



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 28 OF 2021
WITH
INTERIM APPLICATION NO. 75 OF 2021

Mohammad Shahjad Amir Hasan Shaikh ... Appellant/Applicant
vs.
The State of Maharashtra and another ... Respondents

WITH
INTERIM APPLICATION (STAMP) NO. 1028 OF 2026
IN
APPEAL NO. 28 OF 2021

XYZ ... Applicant/
vs. ... Orig. Resp. No.2
The State of Maharashtra and another ... Respondents

Mr. Fauzan Shaikh a/w Mr. Mohd. Munerul Shaikh, Mr. Shashank Shubham and Mr. M. B. Shaikh for appellant and applicant in IA/75/21.

Ms. Sangita E. Phad, APP for respondent No.1-State.

Mr. Abhijit P. Kulkarni (appointed through legal aid) a/w Mr. Abhishek Roy, Ms. Sweta Shah, Mr. Shreyas Zarkar & Mr. Gourav Shahane for respondent No.2 and for applicant in IA(St)/1028/26.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ
RESERVED ON : 20th JANUARY, 2026
PRONOUNCED ON: 09th MARCH, 2026

JUDGEMENT: (Per Manish Pitale, J)

. The appellant has been convicted of raping his own minor daughter. He is aggrieved by judgement and order dated 12.03.2020, passed by the Special Court for Protection of Children from Sexual Offences Act, Greater Bombay (hereinafter referred to as the Trial

Court), in POCSO Case No. 485 of 2018. By the said judgement, the appellant has been convicted for offences under section 376(2)(f) of the Indian Penal Code (hereinafter referred to as the IPC) and under sections 6 and 9(n) read with section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act). Upon his conviction, the appellant has been sentenced to suffer rigorous imprisonment for life, which is for the remainder of his natural life and he is also liable to pay fine of ₹ 1000 and in default of payment of fine, to suffer simple imprisonment for 6 months.

2. The prosecution case is triggered by the statement given by the victim i.e. the daughter of the appellant. On 27.07.2018, she gave her statement to the police, which resulted in registration of FIR, wherein the appellant was named as the accused person. In her statement, she gave details of her place of residence and the fact that her family consisted of her parents, one elder sister and three brothers. It was also stated that the father i.e. the appellant herein, was doing mason work and that her mother was working as a maid servant. She stated that at the time of giving her statement, she was studying in 10th standard at the Agripada Municipal Urdu Secondary School. It was further stated that since she was of the age of 10 years, her father i.e. the appellant (original accused) used to touch her inappropriately and when she made a grievance to her mother, it was ignored. She further stated that about 3 months prior to giving her said statement, the father had physically and sexually abused her. The details were given in the statement and it was further stated that such incidents had taken place at least on four occasions. It was further stated that the latest of such incidents had occurred on 21.07.2018. When a 'Police Didi' program was organised in her

school, she gathered the courage to meet the counsellor and thereupon, with the assistance of the Principal of the School and the counsellor, she had now approached the police with her grievance.

3. Considering the nature of allegations levelled against the appellant, the police arrested him and started the investigation. During the course of investigation, the police recorded the statement of various witnesses. Eventually, charge-sheet was filed and the appellant was charged with the aforesaid offences. During the course of investigation, the medical examination of the victim was also undertaken and the papers pertaining to the medical examination also formed part of the charge-sheet.

4. The prosecution examined 9 witnesses in order to prove its case. PW1 was the victim herself. PW2 was the doctor, who had medically examined the victim upon registration of the FIR. PW3 was the Principal of the aforesaid school, in which the victim was studying when the FIR was registered. PW4 was the counsellor, who had conducted the aforesaid program in the victim's school, pursuant to which she gathered the courage to make her grievance before the school authorities and eventually, the police. PW5 was a social worker, who had also assisted the victim. PW6 was the *panch* witness for the spot *panchnama*. PW7 was the Principal of the school, where the victim had studied and the said witness produced the school records, in order to support the case of the prosecution with regard to victim's date of birth, in order to prove its case that the victim was a minor when the incidents had taken place. PW8 was the investigating officer, who had recorded the victim's statement and caused the FIR to be registered and PW9 was also the investigating officer. On the basis of the evidence of these 9 witnesses, the prosecution pursued its case before the aforesaid Court.

5. The appellant also examined defence witnesses, which included his wife and his mother-in-law. The defence witnesses were examined to prove the claim of the appellant that he was falsely implicated.

6. After considering the oral and documentary evidence on record, the Trial Court found that the prosecution had proved its case and that the appellant was unable to produce sufficient evidence in defence to falsify the case of the prosecution. Accordingly, as per the impugned judgement and order dated 12.03.2020, the appellant stood convicted and sentenced in the aforesaid manner. Aggrieved by the same, the appellant filed the present appeal, which has been taken up for final hearing.

