girl 'X's imagination.

20] The other testimony on the record is of PW-1 Subhash Kodankar (Exh.30) who is a panch before whom the spot panchanama (Exh.34) came to be executed. In his testimony, this witness has deposed about working in the Tahsil office, Seloo on 8-7-2019 on which day a letter (Exh.31) had been received by the Tahsildar from the Seloo Police Station in respect of providing panchas. This oral testimony is duly corroborated by the contents of the letter (Exh.31). Subsequently, as deposed by PW-1 Subhash Kodankar (Exh.30), he along with one Pravin Zod had been deputed to act as the panchas in terms of the letter (Exh.32) which had been issued to them, after which they had gone to the Seloo Police Station where they had been issued an intimation letter (Exh.33), which - on being shown to this witness,

brought forth the fact of it bearing his name and that of the other panch - Pravin. It has also come on the record through this witness that they had then gone to an area i.e. (deposed correctly but is not mentioned so as to conceal the victim 'X's' place of residence), where the police executed the spot panchanama (Exh.34) regarding the spot shown by the victim girl 'X', the contents of which were true and which bore his signature and that of the other panch Pravin. The fact of the police then having taken four photographs – Article-A1 to A4, was also stated by this panch.

21] A perusal of the cross-examination of PW-1 Subhash Kodankar (Exh.30) will show that all the suggestions given to him about he not having gone with another panch - Pravin to the place...., of the police having obtained their signatures on blank papers in the Seloo Police Station, where itself they had been shown some photographs, had all come to be categorically denied by him. The other suggestions about the photographs not being of the spot, of this witness having acted as a panch in many other previous cases, of he - on that day itself, having given evidence in another court as a panch and of the victim never having shown the spot to the police, were also clearly denied by him. Here, it will have to be noted that even PW-6 PSI Dipak Wankhede (Exh.69) has, in his testimony, deposed about having executed the spot panchanama (Exh.34) of the house where the victim girl 'X' used to reside in the presence of the panchas, which testimony could not be falsified during his cross-examination. I therefore, have no hesitation in holding that the prosecution has been able to prove the proper execution of the spot panchanama (Exh.34) in the presence of the panchas on the day after the incident.

22] The only remaining testimony on the record pertains to that of PW-5 retired H.C. Manik Raut (Exh.58). He has in the same deposed about crime no.302/2019 having been registered by Kapil Masram - who was the station diary in-charge, on the basis of the oral report given by the victim girl 'X'. Thereafter, he has stated that he had arrested the accused in terms of the arrest form (Exh.59), which bears his signature. It has also come on the record through this witness that he had then taken the accused for his medical examination and obtained the MLC report (Exh.60). None of these assertions came to be challenged by Shri N.V. Pawar the Advocate for the accused as he declined to cross examine the aforesaid witness. Hence, the prosecution can be said to have proved the fact of the accused being arrested in the matter on 8-7-2019 at about 00.20 hours, as also of he not having any injury on his body at that time. Another aspect which can also be said to have been proved by this witness, is of the oral report (Exh.44) in the matter having been lodged by PW-3 the victim girl 'X'. Only the aforesaid witnesses having been examined by the prosecution, it is clear that the question of whether the allegations made against the accused have been proved or not will depend mainly on the testimonies of PW-3 the victim girl 'X' (Exh.43) and PW-2 Sita Madavi (Exh.39) – her neighbour. This is because, the incident in question was not stated to have been witnessed by a third person.

23] In the course of his arguments, Shri Soitkar the Id. APP has referred to the testimonies of the victim girl 'X' and her neighbour Sita Madavi and pointed out that the basic assertion of the victim girl 'X' i.e. about the accused having entered her home and of he having tried to

throw her down on the cot, after telling her that he would give her Rs.100/- if she would allow him to have sex with her, has been categorically proved. Therefore, arguing that no specific evidence has been placed on the record to prove that the victim girl 'X' had any good reason for falsely implicating the accused, Shri Soitkar the Id. APP has stated that the prosecution can be said to have proved the offences against the accused.

