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Duration :- Y. M. Ds.  
04 01 10

**Exhibit No.**

**IN THE COURT OF DISTRICT JUDGE-18 & ADDITIONAL  
SESSIONS JUDGE, PUNE.**

**A T.... P U N E.**

(Presided over by - S.B. Salunkhe)

**SPECIAL (POCSO) CASE NO. 07 OF 2019**

(CNR NO. MHPU01-000322-2019)

State of Maharashtra,  
Through The Police Station Officer,  
Police Station, Pimpri,  
Tal. Haveli, Dist. Pune.

**...Prosecution.**

...Versus...

Sachin Rohidas Mhaske,  
Age- 22 years, Occu.-nil,  
R/o. Nakhate Vasti, near Tambe School,  
Shiv-Ganesh Colony, Rahatani, Pune.

**...Accused.**

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**Mr. V. B. Pathare, A.PP for the State,  
Mr. R. R. Parab, learned Advocate for the accused.**

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**J U D G M E N T**

(Delivered on 14<sup>th</sup> day of February, 2023)

1] Accused is charged for offence punishable U/s.  
354-D, 323 and 506 of the Indian Penal Code and section

12 of the Protection of Children from Sexual Offences Act, 2012 (herein-after referred to as the 'IPC' and 'POCSO Act' respectively).

2] Brief facts of the prosecution's case are as under :-

That the victim who is child lodged information Exh.23 alleging that on 02.10.2018 at about 4.45 p.m. she and her friend Shruti were proceeding by Pleasure vehicle towards the Mamta Hotel for breakfast. When they were near Vallabh Nagar S.T. stand, the accused came from back side on motorcycle and stopped her two wheeler motorcycle and asked her "why she is not talking with him, he wants to talk with her". At that time, she replied that she does not want to talk with him and he should not try to contact her. At that time he given threat that he will see her and left the spot. She given called to the uncle and called. Prior to two months when she proceeded to meet the friend Shurti at Pimple Saudagar, the accused met her and told that he wants to talk with her. She denied. At that time he pulled her hair and given slap and ran away. She made complaint to her mother, at that time the accused and his brother visited their house and begs apology hence not filed complaint. Then they visited Sant Tukaram Police Chowky and lodged the FIR.

.. 3...

3] On the basis of the report of the informant, crime is registered vide CR No.917/2018 against the accused for the offence punishable under section 354-D, 323, 506 of the IPC and section 12 of the POCSO Act at Pimpri Police Station.

4] The investigation of the same handed over to the PW No.2 PSI Utkarsha Deshmukh. She verified FIR Exh. 23 with the complainant victim, collected School Leaving Certificate Exh.22, drawn spot panchanama Exh.25, got recorded the statement of the complainant under Section 164 of the Cr.P.C. Exh.31. She transpired in her investigation that the accused has committed the offence punishable under section 354-D, 323, 506 of the IPC and section 12 of the POCSO Act. Hence filed charge-sheet before this court.

5] My predecessor framed the charge against the accused at Exh.05 for the offence punishable under section 354-D, 323, 506 of IPC and section 12 of the POCSO Act, The contents of the charge were read over and explained to the accused. He pleaded not guilty and claimed to be tried.

6] I have recorded the statement of accused under section 313 of the Cr.P.C. His defence is that of total denial.

7] Following points arise for my determination and my findings with reasons thereon are as under:

| <b>Sr. No.</b> | <b>POINTS</b>                                                                                                                                                                                                                                                       | <b>FINDINGS</b>       |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 1.             | Whether prosecution proved that on 02.10.2018 at about 04.45 near Vallabh Nagar ST Stand, the accused followed to victim and physically contacted and advanced involving unwelcome and explicit sexual overtures and thereby outraged the modesty of victim child ? | ..In the negative.    |
| 2.             | Whether prosecution proved that on above date, time and place, the accused committed criminal intimidation by giving threat to the victim child ?                                                                                                                   | ..In the negative.    |
| 3.             | Whether prosecution proved that prior to two months of 02/10/2018 the accused has voluntarily caused hurt to the child victim by giving a slap and pulling hair ?                                                                                                   | ..In the negative.    |
| 4.             | Whether prosecution proved that on above date, time and place, the accused committed sexual harassment of victim child ?                                                                                                                                            | ..In the negative.    |
| 5.             | What offence is proved against the accused?                                                                                                                                                                                                                         | ..No offence.         |
| 6.             | What order?                                                                                                                                                                                                                                                         | Accused is acquitted. |

## **REASONS**

### **AS TO POINTS NO. 1 TO 6 :**

8] To prove the guilt of the accused beyond doubt, the prosecution examined :-

i) P.W. No.1 Victim at Exh.21, the FIR lodged by her is at Exh.23, the leaving certificate of the victim is at Exh.22, her statement recorded by the JMFC Pimpri, Pune under Sec. 164 of Cr.P.C. is at Exh. 24.

ii) The P.W. No.2 Investigating Officer PSI Utkarsha Pramod Deshmkh (PW-2) at Exh.28, who has investigated crime and filed charge-sheet against accused.

9] The accused has admitted Leaving Certificate of the victim Exh.22, Spot panchanama Exh.25, arrest panchanama Exh.26.

