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Form No. XXXII**PART 'A'****(Para 44(i) of Chapter VI of Criminal Manual)**

<u>IN THE COURT OF ADDL. SESSIONS JUDGE AND JUDGE SPECIAL COURT UNDER POCSO ACT, PHALTAN AT : PHALTAN,</u> Presided over by P. G. Bhosale, Addl. Sessions Judge and Judge, Special Court Under POCSO Act, Phaltan	
Date of Judgment : 30.07.2026	
SPECIAL (POCSO) CASE NO. 24 OF 2024 Exhibit No.91 <i>(CNR No. MHST210000512024)</i> <i>(Old Spl. POCSO Case No. 157/2021)</i>	
(FIR No. 298/2021, under sections 376-AB, 376(3), 354-B, 354-D, 506 of the Indian Penal Code and Sections 4, 6, 8, 12 of the Protection of Children From Sexual Offences Act, 2012, Phaltan City Police Station.)	
COMPLAINANT	: State of Maharashtra Through Phaltan City Police Station
REPRESENTED BY	: Shri. V. H. Katkar & Shri. M. H.Oak, Addl. P. P. for the State.
ACCUSED	: Dhananjay Bajirao Gaikwad Age - 30 years, Occ. : Agriculture R/o. Zirapwadi, Tq. Phaltan, Dist. Satara.
REPRESENTED BY	: Shri. J. M. Metkari, Advocate for accused.

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

Date of offence	:	26.07.2021
Date of FIR	:	30.07.2021
Date of Charge-sheet	:	23.09.2021
Date of Framing of Charges	:	20.04.2022
Date of commencement of evidence	:	03.10.2024
Date on which judgment is reserved	:	30.07.2026
Date of the Judgment	:	30.07.2026
Date of the sentencing order, if any	:	30.07.2026

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 Cr.PC.
1.	Dananjay Bajirao Gaikwad.	30.07.2021	Under Trial Prisoner	Sections 376-AB, 376(3), 354-B, 354-D, 506 of the IPC and Sec. 3(a) pun/u/s. 4, Sec.5(m) pun/u/s.6, sec. 7 pun/u/s.8 and sec. 11 pun/u/s. 12 of POCSO Act.	The accused is convicted only under Section 7 pun/u/s. 8 of the POCSO Act. The accused is acquitted for the offences under Sections 376-AB, 376(3), 354-B, 354-D, 506 of the IPC and Sec. 3(a) pun/u/s. 4, Sec.5(m) pun/u/s.6,	As per final Order	05 years

					Sec. 11 pun/u/s.12 of POCSO Act.		
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Part 'C'

(Para 44(iii) of Chapter VI of Criminal Manual)

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

Rank	Name	Exh. No.	NATURE OF EVIDENCE
PW 1	Pramila Nitin Shinde	34	Complainant
PW 2	ABC	42	Victim no.1
PW 3	XYZ	44	Victim no.2
PW 4	Ganesh Bhagwan Borate	46	Spot Panch witness
PW 5	Tukaram Dadasaheb Shinde	51	Witness
PW 6	Dr. Abhay Prakash Kamble	53	Medical Officer
PW 7	Dr. Chaitrali Navnath Raskar	63	Medical Officer
PW 8	Bharat Krishna Kindre	68	Investigating Officer
PW 9	Dr. Kavita Gangadhar Gawade	79	Medical Officer

B. DEFENCE WITNESS, IF ANY :

RANK	NAME	EXH.	NATURE OF EVIDENCE
NIL			

C. COURT WITNESS IF ANY :

RANK	NAME	EXH.	NATURE OF EVIDENCE
NIL			

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

Sr.No.	Exhibit Number	Description
1.	35/PW-1	FIR
2.	36/PW-1	Printed FIR
3.	37/PW-1	Spot Panchanama
4.	38/PW-1	Seizure panchanama of clothes of victim no.1
5	47/PW-4	Seizure panchanama of clothes of victim no. 1
6	48/PW-4	Seizure panchanama of clothes of victim no. 2
7	49/PW-4	Seizure panchanama of clothes of accused
8	52/PW-5	Statement of witness Tukaram Shinde recorded U/s.164 of Cr.P.C. before J.M.F.C.
9	54/PW-6	Medico Legal Certificate
10	55/PW-6	Opinion of Medical Officer
11	64/PW-7	Medical Report
12	69/PW-8	Muddemal receipt regarding depositing of muddemal bedsheet
13	70/PW-8	Muddemal receipt regarding depositing of clothes of victim no.1
14	71/PW-8	Muddemal receipt regarding depositing of clothes of victim no.2
15	72/PW-8	Arrest panchanama
16	73 & 73/PW-8	Letters sent by I.O. to M.O., Phaltan for medical examination of both victims
17	75/PW-8	Muddemal receipt regarding depositing of clothes of accused
18	76/PW-8	Letter sent by I.O. to M.O., Phaltan for medical examination of accused