24] On the other hand, Shri Pawar the Advocate for the accused, has referred to the cross-examination of PW-3 the victim girl 'X' (Exh.43), wherein she has stated that she had not gone to the police station and that her brother and the accused had a dispute since before the incident in question. Not only this, but pointing out that the said victim girl had also stated the fact of she not having shown the spot to the police and that no independent witnesses had been examined by the prosecution, the offences against the accused, as per Shri Pawar Advocate, have not been able to be proved beyond all reasonable doubt. The benefit of the same, as per the Advocate should therefore, be given to the accused.

25] In my opinion, it will have to be pointed out that it is settled law that the sole testimony of a victim girl regarding her molestation etc. can be believed even without corroboration, if the same is completely clear, consistent and able to withstand the cross-examination to which she is subjected to. Thus, when a victim girl is the sole witness in her case, her testimony – to be accepted, has to be that of a sterling witness. Reference for this proposition can be made to the judgment of the Hon'ble Supreme Court in Ganesan Vs State

(2020) 10 SCC 573. Another factor which is always required to be kept in mind while analyzing the testimony of a minor girl/boy is the fact of there not being any material to show that he/she had been tutored.

26] Keeping the aforesaid principles in mind, a perusal of the testimony of PW-3 the victim girl 'X' (Exh.43) will show that in her examination-in-chief, she has related the incident which had occurred after the accused had entered her home in the evening. At the same time, she has, as already mentioned while extracting her evidence in the foregoing paras, also stated the fact of not remembering as to whether she had been educated upto the 3rd std., that she did not know how to read and write Marathi, as also that the police had not read over the contents of the report to her. Nothing was however, able to be brought forth in her cross-examination to prove that she had been tutored by anybody to deliberately lodge a report against the accused and even thereafter, to depose against him.

27] With regard to the extent of the education of PW-3 the victim girl 'X' it will have to be appreciated that Shri Pawar Advocate for the accused has admitted the letter dtd.9-7-2019 (Exh.70-A) written by PW-6 PSI Deepak Wankhede to the Head Master of the Zilla Parishad School of the village in which the victim girl was studying. He also admitted the bonafide certificate (Exh.71) issued by the Head Master of the victim's school. Hence, there cannot be any dispute about the contents of the said documents. This being so, the bonafide certificate dtd.9-7-2019 (Exh.71) having stated that the victim girl 'X' had been born on 20-6-2006 as also of she studying in the 7th std. at the relevant

time, the said facts can be taken as having been proved. Hence, the fact of PW-3 the victim girl 'X' having said that she does not remember whether she had been educated till the 3rd std., is completely irrelevant. This is because, the documentary evidence proves that in 2019, the said girl was studying in the 7th std.

28] But, it will have to be kept in mind that being educated does not always mean that a person is literate. This is because unfortunately, the state of education in government schools in our country is so abysmal that the sole fact of a child having studied in a such a school till the 7th std. is no guarantee of he/she being literate. Therefore, the fact that PW-3 the victim girl 'X' (Exh.43) said that she could not read and write the Marathi language, should not come as a surprise to anybody as that is the stark reality of education in the poor rural areas in our country where being promoted from one class to another cannot be said to guarantee an improvement in a student's literacy.

29] This however, cannot be understood as meaning that the incident vis-a-vis the accused, as related by PW-3 the victim girl 'X' (Exh.43), can therefore be disbelieved. Undoubtedly, the said girl has, in her cross-examination, stated that her elder brother and the neighbouring lady had stated the contents of the report (Exh.44) to the police. But, it will still have to be appreciated that the basic fact of the incident having taken place with her when she was alone at her home in the evening, with the accused entering her home, which as per the spot panchanama (Exh.34), even does not even have a door, could not be shattered in any way during her testimony. It will further have to be

