

Exh.No. 23.

Received on : 23.07.2018
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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. 309/2018

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

} COMPLAINANT

Vs.

Jitendra Nagnath Gaikwad.

Age 23 years, Occupation : Security Supervisor
Resident of Ganga Archid, Opposite Ganpati
Mandir, Pingale Vasti, Mundhwa, Pune..

} ACCUSED

**Charge :- Under Sections 305, 354 of the Indian Penal
Code and offence under Sections 8 and 12 of the
Protection of Children from Sexual Offences Act, 2012.**

Advocates :-

Smt. A. S. Brahme, Learned Spl. P.P. for the State.
Shri R. N. Badgujar, Learned Advocate for accused.

J U D G M E N T

(Delivered on 6th May 2022)

1. Accused Jitena Nagnath Gaikwad is facing trial with allegations of committing offence punishable under Sections

305, 354 of the Indian Penal Code and offence under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. It is the case of prosecution that complainant Kavita Rathod has filed complaint on 16.02.2018 alleging that the deceased and complainant were working in Rohan Mithila Society as a sweepers. On 15.02.2018 at about 8:00 a.m. complainant and deceased were on duty in the said society. After 8:30 a.m. deceased told complainant that she wanted to tell her something and asked her to meet her at 'W' building. After taking breakfast the deceased told complainant that accused was trying to touch her body and trying to come near her. She has also stated that the accused was harassing her, at that time she was crying. The deceased also told complainant that accused has also proposed her, but she refused. Thereafter they both came back to work. After sometime complainant heard shouting of the people saying that the girl fell down from the 5th floor. When complainant went to the spot, she saw deceased lying on the floor and she was unconscious. Thereafter the doctor residing in the same building came there and checked the deceased and told them to shift her to Sassoon Hospital. Thereafter deceased was shifted to Sassoon Hospital and during treatment deceased died at about 8:00 p.m.. The Manager Datta Chavan told wrong name of deceased Komal Siddhu Rathod. The complainant has stated that accused has sexually harassed deceased, therefore, she has

committed suicide after jumping from the 5th floor, therefore, complaint was lodged. On the basis of complaint, C. R. No.47/2018 was registered against accused. The investigating officer has investigated the matter and filed charge-sheet against accused in the Court.

3. The charge is framed against accused as per Exh.3 for the offence punishable Under Sections 305, 354 of the Indian Penal Code and offence under Sections 8 and 12 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 in all 3 witnesses. Thereafter Learned A.P.P. has filed pursis at Exh. 21 and closed the prosecution evidence. The statement of accused under Section 313 of Cr.P.C is recorded as per Exh. 22. The defence of accused is that of total denial and false implication. Heard the arguments of 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 15.02.2018 at about 14.00 hours at	

	Roan Mithila Society, U Building, situated at Viman Nagar, Pune abated victim girl who was under eighteen years of age to commit suicide ?	Negative.
2	Does prosecution further prove that on the aforesaid date, time and place accused assaulted or used criminal force to victim minor girl intending to outrage her modesty ?	Negative.
3	Does prosecution further prove that on the aforesaid date, time and place accused with sexual intent touched victim girl and committed sexual assault ?	Negative.
4	Does prosecution further prove that on the aforesaid, date, time and place accused committed sexual harassment upon victim a minor girl ?	Negative.
5	What order ?	Accused acquitted.

Reasons

6. **As to all points:-** In order to prove its case prosecution has examined 3 witnesses out of which PW-1 complainant Kavita Topa Rathod at Exh.5, PW-2 is the incharge Head Master of the school Sopan Gyanba Shelar at Exh.12, and lastly PW-3 investigating officer of this case P.S.I. Chitra Sukdeo Chaudhari at Exh.19 and closed the evidence.

7. The allegation against accused is that the deceased has committed suicide and accused instigated her to commit suicide and committed offence punishable under Section 305 of the Indian Penal Code. There is another allegation that accused tried to touch the body of deceased and he also sexually harassed her and committed offence under Section 8 and 12 of the POCSO Act. Let us see what witnesses have deposed about it .

8. Complainant is the only witness of this case. She has not seen the deceased falling down from the 5th floor nor she has seen deceased jumping from the 5th floor and committed suicide. The complainant has deposed in the Court that on 15.02.2018 at about 2:00 p.m. after taking lunch the deceased was crying, at that time complainant Kavita asked her about it. At that time deceased told her to come in 'W' building then she will tell her about it. The deceased told complainant that accused Jitendra Gaikwad was sexually harassing her. She also told her that accused was touching her back and breast. At that time deceased also told complainant that accused was saying whether she loves him. The deceased refused for the same. Thereafter she went on 6th floor for doing the work. The deceased also went on 5th floor for attending the work. After three minutes she heard shouting from parking. At that time she saw deceased lying on the floor in unconscious condition. Thereafter mother of deceased, accused and Datta Chavan took deceased to Sassoon hospital , thereafter at about 8:00 p.m. deceased declared died. This is the evidence of