19	77/PW-8	Letter sent by I.O. to F.S.L.,Pune for examination of samples
20	78/PW-8	Request letter sent by I.O. to Spl. Sessions Court, Satara for recording the statements of witnesses u/s. 164 of Cr.PC.
21	82/PW-9	Medical examination report of victim no.1

B. Defence Exhibits / List of admitted documents by defence :

Sr.No.	Exhibit Number Admitted by Defence	Description
1.	57	Birth Certificate of Victim no.2
2.	58	Birth Certificate of Victim no.1

C. Court Exhibits :

Sr.No.	Exhibit Number	Description
NIL		

E. Material Objects :-

Sr.No.	Material Object No.	Description
1.	M.O.-A	Pink Colour Top of victim no.1
2.	M.O.-B	Nicker of victim no.1
3.	M.O.-C	Cream colour T-shirt of victim no.2
4.	M.O.-D	Grey colour hotpant of victim no.2
5.	M.O.-E	Bedsheet
6.	M.O.-F	Blue colour Jeans pant of accused
7.	M.O.-G	Faint pink colour shirt of accused
8.	M.O.-H	Blue colour underwear

JUDGMENT

(Delivered on this 30th July, 2026)

01] The accused Dhananjay Bajirao Gaikwad is prosecuted for the offences punishable under Sections 376-AB, 376(3), 354-B, 354-D, 506 of the Indian Penal Code, 1860 (In short, hereinafter referred to as, 'IPC') and Section 3(a) punishable under Section 4, Section 5(m) punishable under Section 6, Section 7 punishable under Section 8, Section 11 punishable under Section 12 of the Protection of Children From Sexual Offences Act, 2012 (In short, hereinafter referred to as, 'POCSO Act').

The accused is arrested on 30.07.2021 and since that day he is in jail.

02] The Prosecution's case is that ;

The complainant Sau. Pramila Nitin Shinde lodged a complaint at Phaltan City Police Station on 30.07.2021 that she resided with her husband, in-law, two daughters, brother-in-law, sister-in-law in a joint family. She worked as a receptionist at Nikop Hospital, Phaltan. Her daughter (victim) studied in 2nd standard. Her husband used to drive TATA Tempo, her brother-in-law had a garage and her sister-in-law worked as a Nurse. All of them used to leave their house at 9:00 a.m. and her in-laws used to look after her children. The accused Dhananjay Bajirao Gaikwad was her neighbour.

03] On 26.07.2021, all of them had gone for work in the morning. Her two daughters and the son of her brother-in-law were

in the house and her in-laws were looking after them. When she came after her work at about 5:30 p.m. her daughter came towards her and stated that she wants to tell something to her. She stated to her that when she was playing with her friend at about 2:00 p.m. to 2:15 p.m. in front of her friend's house, the present accused stated to them that he would give them 'Bhel' and took both of them in his house. He locked the door of his house, made them to sleep on bed, undressed them and committed rape on them. When she shouted, the accused pressed her mouth and did the same thing with the other victim girl. The other victim girl ran away from his house. But the victim girl could not run away as the accused had caught her and pressed her mouth. The accused also threatened her that she should not inform this incident to anybody.

04] The husband of the complainant had taken his tempo to Pandharpur on that day and he had stayed at Pandharpur on that day. So she did not inform this incident to anybody. The complainant took her daughter with her at her work place on 27.07.2021. She informed this incident to her husband when he came back on 27.07.2021. Her daughter was suffering from fever and she did not talk with anybody and so she discussed with her family members and lodged this complaint against the accused on 30.07.2021.

05] The police registered the above offences against the accused and arrested him on the same day. One Bharat Kindre investigated this offence. He took the assistance of WPSI Dhongade to assist him in this investigation. He went with WPSI Dhongade and two panch witnesses at the spot of incident. The complainant

Pramila Nitin Shinde showed them the spot of incident, the house of the accused at Zirapwadi. He prepared the spot panchanama in the presence of panch witnesses. He seized the bed-sheet in the presence of panch witnesses. He recorded the statement of witnesses. WPSI Dhongade recorded the statements of both the victims in question and answer form and video-graphed it. He seized the clothes of the victims and prepared its seizure panchanama. The mother of the another victim produced her clothes. He seized her clothes in the presence of panch witnesses and prepared its seizure panchanama. He kept the muddemal in the custody of the muddemal clerk. He arrested the accused on 30.07.2021 and prepared his arrest panchanama.

