

Exh.No. 18.

Received on :06.02.2019

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Decided on :15.02.2023

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**IN THE COURT OF FAST TRACK SPECIAL COURT,
PUNE AT PUNE**

(Presided over by Shri K. K. Jahagirdar)

Spl. Case (POCSO) No. 45/2019

The State of Maharashtra,
Through Bibavevadi Police Station,
Pune.

} COMPLAINANT

Vs.

Pandurang @ Sahil Babu Kambale.

Age 22 years, Occupation : Painting

Resident of: Upper Indira Nagar,

276, Ota, A 41/42, Bibavevadi, Pune.

} ACCUSED

**Charge :- Offence punishable under Sections 363, 376
(n) of the Indian Penal Code and offence punishable
under under Sections 4 and 6 of the Protection of
Children from Sexual Offences Act, 2012.**

Advocates :-

Smt. Smt. S. S. Narote, Learned Spl. P.P. for State

Shri S.P. Kumbhar a/w. K. M. Gawale, Learned Advocate for accused.

J U D G M E N T

(Delivered on 15th February, 2023.)

1 Accused Pandurang @ Sahil Babu Kambale is
facing trial with allegation of committing offence punishable

under Sections 363, 376 (n) of the Indian Penal Code (hereinafter referred to as the IPC) and offence punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act).

2 It is the case of prosecution that one Mohammad Ali Mubaraq Shaikh has lodged complaint on 26.04.2017 and stated that he is residing at Upper Ota, Bibavewadi , Pune along with his wife and 3 children. At that time victim was taking education in 11th standard. He has further stated that on 26.04.2017 accused enticed victim who was 17 years old and took her to Madha, Indiranagar Zopadpatti, Taluka Madha, District Solapur and performed marriage in a temple and committed sexual intercourse with her from time to time. After attaining the age of majority by victim accused again married with victim at Alandi as per Hindu rites and from the said wedlock victim begotten a child. Accused has enticed victim and committed sexual intercourse with victim when she was minor, therefore, he lodged complaint.

On the basis of complaint crime was registered against accused at C. R. No.133/2017. The investigating officer investigated the matter and filed charge-sheet against accused.

3 The charge is framed against accused at Exh. 7 for the offence punishable under Sections 363, 376 (n) of the Indian Penal Code and offence punishable under Sections 4 and 6 of

the Protection of Children from Sexual Offences Act, 2012. The contents of charge are read over and explained to accused in vernacular to which he pleaded not guilty and claimed to be tried.

4 The prosecution has examined only two witnesses. The statement of accused under Section 313 of Cr.P.C. is dispensed with as there is no incriminating evidence on record against accused. Heard Learned Advocates for both the sides.

5 After hearing submissions of both the parties, following points arise for my determination and I have recorded my findings against each of them for the reasons given below :-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings.</u>
1	Does prosecution prove that on 26.04.2017 at about 1:30 pm at Upper Indira Nagar, Bibavewadi, Pune accused kidnapped victim a minor girl from the lawful guardianship of her parents without their consent ?	Negative.
2	Does prosecution further prove that at Madha, Indiranagar, Zopadpatti, Taluka Madha, District Solapur, accused committed rape repeatedly on victim a minor girl ?	Negative
3	Does prosecution further prove that on the aforesaid date, time and place accused committed penetrative sexual assault on victim a minor girl ?	Negative
4	Does prosecution further prove that on the aforesaid date, time and place accused committed	

	aggravated penetrative sexual assault on the victim a minor girl and made her pregnant as a consequence of sexual assault ?	Negative
5	Does prosecution prove that on the aforesaid date, time and place accused committed aggravated penetrative sexual assault on victim a minor girl more than once or repeatedly ?	Negative
6	What order ?	Accused acquitted

Reasons

6 **As to all points:-** In order to prove its case, prosecution has examined only two witnesses out of which PW-1 is complainant Mohammad Ali Mubaraq Shaikh who is father of victim at Exh.11 and PW-2 is victim at Exh.13. Thereafter summons were issued to the investigating officer, but he failed to appear, therefore, prosecution side is closed and matter is fixed for judgment. The statement of accused under Section 313 of Cr.P.C. is dispensed with.

7 Complainant has deposed in the Court that in the year 2017 victim left the house and started residing with her aunt. Complainant came to know that accused has enticed victim, therefore, he lodged complaint against him. Except this, complainant has not stated anything, therefore, he is declared hostile by the learned A.P.P.. As such he has not supported the prosecution case.

8 Victim has denied all the questions put by the learned A.P.P. and stated that she married with accused and residing with him. During cross-examination conducted by accused, complainant has stated that when victim left the house, her age was more than 18 years. *“It is true that victim left the house and went to the house of her maternal aunt due to quarrel took place between her and us. It is true that accused has not enticed victim. I have no complaint against accused. It is true that there was no physical relation between accused and victim”*.

9 Prosecution has examined victim as PW-2 below Exh.13. She has stated that in the year 2017 there was quarrel between herself and her father. She left the house and went to the house of her aunt. She denied all other allegations during cross-examination conducted by the learned A.P.P. after declaring her hostile. During cross-examination by accused victim has admitted that at the time of incident she was more than 18 years of age. Victim has not stated anywhere that accused enticed her and committed sexual intercourse with her. Victim has denied the suggestions given by learned A.P.P. that accused enticed her and committed sexual intercourse with her. Victim has also denied her alleged date of birth and also denied that she was minor at the time of incident. On the contrary, victim has stated that due to quarrel she left the house and went to the house of her aunt, and after attaining majority she married with accused and delivered a male child. Now she is leading happy life with

accused and she has no complaint against him. Under such circumstances, it can be said that prosecution has failed to prove the case against accused. There is absolutely no evidence against accused to prove the case. The evidence on record is not sufficient to prove the case against accused, thus, accused is entitled to acquittal. In the result, I record my findings on all points in negative and proceed to pass following order.

ORDER

- i Accused Pandurang @ Sahil Bapu Kambale is hereby acquitted of the offence punishable under Sections 363, 376 (n) of the Indian Penal Code and offence punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 vide Section 235(1) of Cr.P.C..
- ii Bail bond of accused stands cancelled.
- iii Accused to furnish personal bond and surety bond of Rs.15,000/- (Rupees Fifteen Thousand) in view of compliance under Section 437-A of the Cr.P.C. with current address proof and undertaking that he will appear before appellate Court in case an appeal will preferred.

iv Today accused is released on P. R bond of
Rs.15,000/- (Rupees Fifteen Thousand) and time
granted to furnish surety.

v Seized muddemal property, being worthless, be
destroyed after appeal period is over.

Dictated and pronounced in open Court.

Date:-15.02.2023.

(K. K. Jahagirdar)
Extra Jt. Addl. Sessions Judge,
Pune.

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer :K.D.Pawar.

Name of the Court : Shri K.K. Jahagirdar.
: Fast Track Special Court,
: Pune.

Date of Judgment : 15.02.2023
Judgment signed by the P.O. : 15.02.2023
Judgment uploaded on : 16.02.2023

