



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

CRIMINAL APPEAL No. 772/2019

Sheikh Rafique Sk. Gulab, : APPELLANT
Aged about 25 years,
R/o Bendikipura, Bharat Nagar,
Tq. and District Yavatmal

Vs.

The State of Maharashtra, : RESPONDENT
Through Police Station Officer,
Police Station Yavatmal City,
Tq. and District Yavatmal

Mr. Shyam R. Jaiswal, Advocate (Appointed) for the Appellant
Mr. Amit Chutke, Adll.PP for the Respondent

CORAM: NIVEDITA P. MEHTA, J.

Date of reserving the judgment : 01.12.2025

Date of pronouncing the judgment : 04.12.2025

JUDGMENT :

The present appeal challenges the judgment and order dated 17.10.2019, passed by the learned Additional Sessions Judge-2, Yavatmal, in Special (POCSO) Case No. 16/2016, whereby the appellant/accused was convicted for offences under Sections 354 and 354-A of the Indian Penal Code (IPC) and under Section 8 of

the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. The trial Court sentenced the appellant to undergo rigorous imprisonment for one year for the offence under Section 354 of the IPC and a fine of Rs. 200/-, in default, to undergo simple imprisonment for 15 days. Under Sections 354-A of the IPC and 8 of the POCSO Act, the appellant was sentenced to undergo rigorous imprisonment for three years and a fine of Rs. 500/-, in default, to undergo simple imprisonment for one month. The trial Court directed that both sentences shall run concurrently.

3. **Prosecution Case :** The prosecution case, in brief, is that on 24.10.2015, at about 2:00 PM, the victim, a 13-year-old girl, informed her maternal uncle that the previous day, i.e., 23.10.2015, the appellant had visited her house while her parents were at work. The appellant allegedly requested a glass of water and, while receiving it, offered Rs. 50/- if she allowed him to engage in sexual activity. The victim reportedly raised an alarm, upon which the appellant left the house. On 24.10.2015, at about 10:30 AM, the appellant allegedly repeated the act, holding the victim's right hand and making the same proposition. The victim thereafter informed her maternal uncle, who lodged the FIR.

4. Upon receipt of the complaint, the police registered an FIR, conducted spot panchanama, recorded statements of witnesses, collected documents, including the medical report, and ultimately submitted a charge-sheet.

5. The trial Court framed charges under Sections 354 and 354-A of the IPC and Section 8 of the POCSO Act. The appellant pleaded not guilty and claimed trial. His defence, as discernible from cross-examination of prosecution witnesses and his statement under Section 313 Cr.P.C., was one of complete denial and false implication.

6. The prosecution examined five witnesses: PW 1 – Victim at Exh. 9, PW 2 – Informant at Exh. 15. PW 3 – Mother of the victim at Exh. 14. PW 4 – Shaikh Yusuf Sk. Yakub, panch witness at Exh. 15. PW 5 – Mangesh Bhaurao Bhoyar, PSI/Investigating Officer at Exh. 18.

7. After a comprehensive appraisal of the evidence on record and consideration of the submissions advanced by the parties, the trial Court concluded that the acts attributed to the appellant squarely fall within the ambit of Sections 354 and 354-A of the IPC as well as Section 7, punishable under Section 8, of the POCSO Act.

Section 354-A of the IPC prescribes a punishment of rigorous imprisonment for a term which may extend to three years, or with fine, or with both. Section 8 of the POCSO Act, however, mandates a minimum sentence of three years' imprisonment, extendable up to five years, in addition to a fine. Invoking Section 42 of the POCSO Act, which provides that where an act constitutes an offence under both the IPC and the POCSO Act, the offender shall be liable to punishment under the statute prescribing the greater punishment, the Trial Court held that the appellant was required to be sentenced in accordance with Section 8 of the POCSO Act. Consequently, the appellant was convicted for the offences punishable under Sections 354 and 354-A of the IPC, as well as Section 8 of the POCSO Act. After recording evidence and hearing arguments, the trial Court concluded that the appellant's act fell within the ambit of Sections 354 and 354-A of the IPC as well as Section 7 read with Section 8 of the POCSO Act. Section 354-A of the IPC prescribes punishment of rigorous imprisonment for a term up to three years or fine. Section 8 of the POCSO Act prescribes imprisonment not less than three years, extendable up to five years, along with a fine. Relying on Section 42 of the POCSO Act, the trial Court held that the appellant was liable for punishment under Section 8 of the POCSO Act. The

appellant was accordingly convicted under Sections 354, 354-A of the IPC, and Section 8 of the POCSO Act.