06] Thereafter, the Investigating officer sent both the victim girls for medical examination along with two letters with Lady Police Constable to the Sub-District Hospital, Phaltan. He also seized the clothes of the accused, which he had worn during the incident. He prepared the seizure panchanama of the clothes of the accused in the presence of panch witnesses. He sent the accused to Sub-District Hospital, Phaltan for his medical examination. Thereafter, he sent the clothes of the victim and the accused for Forensic Science Examination along with a letter. He received the acknowledgment of receiving the clothes from the Forensic Science Laboratory. He sent a letter to the District Court, Satara to record the statements of witnesses under Section 164 of Cr.P.C. He collected the statements of the victim girls recorded under Section 164 of Cr.P.C. and attached it with the charge-sheet. He also collected the medical reports of the

victim girls and attached it with the charge-sheet. After completing the investigation, he came to the conclusion that the present accused Dhananjay Bajirao Gaikwad had called both the victim girls to his house by luring them to give 'Bhel'. He had closed the doors of his house, he had undressed the victim girls and committed penetrative sexual assault on them and also threatened them. Lastly, he filed the charge-sheet against the accused.

07] On the appearance of the accused, the charges were framed against him under Sections 376(AB), 376(3), 354-B, 354-D, 506 of the Indian Penal Code and Section 3(a) read with Section 4, Section 5(m) read with Sections 6, 8 & 12 of the Protection of Children from Sexual Offences Act, 2012. The accused pleaded not guilty and claimed to be tried.

08] The prosecution has examined eight witnesses including the complainant, two minor victim girls, the panch witnesses, two Medical Officers and Investigating officer to prove the guilt against the accused. After the prosecution evidence, the statement of the accused under Section 313 of Cr.P.C. came to be recorded. His defence is of total denial, false implication. His defence is that he used to work as driver on the vehicles of the husband of the complainant. When he stopped to work on his vehicles, he has filed this false complaint against him. He has prayed to acquit him from this case.

09] Heard the Ld. Addl. P.P. and the Advocate for the accused. Perused oral and documentary evidence filed by the prosecution. The following points arise for my determination, I have decided

them along with reasons as under :

Sr. No.	POINTS	FINDINGS
1]	Whether the prosecution proves that on 26.07.2021 at about 2:00 p.m. in his own house at village Zirapwadi, Tq. Phaltan, Dist. Satara, the accused committed rape on two victim girls aged 7 years and 4 years and thereby he committed an offence punishable under Section 376(AB) of IPC ?	In the Negative
2]	Whether the prosecution proves that on the aforesaid date, time and place, the accused committed rape on girls under 16 years of age and thereby he committed an offence punishable under Section 376(3) of the IPC ?	In the Negative
3]	Whether the prosecution proves that on the aforesaid date, time and place, the accused used criminal force on two victim girls to disrobe them to commit rape on them and thereby he committed an offence punishable under Section 354-B of the IPC ?	In the Negative
4]	Whether the prosecution proves that on the aforesaid date, time and place, the	In the Negative

	accused had committed stalking on the victim girls and thereby he committed an offence punishable under Section 354-D of the IPC ?	
5]	Whether the prosecution proves that on the aforesaid date, time and place, the accused committed criminal intimidation by threatening the victim girls that they should not inform this incident to anybody and caused alarm to them and thereby he committed an offence punishable under Section 506 of the IPC ?	In the Negative
6]	Whether the prosecution proves that on the aforesaid date, time and place, the accused committed penetrative sexual assault on two minor girls and thereby he committed an offence under Section 3(a) punishable under section 4 of the Protection of Children from Sexual Offences Act?	In the Negative
7]	Whether the prosecution proves that on the aforesaid date, time and place, the accused committed penetrative sexual assault on two minor girls, below 12 years and thereby he committed an	In the Negative

	offence under Section 5(m) punishable under section 6 of the Protection of Children from Sexual Offences Act?		
8]	Whether the prosecution proves that on the aforesaid date, time and place, the accused sexually assaulted two minor girls and thereby he committed an offence under Section 7 punishable under section 8 of the Protection of Children from Sexual Offences Act?		In the Affirmative.
9]	Whether the prosecution proves that on the aforesaid date, time and place, the accused sexually harassed the two minor girls and thereby he committed an offence under Section 11 read with section 12 of the Protection of Children from Sexual Offences Act?		In the Negative.
10]	What order ?		The accused is convicted as per final order.

10] Arguments of the Prosecution :

The Ld. Addl. P. P. has argued that the accused is the neighbour of the one of the victim girl and uncle and another victim girl. He states that the delay in lodging the F.I.R. is properly explained and it is not fatal to the prosecution case. He states that the prosecution has proved that the accused had committed

penetrative sexual assault on one of the victim girl and attempted to commit penetrative sexual assault on the another victim girl. He states that the complainant and her daughter and the another victim girl have consistently deposed that the accused had committed penetrative sexual assault on them. He argued that there is presumption under Section 29 of the POCSO Act that the accused had committed such serious offence so he has requested to convict the accused.

