

Presented on : 18/10/2016
 Committed on : 18/10/2016
 Decided on : 05/12/2018
 Duration : 2Ys.1M.18Ds.

IN THE COURT OF SESSIONS JUDGE, PUNE

(Presided over by M. R. Purwar, Additional Sessions Judge, Pune)

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Spl.Sessions Case No. 379/2016
CNR No: MHPU01-013008-2016

Exh. No. _____

State of Maharashtra
 Through P.S.O. Warje Malwaladi
 Police Station, Pune.

... **Prosecution.**

Versus

Somnath Vasant Sangule,
 Age: 20 Yrs., Occu. Service,
 R/at: PMT Chowk, Bhosari,
 Pune.

... **Accused.**

Offence punishable under sections 363, 366-A and 354A(i)(iv) of
Indian Penal Code r/w. Section 11(i)(iv) punishable under
section 12 of Protection of Children from Sexual Offences Act,
2012.

 Shri N. D. Patil, Addl. Public Prosecutor for the State.
 Shri. V.D.Shinde, advocate for accused.

J U D G M E N T

(Delivered on 5th December, 2018)

Accused is facing trial for the offence punishable under
 sections 363, 366-A and 354A(i)(iv) of Indian Penal Code r.w Section

11(i)(iv) punishable under section 12 of Protection of Children from Sexual Offences Act, 2012.

2] The case of the prosecution in brief can be stated as under -

that on 30/08/2016 informant Vasant Wayal lodged the report that he is resident of Shivane, Pune and residing there along with family. Victim is 14 years old minor girl and educating from Mahilashram High School, Karve Nagar, Pune. She is his daughter. On 29/08/2016 at about 11.30 a.m. as usual victim has left the house for attending school. As usual she used to come back to the house at about 6.30 p.m. However, on that day she has not come back to house. He conducted her search. From the school he came to know that on that day victim has not attended the school. Thus, he lodged her missing report alleging that some unknown person has kidnapped her.

3] On the basis of such report, initially offence was registered bearing crime No.400/2016 with police station Warje Malwadi for the offence punishable under section 363 of Indian Penal Code.

4] During investigation, statement of witnesses were recorded. Thereafter, Warje Malwadi Police Station, Pune received information that victim girl is in a Barshi. The investigating officer has deputed a team of police for bringing victim girl back. The accused and victim came to be taken in custody. The supplementary statement of the informant was recorded. The statement of the victim

was recorded. Accused was arrested. Thereafter the further sections as referred above came to be added. Victim was referred for medical examination. However, the parents of the victim refused for the medical examination. By virtue of disclosure statement accused has shown the place of incidence. Spot panchanama was prepared. The statements of the witnesses were recorded. Bonafide certificate was collected. On completion of investigation charge-sheet came to be forwarded before the Special Court, Pune. It was then assigned to this court for trial.

5] Charge Exh. 04 for the offence punishable under sections 363, 366-A and 354(i)(iv) of Indian Penal Code read with section 11(i)(iv) punishable under section 12 of Protection of Children from Sexual Offences Act, 2012 came to be framed against the accused. Charge read over and explained to the accused in vernacular to which he pleaded not guilty and claimed to be tried.

6] The following points arise for determination and the findings are recorded for the reasons given below-

<u>Sr.</u> <u>No.</u>	<u>Points</u>	<u>Findings</u>
1]	Whether the prosecution proves that on 29/08/2016 at about 1.00 noon from Alandi, Pune accused kidnapped/abducted the victim, a minor girl from the lawful guardianship of her parents without their consent and thereby committed an offence punishable under section 363 of I.P.C. ?	 No

- 2] Whether the prosecution further proves that on the same date, time and place, during the course of same transaction, accused induced victim, a minor girl to marry with him and taken her to Barshi with intent that she may be forced or compelled to marry and thereby committed an offence punishable under section 366-A of the Indian Penal Code ? No
- 3] Whether the prosecution further proves that during the period from 29/08/2016 till 01/09/2016 at Bhosri and at Barshi accused did an act of sexual harassment to victim, a minor girl by making physical contact by holding her hands, pulling her towards him and by advancing unwelcome and explicit sexual overtures by saying I will marry with you and give me a kiss and thereby committed an offence punishable under section 354A (i)(iv) of the Indian Penal Code ? No.
- 4] Whether the prosecution further proves that during the period from 29/08/2016 till 01/09/2016 at Bhosri and at Barshi accused did an act of sexual harassment to victim, a minor girl by making physical contact by holding her hands, pulling her towards him and by advancing unwelcome and explicit sexual overtures by saying I will marry with you and give me a kiss and thereby committed an offence under section 11(i)(iv) punishable under section 12 of the the Protection of Children from Sexual Offences Act, 2012. No.
- 5] What order ? As per final order.

