



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.471 OF 2017

Ravindra s/o Laxman Narete,
aged about 25 years, occupation-
r/o Sonoli, tahsil Katol,
district Nagpur. **Appellant.**

:: VERSUS ::

State of Maharashtra,
through PSO Katol,
district Nagpur. **Respondent.**

Mrs.Sonali Khobragade, Counsel for the Appellant.
Shri M.J.Khan, Additional Public Prosecutor for the
Respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 24/06/2025
PRONOUNCED ON : 30/06/2025

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order dated 18.8.2017 passed by learned Additional Sessions Judge, Nagpur (learned Judge of the trial court) in Special Child Criminal Case No.2/2016.

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2. By the said judgment impugned in the appeal, the accused is convicted for offences under Sections 354-A(i) of the Indian Penal Code and 8 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act) and sentenced to undergo rigorous imprisonment for 3 years and to pay fine Rs.5,000/-, in default, to undergo simple imprisonment for two months.

3. Brief facts of the prosecution case emerged from the police papers and recorded evidence are as under:

A minor girl (the victim), aged 17 years, resident of Khapa, tahsil Katol, district Nagpur, filed a report on 23.10.2015 alleging that she resides at the said place and is taking education in 11th Std. at Umri. She returns home by 1:00 pm. The accused is also from the same village known as “Balya”. On 23.10.2015, at about 1:15 pm, when she returned to bus stop and was proceeding

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along with her cousin by walk towards her house, at the agricultural field of one Dandare Sir, the accused came from Sonoli Side on his motorcycle and communicated her, hold her hands, and expressed that unless and until she discloses her name, he will not allow her to go and also expressed that “I love you” and, thereafter, she rescued herself from his clutches and went home and disclosed the same incident to her father. On the basis of the said report, the police registered the crime under Section 354-A(i) and 354-D(1)(i) of the IPC and under Section 8 of the POCSO Act.

4. After registration of the crime, the investigating officer visited the alleged spot of the incident and recorded statements of witnesses and after completion of the investigation, he submitted chargesheet against the accused.

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5. Learned Judge of the trial court framed charge vide Exh.8, which denied by the accused.

6. In support of the prosecution case, the prosecution examined in all 5 witnesses namely PW1 the victim vide Exh.12; PW2 her cousin sister vide Exh.15, PW3 Vijay Sahare vide Exh.17; PW4 the father of the victim; and PW5 R.R.Pal the investigating officer vide Exh.24.

7. Besides the oral evidence, the prosecution placed reliance on report Exh.13, FIR Exh.14, birth certificate Exh.19, arrest panchanama Exh.25, spot panchanama Exh.26, and seizure memo Exh.27.

8. After hearing both sides and appreciating the evidence on record, learned Judge of the trial court held the accused guilty and sentenced him, as the aforesaid. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the accused.

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9. Heard learned counsel Mrs.Sonali Khobragade for the accused and learned Additional Public Prosecutor Shri M.J.Khan for the State. They took me through the record of the case and the evidence adduced.

10. Learned counsel for the accused submitted that due to previous enmity, the accused is implicated in the alleged offence. The age of the victim is not proved. Though the alleged incident has occurred during day time, no independent witness is examined by the prosecution.

To attract the offence under Section 354-A of the IPC, the prosecution has to establish that there was a physical contact by the accused with a “sexual intent” or a “demand” or a “request” for sexual favour or “making sexual coloured remarks”, which are absent in the present case.

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The charge under Section 354-D of the IPC is also not established as there is no evidence to show that the victim was followed by the accused to force personal interaction repeatedly despite a clear indication of disinterest by such a woman.

She submitted that applicability of Section 8 of the POCSO Act, is also doubtful as Section 7 defines “sexual assault” means, “whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault”.

All these ingredients are absent in the present crime.

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11. On going through the judgment impugned in the appeal as well as the the record of the case, it reveals that to establish the prosecution case, the prosecution relied upon the evidence of PW1 victim who stated her age as 17 years at the time of the incident. She has not narrated her birth date during her evidence. The evidence of the victim nowhere shows that at the time of the incident, she was 17 years of age.

12. PW4 the father of the victim stated date of birth of the victim as 12.5.1999. The alleged incident has taken place on 23.10.2015. He produced birth certificate of the victim, which shows birth date of the victim as 12.5.1999.

He has not cross examined on the point of age.

13. Thus, the prosecution has placed on record the birth certificate which is at Exh.19 issued by the Sub Registrar, Nagar Parishad, Katol under the provisions of

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Sections 12 and 17 of the Registration of Births and Deaths Act, 1969 and Rules 8 and 13 of the Maharashtra Registration of Births and Deaths Rules. The said birth certificate shows the date of birth of the victim as 12.5.1999. The names of the parents are mentioned in the said birth certificate issued by the Sub Registrar. It is argued that the said birth certificate is not the valid document as it nowhere mentions who has given the information about the date of birth to the Nagar Parishad and, therefore, the said evidence is not sufficient to prove the age of the victim.