11] Arguments of the Defence/ Accused :

The Advocate for the accused argued that this is a false complaint lodged against the accused. He states that there is no eye-witness to the incident. There is not even circumstantial evidence against the accused. He states that the complainant has falsely implicated the accused, has taken disadvantage of the POCSO Act only to harass the accused. He states that the accused used to work as a Driver on the vehicles of the complainant and her husband. When the accused left his job with the complainant's husband, they got annoyed and they have falsely implicated him in this false offence. He states that there is delay of 5 days in lodging the F.I.R. of this incident. He states that the incident occurred on 26.07.2021, whereas the F.I.R. is lodged on 30.07.2021. He states that the complainant has given false reasons that her husband had gone outside of the city, that her daughter was not feeling well, she was afraid and so there was delay in lodging the F.I.R. of the incident. He states that one of the victim girl is the niece of the accused and how can he commit such act with his own niece. He states that the

complainant had tutored both the victim girls to depose falsely against the accused. On the basis of medical evidence, he drew my attention to the oral evidence of the Medical Officer that she did not find any injuries on the private parts of both the victim girls and she had only expressed possibility that sexual assault could not be ruled out. He states that the prosecution has not completed the chain of circumstances to prove the guilt against the accused.

12] The Advocate for the accused has relied upon the judgments of the Hon'ble Bombay High Court :

[1] Kisan Bhaiyyalal Harinkhede Vs. State of Maharashtra, Criminal Appeal No. 303 /2022.

[2] Sikandar Somsingh Chavhan Vs. State of Maharashtra, Criminal Appeal No 584 of 2022, Bombay High Court, Nagpur Bench.

REASONS

AS TO POINT NO.1 TO 9 :-

13] As all the offences have occurred on the same day, date, time and place and have one reasoning, I have discussed them together.

14] Age of the victim girls :

The prosecution has produced the Birth Certificate of both the victim girls. The date of Birth of the first victim girl is mentioned on her Birth Certificate as 24.10.2013. Her Birth Certificate is filed on record below Exh. 58. The incident occurred on 26.07.2021. The age of the first victim girl would be 07 years 09

months and 02 days on the date of incident.

The prosecution has produced the Birth Certificate of another victim girl below Exh. 57. Her date of birth is shown as 08.10.2016. The incident occurred on 26.07.2021. The age of the second victim girl would be 05 years and 18 days on the date of incident.

15] Medical Evidence of the victim Girl no.1 :

The prosecution has examined Dr. Kavita Gangadhar Gawade (PW-9) below Exh. 79 to prove the medical reports of the victim girls. Dr. Kavita Gawade deposed that she was working as Medical Officer at Civil Hospital, Satara on 30.07.2021. She had examined the victim No.1 at 7:30 p.m. on that day. One LPC Bhosale of Phaltan City Police Station had brought the victim girl for medical examination. Her age was 7 years and 9 months. The victim was accompanied by her mother and one more woman. She deposed that the mother of the victim girl had narrated the history before the medical examination. She had deposed that the victim girl had gone to the house of the accused to play games. The accused closed the door and asked them to play the game in two groups. When the victim girl was in the group of the accused, he started rolling over her body, kissed her, removed her pants and opened zip of his pant. Thereafter, he made the victim girl sleep on the ground and he slept on her body. He placed his private part on the private part of the victim girl. The accused had committed same act with another victim girl. When the victim girl No.2 asked the accused to allow them to go to meals, he did not let the victim No.1 to go away though she was requesting him.

16] This Medical Officer deposed that on general examination she found that the victim girl was physically fit, she noticed redness on her genitals. On her examination, she was of the opinion that the possibility of the sexual assault on the victim girl cannot be ruled out. She deposed that the victim girl was in the hospital for about two hours out of which she took 45 minutes to examine her. She deposed that she had issued Medical Examination Report along with her signatures and seal of the hospital below Exh.82. She had recorded the identification marks of the victim on the medical papers. The most important thing she has deposed that she could not specifically state whether there was penetration to the victim girl or not.

17] During the cross examination of the Medical Officer, she admitted that the victim girl was brought after four days of the incident. She had no information, whether the victim was given any treatment in those four days or not. She agreed that if such incident had really occurred then the victim ought to have undergone medical treatment anywhere. The most important thing she has agreed that the hymen of the victim was found intact.