REASONS**AS TO POINT NO. 1 TO 4:**

7] In order to substantiate the accusation, the prosecution inter alia examined as many as ten witnesses namely :-

- 1) P.W.1 Vasant Wayal (informant and father of victim) is at Exh. 09.
- 2) P.W.2-Victim is at Exh. 13.
- 3) P.W. 3 Urmila Wayal (mother of victim) is at Exh. 14.
- 4) P.W.4 Yuvraj Mekar is at Exh.15 .
- 5) P.W.5 Sharad Amrutkar (pancha) is at Exh. 17.
- 6) P.W.6 Vishwanath Kadam (police constable) is at Exh.19.
- 7) P.W.7 Rajashree Wagh (woman police constable) is at Exh. 20.
- 8) P.W.8 Mahendra Phuge (landlord) is at Exh. 21.
- 9) P.W. 9 PSI Sachin Nikam (investigating officer) is at Exh.23.
- 10) P.W.10 Madhumalti Vedpath (headmistress) is at Exh.26.

The prosecution has also produced certain documents namely- Report Exh-10, Spot Panchanama Exh.16, Disclosure panchanama Exh.18, Arrest panchanama Exh. 25 and Bonafide certificate Exh.27. The prosecution has closed evidence by pursis Exh.29. The defence has not adduced defence evidence. The defence of the accused is of

total denial and false implication which I came to know from the line of cross examination and the answers given under section 313 of Code of Criminal Procedure. Heard learned Addl. Public Prosecutor for the prosecution and learned defence counsel.

8] It is argued by the Ld. Addl. Public Prosecutor for the State that witnesses have stated that at the relevant time the victim was fourteen years old. From the evidence it is clear that victim was minor below eighteen years of age. The evidence of victim is sufficient to show that she was taken out of keeping of her lawful guardianship without their consent. He prayed to deal accused as per law.

9] On the other hand, the Ld. Advocate for the accused argued that the prosecution has failed to establish very ingredients of the offence punishable under section 363 and 366-A of Indian Penal Code as well as section 12 of Protection of Children from Sexual Offences Act, 2012 as there is no cogent evidence to establish very fact that victim was below 18 years of age on the date of alleged incidence. He drew my attention towards the evidence of P.W.1 Vasant Wayal, P.W. 2 victim, P.W. 3 Urmila Wayal and P.W. 10 Madhumalti Vedpathak and submits that, evidence is contrary to each other. According to him, the so called bonafide certificate Exh. 27 shows difference in the name of victim. There is no evidence brought on record to show that Exh.27 is of the victim. The victim is having sufficient age of maturity and understanding. She is also aware with the topography of the

Pune city. The conduct of the victim is also not natural. Even though it is alleged that after kidnapping victim alone visited the garden of Bhosri and also traveled by railway but not made any attempt to escape. Victim herself has left the house and thus no question arises about enticing or taking out victim out of her lawful guardianship. The prosecution has failed to establish necessary ingredients of the offence charged. The prosecution has failed to establish alleged disclosure statement. The evidence of the victim is not cogent and reliable. No extract of station diary either of Warje Malwadi Police Station or Barshi Police Station produced on record to substantiate contention that victim was brought back from Barshi. There is reasonable doubt in the case of the prosecution. He prayed for acquittal. For the purposes of such submissions he relied upon following case laws namely :

- 1] **Umesh Rajabhau Khandekar Vs. State of Maharashtra, 2015 ALL M.R. (Cri.) 4006(Bombay High Court).**
- 2] **Alamelu and Anr. Vs. State Rep.by Inspector of Police, 2011 SAR (Criminal) 239 (Supreme Court)**
- 3] **S.Varadrajan Vs. State of Madras, AIR 1965 Supreme Court 942.**
- 4] **Gaurish Shamba Haldankar Vs. State of Goa, 1997 ALL M.R. (Cri) 629 (Bombay High Court)**
- 5] **Khayali Ram Vs. State of Himachal Pradesh, 1979 CRI.L.J. 620.**
- 10] I have given mindful consideration to the submissions and

made close scrutiny of the material available on record. I have also gone through the observations of their Lordships in the case laws cited supra and very much guided.

