



Received on : 29/04/2017
Registered on : 02/05/2017
Decided on : 10/05/2022
Duration : 05Y, 00M, 09D.

IN THE COURT OF SESSION, PUNE AT PUNE

[Before Special Judge & Additional Sessions Judge,
Smt. A. V. Rotte]

Spl.(Child Prot.) Case No. 187/2017

Exh. No. 55

[CNR No. : MHPU01-005687-2017]

State of Maharashtra]
Through,]
Police Inspector,]
Police Station, Wanworie, Pune.] **.... Prosecution.**

Versus

Aafan Aafroz Shaikh]
Age- 18 Yrs, Occ- Saloon Business]
R/at- Lane No.1, Panchasheelnagar,]
Saibaba Temple, Ghorpadigaon,]
Pune.] **.... Accused.**

Offences : Punishable under Sections
363, 376, 354(D), 506 of Indian
Penal Code and Sections 4, 8, 12 of
the Protection of Children from
Sexual Offences (POCSO) Act.

Appearance :

Ld. APP Mr.Javed Khan for State.

Ld. Adv. Mr.A.D.Shinde for Accused.

J U D G M E N T

(Delivered on : 10/05/2022)

1] Accused is facing trial for the offences punishable under Sections 363, 376, 354(D), 506 of The Indian Penal Code and Sections 4, 8 and 12 of The Protection of Children from Sexual Offences (POCSO) Act for kidnapping minor victim girl of 16 years, committing rape and penetrative sexual assault on her, committing sexual assault and harassment of minor victim girl, threatening her and outraging her modesty.

2] The case pertains to a minor victim girl and registered under the Protection of Children from Sexual Offences (POCSO) Act; therefore, names of the victim girl and her relatives are not mentioned here to safeguard their identity.

3] **The case of Prosecution is as under :**

In the year 2017, victim girl was 16 years of age and used to study in 10th standard. She used to attend the school during 07.00 am. to 01.00 pm. On 29/01/2017 there was quarrel between elder sister of victim and victim; therefore, mother of

both shouted to victim. Then on 30/01/2017, victim girl started for school at 07.00 am., on her two wheeler; but she did not return till 03.00 pm. Then mother of victim inquired with the school and came to know that, victim did not attend the school on that day. Therefore, immediately mother of victim approached to Wanworie Police Station and lodged the report of kidnapping of victim, vide Cr. No.57/2017.

4] Then during course of investigation, it is revealed that, victim was at Mumbai. Therefore, police went to Mumbai and from the house of their relative at Behrampada, Mumbai, victim was taken into custody and brought at Pune. Then statement of victim was recorded. As per the prosecution, victim stated that, on 28/01/2017 accused followed victim when she started for school and then insisted for talking with her. Accused threatened her by saying that, if she denies, he would tell to her parents that she wanders with other boys. Then accused took her to a tin shed room in a lane and committed sexual intercourse with her. Victim shouted, but nobody came to help victim. Then accused threatened her and then dropped her near to their residential society. Thereafter, on 29/01/2017 victim was at home and on 30/01/2017 when she started for school, she got afraid of accused. Therefore, she dropped her two wheeler in the campus of Jay Society and decided to leave Pune. Then she went to Kalyan. Then

on 31/01/2017 she went to Gujarat, city Baruch. Then she went to the house of her aunt at Karmad. She met to the son of her aunt. Son of her aunt asked her to return to Pune. Then on 01/02/2017 son of her aunt obtained railway ticket for mumbai. Then on that day at 02.30 pm., she came at Bandra Railway Station, Mumbai and called to her mother and intimated that, she was at Bandra, Mumbai. Then the person at Mumbai, dropped her to the house of her relative at Behrampada, Mumbai. Then police took her into the custody and brought at Pune. As such, victim alleged that, accused committed forceful sexual intercourse with her.

5] During the course of investigation, police recorded statements of witnesses. Medical examination of victim and accused has been conducted. Reports have been collected. Clothes and samples of victim and accused were collected and sent for chemical analysis. Reports are also collected. Panchanamas have been drawn. Accused has been arrested. As such, on completion of investigation, police filed charge-sheet against accused before the Special Court at Pune. The statement of victim before the Magistrate also came to be recorded and filed along with the charge-sheet.

6] My learned Predecessor framed charge against accused for the aforesaid offences. Accused pleaded as not guilty and claimed to be tried. Therefore, trial proceeded against him.

7] Prosecution relied upon oral and documentary evidence and prayed for conviction of accused. On the other hand, defence case is of total denial and false implication.

8] After going through the submissions of both the sides, I prefer to frame following points for adjudication of this case along with the findings for the reasons discussed below.

