



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 697 OF 2024

Datta S/o. Vishnu Gongane,  
Age : 28 years, Occu. : Agriculture,  
R/o. Itali, Tq. Manwat, Dist. Parbhani. ... Appellant

Versus

1. The State of Maharashtra,
2. X.Y.Z. ... Respondents

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Mr. Sudarshan J. Salunke, Advocate for Appellant.  
Mrs. Saie S. Joshi, APP for Respondent - State.  
Mr. Swapnil M. Mule, Advocate for Respondent No.2 (Appointed  
through Legal Aid)

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**CORAM : ABHAY S. WAGHWASE, J.**  
**RESERVED ON : 02 APRIL 2026**  
**PRONOUNCED ON : 15 APRIL 2026**

**JUDGMENT :**

1. Convict for offence punishable under section 4 of Protection of Children from Sexual Offences Act (POCSO Act), hereby challenges the judgment and order dated 08.05.2024 passed by learned Additional Sessions Judge, Parbhani in Special Case No. 94 of 2022.

**FACTUAL MATRIX**

2. In brief, PW1 lodged FIR Exhibit 43, reporting that, while he was at Manwat, on 01.04.2022, his minor daughter telephoned

and complained of pain in the stomach. Accordingly he came to his native Itali, and he and his wife took his daughter to the hospital, where she was examined and reported to be pregnant. He and his wife took victim daughter in confidence, upon which she told that accused had sexual intercourse with her. On report to such extent, FIR was registered and crime was investigated by PW9 API Jadhav, who further carried out investigation and filed charge sheet. At trial, prosecution case was accepted as proved and by above judgment and order, appellant was convicted for above sections. He now, therefore challenges the above judgment.

### **SUBMISSIONS**

#### **On behalf of Appellant :**

3. Learned counsel for appellant would contend that, there is false implication. According to him, prosecution failed to prove the charges beyond reasonable doubt. It is his submission that, here, charge itself was defective and accordingly he took this court through the charge at Exh.19 and point out that, two persons are impleaded as accused, but here, charge explained to them was by applying section 34 of IPC. According to him, there cannot be charge of rape by attributing common intention and he would submit that, if, two or more persons are involved, then 376(G) would be applicable and not section 34 of IPC. On this count, he criticizes the very

manner of trial and questions its legality.

4. He would further strenuously submit that, at the outset, prosecution has failed to prove the victim to be a minor so as to attract the rigors of POCSO Act. He would emphasize that, here, two date of birth are coming on record from the prosecution evidence. He would take this court through the testimony of father and would submit that, father itself is not sure about the date of birth. That, he gave two distinct date of birth i.e. in report and then in supplementary statement. On this count, he also pointed out that, here surprisingly prosecution has relied on the date of birth reflected on Aadhar card, which according to him, is not a cogent and reliable evidence. He submitted that, though Headmaster and the local authority is examined, it is his submission that, when there was no basis for exact date of birth, the information recorded by these authorities is also unreliable. He pointed out that, these authorities are not in a position to state as to on what basis date of birth of victim was inserted, in above record. For all above counts, he submits that, prosecution has miserably failed to prove that the victim was minor.

5. He next submitted that, it is surprising that when victim had delivered child, how her pregnancy throughout went unnoticed by parents. He would submit that, alleged sexual intercourse is of 12.08.2021 and alleged delivery of child is of 01.04.2022. Thus,

according to him, the act was consensual and there is false implication by leveling false accusations, at later point of time.

6. As regards to scientific evidence in the form of DNA report is concerned, it is his submission that, it is merely corroborative piece of evidence and not substantive evidence and as such, he would conclude by submitting that, with such weak evidence, learned trial Court ought not to have recorded conviction, and thereby prays to allow the appeal by setting aside the impugned judgment.