11] In the case of **Umesh**, cited supra, it is observed that since the age of the victim has not been proved as below 18 years of age at the time of incident a reasonable doubt arises.

12] In the case of **Alamelu**, cited supra, it is observed that, the prosecution has failed to prove that the girl was a minor. Victim was staying with the accused for six days. She had many opportunities to complain or to run away. Such behavior would not be natural. The conduct of girl from the time of alleged abduction till the time of recovery unnatural. Date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined. The conviction could not be recorded on sole uncorroborated testimony of victim.

13] In the case of **Varadrajan**, cited supra, it is observed that, when the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is a senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrar's Office where they get an

agreement to marry registered and there is no suggestion that, the instance of marriage came from her side, the accused by complying her wishes can by no stretch of imagination be said to have taken her out of the keeping of her lawful guardianship, that is, the father.

14] In paragraph 9 it is further observed that there is distinction between taking and allowing a minor to accompany a person. The two expressions are not synonymous though it cannot be laid down that, in no conceivable circumstances can the two be regarded as meaning the same thing for the purpose of section 361. Where the minor leaves her father's protection knowing and having capacity to know the full import of what she is doing, voluntarily joins the accused person, the accused cannot be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

15] In the case of **Gaurish**, cited supra, it is observed that, the minor girl leaving her house voluntarily to marry accused and no removal of girl from legal custody of parents by accused. Both accused and girl knowing each other, met on road and she accompanied him by her own volition on invitation from him. No guilt under section 363 of Indian Penal Code proved.

16] In the case of **Khayali Ram**, cited supra, it is observed

that, a scientific test about age as a result of epiphyses of bones is more trustworthy than opinion of a physician.

17] It is the cardinal principle of criminal jurisprudence that the prosecution has to prove its case beyond all reasonable doubt and while doing so the prosecution cannot take advantage from the weakness of the defence.

18] In order to prove an offence under section 363 of Indian Penal Code, the prosecution is under obligation to establish necessary ingredients of section 361 of Indian Penal Code that is -

i) The person enticed or taken away must be a girl under 18 years of age and if male under 16 years of age.

ii) Such minor was in keeping of a lawful guardian.

iii) The accused took or enticed such person to go out of such keeping and such taking was done without the consent of lawful guardian.

19] In order to constitute an offence under section 366A of Indian Penal Code, the prosecution must establish-

i) The accused must induced by any means whatsoever a minor girl under the age of 18 years.

ii) He must induced her to go from any place or to do any act with intention that such girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse.

20] In order to attract offence punishable under the provisions of Protection of Children from Sexual Offences Act, 2012, the prosecution must establish that the victim is a child below the age of 18 years within the meaning of section 2(d) of Protection of Children from Sexual Offences Act, 2012 .

21] In the light of legal position referred supra, let me evaluate the material available on record.

22] In this reference, it has come in the evidence of P.W.1 informant Vasant Wayal that victim is his daughter. In August 2016, she was studying in 10th standard and 14 years old. On 29/08/2016 she left the house for going to school at about 11.30 a.m. However, she has not come back. They have lodged missing report Exh. 10. Victim found at Barshi. Victim narrated that she was having tension of studies and therefore, she went to Alandi. From Alandi accused took her to Bhosri and then to Barshi. Accused stated to her that he is having liking for her and will marry with her.

23] It has come in the evidence of P.W.2 victim that in September 2014 she was 14 years old. Her date of birth is 26/05/2002. Her parents always used to tell her for doing studies. Therefore, one day she left the house at about 11.30 a.m. and had been to Corporation and from there had been to Alandi. At Alandi accused met her. She told him her name and he also told her his name. He told her that he is having liking for her and asked as to whether she will marry with him. She told him that she is not feeling

well. He told her to visit the doctor and took her to his room at Bhosri. There she has taken medicine and slept till next day at about 12.30 noon. On 30/08/2016 she woke up and stated him that she want to go back to house. Accused stated that he is having liking for her and will perform marriage. He pulled her and made demand of one kiss. She again took medicine and slept. At about 4.00 p.m. she woke up and alone had been to a garden situated at Bhosri. Accused came there and stated that he will keep her happily. He stated for visiting Barshi tomorrow . He took her to his room. On next day he has taken her to Bhosri for wandering there. They had been to Pune railway station at about 9.00 p.m. and by train of 11.30 p.m. they had been to Barshi. At Barshi bus stand she was reading newspaper and one police person made inquiry. He took her to Barshi Police Station. Later on she brought to Pune.

