



Presented on : 16.08.2019

Registered on : 19.08.2019

Decided on : 07.02.2023

Duration : Y. M. D.
03 05 19

IN THE COURT OF SESSIONS JUDGE, PUNE
(Presided over by P.P. Jadhav, Spl.Judge (Under POCSO Act) Pune, at Pune)

Spl. POCSO Case No. 397/2019
[CNR No.MHPU01-011884-2019]

Exh. No.

State of Maharashtra.
(Crime No. 99/2019 Through
Saswad Police Station, Pune.

.... **Prosecution.**

Versus

- 1] **Ganesh Vijay Yadav**
Age 22 Years, Occ.: Nil.
R/a. Harani, Tal. Purander,
Dist. Pune.
- 2] **Amar Ravindra Yadav**
Age 19 years, Occ.: Nil.
R/a. Harani, Tal. Purandar,
Dist.Pune.

.... **Accused.**

Offence punishable under sections 354-D(i)(ii) of the Indian Penal Code, 1860 and under Section 11 r/w. 12 of the Protection of Children from Sexual Offences Act.

Appearance :

Shri. Taralgatti, A.P.P. for State.

Shri. V.B. Hinge, Advocate for accused No.1

Shri. Ahiwale, Advocate for accused No.2.

J U D G M E N T

(Delivered on this 7th day of February 2023)

Both the accused are prosecuted for the offence of contacting the victim girl, aged 17 years old, on phone and outraging her modesty by expressing their love. Facts are as under :

2] It is alleged by prosecution that the victim girl, 17 years old, is residing at Harani, Tal.Purander, Dist. Pune. Her birth date is 04.02.2002. In the year 2019 she had appeared for 12th Commerce final examination. One year prior to the complaint dated 17.03.2019, the accused Ganesh Vijay Yadav used to follow her and was trying to talk with her. Said fact was noticed by the victim's paternal uncle. The victim's paternal uncle had informed said fact to the victim's father. Victim's father had decided that after 12th they would sent the victim girl for education out of village. They neglected the acts of the accused Ganesh Yadav.

3] It is further alleged by the prosecution that the victim's mother had gifted Reliance Geo mobile to the victim.

The Victim had downloaded WhatsApp on said mobile No.7498673740. On 15.03.2019 while victim was at home, she received message from mobile No.7498440882. The message read as, “Hi, GM Have a nice day”. When the victim asked whose mobile number it was, she received reply that her number was saved with him. Thereupon, the victim had warned on said mobile number, not to send any message otherwise she would complain to her father. Thereupon, the sender had again replied that he would not send any message. On the same day, at about 2.00 p.m., the victim received call from mobile No. 7498029543. The caller said in vernacular' “मी अमर बोलतोय, आय रिअली लाईक यु, खरच तु मला खुप आवडतेस”. The victim replied the caller, not to call her again. Thereafter, she again received messages from said mobile number. On 16.03.2019 at 12.30 noon she received message from mobile No. 7498440882. It was in vernacular as, “ गणेश यादव कसा आहे तेवढेच सांग, मग परत नाय मेसेज करत मी तुला प्लीज”. Those messages and calls were made by accused Ganesh Yadav and Amar Yadav. Due to said messages and calls, the victim felt ashamed and informed said fact to her parents. On 17.03.2019 she approached Saswad Police Station and lodged report against both the accused.

4] After receiving complaint an offence punishable under Sections 354, 354-B of the the Indian Penal Code, 1860

and Section 12 of the POCSO Act came to be registered against both the accused. Accused came to be arrested on 17.03.2019 and after investigation charge-sheet came to be filed against them for said offence.

5] My ld. Predecessor framed charge against the accused at Exh.7. The accused pleaded not guilty of the offence and claimed to be tried.

6] The statements of accused u/s. 313 of Code of Criminal Procedure are recorded at Exhs.33, 34 and again at Exhs.42 & 43. Defence of accused is of total denial.

7] After going through the prosecution story, evidence on record and hearing arguments of both sides following points arise for my determination, I record my findings thereon for reasons as stated below :-

<u>Sr. No</u>	<u>Points</u>		<u>Findings</u>
1]	Does prosecution prove that on 15.03.2019 and 16.03.2019 at Harani, Tal. Purander, Dist. Pune, the accused sent messages and made mobile calls to the victim girl and outraged her modesty and sexually harassed her?	...	No.