**On behalf of Respondent – State :**

7. In answer to above, learned APP, who would support the impugned judgment, points out that there is clinching and overwhelming evidence on the point of age of victim. She pointed out that, there is evidence of independent authorities, like Headmaster of the school as well as evidence of local authority, who had maintained official records, and both these authorities had placed before the Court record carrying by them to prove the age of victim, and therefore, she justifies the findings of learned trial court.

8. On the point of occurrence she pointed out that, victim's evidence is inspiring confidence. She had named and narrated the incident. Learned APP pointed out that, here, DNA report confirms

appellant to be a father of the child delivered by victim and according to her, there is overwhelming evidence confirming rape on minor. She points out that, in the light of above material, section 29 of POCSO Act comes into play. For all above reasons, she prays to dismiss the appeal for want of merits.

### **STATUS AND EVIDENCE OF THE PROSECUTION WITNESSES**

9. PW1 informant - father; PW2 victim; PW3 Dr. Naznin, a medical expert, who examined victim; PW4 Dr. Zadgaonkar, a medical expert, who examined accused; PW5 Nagargoje, Headmaster of the primary school; PW6 Anganwadi Sevika of village Itali; PW7 and PW8 carriers of *Muddemal* and PW9 is the Investigating Officer.

10. In the light of ground of challenge to the age, first the evidence on this issue is dealt herewith.

**PW1** father, in his evidence at Exhibit 42 gave date of birth of his daughter as 27.02.2005, but in FIR he gave date of birth as 27.01.2006 and her daughter to be studying in 11<sup>th</sup> standard. In supplementary statement, he stated that, initial date of birth in the report supplied by him was on the basis of Aadhar Card and it was incorrect. But correct date of birth is 27.02.2005.

While under cross, he answered that, he had a married

son and also had a daughter, who according to him, on the date of evidence, might be 25 years of age. He answered that he has second daughter after said son and she too is married and she too has a son. Date of birth of elder daughter was 14.08.2001. He answered that, after three years of marriage, son was born and there is gap of three years between such son and elder daughter and there is further gap of four years between elder daughter and victim daughter. He answered that, date given in report on the basis of Aadhar card was by guess.

**PW2** victim deposed that she was taken education in 11<sup>th</sup> standard. In paragraph no. 6 of her examination-in-chief, she gave her date of birth as 27.02.2005. Rest of her testimony is on the point of sexual assault by accused. In paragraph no. 14 of the cross, she stated that, she had given two date of birth and second date of birth is 01.01.2006 and it was on the basis of date of birth reflected in Aadhar Card. She admitted that, at the time of her statement, she did not know what was her date of birth. 27.02.2005 is the date of birth on T.C. and hence she has stated so.

Apart from above evidence, prosecution has adduced testimony of **PW5** Headmaster at Exhibit 70. According to him, since 01.07.2023 he received charge of Headmaster from Bharat Chatte.

That, in response to letter from Manwat Police Station, which was acknowledged by its predecessor, there was demand of admission register extract of 1<sup>st</sup> standard of victim girl and he accordingly carried original register. He deposed that, victim took admission in their school on 20.06.2011 in the 1<sup>st</sup> standard and as per the original record, her date of birth was 27.02.2005. He stated that, victim passed 8<sup>th</sup> standard and left the school and prior to taking admission in their school, victim had not taken education in any other school. He placed Exh. P-72 on record.

It has come in his cross that, he is unable to state since when its predecessor Chatte was Headmaster. He admitted that there was no entry in the original register brought by him as to on the basis of which documents date of birth of victim is taken in the said document. He also admitted that he has no personal knowledge whether prior to taking admission in 1<sup>st</sup> standard victim took education in other school.

**PW6**, who deposed at Exh.77, testified that she was working as 'Anganwadi Sevika', as such, her duties were to provide service of health and diet to children from the age group of 01 to 06 years, breast feeding mother and also to take entry of birth and death including children. That, letter was received from Manwat Police

Station. She identified the said communication at Exh.P-78 and P-79 and on perusing the record, she deposed that, date of birth of victim is 27.02.2005 and that she had carried original register.

