

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 383 OF 2020**

Ashraf @ Afsar Mohd. Imajoddin Shaikh ... Appellant/s

versus

The State of Maharashtra and anr. Respondent/s

Ms. Misbaah Solkar along with Advocate Affan A. Azmi, Advocate for the Appellant.

Mr. S. S. Ghag, APP for Respondent No.1-State.

Mr. Sushan Mhatre, Advocate for Respondent No.2.

PSI-Limbaji Shinde, Shahunagar Police Station, Mumbai.

CORAM : R. M. JOSHI, J.

DATE : 14th NOVEMBER, 2025.

P.C. :

1. During the course of hearing of this appeal, it was sought to be argued on behalf of the appellant that there is no charge framed against the appellant in respect of the incident of sexual assault on the minor victim prior to 17th March 2015, however, evidence was led by the prosecution to that effect. Thus, it is sought to be submitted that the appellant/accused has been denied opportunity of meeting specific charge and this would result into miscarriage of justice.

2. Learned counsel for the appellant placed reliance on the judgment of the Hon'ble Supreme Court in case of Willie Slaney versus The State of Madhya Pradesh reported in Manu/SC/0038/1955 which

deals with the issue as to the substantial denial of opportunity to the accused and lapses during the trial which do not affect substantial rights of the parties.

3. Learned APP and learned counsel for respondent No. 2 have not disputed the fact that the prosecution led evidence in respect of the incidents other than the incident dated 17th March 2015. Similarly, they concede to non-framing of specific charge against the appellant/accused in respect of those incidents.

4. Non-framing of specific charge in respect of incidents other than the one occurred on 17th March 2015 has certainly led to not allowing the appellant to meet the specific allegation/charge against him. Thus, it would be a fit case for referring the matter back to the Trial Court for framing of the charge in respect of the sexual assault on the minor girl on all occasions other than 17th March 2015. There is no further dispute made by the prosecution with regard to the fact that the prosecution has led evidence treating such charge being there against appellant/accused. In such circumstances, this Court finds no reason to permit the prosecution to lead any additional evidence. However, it would be necessary for the defense to cross-examine the witnesses on the basis of such charge being framed by the Trial Court. Hence, following order :

ORDER

- (i) POCSO Special Case No. 256 of 2015 is relegated back to the Trial Court for framing appropriate charge in respect of

sexual assault committed on the minor on occasions other than 17th March 2015.

- (ii) The accused/defense be permitted to cross-examine the witnesses examined by the prosecution on the basis additional charged being framed.
 - (iii) Since the original proceeding is of the year 2015 and the appellant has suffered conviction, Trial Court to record findings on the said additional charge within a period of three months.
 - (iv) Parties are directed to cause appearance before the Trial Court on 24th November 2025.
 - (v) Jail authority is hereby directed to ensure that the appellant is produced before the Trial Court on 24th November 2025.
 - (vi) Learned Trial Court to frame appropriate charge on the same date. Trial Court to ensure that the witnesses are produced before the Court within a period of a month therefrom. Findings be recorded on the additional charge and be relegated to this Court.
 - (vii) Record and proceedings be forthwith sent to the Trial Court.
5. Liberty is granted to the parties to circulate this appeal after receipt of findings from the Trial Court on the additional charge.

(R. M. JOSHI, J.)