7. Mr. Fauzan Shaikh, learned counsel appearing for the appellant submitted that the conviction and sentence of the appellant deserved to be set aside, firstly on the ground that the prosecution had failed to prove that the victim was a minor when the alleged incidents had taken place. Secondly, it was claimed that this was a case of false implication, as the victim was upset with her father i.e. the appellant for having decided to discontinue her studies. It was emphasized that the elder sister of the victim had entered into a love marriage, due to which her studies had been discontinued and that the parents of the victim, including her father i.e. the appellant, were of the opinion that in this backdrop, the studies of the victim were also required to be discontinued. This angered the victim and therefore, she concocted a false case against the appellant. Thirdly, it was submitted that the evidence of the prosecution witnesses was not enough to prove the case against the appellant. It was submitted that the

evidence of the victim was not impeccable and therefore corroboration was necessary. The whole story about the victim having come out with her grievance after the aforesaid program was conducted in her school by the counsellor, was not believable. Lastly, it was submitted that the medical evidence on record did not corroborate the claims made by the victim, as to the manner in which she was physically assaulted and that in any case, the accommodation i.e. small room in which the entire family of about 7 persons were living, would show that the incidents alleged against the appellant, could never have taken place.

8. On the ground pertaining to the age of the victim, the learned counsel appearing for the appellant submitted that in the present case, the evidence on record was not sufficient to prove that the victim was a minor at the time of the alleged incidents and when the FIR was registered. It was submitted that the nature of evidence in the form of school register and the deposition of the Principal of the school, producing such register i.e. PW7, was not enough to prove beyond reasonable doubt, the fact that the victim was a minor when the alleged incidents took place. It was submitted that the investigators had undertaken the ossification test, which reported that the age of the victim could be anywhere between 17 and 18 years. It was submitted that as per settled law, the upper limit was the one to be taken into consideration by the Court and if that be so, the age of the victim had to be taken as 18 years and on that basis, benefit should have been given to the appellant. Instead, the Trial Court proceeded on the basis of the school records and oral evidence in that regard, which was not sustainable and therefore, on this count alone, the findings rendered by the Trial Court need to be set aside.

9. In support of the proposition that when the Court is faced with a challenge to the assertion by the prosecution that the victim was a minor at the time of the incidents and a prosecution is launched under the provisions of the POCSO Act, the Court has to take recourse to section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act), reliance was placed on judgements of the Supreme Court in the cases of *Rishipal Singh Solanki vs. State of Uttar Pradesh and others*, (2022) 8 SCC 602, and *P. Yuvaprakash vs. State represented by Inspector of Police*, (2024) 17 SCC 684.

10. Reliance was also placed on judgement of the Supreme Court in the case of *Ravinder Singh Gorkhi versus State of U.P.*, (2006) 5 SCC 584, to contend that when the prosecution relies upon school records, section 35 of the Evidence Act, 1872 (hereinafter referred to as the Evidence Act) comes into play and that the Court has to apply the said provision of law, to determine as to whether the evidence produced by the prosecution is admissible or not. On this basis, it was submitted that in the present case, the Trial Court committed a grave error in believing the case of the prosecution on the basis of the documentary and oral evidence produced by PW7. Yet, findings were rendered against the appellant, demonstrating the error committed in the impugned judgement and order. In this context, reliance was also placed on judgement and order dated 02.07.2024 of the Delhi High Court in Criminal Reference No.2 of 2024 (*Court on Its Own Motion vs. State of NCT of Delhi*).

11. It was further submitted that if two views were possible on the said aspect of the matter, the one beneficial to the appellant ought to

have been adopted. Reliance was placed on judgement of a learned Single Judge of this Court passed in the case of *Ajay Bharat Shinde vs. State of Maharashtra and another* (judgement and order dated **16.11.2021 passed in Criminal Appeal No.192 of 2021**).

12. It was further submitted that the evidence of the prosecution witnesses was not enough to bring home the guilt of the appellant and yet, in the impugned judgement and order, the appellant was erroneously convicted and sentenced for the aforesaid offences. It was submitted that the evidence of the victim PW1 was not sterling piece of evidence and therefore, the Trial Court ought to have looked for corroboration. Having not done so and since the material on record did not provide corroboration to the version of the victim, the Trial Court ought not to have convicted and sentenced the appellant. In this regard, the evidence of PW1 victim was attacked, on the ground that there were no details about specific incidents. The victim was unable to explain how such incidents could have taken place in a room of 10 ft. x 10 ft., wherein about 7 persons were living together. It was further submitted that in the spot *panchanama*, the wooden plank attached to the wall was said to be the place, where the alleged incidents had taken place. It was submitted that the plank was of such a small size that such incidents could never have occurred. It was further submitted that the evidence of the counsellor and the Principal of the school was also shaky and that it was unnatural that suddenly, the victim gave vent to her grievance before them, which eventually led to registration of the FIR.

13. In this context, much emphasis was placed on the evidence of the defence witnesses i.e. the wife and the mother-in-law of the appellant. It was submitted that both these witnesses had clearly

brought out the circumstances in which the victim had falsely implicated her own father i.e. the appellant. The reason for false implication that came out from the evidence of the defence witnesses was, that since the appellant had decided to discontinue the studies of the victim, she was extremely upset and in a fit of anger, she caused a false FIR to be registered against her own father. The Trial Court failed to appreciate this aspect of the matter, while passing the impugned judgement and order.