In cross, she answered that, in Exhibit P-79 the date of taking of entry of victim girl is not mentioned. She admitted that it is noted in different ink and name of victim is to be added later on. Further she volunteered that name of the child is kept after two months. She is unable to state the date on which name of the victim is written in the said entry. She admitted that, date of birth is written in ascending order and other date of birth till serial no.4 is in ascending order. She admitted that at Exh.81 there is no signatory and stamp of the person, who took entry.

### **ANALYSIS**

11. At the outset, it would be necessary to deal with the ground of defective charge. Learned counsel for appellant would submit that, here charge framed by learned trial Court was itself defective, it is his submission that, when there are two or more persons facing charge of rape, it has to be 376(G) and not section 34 of IPC.

12. In the light of above submissions, record is put to

scrutiny. At Exh.19 the charge was framed and explained by the trial Court. It is noticed that it is explained to both the accused that on 12.08.2021, around 1:30 p.m., accused nos.1 and 2 in furtherance of common intention, repeatedly raped on a victim minor, and thereby, committed offence under sections 376(2)(n) read with section 34 of IPC, and in the alternative, there is charge under section 4 of POCSO Act.

13. Operative part of the impugned judgment shows that there is acquittal of accused no.2 Santosh from charge under sections 376(2)(n) read with section 34 of IPC and only accused no.1 present appellant is held guilty for offence under section 4 of POCSO Act. Even otherwise, it is fairly settled position that, when act of gangrape is committed by one person, even the other accused persons would be equally liable, if they have acted in furtherance of common intention and law to this extent has been dealt by the Hon'ble Apex Court in the case of *Ramesh v. State of Madhya Pradesh*, MANU/SC/1387/2010 wherein reference has been made to earlier judgment of *Pramod Mahto and Ors. v. State of Bihar*, MANU/SC/0416 and *Pradeep Kumar v. Union Administration, Chandigarh*, MANU/SC/8415/2006 are referred to.

14. Consequently, when two or more persons act in concert

together with a unified purpose of committing rape, such persons can be charged and tried for an offence punishable under section 376(2)(g) read with section 34 of IPC. Even recently, the Hon'ble Apex Court in the case of *Raju @ Umakant v. State of Madhya Pradesh*, 2025 INSC 615 has held that, the charge of rape is attracted even if the act is in furtherance of common intention. For above reasons, this court does not find any force in the submission that here charge is defective.

#### **ANALYSIS ON THE AGE OF VICTIM :**

15. Here, there is evidence of father, who admittedly seems to have given two date of birth i.e. in report Exh.43 as date of birth is 27.01.2006, but, later on in examination-in-chief itself he stated that he gave supplementary statement in respect of correct date of birth. That, initially in report, he had given date of birth on the strength of Aadhar Card. Though the defence has tried to cross examine father - informant by questioning him about birth of his elder son, elder daughter and their births taking in respective gaps, father, in his substantive evidence has given date of birth of the victim daughter as 27.02.2005.

Victim too has in paragraph no.6 of her testimony categorically given her date of birth as 27.02.2005.

16. Apart from above evidence, there is evidence of PW5 Headmaster and PW6 Anganwadi Sevika.

PW5 is the Headmaster of the primary school and he has deposed on the strength of record, that victim took admission in their school in the 1<sup>st</sup> standard on 20.06.2011 and as per original record, which he was carrying, date of birth is 27.02.2005, copy of which he has placed on record.

There is also evidence of PW6, who is Anganwadi Worker and in the examination-in-chief, initially she has reported her own duties which comprised of providing health services to children of age group 0 to 6 years and also to take entry of date of birth of breast feeding mothers including children. She has also carried the original record wherein name of parents of children are also maintained.