18] **Medical evidence of the victim Girl No. 2 :**

The prosecution has examined PW-7 Dr. Chaitrali Navnath Raskar below Exh. 63 who had examined the victim girl no.2. This witness deposed that she worked as Medical officer at Civil Hospital, Satara on 30.07.2021. She was on casualty medical officer duty on that day. The Phaltan City Police Station had brought the victim girl no.2 for her medical examination at 7:30 p.m. to the

hospital. She had examined the victim girl at 9:00 p.m. and completed her medical examination at 11:00 p.m. Her M.L.C. number was 6329 at O.P.D. No. 6431. She had obtained the consent and signatures of her mother for her medical examination. She recorded her identification marks. The mother of the victim girl had narrated the history that the accused called two victim girls to play with him in his house. He asked one of the victim girl to lie down, removed her clothes and slept over her. He put his genitals over her genitals and pushed him over her again and again. He kissed her on her cheeks and on her body. He asked the another girl to do the same and did this twice. He had called the victim girls on 26.07.2021 and did the same act.

19] This doctor deposed that there were no external injuries on her person but she found redness over her genitals. She had examined the victim girl after four days and she had mentioned these facts in the diagram on page no.10 of the printed form. On the clinical examination of the patient, she found that the victim was vitally stable and there were no abnormalities on her examination. But she opined that the possibility of sexual assault could not be ruled out. Accordingly, she issued medical report and proved it below Exh. 64. During the cross-examination, she admitted that she could not state whether there was sexual assault on the victim girl no. 2 or not.

20] **Medical Evidence of the Accused :**

The prosecution has examined Dr. Abhay Prakash Kamble below Exh.53 to prove the medical reports/ medical

examination of the accused. He deposed that he was working as Medical Officer at Sub-District Hospital, Phaltan on 31.07.2021. He deposed that Police Constable C. S. Dhapate has brought the accused Dhananjay Gaikwad for medical examination to the hospital. He has deposed that the accused narrated history that he had tried to do sexual intercourse with two small girls on 25.07.2021 and 26.07.2021 but he did not penetrate or ejaculate (this statement cannot be read in evidence). He conducted his medical examination. He found that the accused had developed normal secondary sexual characters. He had found pubic hairs matting absent, foreign body absent, no deformity on his penis, there were no marks of injury on his body, cremasteric reflex present, scrotal normal, sexually transmitted infection absent, injuries on genital organ absent on the person of the accused. He collected the blood samples of the accused after six days. He deposed that it was not clear from the history given by the accused that the accused had committed sexual intercourse or not so his blood samples were sent for chemical analysis. He obtained the signatures as well as the thumb impression of the accused. He recorded identification marks as mole on the right side of abdomen. Accordingly, he issued Medico Legal Certificate under his signatures and seal of the hospital and proved it at Exh.54. He has submitted all the medical papers including the report to the investigating officer. He deposed that the police had asked him certain questions whether the accused was able to do sexual intercourse, whether the accused had sexually transmitted disease, whether the accused had any injuries on his private parts and whether the accused had any fresh scar on his body. This

witness had answered that the accused was able to do sexual intercourse, he did not having sexually transmitted disease, he has no injuries on his private parts and he had no scars on his body.

21] Oral evidence of the victim girl no.1 :

The victim girl No.1 deposed that her date of birth was 24.10.2013, she studied in second standard in Sheeladevi Doshi Primary School, Kolki, Tq. Phaltan. She was of 7 years of age on the date of incident. She deposed that there was Corona Pandemic and Lockdown during the incident. There were online classes in the School. Her mother worked in Nikop Hospital and her father was driver. Her aunt also working in the hospital. Her grand parents stayed at the house.

22] She deposed that the accused resided besides the house of her friend. The incident occurred on Monday on 26.07.2021. Her parents, her uncle and aunt had gone to their work place at 9:00 a.m. She was present at her house with her brother, sister and grand parents. She had completed her online class. She was playing with her friend in the Courtyard of her house. At that time, the accused came and offered her 'Bhel'. The accused took the victim and her friend in his house and locked the door of his house. He removed the clothes of the victim girl and her friend. The accused also removed his clothes and laid them on bed. He started rolling over their bodies. The friend of the victim girl suffered pain and she stated that she was hungry. So the accused left her outside his house. Thereafter, the accused came near the victim girl, removed her pants, the victim girl deposed that the accused penetrated his private

part to her private part and pressed her chest due to which she suffered pain. Thereafter, the got up and when the victim girl asked him to let her go, the accused stated that they were playing. Thereafter, he left her at her house. The victim girl slept as she was feeling bad.

23] The victim girl deposed that she had worn pink coloured one piece and gray coloured pants. She identified her clothes 'Article A and Article B' in the Court. She deposed that her statement was recorded in the Court. She was taken for medical examination.

