



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.437 OF 2018

Sheikh Muhammad Shafique S/o Abdul Hameed
Age: 19 years, Occu: Student,
R/o. Manjurpura Harshnabar, Aurangabad
Tq. & Dist. Aurangabad

..Appellant

VERSUS

The State of Maharashtra
For police Station Officer,
City Chowk Police Station,
Tq. & Dist. Aurangabad
through the Public Prosecutor,
High Court Bench at Aurangabad

..Respondent

....

Mr. P P Mandlik, Advocate for the appellant
Mr. S. G. Joshi, APP for the Respondent/State
Mr. Rajesh H. Mewara, Advocate for respondent No.2 in Criminal
Application No.186 of 2026

**WITH
CRIMINAL APPLICATION No.186 OF 2026**

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CORAM : SANJAY A. DESHMUKH, J.

RESERVED DATE : 18.03.2026

PRONOUNCED DATE : 08.05.2026

JUDGMENT :-

1. This appeal is filed against the judgment of conviction passed by the learned Special Judge, Aurangabad now Chhatrapati Sambhajanagar in Special Case (POCSO) No.56 of 2016 dated 22.06.2018, by which the appellant-accused was held

liable under Section 452 of the Indian Penal Code, 1860 (for short IPC) and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default of payment of fine rigorous imprisonment for 15 days and under Section 7/8 of the Protection of Children from Sexual Offences Act, 2012 (for short the POCSO Act) to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default of payment of fine rigorous imprisonment for one month.

PROSECUTION CASE

2. On 26.02.2016, at about 09:00 hours, the victim child, aged 17 years, was proceeding to her house after attending tuition/ classes namely "Mapari Classes" on her Activa scooter. The appellant-accused, who was a student of her college, was following her on his motorcycle. She was frightened, but somehow she reached her house, parked her scooter and entered into the house. At that time, the appellant-accused followed her and inside of house caught hold her hand and put two dollars in her hands. He thereafter committed obscene acts with her, due to which she felt ashamed and raised hue and cry. Upon hearing the same, her parents rushed there and caught hold the accused. They then called the police, and the police took the

accused with them. Thereafter, the informant along with her parents went to the police station and lodged the report.

3. The Investigating Officer, A.P.I. Sheshrao Abaji Udar, conducted the investigation, recorded the statements of the witnesses and arrested the accused. The Activa scooter and the vehicle of the accused were seized. The charge-sheet came to be filed before the Special Court. The accused was charged under Section 452 and 354 of the IPC, and under Section 7/8 of the POCSO Act. The accused denied the charge. The prosecution examined the following witnesses:

Sr. No.	Prosecution witnesses	Exh. No.	Details
1.	PW.-1 victim girl/prosecutrix	Exh.18	Proved FIR Exh.19
2.	PW.-2 mother of the victim girl	Exh.22	Proved statement under Section 164 of Cr.P.C. vide Exh.23
3	PW.-3 Rupesh Dube	Exh.26	Panch witness on panchanama Exh.27
4	PW.-4 Santosh Agrawal	Exh.28	Independent witness
5	PW.-5- Gajendra Siddh	Exh.30	Panch witness on panchnama Exh.31
6	PW.-6 A.P.I. Sheshrao Abaji Udar	Exh.39	Investigating Officer

4. The mother of the victim girl (PW.-2) and Santosh Agrawal, the Independent eye-witness (PW.-4), supported the prosecution's

case. Rupesh Dube (PW.-3), the Panch Witness, proved the spot panchanama at Exh.27. Gajendra Siddh (PW.-5), the panch witness, proved the seizure panchanama of two dollars recovered from the victim child at Exhi.31. A.P.I. Sheshrao Abaji Udar (PW.-6) deposed regarding the manner in which he carried out the investigation.

5. Mr. P. P. Mandlik, learned advocate for the appellant-accused pointed out the report at Exh.19, in which the victim girl stated that when she entered into the house, the accused forcibly caught hold her hand and put two dollars in her hands and committed a shameful act with her, due to which she raise hue and cry and her mother came there and rescued her.

