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SPL.(POCSO)CASE.NO. 166/2017
CNR - MHPU01-004903-2017

Received on : 17.04.2017
Registered on : 17.04.2017
Decided on : 15.03.2018
Duration : Ys.Ms.Days
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IN THE COURT OF SPECIAL JUDGE (POCSO), PUNE.
(Presided over by S. H. Gwalani)

SPL.(POCSO)CASE.NO. 166/2017
Exh.No. 23

The State of Maharashtra,
Through P.S.O. Wakad Police
Station, Pune. (C.R.No. 696/2016)

... **Prosecution**

Versus

Somnath Popat Karche,
Age 25 yrs., Occu. Painting,
R/at Kokane Nagar, Near Datta
Temple, Kalewadi, Pune.
Originally R/at Mhaswad, Khadki
Lonar Vasti, Tal. Maan, Dist. Satara.

... **Accused**

Charge : U/Sec. 354 of I.P.C., 12 of the
Protection of Children From Sexual Offences Act

Appearance :

A.P.P.Mr. Ghogare Patil for the prosecution
Adv.Mr. R.V.Kulkarni for the accused

J U D G M E N T

(Delivered on 15th day of March 2018)

The accused is charged with the offence punishable
under Sec. 354 of I.P.C. and 12 of the Protection of Children
From Sexual Offences Act (POCSO).

2. The prosecution case in brief as under;

Informant Sou.Mananahdha Koli lodged the report with Wakad Police Station by alleging that her daughter i.e. victim and her friend were studying in Narsinha Vidyalaya. Both of them used to go school at 10.00 a.m. and return back at 5.00 p.m. It is further alleged that on 23.11.2016 at around 10.10 a.m. when victim and her friend were going to school, at that time, accused chased them by his motorcycle No. MH-12/GW-0506 and stopped them. It is further alleged that he gave chit to them and thereby outraged modesty with them and fled away from the spot of incident. Thereafter, Woman A.P.I.B.K.Adhav reduced the report of the informant and P.H.C.Sambhare registered the offence. Thereafter, A.P.I. Santosh Gholve seized the vehicle from the custody of the accused. He recorded the statements of the witnesses. He had collected the bonafide certificate of the victim from the school. On completion of investigation, the accused inducted for the above mentioned offence.

3. The charge came to be framed against the accused for the offences punishable under Sec. 354 of I.P.C. and 12 of the Protection of Children From Sexual Offences Act vide Exh. 3, and the contents thereof have been explained to him in vernacular. He pleaded not guilty and claimed to be tried. The defence is that of total denial.

4. The following points arose for determination in the case, on which findings are recorded coupled with reasons

therefor, as under.

<u>P O I N T S</u>		<u>F I N D I N G S</u>
1	Whether the prosecution proved that on 24.11.2016 between 10.05 to 10.30 a.m. between Londhe Vasti to Bharat Petrol Pump, Tathawade, Thergaon, Pune, accused followed the victim aged 14 yrs. on your motorcycle No. MH-12/GW-0506 and attempted to contact her to foster personal interaction repeatedly despite a clear indication of disinterest by the victim?	Not proved.
2	Whether the prosecution proved that on the relevant date, time and place accused followed the victim, uttered the words to the victim to pick up the chit and made gesture to outrage her modesty?	Not proved.
3	What order?	As per final order.

R E A S O N S

5. In order to establish the offence against accused, prosecution has examined in all five witnesses. Heard Ld.A.P.P. and learned counsel for the accused.

AS TO POINT NOS. 1 & 2 :

6. Ld.A.P.P. for the State has submitted that testimony of the victim (PW-2) is corroborated by PW-3. Prosecution has brought on record that accused chased the victim and her friend to the school. Thereafter, again second day accused thrown chit in front of Bharat Petrol Pump and asked to pick up the chit and accused was making gesture in obscene manner.

From the bonafide certificate Exh. 16 and PW-5 Subhash Karkhile prosecution established that at the relevant time victim and her friend were minor. In short according to the prosecution in view of Sec. 11(4) of the POCSO Act accused tried to contact with victim and her friend therefore, prosecution has established their case under Sec. 12 of the POCSO Act.