14. It was further submitted that the medical evidence on record and the deposition of the doctor clearly indicated that the victim did not suffer any physical injury. Even the hymenal tears were old and there was nothing to show that any incident had actually taken place soon before the registration of the FIR. In such circumstances, it was submitted that the medical evidence did not corroborate the version of the victim and therefore, the conviction and sentence are unsustainable. It was further submitted that the appreciation of the oral and documentary evidence by the Trial Court was not appropriate, which led to the drastic sentence of imprisonment for the remainder of life being imposed upon the appellant. It was submitted that the evidence on record clearly divulged that at least two versions were possible and that in such a situation, as per settled law, the benefit ought to have gone in favour of the appellant. On this basis, it was submitted that the impugned judgement and order deserves to be set aside and the appellant ought to be acquitted.

15. On the other hand, Ms. Sangita E. Phad, the learned APP appearing on behalf of the prosecution, submitted that the impugned judgement and order had considered all the aspects of the matter in an appropriate manner and that no interference is warranted in the

same. It was submitted that the prosecution had taken care to lead detailed documentary and oral evidence to prove the fact that the victim PW1, at the time of the incidents and registration of FIR, was below 18 years of age and therefore, the provisions of POCSO were correctly invoked in the facts and circumstances of the present case. Much emphasis was placed on the evidence of PW1 - victim, PW2 - doctor, PW3 - Principal of the school, PW4 - the Counsellor and PW7 - the Principal of the school, from where the original registers pertaining to the school record were produced, in support of the case of the prosecution.

16. It was emphasized that the fact that the original registers from the school were produced by PW7 and she orally deposed in support of the same, demonstrated that the prosecution had discharged its burden under section 35 of the Evidence Act. Nothing much was brought out in the cross examination of the said witness and therefore, the Trial Court correctly relied upon the said material to hold that the victim was indeed a minor at the time of the incidents and when the FIR was registered. In support of aforesaid submissions, the learned APP relied upon judgement of the Supreme Court in the case of *Mahadeo s/o Kerba Maske vs. State of Maharashtra and another*, (2013) 14 SCC 637, and judgement of this Court in the case of *Sayyad Shabbir Sheikh @ Sayyad Shabbir Saha versus State of Maharashtra*, (2020) All MR (Cri) 4199.

17. It was further submitted that in the present case, the evidence brought on record demonstrated that the appellant being the father of the victim, himself had specifically stated the date of birth of the victim as 15.02.2002 in an affidavit filed, when the admission of the victim was taken in the school. It was on this basis that in the

original admission register of the municipal school, which is a public record, the date of birth of the victim was recorded as 15.02.2002. The Principal of the said school i.e. PW7 appeared in the Court and gave evidence in support of the said documents, which clearly indicated that the prosecution had taken all efforts to prove the date of birth of the victim, which demonstrated that she was indeed a minor when the incidents took place. It was further submitted that the appellant, in his statement recorded under section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.), in response to specific questions, had answered that his daughter was indeed less than 18 years of age and he admitted to the fact that she was indeed a minor. On this basis, the learned APP submitted that an admitted fact need not be proved by the prosecution and yet, sufficient oral and documentary evidence was produced on record, to prove that the victim was indeed a minor, when the incidents took place.

18. The learned APP placed reliance on the evidence of the victim PW1. She submitted that the evidence of the victim was sterling in quality, as she had supported the prosecution case and she had also given details as to the manner in which her own father i.e. the appellant used to physically and sexually abuse her. Her evidence in itself was enough to prove the prosecution case. It was further submitted that the evidence of the other prosecution witnesses i.e. PW2 doctor; PW3 - Principal of the school, where the victim was studying at the time of the incidents; PW4 - the counsellor; PW5 - the social worker; and PW7 - the Principal, who helped to prove the date of birth of the victim, was enough to bring home the guilt of the appellant. It was submitted that the evidence of all these witnesses was absolutely natural and it was after the aforesaid program was conducted in the school of the victim, that she gathered the courage

to come out and make her grievance against her abusive father i.e. the appellant. The learned APP placed reliance on judgement of the Supreme Court in the case of *Bhanei Prasad @ Raju vs. State of Himachal Pradesh*, (2025) SCC OnLine SC 1636, to emphasize upon the approach that the Court is required to take in such cases, where the victim is the daughter and the perpetrator of the horrific crime of rape is her own father.