kept in mind that the victim girl 'X' having been born on 20-6-2006, she was only 13 years old on 7-7-2019 i.e. on the day of the incident. There is also no doubt about the fact of PW-3 the victim girl 'X' having gone to the house of PW-2 Sita Madavi (Exh.39) immediately after the occurrence and having related the facts of the incident to her, as also of the said girl 'X', her elder brother and PW-2 Sita Madavi having gone to the Seloo Police Station on the same day for reporting the occurrence. It is consequently, obvious that by this time, the victim girl 'X's' elder brother would also have come to be informed about the details of the incident. Hence, considering the extremely traditional nature of the rural society in India, the victim girl 'X's' brother and her neighbour Sita Madavi may have taken upon themselves the duty of telling the police about the incident, even when PW-3 – the victim girl 'X' was accompanying them.

30] This is all the more so, as the fact of the report (Exh.44) and the FIR (Exh.45) – both dtd.7-7-2019 bearing the signatures of the victim girl 'X', will show that her presence in the Seloo Police Station on the relevant day and time, is beyond question. The question of the police therefore, not having made any inquiries with PW-3 the victim girl 'X' on the day on which the report (Exh.45) was lodged, does not arise at all. Hence, though the said fact has been stated as much by the said girl in her cross-examination, it will have to be considered only as a stray statement made by her due to her evidence having been recorded four years after the incident and nothing more.

31] Turning now to the question of a fight having taken place between the accused and the victim girl 'X's' elder brother before the

incident in question, the said fact – as pointed out by Shri Pawar Advocate, was stated by PW-3 the victim girl 'X' (Exh.43) in her cross-examination. Pertinently, no other questions regarding the said fight i.e. the reason for it and whether it was only an exchange of hot words or involved fisticuffs etc. were put to the said witness. No such details have also been supplied by the accused while answering the questions put to him under section 313 of Cr.PC. (Exh.74), even though he could have easily done so. It is consequently, not possible to gauge the seriousness of the said fight from the material available on the record. Without the same, the question of whether the victim girl 'X' had been made to lodge a false report cannot be decided one way or the other. Even otherwise, it is not possible for me to believe that due to the said fight, the brother of the victim girl 'X' would go so far as to use his younger sister aged 13 years to involve the accused in offences having sexual overtones.

32] This is specially so as PW-2 Sita Madavi (Exh.39), whom the victim girl 'X' had immediately informed about the occurrence of the incident, has supported the case of the prosecution. Her testimony regarding she having on being informed about the incident by the victimgirl 'X', come out of her house, having seen the accused on the road and of having questioned him regarding his behaviour, could not be shaken in any way. Hence, the testimony of PW-2 Sita Madavi corroborating that of PW-3 the victim girl 'X' regarding the material particulars of the incident in question, I have no hesitation in placing reliance upon her i.e. the girl 'X's' identification of the accused, in the court, as being the boy who had come to her home for asking for water. Therefore, the fact of PW-3 the victim girl 'X' (Exh.43) not having

stated the name of the accused on being asked about it in her examination-in-chief is, in my opinion, inconsequential to say the least. This is specially so, because as previously stated, the girl's testimony had come to be recorded four years after the incident. Notably, no material omission or contradiction was able to be brought forth in the cross-examination of PW-3 the victim girl 'X', which in my view, will also reflect the fact of she speaking the truth. Resultantly, not a single omission or contradiction was able to be put to PW-6 PSI Dipak Wankhede (Exh.69) – the Investigating officer during the course of his cross-examination.

33] Some benefit has then been sought to be taken by Shri Pawar Advocate of the accused from the statement of PW-3 the victim girl 'X' in her cross-examination (Exh.43), about she not having shown the spot to the police. Here, it will have to be noted that, as previously discussed, the due and proper execution of the spot panchanama (Exh.34), has been proved through PW-1 Subhash Kodankar (Exh.30) – a panch and PW-6 PSI Dipak Wankhede (Exh.69). The testimonies of both these witnesses will show that they have deposed about the victim girl 'X' having shown the spot of the incident to them. Neither of these witnesses being interested witness, I find no reason to disbelieve them. Therefore, the oral and documentary evidence i.e. the spot panchanama, having proved that the victim girl 'X' had shown the said spot to the police and the panchas, her statement to the contrary in her cross-examination is, in my view, liable to be ignored. Further, the police having recorded the statements of the victim girl 'X's' neighbours, and the prosecution having examined two of them, there is no substance in Shri Pawar Advocate's argument about no independent

witnesses having been examined.