2]	What order?	...	As per final order.
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REASONS

As to Point No. 1 :

8] To establish the charges levelled against the accused, prosecution has examined the victim girl as P.W.1 at Exh.15. Complaint lodged by her against the accused is at Exh.16. P.W.2 Sopan Gangaram Yadav, a panch on spot panchanama is examined at Exh.24. Spot panchanama is at Exh.25. P.W.4 Madhukar Sopan Jagtap is the Head Master of Harani Secondary School, Harani. His deposition is at Exh.40. School Leaving Certificate of the victim girl showing her birth date as 04.02.2002 is at Exh.41. The Investigating Officer Chetan Chandrakant Thorbole is examined as P.W.3 at Exh.27. Through his deposition prosecution has proved arrest panchanamas of both the accused produced at Exhs.28 & 29. The panchanama of seizure of mobile handset is at Exh.30. Letter requesting CDR of mobiles of victim girl and accused addressed to Superintendent of Police is at Exh.32.

9] The victim examined as P.W.1 has narrated almost all facts alleged in the complaint and discussed earlier in prosecution story. She specifically deposed that she was

using mobile No 7498673740, which was registered in the name of her mother. On 15.03.201 she received message from mobile No. 7498440882. The message was, “Hi, GM Have a nice day”. Thereafter, on same day at 2.00 p.m. she received phone call from mobile No. 7498029543. The caller said in vernacular, “ मी अमर बोलतोय, आय रिअली लाईक यु”. On 16.03.2019 at about 12.30 noon she received message from mobile No. 7498440882. The message in vernacular was, “गणेश कसा आहे तेवढेच सांग मग परत नाय मेसेज करत तुला, प्लीज”.

10] Through the evidence of P.W.2 the prosecution has proved the panchanama of the spot i.e. road in front of the house of victim. Nothing incriminating was found or seized from the said spot. Therefore, it is not necessary to discuss said evidence in detail.

11] P.W.4 Madhukar Jagtap has deposed that the victim had got admission in Harani School on 15.06.2011 in 5th Std. She had produced School Leaving Certificate issued by the Primary School. On said School Leaving Certificate the birth date was mentioned as 04.02.2002. Same birth date is mentioned in School Leaving Certificate issued by Harani Secondary School, produced at Exh.41.

12] Relying upon the evidence of prosecution, the Ld.

APP Shri.Taralgatti vehemently submitted that the birth date of the victim as 04.02.2002 is duly established through the evidence of P.W.4. The incident occurred on 15.03.2019 and 16.03.2019. Thus, on the date of incident the victim was 17 years old and thus, she was minor. The victim has narrated the facts about receiving the messages and phone calls which outraged her modesty. Hence offence is duly proved against both the accused.

13] It is pertinent to note here that in present case there is no physical contact or physical presence of accused at the time of incident. There are allegations that the accused had sent messages through mobile numbers and made calls from the mobile numbers on the mobile number of the victim. However, prosecution has not produced and proved a single document showing that the victim was holding a particular mobile or it was registered in the name of her mother. So also, the prosecution has not produced and proved any document to show that the mobile numbers from which the victim received the messages and calls were registered in the name of accused or their parents. Though the victim had stated that she had obtained the screen shots of the messages, no such screen shots are produced on record. Offence is entirely based upon technical evidence and no technical evidence is produced by the prosecution to support their

allegations. Though the Investigating Officer has seized mobiles, it is not proved that those mobile handsets were belonging to the accused or their family members. Those mobile handsets are not seized from the accused. Though the Investigating Officer had sent letter for CDRs, no CDRs showing phone calls are proved by the prosecution. Thus, the prosecution has miserably failed to prove the charges levelled against both the accused. Hence answering the point in the negative, following order is passed :

ORDER

1] The accused No.1 Ganesh Vijay Yadav and accused No.2 Amar Ravindra Yadav are hereby acquitted, vide Section 235(1) of the Code of Criminal Procedure, of the offence punishable under section 354-D(i)(ii) of the Indian Penal Code, 1860 and under Section 11 r/w. 12 of the Protection of Children from Sexual Offences Act.

2] The bail bonds of the accused shall stand cancelled.

3] Both the accused to furnish P.R. bond to the tune of Rs. 5,000/- each in view of section 437-A of Code of Criminal Procedure.

4] Seized muddemal i.e. two mobile handsets be sold in public auction and sale proceeds be credited to

Government, after appeal period is over.

[Dictated and pronounced in open Court]

Pune.

Date: 07.02.2023

Sd/-

(P.P.Jadhav)

Spl.Judge (Under POCSO Act),

Pune.

CERTIFICATE

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. D.D.Deshpande, Steno (Grade-I)

Court name: P.P.Jadhav,
Addl.Sessions Judge,Pune.

Date of Judgment : 07.02.2023

Judgment signed by presiding officer on: 07.02.2023

Judgment uploaded on: 07.02.2023

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