PW-1. Let us see what she has stated in the complaint. In the complaint she has stated that " त्यानंतर त्या ठिकाणी सोनी हिने मला रडून सांगितले की, सुपरवायझर जितेंद्र गायकवाड याने माझे शरीराला हात लावून माझेशी जवळीक करण्याचा प्रयत्न केला परंतु मी त्यास विरोध केला. जितेंद्र गायकवाड हा मला त्रास देत आहे असे तिने मला सांगितले, त्यावेळी मी सोनी हिंस सांगितले की, जितेंद्र गायकवाड याने मलासुद्धा दोन दिवसांपूर्वी मी तुझेवर प्रेम करीत आहे तु माझेवर प्रेम करती का परंतु मी तुझेबरोबर लग्न करणार नाही असे म्हणाला होता. त्यावेळी मी त्यास नकार दिला होता ". Thereafter the statement of complainant is recorded by the Magistrate under Section 164 of Cr.P.C.. The deceased told complainant that " त्यानंतर माझे बिल्डींग मध्ये आम्ही नाष्टा करायला गेलो त्यावेळी ती खुप रडत होती. तेव्हा तीने मला सांगितले की, जितेंद्र नागनाथ गायकवाड सर रोज तिच्या बिल्डींग मध्ये ३ ते ४ वेळा येतो. जवळ जाण्याचा प्रयत्न करतो तेव्हा मी तिला सांगितले की, दि.१४.०२. २०१८ रोजी व्हॅलेन टाईन डे दिवशी मलाही गायकवाड सरांनी प्रपोज केले व मला म्हणाले की, माझेशी प्रेम करतेस का. मला तू फार आवडतेस. त्यावेळी मी त्याला नकार दिला'' हे मी सोनीला सांगितले. त्यावेळी तिची आईही आमच्या बरोबर होती." There are three different versions about allegation of sexual harassment against accused. In the complaint it is stated that the accused was touching body of deceased and tried to go near her. She resisted, but accused sexually harassed her. In the statement under Section 164 of Cr.P.C.. She has stated that the accused was visiting building of deceased for 3 to 4 times and tried to go near her.

This is the only allegation and thereafter there is improvement in the version of complainant when she deposed in the Court. She has deposed in the Court that deceased told complainant that accused was touching her back and breast which is not at all mentioned in the complaint nor it is stated before the Magistrate. This allegation is made by complainant for the first time in the Court. There are serious contradictions about the allegation of sexual harassment made by complainant against accused. She is not firm on her single statement. There are three different statements which create doubt about the evidence of complainant Kavita. Except the evidence of Kavita, there is no other evidence available with the prosecution. When the complainant is the only witness, she can be able to depose in the Court consistently as per the complaint and as per the statement before the Magistrate but there are three different versions which are contradictory to each other. There are improvements, therefore, it is very difficult to believe on the version of single witness i.e. complainant. Except this, there is absolutely no evidence against accused to prove the case of sexual harassment with the deceased.

9. There is second allegation that accused instigated deceased for committing suicide. For that purpose there are only few lines in the complaint. It is mentioned in the complaint that " जितेंद्र गायकवाड याने सोनी हिचेशी शरीराशी लगट करुन तिला त्रास दिला त्यामुळे तिने रोहन मिथीला सोसायटीचे यु बिल्डींगचे ५ व्या मजल्यावरुनल उडी मारुन आत्महत्या केली. तरी जितेंद्र गायकवाड रा.

गंगा ऑर्चीड, गणपती मंदीरासमोर, पिंगळे वस्ती, मुंढवा पुणे याने माझी आत्मा सोनी सिध्दू राठोड वय १७ वर्षे हिंस आत्महत्या करण्यास प्रवृत्त केली म्हणून माझी त्याचेविरुद्ध तक्रार आहे". The above portion in the complaint are the only four lines against accused about instigating deceased to commit suicide. The complainant Kavita has not stated anywhere that the deceased has committed suicide. In order to prove the offence punishable under Section 305 of I.P.C., firstly it is necessary to prove that the deceased has committed suicide and secondly the accused has instigated her to commit suicide. In this case the complainant has not at all deposed in the Court that the deceased has committed suicide. The complainant has stated that after the talk between herself and deceased she went on 6th floor for doing work and deceased was working on the 5th floor. After few minutes, she heard the shouting from parking area. She saw from the 5th floor towards parking area, at that time she saw deceased lying unconscious on the floor. Except this, complainant has not stated anywhere that the deceased committed suicide after jumping from the 5th floor. The allegation of suicide is totally absent from the record. In this case it is the fact that the complainant has not seen deceased falling down from the 5th floor. Complainant only heard shouting that the deceased fall down. She does not know whether deceased jumped from 5th floor or fell down due to slip of leg. During cross-examination the complainant has stated that when victim fell down from 5th floor of U building, she was on 6th floor in the same building. But she has denied the suggestion