8. Heard Mr. S.R. Jaiswal, learned Counsel (appointed) for the appellant, and Mr. Amit Chutke, learned Additional Public Prosecutor, for the State. The record has been perused in its entirety.

9. **Contentions of the Appellant:** Mr. Jaiswal, learned Counsel contended that Section 8 of the POCSO Act is not applicable as the prosecution failed to prove that the appellant caught hold of the victim with sexual intent. He argued that the victim resides in a densely populated slum, making it improbable that such incidents could occur unnoticed. He also pointed out discrepancies in the timing of the alleged incidents between the FIR, the victim's statement, and her testimony. He submitted that PW 3's testimony was hearsay, the call made by the victim was not verified through call data records, PW 4 turned hostile, and independent witnesses were not examined. Further, he highlighted the delay in filing the FIR and the omission of the word "game" from the FIR. In support, he relied on the decisions of this Court in *Manoj Suryakant Dalvi v. State of Maharashtra*, 2025 ALL MR (Cri.) 2258; and *Santosh v. State of Maharashtra* (Criminal Appeal No. 301/2022).

10. **Contentions of the State:** The learned Additional Public Prosecutor submitted that the trial Court had rightly invoked Section 8 of the POCSO Act, as the evidence clearly established that the appellant had held the victim's hand with sexual intent. He contended that although minor inconsistencies appeared in the victim's statements, these were trivial in nature and did not affect the core of the prosecution case. The appellant, it was argued, failed to produce any material to discredit the victim's testimony or to cast doubt on the credibility of her narration of events. The learned Addl.PP further submitted that the defence could not elicit anything material or fatal to the prosecution during the cross-examination of the witnesses. A bare perusal of the depositions of the prosecution witnesses would reveal that their testimonies are consistent, trustworthy, and free from material contradictions. He, therefore, argued that the ingredients of the offences under Sections 354 and 354-A of the IPC, as well as Section 8 of the POCSO Act, stood fully established, and the conviction recorded by the trial Court warranted no interference.

11. Before proceeding to analyse the rival submissions and arrive at a conclusion, it is incumbent upon this Court to first evaluate the testimony of the prosecution witnesses.

12. **Deposition of Prosecution Witnesses:** Before recording the testimony of the victim (PW-1), she was seated in the Steno Room in compliance with child-friendly procedures. On being asked whether she desired the presence of any relative during her deposition, she requested that her father remain present, which was accordingly permitted. The Court ensured that her evidence was recorded in a victim-friendly atmosphere. She was informed that she could request breaks at any time. Her evidence was recorded *in camera*.

13. **PW-1: Victim** deposed that on 23.10.2015 she was alone at home as her parents had gone to work. The appellant, whom she knew as a neighbour and whom she addressed as “Mama,” came to her house around noon and asked for water. After she provided the same, he offered her ₹50 and told her to “allow him to do the game,” which she did not understand and therefore remained silent. On the next day, at about 2:00–2:30 p.m., when she again provided him water, the appellant caught hold of her hand and repeated the same offer. She jerked her hand away and immediately went to her maternal uncle, to whom she narrated the incident, and thereafter accompanied him to the police station, where her statement was recorded. She identified her birth certificate (Exh.10) and stated that the appellant’s intention was to

sleep with her. She further stated that she showed the spot of incident to the police during investigation.

In her cross-examination, she admitted that the houses in the locality are close to each other and that conversations can be overheard by neighbours. She denied the suggestion that she had falsely implicated the appellant or that he had never made the offending statements or held her hand.

14. **PW-2: Maternal Uncle of the Victim:** PW-2 deposed that on 24.10.2015, the victim came to his house crying around 2:00–2:30 p.m. and narrated that on both 23.10.2015 and 24.10.2015 the appellant had asked her for water, held her hand, and offered ₹50 to “do the game,” by which she meant that he wanted to sleep with her. PW-2 stated that he took her to the police station and lodged an oral report (Exh.12), which was reduced to writing. The FIR (Exh.13) bears his signature. He identified the appellant as the same person involved in the incident.

In cross-examination, he admitted that the appellant used to visit the victim's house earlier and that the victim addressed him as “Mama.” He stated that the report was lodged at the instance of the victim. He denied the suggestion that he was deposing falsely.