POINTS

FINDINGS

1] Whether prosecution proves that, on 28/01/2017 at about 07.30 am., in between the way of residential house of informant to Azam School Campus, AFMC Gate, Pune, accused took or enticed the minor victim girl of 16 years out of the custody of lawful guardian of said girl without the consent of her guardian and thereby committed an offence punishable under Section 363 of the Indian Penal Code ?

.... No.

2] Whether prosecution proves that, on aforesaid date, in a tin shed, situated near Golibar Maidan, Canal side, beside the Irrigation Office, Pune and during course of same transaction, accused committed rape on the minor victim girl of 16 years and thereby committed an offence of rape, punishable under Section 376 of the Indian Penal Code ?

.... No.

- 3] Whether prosecution proves that, on aforesaid date, time and place and during course of same transaction, accused followed the minor victim girl of 16 years and attempted to contact the victim girl to foster personal interaction with her, despite her clear indication of disinterest and thereby committed an offence punishable under Section 354(D) of the Indian Penal Code ?
.... No.
- 4] Whether prosecution proves that, on aforesaid date, time and place and during course of same transaction, accused had given criminal intimidation by threatening the minor victim girl of 16 years with injury to her person with intent to cause alarm to her, or to cause her to an act which she is not legally bound to do and thereby committed an offence punishable under Section 506 of the Indian Penal Code ?
.... No.
- 5] Whether prosecution proves that, on aforesaid date, time and place and during course of same transaction, accused committed penetrative sexual assault on the minor victim girl of 16 years and committed offence defined under Section 3, punishable under Section 4 of the Protection of Children from Sexual Offences (POCSO) Act ?
.... No.

6] Whether prosecution proves that, on aforesaid date, time and place and during course of same transaction, accused physically touched the minor victim girl of 16 years with sexual intent and thereby committed sexual assault on her and committed offence defined under Section 7, punishable under Section 8 of the Protection of Children from Sexual Offences (POCSO) Act ?

.... No.

7] Whether prosecution proves that, on aforesaid date, time and place and during course of same transaction, accused did sexual intercourse with the minor victim girl of 16 years and sexually harassed her and thereby committed sexual harassment defined under Section 11, punishable under Section 12 of the Protection of Children from Sexual Offences (POCSO) Act ?

.... No.

8] What Order ?

.... As per final Order.

9] Heard the learned APP Mr.Javed Khan for the Prosecution and learned advocate Mr.A.D.Shinde for accused. Perused the oral and documentary evidence on record.

10] To prove the guilt of accused, prosecution has relied upon the oral evidence of following witnesses.

<u>Witness No.</u>	<u>Witness Name</u>	<u>Nature</u>	<u>Exh. No.</u>
1]	Mother of victim girl	Informant/witness	19
2]	Victim girl 'X'	Witness	22
3]	Shridhar Bramhashankar Pande	Investigation officer	32
4]	Varsharani Vishwambhar Ghate	Investigation officer	49

11] So also, prosecution has relied upon the following documentary evidence.

<u>Sr.No.</u>	<u>Name of the document</u>	<u>Exh. No.</u>
1]	FIR statement	20
2]	Printed FIR	20/A
3]	Statement of victim girl recorded under Section 313 of Cr.P.C.	23
4]	Consent Form	24
5]	Medical examination report	25
6]	Seizure panchanama of clothes of victim girl	26

7]	Seizure panchanama of clothes of accused	27
8]	Medical examination report of accused	28
9]	Spot panchanama	29
10]	Photocopy of adhar card of victim girl	30
11]	Photocopy of birth certificate of victim girl	31
12]	Intimations given to all Control Rooms, Pune; all Police Stations, Pune and Crime Branch, Pune about missing of victim girl	33 to 35
13]	Letter issued to Principal of school of victim girl for getting CCTV footage of the school premises	36
14]	Letter regarding mentioning of note in the station diary	37
15]	Letter issued to Police Station, Nirmalnagar, Thane	38
16]	Letters addressed to Senior Police Inspector and Special Court about addition of offence	40, 41
17]	Letter addressed to Sassoon Hospital, Pune for conducting medical examination of victim girl	42

18]	Letter addressed to Chemical Analyser, Pune	43
19]	Letter addressed to Sassoon Hospital, Pune for conducting medical examination of accused	44
20]	Letter addressed to CJM, Pune for recording statement of victim girl under Section 164 of Cr.P.C.	45
21]	Chemical Analyser's Reports	46, 47
22]	Arrest panchanama	48

REASONS

AS TO POINTS NO.1 TO 7 :

12] All points have taken up for discussion together.