34] Thus, though the testimony of PW-3 the victim girl 'X' cannot be said to qualify as that of a sterling witness, it will have to be appreciated that the important parts of her testimony find the necessary corroboration from that of PW-2 Sita Madavi (Exh.39) – her neighbour. Hence, there cannot be any impediment in the testimonies of the victim girl 'X' and her neighbour being relied upon. Not only this, but, as has previously been pointed out by me while discussing the testimony of PW-4 Rekha Raut (Exh.56), the said witness though failing to depose the facts regarding the incident due to which she was cross examined by the Id. APP, she has in her testimony dtd.13-12-2024, stated the fact of the incident having occurred many years ago at 5.00 to 6.00 p.m. when she was present in her house. This – as has already been pointed out, will clearly go to indicate that some incident with PW-3 the victim girl 'X' had indeed taken place, thereby falsifying the stand taken by the accused about he having been wrongly implicated.

35] Thus, in view of the aforesaid discussion, the following facts can be said to have been proved -

- i) that on 7-7-2019 between 5.30 p.m. to 6.00 p.m., the victim girl 'X' was alone at her home
- ii) that the accused had then entered the home of the victim girl 'X', which home did not have a door, on the pretext of asking for water for drinking alcohol
- iii) that he did not leave the said home even though the victim girl 'X' had not given him water
- iv) that the accused had then told the said girl that he would give her

Rs.100/- and that she should allow him to have sex with her [मी शंभर रुपये देतो मला करु दे].

v) that the accused he then caught hold of the victim girl 'X's' hand and tried to throw her down on the cot in her home

vi) that the said girl 'X' had kicked the accused and come out of her home after which she had gone to the home of a neighbour Akka i.e. PW-2 Sita Madavi

vii) that PW-2 Sita Madavi had then come out of her home and seen him on the road

viii) that Sita Madavi had then questioned him about his behaviour, at which he said that he would behave as he wanted.

36] The aforesaid facts in my opinion, will clearly prove that the accused had committed the offence of house trespass in the manner in which the said offence is defined under section 452 of the IPC. This is because, the term 'preparation' as used in section 452 of the IPC not having been defined therein, it has to be understood in a logical manner in consonance with common parlance. Hence, it cannot only mean the preparation carried out in preceding days and it can also be said to be made instantaneously. It also cannot be restricted to meaning physical preparation as the said term – 'preparation' can also mean having an idea and determination to use criminal force or make an assault by acts or by gestures. Therefore, anybody who has an idea to use criminal force or to assault and who acts on that intent, the same will qualify as 'preparation' in the manner in which it is contemplated under section 452 of the IPC. Support for this view can be had from the judgment of the Hon'ble Allahabad High Court in Arun Kumar Singh and Others Vs State of U.P. and Another 2012 (1) Crimes 294.

37] I am therefore, of the view that the facts proved in the matter will certainly make out the fact of the accused having committed the offence under section 452 of IPC. This is because, the accused has been shown to have used criminal force to the victim girl 'X' after entering her home, with the said idea developing in his mind when he saw the said girl alone at her home.

38] With regard to the offence under section 354 of the IPC, it will have to be noted that it can be said to have been proved when it is shown that the accused had assaulted or used criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty. From the facts already held to have been proved on the record by the prosecution, it is clear that the accused had indeed used criminal force in the manner in which it is defined under section 350 of the IPC, to PW-3 the victim girl 'X', after having told her that he would give her Rs.100/- if she would allow him to have sex with her. These words and acts of the accused clearly prove his intention of outraging her modesty and resultantly, the fact of he having committed the offence punishable under section 354 of the IPC.