24] **Oral evidence of the victim Girl no.2 :**

The victim girl no. 2 deposed that she was studying in 'Balwadi' in the year 2021. Her class-teacher was Seema. She was residing with her parents, grand parents and brother. Her grandfather looked after her in the absence of her parents. Her mother used to stay at Zirapwadi and Baramati whereas his father worked as a Meson. She deposed that her grandmother was in the courtyard of her house. She was playing around her grandmother. At that time, the victim girl no.1, her friend came and she was playing with her. The grandparents of victim girl no.1 were doing their work in front of their house. At that time, the accused came and offered them 'Bhel' and took both of them in his house. The accused locked the door from inside and removed her clothes and of her friend. He rolled over both of them. When her friend shouted, he pressed her mouth. When this victim girl asked the accused to let her go as she was hungry, he opened his door and allow her to go. Thereafter, she went with her grandmother to her house. She deposed that her

statement was recorded in the court. She had worn cream coloured T-shirt and gray coloured pants. She identified her clothes in the Court as 'Article C and Article D'. She deposed that she was taken for medical examination.

25] During the cross-examination, this victim girl admitted that the father of the accused and her grandfather were real brother. The accused is her neighbour. She admitted that she had not narrated the incident immediately to her grandmother and to her parents.

26] **Oral evidence of the mother of victim Girl no.1 :**

The mother of the victim girl no.1 deposed that she resided with her husband, two daughters, her in-laws, her brother-in-law and son of her sister-in-law at Zirapwadi. She worked as receptionist at Nikop Hospital. The date of birth of her daughter was 24.10.2013. Her daughter studied in 2nd standard in primary school at Kolki, Tq. Phaltan. Her husband used to run a tempo on rent. Her brother-in-law had a garage and her sister-in-law worked as Nurse in a hospital. They all used to go to work at 9:00 a.m. and returned about 5:00 a.m. Her in-laws used to take care of her daughter in their absence. She deposed that the accused Dhananjay Bajirao Gaikwad was her neighbour.

27] She deposed that on 26.07.2021, she had gone for work along with her brother-in-law and sister-in-law at 9:00 a.m. Her two daughters and nephew were at home along with her in-laws. All of them returned in the evening from their work. When she came her

daughter victim came and stated that she wanted to say something to her. She stated that she had gone to play with her friend victim girl no.2 in front of her house about 2:00 to 2:15 p.m. The accused came and offered them a 'Bhel', he took them in his house and laid them on the bed. Then he removed his clothes, he took both the victim girls near him and pressed their breasts. He inserted his private part into her private part. When she cried due to pain, he pressed her mouth and the accused committed same act with the other victim girl. She deposed that the victim girl no.2 ran away from that place due to pain. She deposed that her daughter could not run away as the accused hold her tightly. He pressed her mouth and kissed her on her cheek. Thereafter, he asked her to go to her house and threatened her that she should not inform this incident to anybody.

28] This witness deposed that her husband had gone to Pandharpur with his tempo on 26.07.2021. So she did not inform this incident to anybody. Her daughter was calm and frightened on that day. She took her daughter with her to her work place. Her husband returned on 27.07.2021 in the evening. She informed this incident to her husband on 27.07.2021. She deposed that her daughter was suffering from fever and not talking with anybody. She discussed the incident with her family members and lastly she lodged this complaint against the accused on 30.07.2021 at Phaltan City Police Station. She proved her complaint at Exh.36. She showed the spot of incident to the police. The police prepared the spot panchanama below Exh.37. She deposed that her daughter had

worn one pink coloured one piece and gray coloured pant. The police seized the clothes of her daughter and prepared seizure panchanama. She identified the clothes of her daughter as 'Article A and Article B'. She deposed that her daughter and the victim girl no.2 were taken to Civil Hospital, Satara on the same day for their medical examination.

29] During the cross-examination, she admitted that her family had two vehicles, one was used for dolby speakers and the other was used for carrying vegetables. She admitted that her family used to call the accused to drive their vehicle for 4 to 5 years. She admitted that the victim girl no.2 was the niece of the accused. She admitted that she had not taken her daughter anywhere for medical treatment between 26.07.2021 to 30.07.2021. The most important admission given by this witness is that her daughter used to play on the playground even after 26.07.2021 with her friend victim girl no.2.

30] The prosecution has examined PW-5, the grandfather of victim girl no.1 Mr. Tukaram Shinde below Exh. 51. He deposed that there was lockdown in the year 2021. He was in his house. His grand daughter and grand son used to play besides him. His sons, daughters-in-law used to go to work at 9:00 a.m. and returned at 6:00 p.m. He deposed that the accused is his neighbour and resided with his parents.