19. In this backdrop, it was submitted that the theory of false implication, raised on behalf of the appellant, is wholly unbelievable. It was submitted that merely because the victim was claimed to be upset, as her studies were likely to be discontinued, could not be a ground for her to make such grave, serious and scandalous allegations against her own father. It was submitted that the theory of false implication, sought to be built upon the evidence of the defence witnesses, was fragile and that the Court below correctly rejected the same. As regards medical evidence, it was submitted that the evidence of PW2 - doctor was enough to show that there were indeed hymenal tears. The case of the prosecution based on the version of the victim, was that sexual and physical abuse was being suffered, at least on four occasions in the 3 months preceding to registration of FIR. Last such incident was claimed to be of 21.07.2018 and the FIR being registered on 27.07.2018, sufficiently explained why the hymenal tears were old and not absolutely fresh. It was submitted that in any case, when there was ocular evidence of the victim herself, which was sterling in nature, it would certainly prevail over the medical evidence on record. On this basis, it is submitted that no interference is warranted in the impugned judgement and order and that the appeal deserves to be dismissed.

20. Mr. Abhijit Kulkarni, learned counsel appointed to appear on behalf of respondent No.2 i.e. victim, supported the contentions raised by the learned APP. He submitted that the impugned judgement and order of the Trial Court ought to be sustained and that the appeal deserves to be dismissed. He also relied upon the aforesaid judgement of the Supreme Court in the case of **Bhanei Prasad @ Raju vs. State of Himachal Pradesh** (*supra*), to contend that when a father inflicts such physical and sexual abuse on his own daughter, no mercy can be shown and that appropriate punishment ought to be imposed. He also relied upon judgement of this Court in the case of *Jagannath Pandurang Waghare vs. State of Maharashtra and another*, (2025) SCC OnLine Bom 5256, to submit that as per the statutory scheme, after substitution of section 376 of the IPC in the year 2013, in such cases, the punishment of imprisonment for the rest of the life of the convict, is fully justified. It was further submitted that the position of law is well-settled that the sole testimony of the victim i.e. the prosecutrix, is enough to convict the accused, if the evidence of such a victim inspires confidence. In the present case, it was submitted that the evidence of PW1 victim was absolutely sterling in quality and therefore, no corroboration was required. In support of the said proposition, reliance was placed on judgement of the Supreme Court, in the case of *State of Himachal Pradesh vs. Manga Singh*, (2019) 16 SCC 759. On this basis, it was submitted that the appeal may be dismissed.

21. We have considered the rival submissions. The learned counsel for the appellant made elaborate submissions on the question of date of birth of the victim and it was alleged that at the time of the incidents, it was not clear as to whether the victim was indeed a minor. It was submitted that the benefit of doubt ought to be given to

the appellant in such circumstances and therefore, the prosecution and conviction of the appellant under the provisions of POCSO Act, is clearly unsustainable. Since long period of time was devoted to the arguments on this aspect of the matter, we have considered the rival submissions on the basis of the law, as has been laid down by the Supreme Court in this context in a number of judgements.

22. In the case of *Vishnu vs. State of Maharashtra*, (2006) 1 SCC 283, the Supreme Court held that documents ought to be given primacy over medical reports and that the best evidence for date of birth of a child is that of the father and the mother. This has some bearing on the present case in the light of the statements made by the appellant himself as the father of the victim.

23. In the case of *Shah Nawaz vs. State of Uttar Pradesh*, (2011) 13 SCC 751, the Supreme Court accepted the date of birth as recorded in a marksheet and a school certificate produced before the Court by applying Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the JJ Rules), framed under the JJ Act. It was specifically held that such documents ought to be preferred above medical reports, while determining the age of a person.

24. In the case of *Ashwani Kumar Saxena vs. State of Madhya Pradesh*, (2012) 9 SCC 750, the Court held that the date of birth was discernible from school records and therefore, medical examination report, in such case, was not necessary. The Supreme Court found that entries in school admission registers, on the basis of statements of parents, are clearly believable.

25. In the case of *Jarnail Singh vs. State of Haryana*, (2013) 7 SCC 263, the Supreme Court categorically held that the aforesaid Rules have to be the basis of determination of date of birth, not only of a juvenile in conflict of law, but also a child victim of crime. Therefore, the applicability of the aforesaid Act and Rules to such cases, was established as per the law laid down in the said judgement.

26. In the case of *State of Madhya Pradesh vs. Anoop Singh*, (2015) 7 SCC 773, the Supreme Court held that in the first place, the documents mentioned in Rule 12 of the JJ Rules, framed under the JJ Act, have to be basis for determination of date of birth and only if such documents are absent, that medical opinion should be sought for determining the age of an individual. Therefore, it was reiterated that documentary material has to be given primacy over medical opinion for determination of age of an individual.

27. In the case of **Rishipal Singh Solanki vs. State of Uttar Pradesh and others** (*supra*), the Supreme Court took into consideration various precedents and after analysing the said precedents, arrived at specific conclusions, some of which are relevant for the present case. The relevant paragraphs of the said judgment read as follows:

‘33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and

authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.

- 3.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.'

28. A perusal of the above-quoted portion of the said judgment of the Supreme Court shows that whenever documentary material is sought to be made the basis of determination of date of birth, it has to be analyzed on the basis of section 35 of the Evidence Act. The documents that are public documents or official documents in nature and are maintained in the discharge of official duty, have to be given greater credibility.