39] In the result, I answer point nos. 1 and 2 in the affirmative and record my findings thereon accordingly.

As to Point No. 3 :-

40] In order to bring home any offence alleged to have been committed under the POCSO Act, the basic question which is required to be proved by the prosecution is the fact of the victim being a 'child' i.e. a person below the age of 18 years.

41] In the matter in hand, as has been discussed in my discussion as to point nos.1 and 2, there is no specific statement made by PW-3 the victim girl 'X' in her testimony about her exact date of birth. This is because, she has therein stated that she did not remember her date of birth and said that she was studying in the 3rd std. at the time of the incident. Thereafter, at the end of her examination-in-chief, this witness stated that she was 12 years old at the time of the said incident. In the course of her cross-examination, the victim girl 'X' again said that she did not remember as to whether she was more than 18 years old at the time of the said incident.

42] But, as has also been pointed out previously, Shri Pawar Advocate for the accused had thereafter, admitted the victim girl 'X's' bonafide certificate dtd.9-7-2019 (Exh.71) as issued by the Head Master of the school attended by the said girl. Therein, her date of birth was stated to be 20-6-2006. The said fact having been admitted on behalf of the accused, the same will prove that the victim child 'X' was 13 years old on 7-7-2019 i.e. the day of the incident. Obviously therefore, she - on the day on which the incident had occurred, was indeed a 'child' in the manner in which the said term has been defined under section 2(d) of the POCSO Act.

43] Turning now to the question of whether the prosecution has been able to prove the fact of the accused having committed the offence of 'sexual assault' as defined under section 7 of the POCSO Act, which is punishable under section 8 of the said Act, it will be appropriate to point out that the entire oral and documentary evidence led on the record has already been discussed by me while discussing

the question of whether the offences under section 452 and 354 of the IPC had been proved or not. Hence, I am of the opinion that it is now not necessary to again recapitulate the said discussion as the same will unnecessarily burden this judgment.

44] Suffice it to say that the facts proved on the record by the prosecution are that the accused, after entering the house of PW-3 the victim girl 'X' – who was a 'child' on 7-7-2019 between 5.30 p.m. to 6.00 p.m. at a village in Tahsil Seloo, Dist. Wardha, had told her that he would give her Rs.100/- if she would allow him to have sex with her, after which he had caught hold of her hand and tried to throw her down on the cot in the room. These acts will clearly prove that the accused had, with a sexual intent, done an act which involved physical contact without penetration.

45] It will also have to be noted that section 30 of the POCSO Act which deals with the presumption of a culpable mental state, stipulates that in any prosecution for any offence under the said Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the Act charged as an offence in that prosecution. Further, sub section 2 of section 30 of the POCSO Act also states that for the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when it's existence is established by a preponderance of probability.

46] This being the law, it will have to be pointed out that the

accused – while cross examining the prosecution witnesses, has not been able to prove that he did not have a sexual intent in catching hold of PW-3 the victim child 'X' after telling her that he would give her Rs.100/- and that she should allow him to have sex with her [मी शंभर रुपये देतो मला करु दे]. He i.e. the accused not having examined any witness or even himself in support of the stand taken by him, it is clear that he has not been able to discharge the burden of proving that he did not have any sexual intent while touching the victim child 'X'.

47] Not only this, but it will also have to be appreciated that section 29 of POCSO Act which deals with presumption as to certain offences, states that where a person is prosecuted for committing any offence under sections 3, 5, 7 and 9 of the Act, the Special Court shall presume, that such person has committed the offence, unless the contrary is proved. As is apparent from the discussion in the foregoing paras, the prosecution has been able to prove all the foundational facts regarding the accused having sexually assaulted the victim child 'X' on 7-7-2019 in the evening inside her home. This being so, the burden – in view of section 29 of the POCSO Act, then shifted on the shoulders of the accused to prove that he had not done so. However, as has already been stated, no such proof has been able to be brought on the record by way of cross examining the prosecution witnesses.