15. **PW-3: Mother of the Victim:** PW-3 stated that the victim is her daughter and that she and her husband work as a maid servant and mason respectively. She deposed that on 24.10.2015 the victim informed her telephonically that the appellant had come to the house and made the same proposition, offering ₹50 to “do the game.” On returning home, the victim also informed her about the similar incident of the previous day. PW-3 stated that the appellant, who is her adopted brother, resides behind their house and that the victim used to address him as “Mama.” She identified the appellant in Court.

In cross-examination, she admitted that she had not told the police about receiving the phone call from her brother. She denied the suggestion that no such incident had occurred.

16. **PW-4: Panch Witness:** PW-4 stated that he ran a pan shop and that the police had obtained his signature there, though he did not know the contents of the spot panchanama. He did not support the prosecution case, and was permitted to be cross-examined by the APP. He denied suggestions that the police had called him to the scene and prepared the panchanama in his presence.

17. **PW-5: Investigating Officer:** PW-5, the PSI attached to Yavatmal City Police Station, stated that on 24.10.2015 the victim's maternal uncle lodged an oral report which he reduced to writing (Exh.12) and accordingly registered Crime No. 450/2015. He conducted the investigation, visited the spot the next day with panch witnesses, and prepared the spot panchanama (Exh.19). He recorded statements of witnesses, collected documents including the victim's birth certificate, and arrested the appellant, preparing the arrest form (Exh.20). He stated that the victim's statement under Section 164 Cr.PC. was also recorded.

In cross-examination, he admitted that the locality is thickly populated and that he did not record statements of neighbours. He denied all suggestions that he failed to conduct proper investigation or filed a false charge-sheet.

Reasoning, Analysis and Conclusion :

18. This Court has carefully examined the oral and documentary evidence placed on record. In cases arising under the POCSO Act, the testimony of the child victim occupies a position of paramount importance and, if found cogent and trustworthy, can by itself form

the basis for conviction. With this settled principle in view, the testimony of the victim (PW-1) is first evaluated.

19. PW-1 has given a clear, consistent and natural account of the incidents that occurred on 23.10.2015 and 24.10.2015. Her deposition shows that on both occasions the accused entered her house under the pretext of asking for water, held her hand, and stated that he would give her ₹50/- if she allowed him to “do the game,” which she explained as an invitation by the accused to sleep with her. Her narration is spontaneous and free from embellishment. She immediately approached PW-2, her maternal uncle, on the second day and the FIR was thereafter promptly lodged. The core of her evidence remained unshaken in cross-examination. Minor discrepancies regarding peripheral details do not affect the credibility of her substantive account. Her testimony inspires confidence and is accepted.

20. The evidence of PW-2, the maternal uncle of the victim, provides material corroboration. He stated that the victim came to him in a distressed condition on 24.10.2015 and narrated the incident to him. He promptly took her to the police station and lodged the oral report (Exh.12). His evidence substantially

corroborates the victim's version in respect of the acts done by the accused and the timing of the occurrence. The omissions brought in the cross-examination are minor and do not go to the root of the prosecution case.

21. PW-3, the mother of the victim, further supports the prosecution case by stating that the victim informed her over the phone about the incident of 24.10.2015 and later disclosed the incident of the previous day as well. The minor omission in her police statement pertaining to the phone call does not weaken her substantive evidence. She admitted that the accused was treated as an adopted brother and was known to the family, but that does not diminish the wrongfulness of the acts attributed to him. Her testimony is consistent with the version of PW-1 and PW-2.

22. PW-4, the panch witness, did not support the prosecution case. However, it is settled law that the testimony of a hostile witness does not efface or nullify the other credible evidence on record. PW-4 was only a witness to the spot panchanama, and the substantive offence in the present case does not depend upon his testimony. His hostility therefore does not affect the core prosecution case.

23. PW-5, the Investigating Officer, proved the registration of the FIR, the spot panchanama (Exh.19), the arrest of the accused, and the other steps of investigation. His testimony is consistent and the defence has not been able to elicit anything to show *mala fides*, improper investigation, or fabrication. The omission to examine neighbours is not fatal, particularly when the evidence of the victim clearly shows that she was alone at the time of the incident.

24. The prosecution has placed on record the birth certificate (Exh. 10) of the victim, wherein her date of birth is recorded as 06.09.2002. The certificate was registered on 30.09.2002 under Registration No. 7291 and was issued on 21.08.2008 by the Registrar of Births and Deaths and Chief Officer, Municipal Council, Yavatmal. The document reflects the name of the victim, the names of her parents, and the place of birth. Being a public document, the birth certificate does not require further corroboration. The alleged incident occurred on 24.10.2015. Based on the date of birth recorded as 06.09.2002, the victim was approximately 13 years and 19 days old at the time of the incident and was, therefore, a minor. She squarely falls within the definition of a “child” under Section 2(d) of the POCSO Act.