29. In the case of **P. Yuvaprakash vs. State represented by the Inspector of Police** (*supra*), the Supreme Court categorically laid down that the provision of section 94 of the JJ Act, has to be the basis for determining the age of a child victim in cases where the accused are prosecuted under the provisions of the POCSO Act.

30. The case of **Ravinder Singh Gorkhi versus State of U.P** (*supra*), upon which the learned counsel for the appellant has placed reliance, cannot be of any assistance because in the facts of the said case, the Supreme Court found that the certificates issued by the school could not be accepted as the basis for determination of age of the victim. But, while discussing the manner in which the school record is to be appreciated, the Supreme Court referred to section 35 of the

Evidence Act and made the following observations:

‘23. Section 35 of the Evidence Act would be attracted both in civil and criminal proceedings. The Evidence Act does not make any distinction between a civil proceeding and a criminal proceeding. Unless specifically provided for, in terms of Section 35 of the Evidence Act, the register maintained in the ordinary course of business by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which, inter alia, such register is kept would be a relevant fact. Section 35, thus, requires the following conditions, to be fulfilled before a document is held to be admissible thereunder. (i) it should be in the nature of the entry in any public or official register; (ii) it must state a fact in issue or relevant fact; (iii) entry must be made either by a public servant in the discharge of his official duty, or by any person in performance of a duty specially enjoined by the law of the country; and (iv) all persons concerned indisputably must have an access thereto.’

31. Therefore, the position of law as it emerges from the aforementioned judgements of the Supreme Court, makes it abundantly clear that applying section 94 of the JJ Act, documentary material as indicated in the said provision, has to be given primacy over any medical or ossification test. The manner in which the said provision lays down the requirement of determining date of birth, makes it abundantly clear that in the first place, school records are to be given primacy and only thereafter, can an ossification test or medical test be ordered for determination of age of an individual.

32. The real question is as to whether in the present case, there was sufficient documentary material produced by the prosecution to prove its case about the date of birth of the victim being 15.02.2002,

thereby proving her to be a minor at the time of the incidents, or that the medical report on record had to be relied upon.

33. But, before we analyze the documentary material placed on record by the prosecution, it is significant to note that the appellant as the father of the victim, himself stated in response to questions put to him during his examination under section 313 of the Cr.P.C. that it was true that the date of birth of the victim i.e. his own daughter was 15.02.2002 as per the school record. He specifically responded to question 8(ii), by stating that it was indeed true that her date of birth was 15.02.2002. In response to question 10(iii), the appellant himself specifically stated that it was true that his daughter i.e. the victim was not 18 years old.

34. We find substance in the contention of the learned APP that these responses clearly show that the appellant himself admitted that his daughter was a minor at the time of the incidents and that her date of birth was indeed 15.02.2002. In that light, it would not be necessary for the prosecution to prove a fact which was, as a matter of fact, admitted by the appellant himself. We also find that the prosecution was able to place on record copies of affidavit sworn by the appellant himself, as the father of the victim, stating that the date of birth of his daughter was 15.02.2002, when she was admitted to the school in the first place. In that light, we find that the observations made by the Supreme Court in the aforementioned judgements in the cases of **Vishnu vs. State of Maharashtra** (*supra*) and **Ashwani Kumar Saxena vs. State of Madhya Pradesh** (*supra*), assume significance. In both these cases, the Supreme Court laid down that the best evidence for date of birth of a child is the evidence of the father and the mother. It was held that entries in

school admission registers on the basis of statements made by the parents, are believable. Applying the said position of law to the facts of the present case, we find that the material available on record was sufficient to prove the date of birth of the victim being 15.02.2002.

35. It is in this context that the evidence of PW7 needs to be analyzed. She was the Principal of the school, where the victim was first admitted. The said witness had brought the original admission register during the course of recording of her evidence and at Sr. No.8492 in the original admission register, was found the name of the victim, recording her date of birth as 15.02.2002. She deposed that the entry of the date of birth was done at the time of admission itself and that it was based on the statement given by the appellant being the father of the victim and that the parents had also specifically filled in a form about the age of the victim, wherein it was specifically stated that the date of birth of the victim was 15.02.2002. Copy of the affidavit of the appellant as the father of the victim, was also on record, wherein it was stated that the victim was born on 15.02.2002 in District Samastipur.

36. We find that the aforesaid documents are indeed public and official documents because they were prepared and maintained by school authorities, which pertain to a municipal school and they clearly qualified as public or official documents, maintained in the discharge of official duty. Hence, such documents clearly have credibility in terms of the law laid down by the Supreme Court noticed hereinabove. In the face of such credible material, there was no necessity of any medical test or ossification test to be undertaken for determination of age of the victim. Therefore, this Court need not even look at the document on record at Exhibit 35 pertaining to the

proforma for age determination of a female. It shows that certain x-ray and other tests were conducted and on that basis, it was opined that the age of the victim was anywhere between 17 to 18 years. The appellant is seeking to take advantage by claiming that since the upper age should be taken into consideration, it could be said that the victim was 18 years of age, not a minor and therefore, he should be given the benefit of doubt.