6. The learned advocate further pointed out the statement of the victim child at Article-A, which was recorded before the learned Judicial Magistrate First Class, Aurangabad, in which she stated that when she reached at her house, the accused caught hold her hand. He further pointed out the statement of the mother of victim child (PW.-2) recorded before the learned Judicial Magistrate First Class, Aurangabad at Exh.23, in which she has stated that upon hearing the hue and cry of her daughter, she came out of the house and saw that the accused was holding her daughter's hand. She rescued her

daughter and shouted. In the oral evidence of the victim child recorded before the Court, she admitted in the cross-examination that the incident took place after she had entered into the house. She also admitted that the contents of her statement at Article-A, recorded before the Magistrate, were correct.

7. Learned Advocate for the appellant further submitted that the evidence of Santosh Agrawal (PW.-4), the independent witness, is also not certain regarding the place where the incident took place. He has deposed that the incident occurred outside of the house. He submitted that the spot of the incident has been materially changed, which creates a reasonable doubt, and therefore the appellant-accused is entitled to acquittal. He further submitted that the birth certificate of the victim child has not been duly proved to establish that she was a minor at the time of the incident. Therefore, the prosecution under the POCSO Act is not maintainable. He, therefore, prayed to allow the appeal by acquitting the appellant-accused.

8. The learned APP for the respondent-State strongly opposed the appeal and submitted that the incident took place in the presence of eye-witnesses, particularly the mother of the victim child and the independent witness, Santosh Agrawal (PW.-4). The panch witness,

Rupesh Dube, has proved the spot panchnama at Exh.27, and Gajendra Siddh, the panch witness to the seizure of two dollars, has proved the seizure panchnama at Exh.31. The evidence of these witnesses has not been shaken in the cross-examination. On the contrary, the evidence of Santosh Agrawal materially corroborates the version of the victim child. The reasons and findings of the learned Trial Court are legal and correct, and no interference is warranted therein. He therefore prayed to dismiss the appeal, as there is no substance in the grounds of objections raised therein.

9. On perusal of the impugned judgment along with the oral and documentary evidence on record, particularly the evidence of the victim child and her mother regarding the spot of the incident, there are material discrepancies in their evidence. The victim child stated in her report as well as in her deposition that the incident took place inside the house when the accused followed her. However, while recording her statement before the learned Magistrate, she stated that when she reached near her house, the accused caught hold of her hand. Her mother (PW.-2) deposed in her examination-in-chief that she heard the shouts of her daughter and at that time the accused was holding her hand, whereupon she separated them. However, in her

statement recorded before the learned Magistrate, she has stated that when she heard the shouts of her daughter, she immediately rushed outside of the house and saw that the accused was holding her daughter's hand, and she rescued her. Thus, these admissions, along with the admissions of the victim child, create a reasonable doubt as these three witnesses have stated that the incident took place outside of the house, whereas the informant, in her report and deposition, stated that the incident took place inside of her house.

10. The accused was arrested on the next day, though the prosecution case is that he was caught hold by the prosecution witnesses and handed over to the police immediately after the incident. Thus, the prosecution case becomes reasonably doubtful. Therefore, the accused is entitled to the benefit of reasonable doubt.

11. The learned Special Court erred in appreciating the evidence in its proper perspective and erroneously held the accused guilty. Therefore, interference in the impugned judgment is warranted. The appeal, therefore, deserves to be allowed and the impugned judgment deserves to be set aside with acquittal of the accused. Hence, the following order:

::ORDER::

- a. The Criminal Appeal is allowed.
- b. The impugned judgment and order of conviction dated 22.06.2018, passed by the learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No.56 of 2016 is set aside.
- c. The appellant-accused is acquitted of the offences punishable under Section 452 of the Indian Penal Code and under Section 7/8 of the Protection of Children from Sexual Offences Act, 2012.
- d. The fine amount be repaid to the accused after the appeal period is over.
- e. Rest of the operative part of the order is maintained.
- f. Pending civil applications are disposed of.

[SANJAY A. DESHMUKH, J.]

HRJadhav