24] P.W. 3 Urmila Wayal testified that victim is her daughter. As usual in the morning hours she had been to her school. However, during evening hours she has not come back. On inquiry she came to know that victim has not attended the school. At that time victim was 15 years old. She came to know that, from Alandi one boy has taken the victim to Bhosri and Barshi.

25] P.W. 4 Yuvraj Mekar deposed that on one day father of victim informed him that victim left the house. Victim was found at Barshi and brought back to Pune.

26] P.W. 5 Sharad Amrutkar is the pancha witness on

disclosure statement Exh.18. He testified that the disclosure given by the accused was recorded and thereafter accused shown the room. According to P.W. 6 Police Constable Kadam and P.W. 7 Wagh they have brought victim back to Pune from Barshi. P.W.8 Mahendra Fuge deposed that he is owner of Chandrabhaga building. Accused was residing in one room. One girl came along with accused. Accused stated that said girl is his relative. P.W.9 PSI Nikam has conducted investigation. P.W. 10 head mistress Madhumalti Vedpathak has proved bonafide certificate Exh. 27.

27] This much is the evidence adduced by the prosecution. Let's see whether it has a ring of truth.

28] The backbone of the case of the prosecution is that, at the relevant time victim was a minor girl under the age of eighteen years. Therefore, it is obligatory upon the prosecution to establish it beyond all reasonable doubt by adducing cogent and reliable evidence. Undisputedly the prosecution has not produced birth certificate of the victim. The reasons for the same may be best known to the prosecution. The evidence of P.W.1 Vasant Wayal, P.W. 2 victim and P.W. 3 Urmila Wayal found contrary to each other regarding age of the victim. As per P.W. 1 Vasant Wayal in August 2016 victim was 14 years old. P.W.2 victim deposed that in September 2014 she was 14 years old. P.W.3 Urmila Wayal testified that when victim left the house she was 15 years old. The accused has disputed age of the victim. P.W. 2 victim has stated her date of birth as 26/05/2002.

However, it is in the form of improvement which is brought on record. Thus the improvement is material in nature and goes to the root of the matter. The bonafide certificate Exh. 27 however states some different story regarding date of birth of the victim. In bonafide certificate Exh. 27 date of birth of the victim is mentioned as 16/08/2001.

29] To prove the bonafide certificate Exh. 27 prosecution has adduced evidence of P.W. 10 headmistress Vedpathak. She testified that since 1/02/2018 she is serving as a headmistress in Mahilashram High School, Karvenagar, Pune. Victim was taking education in their school and as per register her date of birth is 16/08/2001. In cross she admits that victim has taken admission in their school in 9th standard. Earlier she was studying from Navbharat Gyanvardhini School. According to her, she was admitted in their school on the basis of leaving certificate issued by earlier school and the date of birth of victim was mentioned in the records of their school on the basis of leaving certificate issued by earlier school. She again admits that, she cannot say on what basis Navbharat Gyanvardhini School entered date of birth of victim in their register and their school is not knowing which date of birth of the victim mentioned on the birth certificate.

30] Necessary to note that the Hon'ble Apex Court in the case of **Alamelu**, cited supra, observed that, the transfer certificate issued by school duly signed by headmaster would be admissible in evidence

under section 35 of the Indian Evidence Act. However, admissibility of such document would be of not much evidentiary value to prove age of girl in absence of materials on basis of which age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless person, who made entry or who gave date of birth is examined.

31] In the case in hand also as observed above, the parents of the victim girl have nowhere testified the date of birth of the victim and also nowhere stated that they have narrated date of birth of the victim to the school authorities. Undisputedly, the headmaster from Navbharat Gyanvardhini School, Pune is not examined by the prosecution. The evidence of P.W. 10 headmistress Vedpathak for the reasons narrated above loses its significance. No birth certificate is produced. In this view of the matter it is crystal clear that the prosecution has failed to establish the very fact that at the relevant time victim was below 18 years of the age or child within the meaning of section 2(d) of the Protection of Children from Sexual Offences Act, 2012 beyond all reasonable doubt and consequently failed to establish one of the essential ingredients of the offence punishable under section 363 and 366A of Indian Penal Code along with section 12 of the Protection of Children from Sexual Offences Act, 2012. Accused deserves to be acquitted on this ground alone from above charges.

32] So far as question of factual aspect is concerned, the

evidence of P.W. 1 Vasant Wayal, P.W. 3 Urmila Wayal and P.W. 4 Yuvraj Mekar is not direct on the point of alleged incidence.