25. The victim, a minor aged about 13 years, deposed that on two separate occasions the appellant approached her house while her parents were away, made an offer of money in exchange for sexual favours, and on the second occasion caught hold of her hand. The evidence of the victim (PW 1) is corroborated by her maternal uncle (PW 2), who lodged the FIR immediately after being informed. Although the mother of the victim (PW 3) gave evidence on hearsay, this does not materially undermine the prosecution case, as the FIR and the victim's statement under Section 164 Cr.P.C. provide direct corroboration.

26. The appellant highlighted minor discrepancies in the timing of the alleged incidents between the FIR and trial evidence, as well as in the details of a call made by the victim to her mother. It is well-settled that minor variations in time or narration do not vitiate a credible prosecution case, particularly in cases involving child victims. The core fact remains that the appellant attempted to induce sexual activity and physically restrained the victim's hand, which forms the substance of the offence.

27. The contention that PW-4, the panch witness, has turned hostile does not materially affect the prosecution case. The spot of the incident stands duly proved through the testimony of the

Investigating Officer and minor procedural lapses, if any, in the conduct of the spot panchanama do not undermine the substantive evidence establishing the offence. No suggestion of fabrication or false implication has been elicited on behalf of the appellant.

28. The applicability of Section 8 of the POCSO Act is established by the evidence that the appellant caught hold of the minor victim with sexual intent. The act of offering money in exchange for sexual favours, combined with physical control over the victim's hand, satisfies the statutory requirements under Section 7 and attracts punishment under Section 8. The argument that mere holding of hand without further physical assault cannot constitute an offence is without merit, as the POCSO Act protects children from sexual assault in all its forms, including attempted or inducement-based acts.

29. The law recognizes the vulnerability of child victims and does not require corroboration by independent witnesses. In this case, the victim's testimony is direct, consistent, and corroborated by the FIR and Section 164 Cr.P.C. statement. The judgments relied upon by the appellant are distinguishable, as those cases involved either inherently improbable allegations or material contradictions undermining the prosecution case. In contrast, the evidence before

this Court establishes credible attempts by the appellant to sexually exploit the minor victim.

30. Insofar as the defence is concerned, apart from suggesting false implication due to neighbourhood familiarity, no material has been brought on record to discredit the prosecution evidence. On the contrary, the defence suggestions that the accused was known to the family or that the victim called him “Mama” are consistent with the prosecution case and merely show that the accused had easy access to the victim’s house. No defence evidence has been led to rebut the prosecution case.

31. The acts described by the victim constitute “sexual assault” within the meaning of Section 7 of the POCSO Act, as they involve physical contact coupled with clear sexual intent. The act of catching hold of the hand of a minor child, accompanied by an offer of money and an invitation to engage in sexual activity, unmistakably demonstrates sexual intent. The ingredients of Section 8 of the POCSO Act are fully satisfied. The conduct of the accused further falls within the ambit of Sections 354 and 354-A of the IPC. The Hon’ble Supreme Court in *Raju Pandurang Mahale Vs. State of Maharashtra, (2004) 4 SCC 371*, have discussed the essential ingredients of Section 354 of IPC, paragraphs 11 to 15 read thus:

“11. Coming to the question as to whether Section 354 of the Act has any application, it is to be noted that the provision makes penal the assault or use of criminal force on a woman to outrage her modesty. The essential ingredients of offence under Section 354 IPC are:

(a) That the assault must be on a woman.

(b) That the accused must have used criminal force on her.

(c) That the criminal force must have been used on the woman intending thereby to outrage her modesty.

12. What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word "modesty" is not defined in IPC. The Shorter Oxford Dictionary (3rd Edn.) defines the word "modesty" in relation to a woman as follows:

"Decorous in manner and conduct; not forward or lewd; Shamefast; Scrupulously chaste."

13. Modesty is defined as the quality of being modest; and in relation to a woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patteson in R. v. James Lloyd:

In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part.

The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there

should be some action on the part of the accused which would show that he was just going to have sexual connection with her.