37. We are in complete disagreement with the said submission made on behalf of the appellant, simply for the reason that as per the law recognized by the Supreme Court and this Court over the years, school records and documentary evidence has to be given primacy and in the face of such credible material being available, there was no necessity to undertake any medical or ossification test to determine the age of the victim.

38. As a matter of fact, in this case, the investigating officer had called for the date of birth certificate from the school in which the victim was undertaking education at the time the FIR was registered. Thereafter, PW7 was produced as prosecution witness, who brought the original admission register of the year 2009, when the victim was first admitted to school. The aforementioned documentary material was produced in original and relied upon by PW7 to prove the age or date of birth of the victim. Such material clearly indicated that the date of birth of the victim was 15.02.2002, thereby proving that she was indeed a minor at the time when the incidents took place. We find such material to be credible and believable and that the Trial Court committed no error in relying upon the same to hold that in the present case, the victim was a minor and therefore, the appellant was correctly prosecuted for offences under the POCSO Act also.

39. In the series of judgments noted hereinabove and particularly in the case of **Rishipal Singh Solanki vs. State of Uttar Pradesh and others** (*supra*), the Supreme Court has categorically laid down that once such credible documents including school records are available, there is no necessity of mechanically going in for a medical or an ossification test for determination of age of the victim. Even applying the rigors of section 35 of the Evidence Act, we find that in the present case, the documents produced by PW7 during the course of evidence, including the original admission register, sufficiently demonstrate that the documents clearly passed the test under section 35 of the Evidence Act as the original register maintained in the ordinary course of business while discharging official duty, amounted to a credible material proving the date of birth of the victim as 15.02.2002. Therefore, the contention raised on behalf of the appellant claiming that the date of birth of the victim was not proved by the prosecution, cannot be accepted and the said contention is rejected.

40. It is relevant to note that the judgements relied upon by the appellant i.e. **Ravinder Singh Gorkhi versus State of U.P.** (*supra*) and **P. Yuvaprakash vs. State represented by Inspector of Police** (*supra*), were both cases where the Supreme Court, after applying the aforesaid tests, on facts found that the concerned person was not proved to be a minor. The conclusions rendered therein were based on the facts of those individual cases, but the tests applied therein, when applied to the facts of the present case, demonstrate that the prosecution was able to prove that the victim in the present case was indeed a minor at the time when the incidents took place, as her date of birth was proved to be 15.02.2002, on the basis of credible

material. Hence, the elaborate submissions made on behalf of the appellant on the question of the victim being a minor or otherwise, are rejected. The case of the prosecution is accepted that the date of birth of the victim was 15.02.2002, thereby demonstrating that at the time when the incidents took place, she was indeed a minor.

41. The next submission made on behalf of the appellant was that the evidence of the victim i.e. the prosecutrix in the present case, was not of sterling quality. It was sought to be indicated that corroboration of her evidence was necessary. In this regard, the settled position of law is very clear that even the sole testimony of the prosecutrix is enough to return a finding of conviction, so long as the evidence of the prosecutrix inspires confidence. It is only in cases where the evidence of the prosecutrix does not inspire confidence, that corroboration is required. In fact, it is laid down that minor contradictions and small discrepancies cannot be a ground to throw out the sole testimony of a prosecutrix and the Court must see compelling reasons for looking for corroboration of the evidence of the prosecutrix.

42. Applying the aforesaid test to the evidence of the victim PW1 in the present case, shows that that her evidence is steadfast. She has given details of the manner in which she suffered physical and sexual abuse at the hands of her own father i.e. the appellant. She clearly stated that the process started when she was only 10 years old and that about 3 months prior to the registration of the FIR, incidents of actual sexual assault had started. She referred to 4 such incidents and she also gave graphic details of the same. In cross-examination, her evidence could not be shaken and this Court finds the same to be believable on its own.

43. Although an attempt was made on behalf of the appellant to contend that the spot *panchanama* demonstrated that the house consisted only of one room of 10 ft. x 10 ft. and that it was impossible that such sexual assaults would have gone unnoticed, we find that the prosecution has been able to place on record circumstances to show that there were indeed occasions when the appellant and his own minor daughter were together in the said room, when such incidents, as described by the victim herself, had taken place. We find substance in reliance placed on judgment of the Supreme Court in the case of **State of Himachal Pradesh vs. Manga Singh** (*supra*), wherein it is reiterated that to disbelieve the prosecutrix, particularly a minor victim of sexual assault, when there is no apparent reason to doubt her version, would amount to adding insult to injury. In fact, it is laid down in various judgements that the testimony of victim of sexual assault has to be treated on par with the evidence of an injured witness. If that be so, the graphic details given by the victim in the present case, sufficiently prove the prosecution case and the sole testimony of the victim PW1 is enough to prove the guilt of the appellant.