33] The prosecution has come with a specific case that due to tension of studies victim herself has left the house and went to Alandi. This fact itself is sufficient to show the maturity and understanding capacity of the victim. It is alleged that from Alandi accused has taken victim to his room situated at Bhosri and later on to Barshi. The evidence of the victim show that in the room of the accused she has taken the medicine and slept there. From the room of the Bhosri she alone went to garden for wandering. According to her, she is having information in respect of the roads and PMT buses of Pune. She admits that, from the garden of Bhosri it was possible to her to seek help of the people. It was also possible for her to ask the people present there for a mobile phone for making call to her father but she never did it. According to her, before proceeding to Barshi she neither made a call on a mobile of his father nor sought help of any person. She was present at Pune Railway Station for about 3 hours and at that time so many people and police persons were present there. However, she has not sought help of any person and even no attempt made by her to escape. The above facts are self sufficient to show that victim was having ample opportunity to return to home by taking help of the people or to escape. However, she has never tried to take help to rescue herself. Thus, the conduct of victim is not natural. Her natural conduct would be to seek help to rescue herself or to raise hue and cry. In the case of **Alamelu**, cited supra, it is

observed that, prosecutrix was abducted and compelled to marry. For six days she was staying with the accused but neither protested nor complained to anybody after alleged abduction. The conduct of the prosecutrix not natural. In the case in hand also, for the reasons narrated above the conduct of the victim not appears natural. There is no evidence on record regarding alleged force. The prosecution itself has come with the case that on the fateful day the victim herself has left the house. If this is the fact situation, then no question arises regarding enticing or taking away victim from the lawful guardianship of her parents. From the point of view of the factual aspect also, the prosecution has failed to establish the essential ingredients namely taking and enticing.

34] There is another facet to the story which needs to be taken into consideration. Victim narrated that, for once accused pulled and demanded a kiss to her. The prosecution has come with the case that at the relevant time victim and accused were alone in the room and even for about two to three days victim was present along with accused in a room. In the backdrop of such a situation when the accused having clear opportunity to do something more than making demand of kiss only it is highly improbable to accept evidence of victim girl that accused made a demand of kiss.

35] To establish circumstantial evidence namely disclosure statement prosecution has adduced evidence of P.W. 5 Sharad and P.W. 9 PSI Nikam. P.W. 5 Sharad has nowhere stated what statement

accused has given. Same is the situation with the evidence of P.W.9 PSI Nikam. The prosecution has therefore failed to establish disclosure statement Exh.18. As per case of the prosecution the victim has brought back from Barshi. P.W. 6 Police Constable Kadam and P.W. 7 Police Constable Wagh testified to that effect. However, P.W.9 PSI Nikam admits in cross that Barshi police have not taken entry in the station diary in respect of apprehending victim and the accused. According to him, extract of station diary in respect of visiting Barshi police station from bringing victim and accused back to Pune is not produced. No rent agreement produced by P.W. 8 Mahendra Fuge to substantiate the fact that accused was his tenant

36] After scanning the entire material available on record, for the reasons narrated above and in the given fact situation it is crystal clear that the evidence of the prosecution witnesses lacks with the necessary assurance requires in a criminal trial. The prosecution has failed to establish necessary ingredients of the offence charged against accused. There is reasonable doubt in the case of the prosecution. The benefit of doubt therefore must go in favour of accused. Accused deserves to be acquitted. Thus, I answer Points 1 to 4 in negative.

As to Point No. 5 :-

37] In view of negative findings to Point Nos.1 to 4 supra accused deserves acquittal. Hence, the following order :-

ORDER

- 1) Accused is acquitted of the offence punishable under section 363, 366-A and 354A (i)(iv) of Indian Penal Code r.w Section 11(i)(iv) punishable under section 12 of Protection of Children from Sexual Offences Act, 2012 vide Section 235 (1) of Code of Criminal Procedure.
- 2] Accused to submit fresh bail bonds to the tune of Rs. 15,000/- as per the provisions of Section 437-A of Code of Criminal Procedure.

(Dictated and pronounced in open Court.)

Pune
Dt.- 05/12/2018

(M. R. Purwar)
Addl. Sessions Judge,
Pune

CERTIFICATE

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

Name of stenographer	:	B.D.Gaikwad, Steno (Grade- 1)
Court	:	Shri M.R. Purwar Addl. Sessions Judge Pune
Date	:	05/12/2018
Judgment signed by the Presiding Officer on	:	05/12/2018
Judgment uploaded on	:	06/12/2018