14. As per provisions of Rule 9 of the Maharashtra Registration of Births and Deaths Rules, 1976, this Certificate is issued by the Sub-Registrar acting under the provisions of the Registration of Births and Deaths Act, 1969. Section 7 thereof deals with appointment of Registrars for each local area comprising the area within

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the jurisdiction of the Municipality, Panchayat or other local authority. It is the duty of the Registrar to register every birth and every death which takes place in his jurisdiction. This Act mandates that the Registrar should discharge his duties carefully. Section 8 of this Act mandates each head of the house to report birth in the family to the Registrar. The Act provides for maintenance of register for recording birth and death within the local area. That is how, certificate came to be issued by the Sub-Registrar as per provisions of Sections 12 and 17 of the said Act. The Birth Certificate, as such, is issued by the Public Officer and it is a document forming the record of the acts of the Public Officer and therefore the same is a public document within the meaning of the said term as per provisions of Section 74 of the Indian Evidence Act, 1872. The same is admissible in evidence by mere

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production thereof in view of provisions of Section 77 of the Evidence Act.

15. Section 17 of the Registration of Births and Deaths Act, 1969, provides for search of Birth Register and supply of extract thereof by certifying the same by the Registrar or other authorized Officer. Section 17 of the said Act provides that such extract shall be admissible in evidence for the purpose of proving birth or death to which the entry relates. The Birth Certificate is, in fact, the extract of Birth Register in respect of entry of birth of the victim child and as such, admissible in evidence. Section 35 of the Evidence Act, 1872, makes it clear that if entry is made by public servant in the official book in discharge of his official duty, then such entry becomes the relevant fact and admissible in evidence. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue

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or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. It is, thus, clear that the Birth Certificate issued by the statutorily appointed competent authority is relevant and admissible. The birth certificate is a public document and primary evidence which can be proved by production in view of Section 77 of the Indian Evidence Act.

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16. Thus, as far as aspect of the age is concerned, the prosecution has proved the age of the victim.

17. In this case, admittedly, the alleged incident, according to the victim, is dated 23.10.2015, which took place between 1:00 pm to 1:30 pm.

18. The nature of the evidence of the victim shows that when she was proceeding along with her cousin, the accused followed her on motorcycle, insisted her to disclose her name, caught her right hand, and expressed words, “I Love You”. Thereafter, she went home and narrated the incident to her father and subsequently, lodged the report.

During her cross examination, she admitted that she was not knowing the name of the accused prior to the incident. Her cross examination shows that the agricultural field of the accused is situated at Khapa.

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However, she denied that prior to 15 days of the incident, a dispute took place between her father and the accused on account of supplying of water to the field of the accused.

19. PW2 is cousin of the victim. She has corroborated the evidence of the victim as to the fact that on the day of incident, when they were proceeding, the accused came on motorcycle, insisted the victim to disclose her name, hold her hands, and expressed that, “he loves her”.

Her cross examination shows that the alleged incident has taken place on traffic road.

Except the above cross examination, nothing is brought on record.

20. The prosecution further examined PW3 Vijay Sahare, who testified that on the day of the incident, at about 1:00 pm, when he reached agricultural field of

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Dandari Sir, he saw the accused proceeding on motorcycle who stopped near a girl and caught hands of one girl.

During cross examination, this evidence is brought on record as omissions. The cross examination of this witness shows that the material evidence he stated came in the form of omissions.

21. PW4 the father of the victim, is not eyewitness. He stated that the victim has not disclosed name of the accused.

22. PW5 R.R.Pal, the Investigating Officer, has narrated about the investigation carried out by him. His cross examination shows that he has not obtained birth certificate of the victim from parents.

Rest of the cross examination is in denial form.

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23. On going through the evidence, the sole question is, whether this sole incident by itself amounts to commission of offence punishable under Section 354-A or 354-D of the IPC as well as 8 of the POCSO Act.

24. Section 354-A of the IPC deals with, “sexual harassment and punishment for sexual harassment”.

Before that, Section 354 of the IPC deals with, “assault or criminal force to woman with intent to outrage her modesty”.

In view of Section 354-A (1) of the IPC, (a man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or

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(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

Sub-section (2) of Section 354-A of the IPC deals with any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

Sub-section (3) of Section 354-A of the IPC, states that any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

25. Thus, in view of definition provided under Section 354-A of the IPC, whoever assaults or uses criminal force to any woman or abets or conspires to assault or uses

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such criminal force at any woman intending to outrage or knowing it to be likely that by such assault he will thereby outrage or causes to be outraged the modesty of a woman, is said to have committed the offence of sexual harassment.

26. Any sexual act performed without a woman's consent constitutes "sexual assault". It includes unwanted touching of private parts, forced kissing, or other sexual contact with a woman and modesty involves acts that are offensive, indecent, or degrading to a woman's sense of decency and morality. It includes acts like inappropriate touching, forcible disrobing, indecent gestures or remarks with the intent to insult modesty.