7. In support of submission prosecution placed reliance upon '**State of Karnataka Vs. K.Yarappa Reddy, 2000 ALL M.R.(Cri)348**' in which Hon'ble Supreme Court held that if the Court is convinced that the testimony of a witness to the occurrence is true the Court is free to act on it albeit Investigating Officer's suspicious role in the case.

8. Per contra Ld.Consel for the accused Mr.Kulkarni submitted that during investigation no identification parade of the accused conducted by the prosecution. No alleged chit seized from the spot of incident. In view of report of R.T.O. (Exh. 16) accused was not owner of the said vehicle. Further PW-1 has admitted in her cross-examination that she do not want to continue the case. Informant has also not informed the incident to her parents. The victim has also not complained against the accused. Therefore, for want of sufficient evidence and in absence of identification parade, prosecution failed to establish the case against the accused, therefore, accused is entitled for acquittal. In support of submission Ld.Counsel for the accused seeks to rely upon '**Pandurang Sitaran Bhagwat**

Vs. State of Maharashtra, A.I.R. 2005 S.C. 643'

9. Mahananda Koli (PW-1) informant has narrated in her evidence that her daughter was taking education in 8th standard. On day of incident she went on labour work and her daughter had gone to school. Thereafter, her husband received telephone call from victim's school, therefore, she went to the school of her daughter. On that day Alhat Sir told her that while her daughter was coming to school, at the relevant time one boy dropped a chit and he had seen the vehicle number of the said boy and asked whether she wants to lodge report or not. Thereafter, she went to the Wakad Police Station and lodged report (Exh. 9) and police had registered the offence vide Exh. 10.

10. In the cross-examination she has admitted that she do not want to continue the case, she had not seen the accused nor number of the vehicle.

11. Victim (PW-2) narrated the incident that her birth date is 19.01.2001. On the day of incident she was taking education in Narsinha Vidyalaya, Tathawade, in 8th standard. She along with her friend were going to school by walk, at that time one boy was chasing them and told them to stop. Thereafter, they went to the school. On the next day when they were proceeding to the school, again said boy chased them. He asked to stop and threw one chit. Said act noticed by their Alhat Sir. Thereafter, Alhat Sir asked her mother to

lodge the report in order to prevent such act in future. She identified the said boy before the court.

12. In the cross-examination she has admitted that she had not informed about incident to her parents. After the incident first time she had seen the accused in the court. She had not informed her birth date to the police. She was not intending to lodge the report however, on the say of Alhat Sir she has lodged the report. She was not aware as to whether Alhat Sir was coming behind them. She had not personally informed about the incident to Alhat Sir. She had not seen the chit on the spot. She has no complaint against the accused. In her presence no identification parade of the accused conducted by the police.

13. PW-3 friend of the victim has narrated the incident that on the day of incident she along with were proceeding to school by walk. Thereafter, one boy chased them up to the school. Thereafter, he went away. Thereafter, on second day again when they were going to school, said boy thrown chit in front of Bharat Petrol Pump. He asked them to stop and to pick-up the said chit and was making gesture in obscene manner. The number of the said vehicle was MH-12/GW-506. Thereafter, they went to the school and informed about the incident to Salunkhe Madam and Salunkhe Madam informed to Alhat Sir. Alhat Sir disclosed that he had seen the said boy on vehicle and noted down the vehicle number. Thereafter, Alhat Sir made phone call to the parents of the victim and called

them. Thereafter, mother of the victim lodged the report. She has identified the said boy before the court.

14. In the cross-examination she has admitted that she has not informed about the first incident to her parents nor to Alhat Sir. At the time of incident no hue and cry was made by them nor informed to anyone in the way. Police had not arranged identification parade in her presence. There was distance of about 15 to 20 ft. between them and the boy who was chasing them.

15. PW-4 Sandosh Gholve, who had investigated the case deposed that he had recorded statements of the witnesses as per their say. On 10.01.2017 he had seized one vehicle from the custody of the accused in presence of panchas (Exh. 14). He had collected bonafide certificate i.e. birth date certificate of the victim from her school. Thereafter, he arrested the accused and after completion of investigation charge-sheet came to be filed.