44. Apart from this, we find that the evidence of PW3 - Principal of the school, where the victim was studying, PW4 - the counsellor, who had conducted the program in the school and PW5 - the social worker, who assisted the victim in the present case, sufficiently demonstrate as to the manner in which the victim was able to gather courage and air her grievance against her own father. Although it was vehemently argued on behalf of the appellant that the evidence of these witnesses did not bring out the story of the victim in a natural manner, upon a detailed analysis of the evidence of these

witnesses i.e. PW3 to PW5, we do not find anything unnatural in the manner in which the victim aired her grievance first before these 3 witnesses and eventually, made a statement before the Police which led to registration of the FIR. The evidence of these witnesses indeed shows that when the aforesaid program was conducted in July 2017 in the school in which the victim was studying, which was arranged by the local police station, the victim gathered courage to come out with her grievance against her own father. She discussed it with PW4 - counsellor and then, the grievance reached PW3 – the Principal and this eventually, led to the statement of the victim which resulted in registration of the FIR, initiation of investigation and prosecution of the appellant. The evidence of these witnesses sufficiently corroborates the version of the victim, although we are clear that the sole testimony of PW1-victim is enough to prove the guilt of the appellant.

45. It was also argued on behalf of the appellant that this was a case of false implication as the victim was upset with her own father i.e. the appellant as he proposed to discontinue her studies. In this backdrop, the appellant placed emphasis on the fact that the elder daughter had discontinued her studies, after getting married to an individual. It was stated that the victim apprehended that her studies would also be discontinued abruptly and that she desired to study and in this backdrop, due to her anger against her own father, she concocted such a false case against him. We find that the aforesaid theory sought to be floated on behalf of the appellant, cannot be accepted, for the reason that a child may be angry with her parents as it does happen when parents intend to discipline their own child. But, it would be far-fetched to accept that only for this reason, the victim made such serious, drastic and far-reaching allegations against

her own father. We refuse to accept the aforesaid theory sought to be floated on behalf of the appellant.

46. We also do not find much substance in the contention raised on behalf of the appellant on the basis of the medical evidence on record. PW2 - doctor, in her deposition, supported the medical report on record. The report in fact showed that there were old hymen tears in the case of the victim. Much emphasis was placed on behalf of the appellant on the ground that these were old hymen tears and since there was no physical injury found on the body of the victim, there was lack of evidence to show any fresh sexual assault, as was claimed by the victim. In the present case, the dates are relevant. The victim stated that in the 3 months preceding the registration of the FIR on 27.07.2018, there had been at least 4 instances of sexual assault by the appellant. It was specifically stated that the last such assault had taken place on 21.07.2018. Thus, between the point in time when the last sexual assault had taken place and the date on which the victim was medically examined after registration of the FIR, there was a gap of one week. In cross-examination, PW2-doctor clearly stated that generally, time of one week is required for healing of a hymen injury. This sufficiently explains the existence of old hymen tears and therefore, much capital cannot be made out by the appellant in the facts and circumstances of the present case.

47. In any case, even during giving history at the time of her medical examination, the victim had categorically stated that she had been suffering such assaults at the hands of her own father i.e. the appellant, at least on 4 occasions in the last three months prior to registration of the FIR. In such a situation, we find that the medical evidence, in fact, corroborates the allegations made by the victim

against her own father. Even otherwise, as per settled law, ocular evidence always trumps medical evidence and therefore, in the present case, the appellant cannot rely upon the medical evidence to claim that the allegations made by the victim stood falsified. The aforesaid contention raised on behalf of the appellant is also rejected.

48. We have already discussed hereinabove, some of the judgements that were relied upon by the learned counsel appearing for the appellant. We also find that in the light of the above discussion, reliance placed on behalf of the appellant on the judgement of this Court in the case of **Ajay Bharat Shinde vs. State of Maharashtra and another** (*supra*), cannot be of much help to the appellant, simply for the reason that even if section 94 of the JJ Act is applied, in the present case, the prosecution sufficiently placed documentary material on record to prove the date of birth of the victim. There was no necessity to even go for the ossification test or call for a medical report. For the same reason, reliance placed on behalf of the appellant on the judgment of the Delhi High Court in the case of **Court on Its Own Motion vs. State of NCT of Delhi** (*supra*), cannot be of much help because it concerns questions about the upper side of age estimation in a medical or an ossification report being relevant in such cases for determination of age of the victim. We have already come to the conclusion that in the present case, sufficient documentary material itself was placed on record by the prosecution to prove the date of birth of the victim and therefore, there was no necessity to look at the medical report or the ossification report.

49. On the other hand, we find that the learned APP is justified in relying upon the judgement of the Supreme Court in the case of

Mahadeo vs. State of Maharashtra (*supra*), wherein the Supreme Court in similar circumstances, placed reliance on documentary material, including transfer certificate as well as admission form pertaining to the prosecutrix therein, which demonstrated that the age of the prosecutrix in the said case at the relevant time, was below 18 years. We find that in the present case also, the prosecution has been able to place on record credible material to prove its case that the date of birth of the victim was 15.02.2002 and hence, she was a minor at the point in time when the incidents took place. It is also relevant to note that the mother of the victim, who appeared as defence witness, also did not make any statement about the age of the victim. In fact, she did not state anything about her date of birth.

