



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 220 OF 2018

The State of Maharashtra,
Through Shivoor Police Station,
District Aurangabad
[C.R.No.I-17/2013]

....Applicant

Versus

Balan Raghvan
Age: 53 years, Occu.: Puncture Shop,
R/o. Haripad, Tq. and District Alari,
At present Shivoor [Bk.],
Tq.Vaijapur, District Aurangabad.

....Respondent

APP for Applicant : Mr.S.G.Sangle
Advocate for Respondent : Mr. Amol S. Gandhi

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 FEBRUARY, 2026
PRONOUNCED ON : 09 FEBRUARY, 2026

ORDER :

1. Instant application for leave to file appeal by invoking Section 378(1)(b) of the Code of Criminal Procedure is on behalf of State as it intends to question the judgment and order of acquittal dated 03-07-2018 passed by learned Additional Sessions Judge, Vaijapur in Special Case No.15 of 2016.
2. In brief, report was lodged by PW2 informant with Shivoor

Police Station, District Aurangabad, alleging that her minor daughter studying in 1st standard, aged 7 years, after attending school, used to go to the house of Prasanna Madam for tuition. According to her, on 03-03-2013, her minor daughter told that husband of Tutor used to unbutton his pant, display his private part while sleeping on the cot. That, her daughter also told that, when her Tutor was not attentive, said husband made her daughter touch his private part and while alighting from the school van, he used to touch her private part. On report to this extent, crime was registered, investigated and after chargesheeting accused, he was made to face trial vide Special Case No.15 of 2016 for commission of offence under Sections 354-A of the Indian Penal Code (IPC) and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act), during which prosecution adduced evidence of in all five witnesses. Defence also, after answering questions under Sections 313 of the Cr.P.C., adduced evidence of two witnesses. After appreciating oral and documentary evidence, learned trial Judge reached to a finding that prosecution has failed to prove the guilt and thereby vide above judgment and order acquitted the accused.

Feeling aggrieved by the above judgment, now state is seeking leave.

3. Learned APP would point out that, serious crime was reported regarding sexual assault on minor. That, prosecution had adduced evidence of informant mother as well as that of victim and maternal uncle of victim. That, evidence of victim was crucial and the same is incorrectly appreciated by learned trial court. That, some minor omissions are given undue importance. That, there was evidence of mother as well as maternal uncle of victim, but the same has not been properly appreciated. That, defence case of false implication in the backdrop of some complaint for breaking front glass of school bus by the victim and making parents pay for the damages, is made the motive for false implication. According to learned APP, there is a good case on merits in appeal and so he prays to accord leave.

4. Learned counsel for respondent would support the judgment and order of acquittal by pointing out that statement of victim was never recorded by Police under Sections 161 or 164 of the Code of Criminal Procedure (Cr.P.C.), however, directly victim was made to step in the witness box. That, even otherwise according to him, on appreciation of evidence of victim and her mother, several material omissions and improvements are brought on record. That, evidence of maternal uncle being hearsay was rightly not taken into account.

Therefore, when there is complete appreciation of evidence as well as law, he finds the order, sought to be challenged, to be perfectly legal and valid and prays to refuse the leave.

5. Heard both the sides. Perused the record.

6. Case of prosecution in trial Court, as stated, rested on evidence of five witnesses i.e. PW1 Balu Chandrabhan Pawar, pancha to spot panchanam exh.16, PW2 mother and informant, PW3 maternal uncle of victim, PW4 Rekha Mali (ASI), Investigating Officer and PW5 victim herself.

7. In view of nature of charge and accusations, evidence of informant **PW2**, her brother **PW3** and victim **PW5** is of significance.

PW2 informant mother is examined at exh.17 and in her short evidence, she stated that, her daughter, aged 7 years, studied in 1st standard and used to attend school in school bus and after school she attending tuition. According to her, on 03-03-2013, her daughter told her that at tuition place, husband of the madam, who used to sleep on the cot, open button of pant, and used to display his private part to her daughter and that, when Tutor Madam was not attentive,

many times he made her touch his private part. That, while alighting from vehicle, he used to touch her private part and so on reporting to above extent, informant mother lodged complaint exhibit 18.

