

(1)

Spl. Case No. 371/2017 (Judg)

Exh. 30

Received on : 11.08.2017

Registered on : 11.08.2017

Decided on : 23.01.2020

Duration : Ys, Ms, Ds.
02 05 12

IN THE COURT OF THE SESSIONS JUDGE,
AT : PUNE

**(Presided over by Neeraj P. Dhote,
Principal District & Sessions Judge, Pune)**

SPECIAL CASE NO. 371/2017
(CNR-MHPU01-010035-2017)

State of Maharashtra
Through Police Inspector
Sinhagad Police Station, Pune.

.. **PROSECUTION**

VERSUS

Parshuram @ Bala Ganpat Raut
Age – 20 Years, Occu- Nil
R/at– Anand Vihar, Survey No.2
Near Shankar Mandir,
Behind Aba Patil Bungalow,
Rajmatanagar, Hingne Khurd,
PUNE.

.. **ACCUSED**

APPEARANCES :

Ld. A.P.P. Shri. Pathare, for Prosecution.
Ld. Adv. Shri. G. G. Bhosale, for accused.

JUDGMENT

(Dictated and delivered in open Court on 23.01.2020)

(1) The accused before the Court stands prosecuted for the offence punishable under Sections 354 (A) & (D) of the Indian Penal Code (I.P.C.), and under Section- 7 r/w. Section – 8 and Section – 11 r/w. Section- 12 of the Prevention of Children from Sexual Offences Act, 2012 (POCSO), in Crime No. 359/2015, registered with Police Station Sinhagad.

(2) The prosecution's case as revealed from the police report, is as under :

The informant resides at Anandnagar, Hingne Khurd, Pune, with her husband, son and victim daughter. The accused and the victim were in the same tuition class and known to each other. The accused used to follow and harass the victim. The accused used to give phone calls to the victim from different mobile numbers, and so she informed to her mother. Despite giving understanding from the informant to the accused, the harassment was continued. Eventually, the mother lodged report with the police and crime vide C.R. No. 359/2015 came to be registered with Sinhagad Police Station, under the aforementioned Sections of I.P.C. and POCSO.

The Police recorded the statement of victim and other witnesses and carried out the required investigation and submitted the charge-sheet.

(3) The charge for the offence punishable under Sections 354 (A) and (D) of I.P.C., and for the offence punishable under

Sections 7 r/w. Section – 8 and Section – 11 r/w. Section- 12 of the POCSO came to be framed against the accused at Exh.6 to which he pleaded not guilty and claimed to be tried.

To prove the charge, the prosecution examined the informant Anjana Dilip Jagade, as P.W. 1 at Exh. 24, the victim as P.W. 2 at Exh.26 and father of victim Dilip Arjun Jagade, as P.W. 3 at Exh.27. The report lodged by the informant is brought on record at Exh.25. The prosecution closed their evidence by evidence closure pursis vide Exh.28. The statement of accused came to be recorded pursuant to the provisions of Section-313 of Cr.P.C. at Exh.29 and he denied the evidence of the prosecution. The accused neither examined himself nor examined any witness.

(4) Heard the learned APP for the prosecution and the learned defence advocate. Perused the evidence on record. Following points arise for my determination :

<u>Points</u>	<u>Findings</u>
1) Whether prosecution proved that the.. victim was minor during the period from 2011 to 2015 ?	Affirmative.
2) Whether prosecution proved that from the.. year 2011, the accused committed physical contact with the victim, advanced unwelcome overtures to the victim, followed and contacted the victim while she used to go to her school / college and	Negative.

thereby committed an offence punishable under Section – 354(A) and (D) of Indian Penal Code ?

- 3) Whether prosecution proved that the.. Negative
accused from the year 2011, committed sexual assault and sexual harassment to the victim and thereby committed an offence punishable under Sections – 7, r/w. Section 8 and Section – 11 r/w. Section 12 of the Protection of Children from Sexual Offences Act, 2012 ?
- 4) What order ? .. As per final order.

REASONS

AS TO POINT NO. 1 :-

(5) According to the mother of the victim, 14.11.1998 is the date of birth of the victim. So also, the victim in her evidence, has deposed the same date of her birth. In the cross examination, there is no challenge to the said date of birth. The alleged incident is reported to the police on 25.08.2015 and, therefore, it is clear that on that date, the victim was minor. Without hesitation, it can be held that the prosecution has proved that the victim was minor at the time of incident.

AS TO POINT NOS. 2 TO 4 :-

(6) Though the informant who is the mother of the victim deposed that whenever the victim used to go to the school accused used to follow her and trouble her and used to tell the

victim that he will ruin her and accused used bad words and stops her in her way, in her cross examination, she has deposed that her daughter never complained to her against the accused that he troubles her. She further goes to say in the cross examination that she had no suspicion on the accused about the chit mentioning the name of the victim. In the cross examination, the evidence of this witness given for the prosecution, has received severe dent. She gave contrary version in the cross examination which creates doubt about her evidence that the victim informed her about the trouble by the accused. Admittedly, the informant is not the eye witness to any of the incidents and her evidence given in the examination-in-chief even if accepted, would be hearsay in nature.

(7) The victim in her evidence nowhere deposed that the accused committed sexual harassment, stalking and other acts, so as to prove the charge. Her evidence show that the victim did not support the prosecution, therefore, she was cross examined by the learned APP, however, nothing beneficial for prosecution, could come up in her evidence. Her evidence go to show that she was living happy married life. In her cross examination done by the defence, it has come that her mother lodged the report against the accused out of misunderstanding and suspicion.

(8) The father of victim in his evidence deposed nothing against the accused so as to prove the charge. His evidence show

that he was not aware about any incident as the victim did not inform him. His evidence show that he did not support the prosecution and, therefore, the prosecution cross examined him. However, nothing fruitful has come in his evidence to prove the charge.

(9) The evidence available on record is neither cogent, nor sufficient to prove the charge. The essential ingredients for the offence under which the charge is framed against the accused, are completely absent from the prosecution's evidence. It is true that there are presumption under the provisions of Section – 29 and 30 of POCSO Act, however, the evidence on record is not of such nature which leads to believe the existence of acts of sexual assault, sexual harassment and other ingredients of the offence under which the charge is framed. The only order which can be passed on the basis of the evidence available on record, is that of acquittal. Hence, the following order :

ORDER

1. The Accused - Parshuram @ Bala Ganpat Raut is acquitted under Section 235(1) of the Code of Criminal Procedure, 1973, for the offence punishable under Sections 354 (A) & (D) of Indian Penal Code and under Section- 7 r/w. Section 8 and under Section- 11 r/w. Section 12 of the Protection of Children from Sexual Offences Act, 2012, in C.R. No. 359/2015 registered with Police Station Sinhagad.

2. The Accused Parshuram @ Bala Ganpat Raut is on bail. His bail bond stands cancelled.
3. The muddemal property, if any, be disposed of in accordance with law, after appeal period is over.
4. The Accused to execute personal bond of Rs. 15,000/- and shall furnish one surety in the like amount to appear before the Higher Court as and when such Court issues notice in respect of any appeal or petition filed against this Judgment, in compliance of Section 437A of the Code of Criminal Procedure.

(Neeraj P. Dhote)
Sessions Judge, Pune.

Date :- 23.01.2020.

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

Name of Steno :- Mrs. S. S. Yengul
Stenographer (Grade-1)

Court Name :- Principal District & Sessions Judge,
Pune.

Date :- 23.01.2020
Date of Sign :- 23.01.2020
Date of PDF :- 04.02.2020.