16. In the cross-examination by the accused, he has admitted that on his letter (Exh. 15) R.T.O. replied the particulars of the vehicle (Exh. 16). The vehicle No. MH-12/GW-506 was not in the name of the accused. In the F.I.R. (Exh. 10) name of the accused is not mentioned. Informant has also not described the description of the accused. He had not arranged identification parade of the accused. On the basis of vehicle number of the accused, accused has been arrested. The

statements of the two girls were recorded by male police officers. On the day of incident vehicle number MH-12/GW-506 was standing in the name of Mhamunkar Bhavesh. No video shooting recorded by him while recording statement of said two girls.

17. PW-5 Subhash Karkhile, Principal of Narsinha Vidyalaya deposed that in the original General Register they used to maintain name of the student, caste, birth date, from which the student has admitted and on the basis of the said entry of General Register (Exh. 18 and 19) he had issued bonafide certificate of the victim to the police. As per Exh. 18 the birth date of second victim is 28.09.2002.

18. After evaluation of evidence available on record it appears that on the basis of report lodged by PW-1 against driver of vehicle bearing No. MH-12/GW-0506 offence has been registered. As per the story of the prosecution one Alhat Sir noticed the act of the accused and noted down the vehicle number. Thereafter, he had informed the said incident to parents of victim, thereafter mother of the victim has lodged the report. From the testimony of PW-1 it indicates that she has not stated anything about the incident, though she admitted that police read over the contents of report to her and victim. In the cross-examination she has admitted that she do not want to continue the case, she had not seen the accused nor number of the vehicle, therefore, testimony of PW-1 is not much useful to the prosecution case.

19. So far question of testimony of PW-2 victim is concern, according to her she along with her friend were going to school by walk, at the relevant time one boy was chasing them and told them stop, stop. Thereafter, they went to the school. On the next day again the said boy chased them and asked them to stop and thrown one chit. Thereafter, on the basis of the incident noticed by Alhat Sir her mother lodged report. However, I would like to state that in the cross-examination she has admitted that she had not informed about incident to her parents and Alhat Sir and she was not intending to lodge report. However, on the say of Alhat Sir her mother lodged report. She has also not seen the chit on the spot. I would like to state that in order to corroborate the testimony of PW-2 victim prosecution has not examined Alhat Sir. Admittedly, no alleged chit has been seized from the spot of incident. From the testimony of PW-2 prosecution failed to establish that accused has outraged the modesty of the victim.

20. It further appears from the testimony of PW-3 that on the day of incident she along with victim were going to school. At the relevant time one boy chased them and asked to pick-up the chit and the said boy was making gesture in obscene manner. I would like to state that testimony regarding accused was making gesture in obscene manner, was not corroborated by victim and her mother PW-1. Though PW-3 has stated that they informed about the incident to Salunkhe Madam and Salunkhe Madam informed to Alhat Sir and thereafter, Alhat Sir disclosed that he had seen the said boy on

vehicle and noted down the vehicle number. However, I would like to state that prosecution has not examined said Salunkhe Madam and Alhat Sir, best reason known to the prosecution. No doubt, on the basis of the number of the vehicle, the offence has been registered. It was the duty of the investigation officer to verify the description of the said boy from the Alhat Sir. However, nothing was done by the investigation officer. No doubt, from the testimony of PW-4 prosecution has established that the said vehicle has been seized from the custody of the accused. At the same time prosecution has called R.T.O. particulars by letter to R.T.O. (Exh. 15) and thereafter, R.T.O. issued vehicle information (Exh. 16) by contending that as per record Mhamunkar Bhavesh is the registered owner of vehicle No. MH-12/GW-0506. Then in such circumstances it was the duty of the investigation officer at least to record the statement of the registered owner of the vehicle, in order to verify, at the relevant time who was carrying the said vehicle. Admittedly, the investigation officer has not arranged identification parade in presence of the witnesses.