48] In the result, I am of the opinion that the prosecution has been able to prove that the accused on 7-7-2019 between 5.30 p.m. to 6.00 p.m. at a village in Tah. Seloo, Dist. Wardha had, with sexual intent, caught hold of the victim child 'X' and tried to throw her down on the cot, i.e. doing an act which involved physical contact without

penetration, with sexual intent, thereby committing the offence of sexual assault. I therefore, answer point no. 3 in the affirmative and record my finding thereon accordingly.

As to Point No. 4 :-

49] As I have held the accused guilty for the offences with which he had been charged, I have heard him, Shri Pawar Advocate for the accused and Shri Soitkar the Id. APP for the State on the point of sentence. The accused has remained silent. Shri Pawar Advocate has however, stated that the accused does not have any criminal antecedents and is an unmarried man working as a labour to maintain himself and his widowed mother. On these grounds therefore, he is seeking leniency for his client. On the other hand, Shri Soitkar the Id. APP has pointed out that the victim being a 13 year old girl who was targeted as she was alone at home, will show that there is no reason to take a lenient view in the matter. He has also sought the grant of compensation to the said victim 'X'.

50] In my opinion, it will have to be pointed out that a child having been targeted by the accused for satisfying his sexual desires, there does not arise any question of he being given the benefit of probation. At the same time, it will have to be noted that there is no material before me to show that the accused suffers from any criminal antecedents. The facts of the matter will also not show that the accused is a person who is beyond redemption. Hence, keeping in mind the facts of the incident as also the situation of the accused, I am of the view that a sentence which is not very lenient but at the same time, is not extremely severe is liable to be imposed upon the accused.

This may probably result in the accused realizing the folly of his ways and reforming.

51] As pointed out by Shri Soitkar the ld. APP, the victim girl 'X' will also be required to be compensated for the trauma suffered by her at the hands of the accused. A direction to the DLSA, Wardha for determining the appropriate compensation payable to her under the Victim Compensation Scheme envisaged under section 357-A of Cr.P.C., in my opinion, will meet the ends of justice. In the result, I proceed to pass the following order.

Order

1] The accused Prakash @ Pakya Babanrao Warkhade, aged 29 years, occupation- Labour, r/o Gondpura, Kelzar, Tah. Seloo, Dist. Wardha stands convicted for the offences punishable under section 452, 354, of the Indian Penal Code, as also for the offence punishable under section 8 of the Protection of Children from Sexual Offences Act vide section 235(2) of the Code of Criminal Procedure.

2] For the offence punishable under section 452 of IPC, he is sentenced to suffer Rigorous Imprisonment for 2 (Two) years and to pay a fine of Rs.1000/- (Rs. One Thousand) in default of which he shall undergo simple imprisonment for two months.

3] For the offence punishable under section 354 of the IPC, the accused is sentenced to suffer Rigorous Imprisonment for 3 (Three) year and to pay a fine of Rs.2000/- (Rs. Two Thousand) in default of which he shall undergo simple imprisonment for three months.

4] For the offence punishable under section 8 of the POCSO Act, the

accused is sentenced to Rigorous Imprisonment for 3 (Three) years and to pay a fine of Rs.3,000/- (Rs. Three Thousand), in default of which he shall undergo simple imprisonment for three months.

5] All the substantive sentences to run concurrently.

6] The accused has been in custody from 08.07.2019 to 26.06.2020. He shall therefore, be given the benefit of set-off as per the provisions of section 428 of Cr.PC.

7] Copy of this judgment be sent to the DLSA, Wardha for determining and paying the compensation to the family of the victim child 'X'.

8] Copy of this judgment be provided to the accused free of cost.

Wardha.
Dt. 28/07/2026.

(Ms. S.J. Ansari)
Special Judge (POCSO Act), Wardha

CERTIFICATE

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

(S.V. Dakhane)
Steno.(Grade-1)