13] Victim girl is the direct witness of the incident and examined as PW No.2 here. Presently, she is residing at Manama East, State of Bahrain. She deposed that, in the year 2017 she used to study in 10th standard and her school timing was 07.00 am. to 12.00 noon. But she denied that, any incident happened on 28/01/2017. She has not supported the prosecution on material aspects of kidnapping, sexual assault, rape or penetrative sexual assault. She denied the Portion Marks 'A', 'B', 'C' of her statement before police. These contents of portion marks were confronted to

investigation officer PW No.4 PSI Mrs. Ghate. She stated that, victim narrated these contents to her. Therefore, these portion marks are exhibited as Exh.50, Exh.51 and Exh.52. Victim girl has denied all the suggestions of learned APP about happening of any incident of ravishing, sexual assault or penetrative sexual assault with her. Therefore, it is seen that, victim girl is not consistent before this Court. She even denied to identify the accused present before the Court. Her version before the police and the learned Magistrate is different than the deposition before this Court. Therefore, victim girl is not seen to be a reliable witness to draw any conclusion. Evidence led through PW No.2 victim girl is of no use for the prosecution.

14] The further material witness is PW No.1 mother of victim. Her evidence is seen to be relevant to the extent that, she lodged report about kidnapping of victim as per Exh.20, Exh.20/A. PW No.1 has also not supported the prosecution on material aspect of incident of sexual assault or penetrative sexual assault. She denied that, victim ever narrated to her any such incident. Therefore, evidence of mother of victim is also not much useful to prove the alleged offence against accused.

15] Victim girl has admitted her signature on the consent form at Exh.24 for her medical examination. The medical examination report is admitted by the defence and marked as

Exh.25. On local examination of gentiles, anus and oral cavity of victim, doctor has given the finding as normal. There was no injury on any of the body part of victim. The final opinion of doctor is “there is no evidence of penetrative sexual vaginal intercourse. There is no evidence of physical assault.” Doctor has opined that, there is no such evidence of sexual intercourse with the victim. There is no evidence of any physical assault on victim. Therefore, medical report is also not much useful for the prosecution case.

16] Defence has admitted the seizure panchanama of clothes of victim, which is at Exh.26, seizure panchanama of clothes of accused Exh.27, medical examination report of accused Exh.28, spot panchanama Exh.29 and birth certificate of victim Exh.31. Prosecution has placed on record the chemical analyser's reports at Exh.46 and Exh.47. Nothing incriminating is brought on record through the chemical analyser's reports or any of the above said admitted documents.

17] Prosecution has examined two police officers. PW No.3 PSI Mr. Pande is the investigation officer and PW No.4 PSI Mrs.Ghate has recorded the statement of victim girl. But the evidence of these police officers are relevant to the extent of carrying out investigation in the matter. As stated above, the most important witness victim girl has not supported the prosecution on

material aspects. Therefore, there is no substantive evidence available against accused. In this background, the evidence of police officers PW No.3 and 4 is not of much useful for the prosecution.

18] As per the discussion made above, I find that, prosecution has totally failed to prove the above said offences against accused. Therefore, accused is entitled for benefit of doubt. Hence, I answer these points in negative.

AS TO POINT NO. 8 :

19] As per my findings on aforesaid points, I prefer to pass following order.

ORDER

1] The accused, namely, **Aafan Aafroz Shaikh** is hereby acquitted under Section 235(1) of the Code of Criminal Procedure, 1973 for the offences punishable under Sections 363, 376, 354(D), 506 of The Indian Penal Code, 1860 and offences punishable under Sections 4, 8, 12 of The Protection of Children from Sexual Offences (POCSO) Act, 2012.

2] Bail-bonds of the accused shall stand cancelled.

3] The accused to furnish Bail of Rs.15,000/- (Rupees Fifteen Thousand only) under Section 437(A) of the Code of Criminal Procedure, 1973.

4] Seized muddemal i.e. clothes of victim girl and accused
be destroyed after appeal period is over, as shown worthless.

[Pronounced in Open Court]

Pune.

Date : 10/05/2022.

[Smt. A. V. Rotte]

Special Judge &
Additional Sessions Judge, Pune

C E R T I F I C A T E

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

Name of the Court :- Smt. A. V. Rotte,
District Judge- 4,
Special Judge & Additional Sessions
Judge, Pune.

Name of the Steno :- Shri. D. L. Gudde,
Stenographer (Grade-I)

Date of Judgment :- 10/05/2022

Judgment signed by
presiding officer :- 10/05/2022

Judgment uploaded on :- 10/05/2022.