31] He deposed that on the day of incident, he was repairing the decoration lights in front of his house. His wife was cleaning the grains. His grand daughter victim no.1 was playing with victim no.2

in the courtyard of his house. He deposed that the accused came and took both the victims in his house. He was present in his house. After 5 to 10 minutes, his grand daughter, victim no.1 came to his house. She sat near him and thereafter went inside the house and slept. She had fever for three days. Thereafter, she was taken to police station to lodge the complaint. She deposed that the statement was recorded under Section 164 of Cr.P.C. in the court of Judicial Magistrate First Class, Phaltan.

32] During his cross-examination, he admitted that the accused worked as a driver on his family's vehicles. The accused used to visit his house. He admitted that he could not state the date when he came to know about the incident.

33] PW-4 Ganesh Borate is the panch witness in whose presence the police had prepared the spot panchanama. He deposed that the mother of the victim girl no.1 showed the spot of incident. The spot of incident was he house of accused, there was an iron bed in one of the room and clothes were scattered in that room. He deposed that the police seized bedsheet in his presence. He has proved the spot panchanama below Exh. 37.

34] This witness deposed that on the same day in the evening the mother of the victim girl had handed over the clothes of the victim girl in the police station. The police had seized the clothes in his presence and prepared its seizure panchanama. He proved the seizure panchanama of the clothes below Exh. 47.

35] This witness deposed that on the same day, the mother of

victim girl no.2 handed over the clothes of her daughter in his presence to the police between 5:35 p.m. to 6:00 p.m. He identified her clothes and proved the seizure panchanama below Exh. 48.

36] This witness deposed that the police seized the clothes of the accused on the same day at about 7:30 p.m. to 8:30 p.m. in his presence. He identified the clothes of the accused and proved the seizure panchanama of the clothes below Exh. 49.

37] The prosecution has examined the Investigating Officer of this case PW-8 Mr. Bharat Khindre below Exh.68. He deposed that on 30.07.2021, PSO Khade had handed over the investigation of Crime No. 298 of 2021 to him. He was given the F.I.R. of incident. As the offence was against the minor girls, he took the help of WPSI Dhongade to help him in the investigation. He went to the spot of incident, along with two panch witnesses. The complainant and mother of victim girl no. 1 showed the spot of incident. The house of the accused was the spot of incident. He seized the bedsheet in the presence of panch witnesses. He prepared the spot panchanama and seizure panchanama. He recorded the statements of the victim girls in question and answer form and videograph it. He seized the clothes of the victim girl and the accused and prepared seizure panchanama on 30.07.2021. He arrested the accused on 30.07.2021. He sent the victim girls for medical examination along with letter to Sub-District Hospital, Phaltan. They were referred to Civil Hospital, Satara. He also sent the accused for medical examination along with a letter. He sent the clothes of the victims and the accused for C.A. examination. He recorded the statements of the victim girls and the

witnesses under Section 164 Cr.P.C. He collected the medical reports of the victim girls and the accused and annexed it with the charge-sheet. He completed the investigation and filed charge-sheet against the accused.

38] After going through the entire evidence of the case, I appreciate the evidence of the victim girls, the complainant, the Medical Officers, the circumstantial evidence. First of all, there is delay of four days in lodging the F.I.R. of the incident. The delay though not fatal, weakens the prosecution case. The Court has to take a lot of care while appreciating the evidence of a child witness. Children are prone to tutoring. If a serious incident like rape happens with daughter of anybody, how would a woman/mother remain silent. She will inform the incident to near and dear ones. Here the complainant is silent after the incident. She takes her daughter with her on the next day to her work place in the hospital. It is surprising that she does not inform the doctors in the hospital about the rape incident with her daughter. She had stated that her daughter was suffering from fever. But she has not given medical treatment to her daughter though she was suffering from fever. Even after that she waits for two days without any explanation to lodge the F.I.R. of the incident. The complainant has admitted in her cross examination that her daughter was playing on the playground on the next days after the incident. It is very surprising that the grand parents of both the victim girls were silent after the incident and they did not inform about it to anybody.

39] Now going through the medical evidence of both the

victim girls, both the medical officers have opined that they cannot specifically state whether there was penetrative sexual assault by the accused. They have only expressed the possibility that sexual assault cannot be ruled out. The medical officers have deposed clearly that there were no external injuries over the genitals of the victim girls and there was only 'redness' on their genitals. The medical officer has admitted that the hymen of the victim girl no.1 was found intact. There was redness on her genitals. The medical examination form also shows that the hymen of the victim girls were intact. There were no injuries on their private parts. There is contradiction in the oral evidence of both the victim girls. If the incidents had occurred prior to that day then why they had not informed their parents earlier. So on the basis of medical examination reports, I hold that there was no penetrative sexual assault and aggravated penetrative sexual assault on the victim girls. So the prosecution has failed to prove that the accused had committed rape on the two victim girls.