14. Webster's Third New International Dictionary of the English language defines modesty as "freedom from coarseness, indelicacy or indecency: a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.), the meaning of the word "modesty" is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

15. In State of Punjab v. Major Singh a question arose whether a female child of seven-and-a-half months could be said to be possessed of "modesty" which could be outraged. In answering the above question the majority view was that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the "common notions of mankind" referred to have to be gauged by contemporary societal standards. It was further observed in the said case that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of "modesty" and the interpretation given to that word by this Court in Major a Singh case the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. The above position was noted in Rupan Deol Bajaj v. Kanwar Pal Singh Gill. When the above test is applied in the present case, keeping in view the total fact situation, the inevitable conclusion is that the acts of the accused- b appellant and the concrete role he consistently played from the beginning proved combination of persons and minds as well and as such amounted to "outraging of her modesty" for it was an affront to the normal sense of feminine decency. It is further to be noted that Section 34 has been rightly pressed into service in the case to fasten guilt on the accused-appellant, for the active assistance he

rendered and the role played by him, at all times sharing the common intention with A-4 and A-2 as well, till they completed effectively the crime of which the others were also found guilty.”

32. Section 42 of the POCSO Act provides that where an act constitutes an offence under both the POCSO Act and the IPC, the offender shall be punished under the statute providing the greater punishment. Section 8 of the POCSO Act prescribes a minimum sentence of three years, which is more stringent than Section 354-A of the IPC. The trial Court was therefore justified in invoking Section 42 and imposing punishment under Section 8 of the POCSO Act.

33. Upon an overall consideration of the evidence of the victim PW-1, the corroboration from PW-2 and PW-3, the supporting testimony of the Investigating Officer PW-5, and the absence of any credible defence, this Court finds that the prosecution has proved its case beyond reasonable doubt. The testimony of the child victim is truthful and reliable. The minor inconsistencies pointed out by the defence are immaterial and do not dent the core prosecution case. The conviction of the appellant under Sections 354 and 354-A of the IPC and Section 8 of the POCSO Act is therefore well-founded and warrants no interference.

34. The judgments of this Court relied upon by the learned Counsel for the appellant in *Manoj Suryakant Dalvi v. State of Maharashtra*, 2025 ALL MR (Cri.) 2258, and *Santosh v. State of Maharashtra* (Criminal Appeal No. 301/2022) do not advance the case of the appellant. Both decisions turn on their own distinct factual matrices, which are not comparable to the circumstances of the present matter. The ratio laid down therein was rendered in the context of materially different evidence and legal considerations, and therefore cannot be applied to the facts of the present case. Consequently, the reliance placed on the said judgments is misplaced.

35. In view of the foregoing discussion and upon a thorough re-appraisal of the evidence, this Court finds no infirmity, perversity, or illegality in the findings recorded by the learned Trial Court. The conviction of the appellant for offences punishable under Sections 354 and 354-A of the IPC, as well as Section 8 of the POCSO Act, is accordingly affirmed.

36. *In Shri Narshiv Usapkar Vs. The State of Goa, 2012 ALL MR (Cri) 3891* this Court held in paragraph 17 as follows:

“17. Therefore, in my view, though the accused had no criminal antecedents prior to commission of the alleged

offence and although the accused is married and having two children, these facts themselves would not entitle the accused to get benefit of Section 4 of Probation of Offenders Act. While awarding the sentence, balance has to be struck between the interest of the accused and that of the society; otherwise the very purpose of sentencing the accused in a crime, would be defeated.”

In the present case, having regard to the nature and gravity of the offences committed by the appellant, as well as the findings recorded by the learned Trial Court, the observations made in *Shri Narshiv Usapkar* (supra) are squarely applicable. In view of the said observations, the appellant cannot be extended the benefit of the Probation of Offenders Act, 1958. While the appellant may have no prior criminal antecedents, the seriousness of the offences, which involve sexual assault on a minor, requires that a balance be struck between the interests of the accused and those of society. Granting the benefit of probation in such circumstances would be contrary to the object and purpose of sentencing in cases of this nature.

37. The sentence imposed by the learned Trial Court, being in consonance with the statutory minimum prescribed under Section 8 of the POCSO Act, also calls for no interference. The appellant is therefore directed to undergo the rigorous imprisonment and to pay the fine as awarded by the Trial Court.

38. The appeal is dismissed. The appellant shall be informed of this judgment through the Superintendent of the concerned Prison by the Registry.

A copy of this judgment be sent to the concerned Trial Court for information and compliance.

The fees of Mr. Shyam R. Jaiswal, learned Counsel appointed to represent the appellant, shall be quantified and paid in accordance with the rules.

(NIVEDITA P. MEHTA, J.)

MPDeshpande