Her **cross-examination** shows that accused displaying private part to her daughter and while behind attention of Madam, he used to cause her daughter touch his private part, is shown to be a material omission, as she admitted that she cannot tell why such text is not appearing in her complaint. She is unable to give any documentary evidence of her daughter attending tuition. Rest is all denial.

8. Another crucial witness is victim, who is examined as **PW5** at exhibit 35 wherein after giving date of birth and stating to be studying in 1st Standard, she deposed that, from school, she used to attend tuition to the house of Prasanna Madam. According to her, she also attended school by van. According to her, husband of her Tutor (accused) is to be in the van and when she attended tuition, he used to lie down on the cot, hold newspaper and according to her, he also pointed her to his private part. While getting from the van, he touched her private part and when Tutor Madam was not attentive, he used to first catch her both hands and made her keep it on his

private part. She stated that she narrated incident to her mother and they approached Police Station where two lady police staff made enquiry with her and she pointed spot to police.

While under **cross-examination**, she answered that she told her mother that accused used to be in the van and also told that when her Tutor Madam was absent, accused used to make her touch his private part. In further cross-examination, she answered that Tutor taught all subjects and while teaching, she used to be attentive to each of the pupil. Then she answered that Digambar Jadhav was the driver of the van. According to her, on 01-03-2013 her mother told that they need to lodge complaint. Rest all suggestions are denied including suggestion that driver Digambar used to take all children out of the vehicle.

9. **PW3** is the maternal uncle of the victim, but he has hearsay information.

10. Accused has also adduced evidence of two witnesses i.e. the **DW1** Tutor as well as **DW2** Digambar Jadhav, driver of the school van.

Evidence of **DW1** Tutor is on the point of victim girl breaking

front glass of the vehicle and damages sought from victim's mother resulting into quarrel. According to her, allegations against her husband are false.

In **cross-examination** of this witness at the hands of learned APP, she has stated that attendant/Peon Sangita used to work as Peon in the school.

DW2 Digambar Jadhav, in his evidence at exhibit 55, stated that victim had broken front glass of school bus and so one Quadri Madam had asked Prasanna Madam to get money for broken glass from victim's mother and as such there was dispute.

In **cross-examination** at the hands of learned APP, he stated that he was working as driver and that, one another person worked as attendant for helping students come out of the van.

11. Above is the only evidence. Here, as stated above, informant is mother, but there are material omissions as stated above in her evidence regarding accused displaying his private part to her daughter and making her daughter touch his private part.

12. There is evidence of victim also. Defence has raised objection that her statement was not recorded by Police either under Sections

161 or 164 of the Cr.P.C. and therefore, directly her testimony in Court ought not to have been recorded and further relied. However, mere failure to record statements under Sections 161 or 164 of the Cr.P.C., would not itself be automatically fatal to the prosecution case as primarily it is not substantive evidence and its purpose is only to contradict or corroborate the witness testimony. Here, victim has stepped in the witness box and though victim stated that two police personnel made enquiry with her, failure to record her statement would be only serious laps on the part of investigating machinery. However, as stated here, there is testimony of victim also at exhibit 35. In her examination-in-chief, she stated that when she attended tuition, accused used to lie on the cot and while possessing newspaper, she deposed that, he pointed her to his pennis. According to her, even while getting down from van, he used to touch her private part and when her Tutor was not paying attention, he used to catch hold of her hands and made her place it on his private part. However, here, there is no corroboration to her such testimony even when she has admitted that there were other 10-15 students in the class. She has also not stated when such instances took place and she stated that it happened somewhere between Diwali 2012 to March 2013 period.

13. Here, defence version is about victim child indulging in damaging the front glass of school van and making informant mother pay for the damages resulting into quarrel and therefore, complaint to be motivated. This such defence has been probabilized by examining witness DW2 Digambar Jadhav.

14. Therefore, taking into account belated reporting, material improvements in the testimony of informant mother and uncorroborated testimony of victim, learned trial Court seems to have extended benefit of doubt to accused by stating that, when two views are possible, the one which favours accused need to be granted. Taking such legal position into account, acquittal has been granted. There is no illegality or error in adopting above view with such quality of evidence wherein case has not been proved beyond reasonable doubt and defence succeeding in probabilizing defence. Hence, leave to file appeal is refused. Accordingly, following order is passed :

ORDER

Application for Leave to Appeal by State is rejected.

**(ABHAY S. WAGHWASE)
JUDGE**