40] The prosecution has also failed to prove that the accused committed stalking on the victim girls. There is evidence that the accused used to frequently visit the house of the victim girls. He was familiar to them. He was their neighbour. The victim girls played besides him. If they played daily besides him, if they knew him, then how could he commit stalking on them. Secondly, if the accused had really used criminal force on the victim girls, when their grand parents were sitting outside, then how they did not raise any voice against the accused. After the incident, the victim girl came and sat besides her grandfather and both of them went inside and slept in

their house. If the accused had used criminal force then why the victim girl did not inform her grandfather. So I hold that prosecution has failed to prove the charges of rape and penetrative sexual assault against the accused.

41] The only evidence against the accused is that the medical officers have deposed that there was redness on the genitals of victim girl. If the victim girls are to be believed and the complainant is to be believed then it can be said that the accused has committed sexual assault on the victim girls with sexual intent without penetration. The C. A. Report of the clothes of the victim girls and the accused do not show any blood or semen on their clothes. On the basis of the oral evidence of the victim girls and the medical officer, I hold that only the offence under Section 7 of sexual assault under the POCSO Act is proved against the accused. I stop here to hear the accused on the point of sentence.

PHALTAN

Date : 30/07/2026

(P. G. Bhosale)

Addl. Sessions Judge and Judge, Special
Court Under POCSO Act, Phaltan.

42] Heard Addl. P. P. for the State and Advocate for the accused. The Ld. Addl. PP. has requested to impose maximum sentence upon the accused. Against this, the Advocate for the accused states that the accused is in jail for last five years. His parents are dependent upon him. This is his first offence. The accused may be sentenced to the imprisonment already undergone by him. The Court may take lenient view in favour of the accused.

43] The prosecution has utterly failed to prove the charges of rape on girls under 12 years of age and using criminal force on the girls with intent to disrobe them and stalking them and causing criminal intimidation to them under Sections 376-AB, 376(3), 354-B, 354-D, 506 of the Indian Penal Code. The prosecution has also failed to prove the charges of penetrative sexual assault on a child, and aggravated penetrative sexual assault on a child below 12 years and sexual harassment of the victim girls under sections 3(a) read with section 4, 5(m) read with Section 6 and Section 11 read with Section 12 of the Protection of Children from Sexual Offences Act, 2012. The accused has undergone imprisonment from the date of his arrest from 30.07.2021 till the date of judgment on 30.07.2026. The accused is entitled to get set off under Section 428 of the Cr.P.C.

44] The accused is convicted only for the offences of sexual assault on victim girls with sexual intent without penetration as per Section 7 punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012. The maximum punishment for Section 8 of the POCSO Act is imprisonment of either description for a term which shall not be less than three years but which may extend to five years and shall also be liable to fine. The accused is sentenced to the maximum imprisonment of five years punishable under Section 8 of the POCSO Act. Accordingly, I pass the following order.

ORDER

1] The accused **Dhananjay Bajirao Gaikwad** is hereby convicted for the offence under Section 7 punishable under Section 8 of the

Protection of Children from Sexual Offences Act, 2012 as per Section 235 (2) of Criminal Procedure Code, 1973.

2] The accused **Dhananjay Bajirao Gaikwad** is hereby sentenced to undergo rigorous imprisonment for a period of 05 years (five years) and to pay fine of Rs.2,000/- (Rupees Two Thousand only) for the offence under Section 7 punishable under section 8 of the Protection of Children from Sexual Offences Act, 2012 in default to undergo simple imprisonment for 01 month (one month).

3] The accused **Dhananjay Bajirao Gaikwad** is hereby acquitted of the offences punishable under Sections 376-AB, 376(3), 354-B, 354-D, 506 of the Indian Penal Code and Sections 3(a) punishable under section 4, Section 5(m) punishable under Section 6 and Section 11 punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012 as per Section 235 (1) of Criminal Procedure Code, 1973.

4] The accused is in jail since 30.07.2021. The set off be given to him as per Section 428 of Cr.P.C.

5] The Judgment of the case be sent District Legal Services Authority, Satara to pay compensation of the victim girls.

6] The muddemal i.e. the Bed-sheet, the clothes of the victim girls and the accused be preserved till the appeal period is over.

7] The accused is hereby directed to furnish P.R. bond of Rs.25,000/- as per Section 437-A of the Code of Criminal Procedure

Judgment

*Spl. POCSO Case no. 24/2024
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to appear in the Hon'ble High Court, if any, appeal is filed against this judgment.

- 8] The copy of the judgment be given free of costs to the accused.
- 9] Issue conviction warrant of the accused to the Jail.

(Judgment dictated and pronounced in Open Court)

PHALTAN
Date : 30/07/2026

(P. G. Bhosale)
**Addl. Sessions Judge and Judge, Special
Court Under POCSO Act, Phaltan.**