17. On going through above evidence, it is emerging that, father has given date of birth of victim as 27.02.2005. He has rectified the mistake appearing in complaint by giving supplementary statement. Victim has also given her date of birth as 27.02.2005. PW5 Headmaster had carried the original record of the school maintained by the school. PW6 an Anganwadi worker, working at grassroots village level, has maintained a record of birth of victim. Their cross does not upset above position.

18. Learned counsel for appellant would strenuously submit that, testimony of the none of the above witnesses is worthy of credence, and on the point of age, there is no conclusive proof. It is his specific contention that PW5 Headmaster has no personal knowledge about the date of birth in the school record and there is no foundation or supportive document on the date of birth entered in school record. On this count he sought reliance on the judgment of the Hon'ble Apex Court in the case of ***Alamelu and Anr. v. State, Represented by Inspector of Police***, AIR 2011 SC 715 and judgment of this Court (Principal Seat) in the case of ***Maherban Hasan Babu Khan v. State of Maharashtra***, AIROnline 2023 BOM 819.

19. Here, apart from victim, her father has clarified the date of birth of victim. True it is that, there is no birth certificate, but here, there is also evidence of PW5 Headmaster. He was carrying the original register of the school, which is the first school of the victim i.e. when she took admission in the 1<sup>st</sup> standard. Therefore, this is the first school where victim has been admitted. Though this witness has taken charge from previous Headmaster, there is no reason to doubt the original record which is otherwise not shown to be doubtful in any manner.

20. It is fairly settled position that, while school register

extracts are public documents and have evidentiary value regarding the date of birth, and though it is a requirement that there has to be supportive document, here, there is father's evidence which can be said to be supportive evidence, and therefore, there is no reason to doubt the evidence on the point of age of the victim.

**ANALYSIS ON THE POINT OF SEXUAL ASSAULT :**

21. The second ground of challenge is that act was consensual and credibility of prosecution story about sexual intercourse is questioned by stating that there was no reporting by either of the parents at earlier point of time till delivery of child. Equally it is submitted that, DNA evidence is merely corroborative evidence and there is no full proof evidence on the point of sexual intercourse.

22. On above aspect, crucial evidence is of victim and it is to be seen whether the same inspires confidence and whether there is further corroboration in the form of scientific evidence.

Victim, who deposed at Exh.45, testified that, she knew accused, who resided near their house. Initially she deposed that, as accused has no sister, she was calling her as 'didi' (sister). Hence, she frequented his house where he resided with his wife. She deposed

that, on 12.08.2021, when she had been to their house to watch television, while wife of accused had been to fetch water, accused was alone in the house and he moved his hand over her body and breast. She objected, but according to her, he did not listen to her. He removed her clothes, fell on her person, disabled her from making movement and had sexual intercourse with her. She categorically stated that, it was against her wish. Then again she reported the second incident that took place during the Nagpanchami festival, when the wife of accused had been to her maternal house and at that time, accused came to her house and by threatening to defame, she claims that, he committed rape against her wish.

23. After 2 to 4 months of the incident, when she had been to field and while mother was working in adjacent field, again by threatening to defame her, he had sexual intercourse with her against her will, and as such, 3 to 4 time, he had sexual intercourse with her. She very categorically stated that, she was scared and did not report to her parents or anyone. According to her, when she disclosed that she would inform her mother, he admitted his mistake, held her feet and assured to not do it again. She also reported of being raped by the younger brother of accused. Then she reported that on 01.04.2022, as there was vomiting, she had been to hospital of a lady doctor, who examined and told that she was pregnant and that she

deposed that parents took her in confidence and she stated whole incident to them.