27. Said Section 354 of the IPC deals with "assault or criminal force to woman with intent to outrage her modesty". The said Section states that whoever assaults

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or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

28. Admittedly, “modesty” is not defined in the IPC. However, it refers to indecent propriety of a woman and conduct. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

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The same ingredients to attract the offence must be fulfilled.

29. Section 354-D of the IPC defines the offence of "stalking" and it lays down that in order that this offence is committed, there must be following of a woman and contacting her or attempting to contact a woman to foster personal interaction repeatedly despite a clear indication of disinterest by such a woman or there should be monitoring of the use by a woman of the internet, email or any other form of electronic communication.

30. In the present case, allegations are not of use of any Internet or E-mail. The allegations used against the accused are that when the victim was proceeding, the accused contacted her only once and insisted her to disclose her name and expressed in words, "I Love You".

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31. A bare perusal of the evidence of prosecution witnesses nowhere reveals that with a “sexual intent”, these words, “I Love You”, are used by the accused.

32. The expression “sexual intent” is a question of fact and it is to be determined on the basis of the evidence.

33. In order to understand intention of the accused behind such utterances, one has to look into the entire evidence of the prosecution.

34. Admittedly, “intention” is inner compartment of mind of that person and has to be determined from surrounding facts and circumstances. If somebody says that he is in love with another person or expresses his feelings itself would not amount to an “intent” showing some sort of his “sexual intention”. What constitutes such “sexuality” or “sexual intent” and what is not, is a question of fact.

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35. While interpreting “sexual intent”, single judge bench of this court in the case of **Bandu Vitthalrao Borwar vs. State of Maharashtra, thr.PSO, reported in 2016 SCC OnLine Bom 16128** observed that perhaps understanding generally accepted meaning of words "sexual" and "intent" will help us in finding out an answer. Words 'sexual' and 'intent' have not been defined anywhere in the Act and, therefore, it would be useful to understand their meaning as are commonly understood in English language. For this purpose, a reference to the English dictionary would be useful. In Webster's New Explorer Encyclopedic Dictionary, 2006th Edition, the words 'sexual' and 'intent' have been defined on Page Nos.1683 and 959 respectively as under:

“Sexual” : 1 : of, relating to, or associated with sex or the sexes (sexual differentiation) (sexual

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conflict) 2: having or involving sex (sexual reproduction)",

“Intent” : "1a : the act or fact of intending : PURPOSE; especially : the design or purpose to commit a wrongful or criminal act (admitted wounding him with intent)., and

b : the state of mind with which an act is done : VOLITION. 2 : a usually clearly formulated or planned intention : AIM 3a :MEANING, SIGNIFICANCE b : CONNOTATION".

36. Thus, the state of mind, must be to establish some sort of physical contact or must be related to or associated with sex or indicative of involvement of sex in the relationship, if it is to be considered as sexual. Words uttered should be with “sexual intent” associated with indicative of involvement of sex or physical contact or expressing sexual overtures. Words expressed “I Love

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You” would not by itself amount to “sexual intent” as contemplated by the legislature. There should be something more which must suggest that the real intention is to drag in the angle of sex, if the words uttered are to be taken as conveying sexual intent. it should reflect by the act.

37. On considering the evidence of the prosecution, in order to ascertain the state of mind of the accused, there is not a single circumstance indicating that the accused’s real intention was to establish sexual contact with the victim. There is no evidence on record showing that there was any gesture in the nature of “eye expression” or body language of the accused. Moreover, “utterances” in question have not been made repeatedly, but it was made only once. Such being nature of evidence, “utterances” by the accused addressing the victim and heard by PW2

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the cousin of the victim are not sufficient to indicate any “sexual intent” on part of the accused.

38. Even, the offence under section 8 of the POCSO Act, is not made out as there is no allegation that either the accused with “sexual intent” touches private part of the victim described under Section 7 of the POCSO Act involving physical contact and, therefore, the offence under Section 8 is also not made out.

39. The “sexual assault” without penetration has not been proved by the prosecution beyond reasonable doubt.

40. Learned Judge of the trial court has not considered the definition of “sexual assault” given under Sections 7 of the POCSO Act and punishment under Section 8 of the POCSO Act and without considering the true import of the provision, convicted the accused, which is erroneous.

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41. Thus, neither offences under Section 354-A and 354-D of the IPC nor under Section 8 of the POCSO Act are made out against the accused.

42. In the result, the appeal deserves to be allowed, as per order below:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The judgment and order dated 18.8.2017 passed by learned Additional Sessions Judge, Nagpur in Special Child Criminal Case No.2/2016 is hereby quashed and set aside.

(3) The accused is acquitted of offences for which he was charged and convicted.

(4) The accused be released from the jail forthwith, if he is not required in any other crime.

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(5) Fine amount paid, if any, be refused to the accused.

(6) Bail bond of the accused stands discharged.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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