10] The APP argued that the prosecution has proved guilt of the accused beyond reasonable doubt. The prosecution has examined victim at Exh.21. She given her birth date as 06.07.2001, the Leaving Certificate Exh.22 is admitted by the accused. The alleged incident is dated 02.10.2018. The victim was child on the date of alleged offence. The victim has deposed that the one motorcycle came from the back side and stopped their motorcycle. The boy on motorcycle teased her and asked her address. She

has not given answer to it. She given call to the uncle and lodged the FIR Exh. 23. She has denied the portion marked A and B Exh.29 and 30. The Exh.29 and 30 are proved through P.W. No.2, IO Smt. PSI Utkarsha Deshmukh. The spot panchanama Exh.25 is admitted by the accused. The prosecution proved guilt of the accused beyond reasonable doubt and prayed to convict him.

11] The Advocate of the accused argued that the victim has not disclosed the name of accused as he has stopped vehicle and asked to talk with him or chase frequently to her. The cross-examination of the complainant be taken into consideration. The victim deposed that as per say of police she deposed before JMFC, Pimpri. The evidence of P.W. No.2 IO in support of offence is heresay and not substantive one. He relied on ruling **AIR Online 2021 Bom. 657 Imran Shabbir Gauri Vs. State of Maharashtra**. The prosecution has failed to prove the guilt of the accused beyond reasonable doubt and prayed to acquit accused.

12] The prosecution examined victim at Exh.21. As per her chief examination, her birth date is 06.07.2001. The accused has admitted Leaving Certificate issued by Jai Hind High School Exh.22 wherein birth date of the victim is mentioned as 06.07.2001. The alleged offence is took place on 02.10.2001. This fact itself shows that when the alleged

offence took place victim was below 18 years. She was child.

13] I have gone through the FIR Exh.23. As per the FIR on 02.10.2018 at about 4.45 p.m. victim was proceeding by the pleasure motorcycle along with the friend Shruti. When they were near Vallabh Nagar ST stand, the accused came back side on motorcycle, stopped motorcycle and asked her why she was not talking with him. He is intended to talk with her. At that time she replied that she does not want to talk with him and not to talk. He given threat and left the spot. She called uncle. Prior to two months when she was Pimple Saudagar to visit her friend Shruti, the accused stopped her and asked to talk, she denied. Hence he pulled her hair and given slap. She reported incident to her mother, the accused and his brother visited her house and beg apologies. Hence she has not lodged the complaint.

14] The complainant has denied the Exh.29 and 30 in FIR Exh.23, which discloses that the accused has come from back side, asked to talk her, she denied, he given threat and previous incident about pulling the hair and given slap and apologies by him and his brother. The prosecution declared her adverse and cross-examined at length but nothing was elicited from it. The APP submitted that the said portion allegations are proved by examining

IO. But it is pertinent to note that the evidence has not come on record which will show that complainant is deposing due to ulterior motive. I am not agree with the arguments of the APP.

15]           The statement of victim is recorded by JMFC, Pimpri under section 164 of Cr.P.C., which is at Exh.24. The victim PW-1 has admitted her signature on it and her statement is recorded as per her say. In cross-examination she has admitted that prior to record her statement, the police told her and her family members, it need to depose as per FIR, hence she has given such a statement. She has not denied in chief examination that boy has stopped them and asked to talk. She denied that the said boy was accused. I come to conclusion that the said statement Exh. 24 is not helpful as the complainant denied the contents of it.

16]           The prosecution has relied on circumstantial evidence, spot panchnama Exh.25. The said panchanama is admitted by the accused as the complainant victim is not supporting to the prosecution about the alleged incident committed by the accused alleged in the FIR. It can not be said that the said spot panchanama sufficient to prove the guilt of the accused beyond reasonable doubt.

.. 9...

17] I have gone through the rulling **AIR Online 2021 Bom 657 Imran Shabbir Gauri Vs. State of Maharashtra** wherein it is observed that the statement under section 164 of Cr.PC. is not substantive evidence and has not been given status of examination in chief. The FIR is nothing but what has been told orally by the first informant to the police. It is cardinal principle that the evidence has to be direct. No doubt the police who records the FIR has heard what the first informant has said. So at the most the evidence of investigating officer can be said to be direct evidence about what he has heard. It cannot be a direct evidence of what has happened. I come to the conclusion that the above observations are applicable to the present case and facts and circumstances.

18] Taking into consideration, the evidence on record and above discussion, I come to the conclusion that prosecution has failed to prove guilt of the accused beyond reasonable doubt. Thus, points under consideration are answered accordingly. I proceed to pass following order.

### **ORDER**

- (i) Accused Sachin Rohidas Mhaske is acquitted under section 248(1) of Cr.PC. for the offence punishable under section 354-D 323, 506 of the Indian Penal Code and section 12 of the Protection of Children from Sexual Offences Act, 2012.

- (ii) The bail bond of the accused stands cancelled.
- (iii) The accused is directed to execute PR bond of Rs.50,000/- and furnish surety of like amount under section 437-A of the Cr.P.C.

[Judgment dictated and pronounced in open Court.]

Pune.

Date : 14/02/2023

(S.B. Salunkhe)  
Additional District and  
Sessions Judge, Pune.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file order is same word for word as per original Order.

|                                             |   |                                                                         |
|---------------------------------------------|---|-------------------------------------------------------------------------|
| Name of Steno                               | : | A.E. Deshmukh<br>(Stenographer Grade-III)                               |
| Court Name                                  | : | Shri. S.B. Salunkhe<br>Additional District and<br>Sessions Judge, Pune. |
| Date of Judgment                            | : | 14/02/2023                                                              |
| Judgment signed by<br>the Presiding Officer | : | 16/02/2023                                                              |
| Judgment Uploaded on                        | : | 16/02/2023                                                              |