Above witness is extensively cross examined. Initial cross is on the point of marital status of accused, locality of the houses, its geographical directions, there being a road to commute, details of agricultural land holdings. Then she is questioned about birth of baby of her brother, marks secured by her in 10<sup>th</sup> standard. She is unable to give exact time on which she went to the house of accused, how many times she watched television, distance of the place where wife of accused had been to fetch water. She answered that till she left from there, wife of accused did not come. She is unable to state what was going on the television. She answered that when he tried to outrage her modesty, she tried to run by giving jerk. But, she further stated that he did not allow her to move. She admitted that she did not report about the incident to anyone in the house that day. According to her, when accused came to her house, at that time, no one was present in the house and she admitted that she has not raised any hue and cry. After second incident, she stated that, she did not meet any of the family members. She is unable to give details of the incident by brother of the accused.

24. In paragraph 10, she deposed that she had experienced

menstruation, but not regularly, and that she did not report about it to her mother. Omission is brought to the extent of removal of clothes regarding incident on 12<sup>th</sup>; about second time accused coming to the house to call her; about another incident taking after 2 to 4 months in the field. She answered that, in statement before the Court at Manwat she had stated that mother of accused had called her. She answered that she asked accused why she was called and that time she made hue and cry, but nobody came and incident lasted for 5 to 6 months. Omission is brought about accused asking her to allow him to do otherwise defame her in village. Rest is all on the point of her delivery or denial of all suggestions.

25. Prosecution, to corroborate offence of rape, has adduced evidence of PW3 Dr. Rana and PW4 Dr. Zadgaonkar, medical experts.

PW3 Dr. Rana has deposed that on examination she did not notice signs of force. However, she opined that, sexual violence cannot be ruled out and she collected samples for C.A examination. Her answer in the cross shows that, she noticed that uterus was bulky as it was after delivery.

PW4 Dr. Zadgaonkar, another medical expert, on request of police has gathered samples of accused, victim and child born to victim. He has deposed that, DNA analysis confirmed appellant to be

biological father of child to be born to victim. Copy of DNA report is also placed on record and even birth certificate of baby born to the victim.

26. The last ground of challenge in this appeal is that, there is no corroboration to the testimony of victim and that DNA report is merely corroborative piece of evidence and it has no independent probative value.

27. It is fairly settled position that, in cases of rape, even conviction can be based on solitary testimony of victim, provided it inspires confidence. Here, on appreciation of evidence of victim, in the considered opinion of this court, the account narrated by her seems to be the natural account. Though she herself used to frequent the house of accused, at that time, she stated that accused had no sister and so he used to call her as 'didi'. Therefore, she had reposed trust in him. Moreover, he was married. She used to go to his house to watch T.V. and during such one of the visit, when wife of accused had been to fetch water, accused allegedly initially molested her and then had sexual intercourse with her in his own house. Second time, he has entered her house and when her mother was out of station for festival, he had relations with her against her wish and she has deposed to that extent. Third time, she has deposed that she was

raped by threatening to defame her. He has impregnated her and the DNA report confirms him to be the biological father of the baby born to the victim. Therefore, there is confirmation about forceful sexual intercourse by him.

As regards to no necessity of sufficient corroboration useful reference can be made by the Hon'ble Apex Court in the case of ***State of Himchal Pradesh v. Manga Singh*** (2019) 16 SCC 759 and the relevant paragraph for ready reference is borrowed and quoted hereunder:

*“10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.*

*11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basis infirmity and the “probabilities factor” does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.”*

28. Though, there is no serious challenge to chain of custody, here, medical expert has deposed about collecting sample and in his presence sealing it and handing it over to the Investigating Officer. Both the carriers, who took DNA Kit and sample, are also examined. Therefore, there is no infirmity or lapses or lacuna to doubt the chain of custody.

29. Perused the judgment. Learned Trial Judge has appreciated the evidence in the correct perspective and in the light of legal requirements, and the findings are convincing, no error is committed in accepting the case of prosecution. Resultantly, there being no merits in the appeal, I proceed to pass the following order.

### **ORDER**

The appeal is hereby dismissed.

**(ABHAY S. WAGHWASE, J.)**