21. In so far as fact as to age of the victim and her friend is concern, the prosecution case is that victim was aged 15 yrs. and her friend as 14 yrs. at the time of incident. The victim stated her date of birth as 19.01.2001. The prosecution has filed General Register Extract (Exh. 19) of Narsinha Vidyalaya and bonafide certificate (Exh. 16) as well as for showing the age of friend of victim, prosecution has filed

General Register (Exh. 18) and examined Head Master Subhash Karkhele (PW-5), who stated that the date of birth of victim was 19.01.2001 and date of birth of victim's friend is 28.09.2002, as per the said record. Ld.Counsel for the accused submitted that no birth certificate from any Government Authority is produced on record and there is no ossification test held by the prosecution to show the age of the victim and her friend below 18 yrs.

22. In case of '**Sandeep Janaji Konde Vs. State of Maharashtra, 2016 ALL M.R.(Cri) 1433**' Hon'ble Supreme Court has held that '*the Hon'ble Bombay High Court held that an entry relating to date of birth in school register would be relevant under Sec. 35 of the Evidence Act and that such entry would not have much evidentiary value to prove the age of the person in the absence of material on which the age was recorded.*'

23. In a said case between '**Sunil Baban Gadhane & Ors. Vs. The State of Maharashtra, 2016 ALL M.R.(Cri), 4307**', the victim stated her age below 16 yrs. and the medical evidence of ossification test showed margin of error of two years. Regarding the entry date of birth in school record, it is held that it cannot be form a sole clinching factor for determining the age.

24. In the instant case in absence of any proof from the Primary School, on the basis of which, the entry was alleged to

be taken therein, and further in absence of any birth certificate issued by Municipal Council or Government Authority, the entry in bonafide certificate (Exh. 16) cannot be taken as full proof evidence to hold that victim was below 18 yrs. of the age.

25. Admittedly, no alleged chit has been recovered from the spot of incident. It further appears that on the say of the Alhat Sir informant has lodged report against the accused. However, informant and victim have no interest to continue with the case against the accused. It further appears that prosecution has not examined the material witnesses i.e. Alhat Sir who had noticed about the incident and thereafter, he had informed the said incident to Salunkhe Madam. The testimony of the victim and PW-3 is not corroborated by the independent witnesses. Identity of the accused is also doubtful. Even testimony of child victim PW-2 and 3 is not reliable and trustworthy and evidence of victim has not been duly corroborated by the material witnesses i.e. Alhat Sir and Salunkhe Madam, who were available. Therefore, in these facts, presumption stands rebutted by accused and it will not be safe to rely upon the testimony of child victim PW-2 and 3.

26. In view of above discussion the prosecution evidence, on scrutiny is not found credible and acceptable therefore, the judicial precedent relied on behalf of the prosecution in this case could not be considered in its favour, as the facts and circumstances are distinguishable and not akin with the facts and circumstances of the present case.

Therefore, there is no substance in the submission of Ld.A.P.P.
In the result I answer point No. 1 and 2 in the negative.

AS TO POINT NO. 3 :

27. In view of negative findings to point No. 1 and 2, the accused is entitled to be acquitted. Hence, in answer to this point I pass the following order.

O R D E R

1. Accused Somnath Popat Karche is hereby acquitted of the offences punishable under Sec. 354-D of I.P.C. and 12 of the Protection of Children From Sexual Offences Act.
2. His bail bond stands cancelled.
3. The accused in compliance of provisions of Sec. 437-A of Cr.P.C. shall submit P.R.Bond of Rs. 15,000/- with like amount surety.
4. Muddemal property i.e. Hero Honda CBZ motorcycle No. MH-12/GW-0506 be returned to the registered owner after verification of documents after appeal period.

Dt. : 15.03.2018

(S. H. Gwalani)
Special Judge (POCSO), Pune.

I affirm that the contents of this P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	:	Smt. N. A. Surve
Court Name	:	Shri S. H. Gwalani Special Judge(POCSO),Pune.
Date of Decision	:	15.03.2018
Judgment signed by Presiding Officer on	:	19.03.2018
Judgment Uploaded on	:	19.03.2018