50. Once we have found that the prosecution has been able to prove its case that the appellant being the father, committed such a ghastly act against his own daughter who was a minor, the consequences as provided by law, must follow. Reference to and reliance placed on the judgement of the Supreme Court in the case of **Bhanei Prasad @ Raju vs. State of Himachal Pradesh** (*supra*), is relevant in this backdrop. The Supreme Court, while considering similar circumstances, observed as follows:

‘13. When a father who is expected to be a shield, a guardian, a moral compass, becomes the source of the most severe violation of a child's bodily integrity and dignity, the betrayal is not only personal but institutional. The law does not, and cannot, condone such acts under the guise of rehabilitation or reform. Incestuous sexual violence committed by a parent is a distinct category of offence that tears through the foundational fabric of familial trust and must invite the severest condemnation in both language and sentence. The home, which should be a sanctuary, cannot be permitted to become a site of

unspeakable trauma, and the courts must send a clear signal that such offences will be met with an equally unsparing judicial response. To entertain a plea for leniency in a case of this nature would not merely be misplaced, it would constitute a betrayal of the Court's own constitutional duty to protect the vulnerable. When a child is forced to suffer at the hands of her own father, the law must speak in a voice that is resolute and uncompromising. There can be no mitigation in sentencing for crimes that subvert the very notion of family as a space of security.'

51. Another aspect of the present case cannot be ignored. In the present case, the appellant has been convicted and sentenced under section 376(2)(f) of the IPC. The said provision pertains to an accused who, being a relative, guardian or teacher or a person in a position of trust or authority towards the woman, commits rape on such a woman. The appellant in the present case, being the father of the victim, was clearly covered under the said provision and therefore, even if the contention raised on behalf of the appellant that the prosecution failed to prove the fact that the victim was a minor, is accepted only for the sake of arguments, we find that being the father, the appellant was clearly in a position of trust and authority over the victim and he committed rape on her. Therefore, the ingredients of the said offence are clearly made out in the present case and the Trial Court did not err in returning the finding of conviction and sentencing the appellant in the aforesaid manner.

52. We also find that the statute itself provides for punishment of imprisonment for the remainder of the life, which has been imposed upon the appellant. It is to be noted that section 376 was substituted in the year 2013 and it now exists in its present form. Once the Court finds that the accused is proved to be guilty of an offence under

section 376(2) and its various clauses, as also the fact that the Court reaches a conclusion about the accused deserving sentence of imprisonment for life, there is no discretion left in the Court, but to sentence the appellant for imprisonment for the remainder of his life. The observations made by this Court in the case of **Jagannath Pandurang Waghare vs. State of Maharashtra and another** (*supra*) are relevant in the present case. The relevant portion of the said judgement reads as follows:

“45. A perusal of the said provision shows that sub-section (1) of Section 376 of the IPC, while prescribing punishment for rape, specifically states that except in the cases provided for in sub-section (2), who ever commits rape, shall be punished with rigorous imprisonment of either description for a term, which shall not be less than 10 years, but which may extend to imprisonment for life, and shall also be liable to fine. As opposed to this, sub-section (2) of Section 376 of the IPC, prescribes that if an accused is found guilty of offence under clauses (a) to (n) thereof, such an accused shall be punished with rigorous imprisonment for a term, which shall not be less than 10 years, but which may extend to imprisonment for life, which shall mean imprisonment for remainder of that person’s natural life and shall also be liable for fine.

46. We are of the opinion that substitution of Section 376 of the IPC with effect from 03.02.2013, applicable to the facts of the present case, must be given its full effect. In the present case, we have upheld the conviction of the appellant under Section 376(2)(f) and (i) of the IPC, as the appellant was certainly a person in authority over the victim and she was under 16 years of age. We are in complete agreement with the Trial Court that such an offence committed by the appellant, being the father of the victim, does deserve punishment of imprisonment for life. Once this conclusion is reached, there is no discretion left in the Court for applying the aforesaid guidelines framed by the

State under Section 432 of the Cr.P.C., because the statute itself states that in such cases, imprisonment for life shall mean imprisonment for the remainder of that person's natural life.

47. It is also relevant to note that as per the subsequent amendment brought into effect from 21.04.2018, whereby clause (i) of sub-section (2) of Section 376 of the IPC, was deleted and sub-section (3) was added, it was provided that when rape was committed on woman under 16 years of age, the minimum term for which rigorous imprisonment would be imposed, was 20 years. The same could extend to imprisonment for life, which shall mean imprisonment for remainder of that person's natural life. Therefore, the 2018-amendment increases the minimum sentence to 20 years and retains the statutory mandate that once the Court grants imprisonment for life, it shall mean imprisonment for remainder of that person's natural life."

53. In view of the above, we do not find any error committed by the Trial Court in convicting and sentencing the appellant in the aforementioned manner. The present appeal is found to be without any merit.

54. Accordingly, the appeal is dismissed. Pending applications also stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)