that deceased fell down from the 5th Floor due to slip of leg, but she has not stated in examination-in-chief itself that deceased has committed suicide. So far as the statement under Section 164 of Cr.P.C. is concerned, in the statement under Section 164 of Cr.P.C. complainant has stated that deceased went on 5th floor, at that time she heard shouting that somebody fell down, thereafter she rushed on the spot and saw the deceased lying unconscious on the floor. The complainant has not stated in the statement under Section 164 of Cr.P.C. that the deceased has committed suicide nor she has stated that accused has instigated the deceased to commit suicide. The allegation of committing suicide by the deceased and instigation by accused is totally absent from the record. Nobody is saying so. Even the complainant has not stated that deceased has committed suicide and accused has instigated her. Thereafter the prosecution has examined the investigating officer who is important witness of this case. She has deposed that *"It is true that it is found during panchnama that the deceased fell down from the 5th floor of the building in the parking area while doing the work due to slip of leg"*. The investigating officer has also admitted during cross-examination that *"There is no any evidence to show that the deceased committed suicide"*. From the evidence of complainant and investigating officer it is clear that the deceased has not committed suicide. When there is no suicide, then there is no question of instigation of the accused to deceased to commit suicide. The prosecution has failed to prove that accused has

instigated victim to commit suicide and also failed to prove that deceased has committed suicide. I have also held that the evidence of complainant about sexual harassment of victim is not free from doubt. The statement of complainant is contradictory to each other. She has made improvement in examination-in-chief which is not in the complaint nor in the statement under Section 164 of Cr.P.C.. The deceased is only an eye witness of the incident of sexual harassment. The deceased is no more, therefore, her evidence is not available. The evidence of complainant is hearsay and contradictory to her different statements. Therefore, it is very difficult to hold that the prosecution has proved the case against accused about committing sexual harassment with the deceased. The prosecution has failed to prove the case against accused beyond shadow of doubt, therefore, accused is entitled to acquittal.

10. In this case the prosecution has examined PW-2 Sopan Shelar. He has deposed about the age of deceased. The school leaving certificate is filed on record at Exh.13 in which so many different things are mentioned. On the top it is mentioned that Lady Taherunnisa Inamdar Marathi High School and thereafter it is mentioned that Zilla Parishad/Nagarpalika and thereafter " Shala Sodlyacha Dakhala". This is a xerox copy, but it bears the original signature of the Head Master, therefore, the copy is exhibited, but it is not proved by the prosecution properly. The format of the school leaving certificate is not

proper. Even in the postmortem report and other medical papers the name of deceased is shown different. Therefore, I hold that the prosecution has not proved the case against accused. The prosecution has neither proved the charge of committing sexual harassment with the deceased nor proved the charge under Section 305 of the Indian Penal Code. Even though the prosecution has proved the age of victim, but it is not sufficient to prove the case against accused beyond shadow of doubt. So far presumption under Section 29 of the POCSO Act is concerned, it is rebuttal presumption, if prosecution proves the case beyond shadow of doubt, then the presumption arises. The prosecution has failed to prove the case against accused beyond shadow of doubt, therefore, no presumption is available to the prosecution to prove the case against accused. In the result, I record my findings on all points in negative and proceed to pass following order.

ORDER

i) Accused Jitendra Nagnath Gaikwad is hereby acquitted for the offence punishable Under Sections 305, 354 of the Indian Penal Code and offence under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 vide Section 235(1) of Cr.P.C..

ii) The 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 is preferred.

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

Dictated and pronounced in open Court.

Date:-06.05.2022.

(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 : 06.05.2022.

Judgment signed by the P.O. : 06.05.2022.

Judgment uploaded on : 09.05.2022.

**IN THE COURT OF FAST TRACK SPECIAL COURT,
PUNE AT PUNE
(Presided over by Shri K. K. Jahagirdar)**

Spl. Case (POCSO) No. 599/2019

The State of Maharashtra,
Through Talegaon Ddabhade Police Station, } COMPLAINANT
Pune.

Vs

Vijay Dagadu Sasane

Age 24 years, Occupation : Service
Resident of Dehugaon, Vithalwadi,
Indrayani Society, Taluka Haveli,
District Pune.

} ACCUSED

OPERATIVE ORDER

i) Accused Vijay Dagadu Sasane is hereby acquitted for the offence punishable Under Sections 354-A, 354-D, 363, 366, 323, 504, 506 of the Indian Penal Code and offence under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 vide Section 235(1) of Cr.P.C..

ii) The 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 is preferred.

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

v) The seized auto rickshaw described in the charge-sheet be returned to its registered owner after appeal period is over.

Dictated and pronounced in open Court.

Date:-23.02.2022.

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