

MHPU010160792018



Presented on : 03.12.2018

Registered on : 26.12.2018

Decided on : 12.11.2024

Duration : 05Y. 10M. 17D.

Exhibit- 85

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PUNE
AT PUNE**

Present : Shri. K.P Kshirsagar

Date of the Judgment : 12/11/2024

Special (POCSO) Case No.529/2018

Prosecution	:	The State of Maharashtra, through Lonikand Police Station, Pune.
Represented by	:	Shri. N. P Konghe Ld. Special P. P for the State. Shri. G. J. Jachak Ld. Advocate for informant.
Accused	:	Bhausahab Kisanrao Mule Age : 56 Years, Occupation : Contractor, R/at Wadgaon Shinde, Taluka - Haveli, District - Pune.
Represented by	:	Shri.Purohit Yashpal Dattaprasad
Date of offence		From 07.11.2017 till 03.10.2018
Date of FIR		04.10.2018
Date of Charge-sheet		03.12.2018
Date of Framing of Charges		10.03.2023
Date of Commencement of Evidence		12.03.2020

Date on which judgment is reserved	08.11.2024
Date of the Judgment	12.11.2024
Date of the Sentencing Order, if any	12.11.2024

Accused details

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 Cr..PC.
1.	Bhausahab Kisanrao Mule	05.10.2018	U.T.P	U/s 376(2) (f)(n)(j) (k),376(3) of IPC & U/s 6 r/w 5(l)(n)(p), 6 of POCSO Act.	Convicted	Rigorous imprisonment for 25 (twenty five) years and to pay fine of Rs.10,000 /- (Rs. Ten thousand only) and in default of payment of fine, to suffer simple imprisonment for one month.	06 years, 01 month, 07 days.

LIST OF PROSECUTION WITNESSES**A. Prosecution :**

RANK	NAME	Exh. Nos.	NATURE OF EVIDENCE (Eye witnesses, Police witness, Expert witness, Medical witness,
------	------	-----------	--

			Panch witness, other witness)
PW-1	Victim	05	Eye witness
PW-2	Informant i.e. mother of victim	16	Other witness
PW-3	Kishor Vitthal Gaikwad	32	Panch witness
PW-4	Dr. Shailesh Ramesh Khadtare	38	Medical witness
PW-5	Sunita Sunil Salunke	41	Police witness

B. Defence witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (Eye witnesses, Police witness, Expert witness, Medical witness, Panch witness, other witness)
DW-1	Prakash Kisanrao Mule	Other witness
DW-2	Rupali Bhausahab Mule	Other witness

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (Eye witnesses, Police witness, Expert witness, Medical witness, Panch witness, other witness)
--	Nil.	--

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS :**A. Prosecution :**

Sr. No.	Exhibit Numbers	Description
1.	14	Birth Certificate of the victim.

2.	15	Statement of victim recorded under Section 164 of Code of Criminal Procedure (Cr.P.C.)
3.	17	Report
4.	18	Printed F.I.R.
5.	19	Statement of Informant recorded under Section 164 of Cr.P.C.
6.	33	Spot Panchanama
7.	34	Spot Panchanama
8.	35	Spot Panchanama
9.	36	Seizure Panchanama of cloths of victim
10.	39	Consent Letter
11.	40	Medical Examination Report of the victim
12.	42	Letter to Sassoon Hospital, Pune dated 04.10.2018
13.	43	Arrest Form
14.	44	Letter to CJM, Pune dated 05.10.2018
15.	45	Letter to Sassoon Hospital, Pune, dated 08.10.2018
16.	46	Letter to Forensic Science Laboratory (FSL), Pune dated 06.10.2018
17.	47	Letter to Gramvikas Adhikari, Wadgaon Shinde Grampanchayat, Pune, dated 08.10.2018
18.	48	Letter to FSL, Pune, dated 09.10.2018
19.	49	Letter to FSL, Pune, dated 10.10.2018
20.	50	Remand report dated 05.10.2018

B. Admitted :

Sr. No.	Exhibit Number	Description
	--	--

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
1.	03 and 03-A	Charge and altered charge
2.	57	Statement U/s. 313 of Cr.P.C. of accused

D. Material Objects :

Sr. No.	Material Object Number	Description
1.	Article-A	Pant of victim
2.	Article-B	Knicker of victim

J U D G M E N T**(Delivered on 12th of November, 2024)**

Accused **Bhausahab Kisanrao Mule** is prosecuted for the offences punishable under Sections 376(2)(f)(n)(j)(k) and Section 376(3) of the Indian Penal Code (hereinafter referred as '**I.P.C.**') and under Section 6 read with Section 5(l)(n)(p) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as '**the POCSO Act**'). In order to protect privacy and confidentiality of victim, identity of victim and her relative is not disclosed in the judgment as per Section 33(7) of the POCSO Act.

Prosecution case in brief is as under:

2. That, in the year 2018, victim was 13 years old and she was studying in 8th Standard. Informant is second wife of accused and victim is begotten out of wedlock between informant and accused. First wife of accused resides at Lohgaon, informant was

residing at Wadgaon-Shinde and accused used to reside with both his wives. Accused is a mason and in the year 2018, his work was going on at Pirangut and therefore, he was residing there and therefore in the month of June-2018, he had taken victim with him at Pirangut for her education. On 29.09.2018, accused left victim to the house of informant and on 30.09.2018, accused had been Pirangut. At that time, victim was very apprehended and she started weeping and requested informant not to send her with accused and accused did bad act with her. Thereafter, victim was trying to tell something to informant for two to three days. Thereafter, when informant took victim in confidence and inquired her, at that time on 03/10/2018, victim narrated her that on 07.11.2017, accused had taken her with him for bringing chicken at Khindi and there in a field, accused had committed penetrative sexual assault on her and threatened her that if she tells anything about it then he will kill her mother and brother and thereafter, accused used to take her frequently in field near Supti Vasti and used to commit penetrative sexual assault on her and also used to administer her contraceptive pills. Victim also informed that at village Pirangut, accused used to commit penetrative sexual assault on her twice or thrice in a week in the room and due to apprehension of accused, she did not narrate said fact till 03.10.2018 to anybody. As accused committed repeated penetrative sexual assault on victim, a child and victim informed said fact to the informant on 03.10.2018, informant lodged report against accused in Lonikand Police Station, Pune.

3. On the basis of report lodged by informant, Crime No.

1051/2018 was registered at Lonikand Police Station against accused for the offences punishable under Sections 376(2)(f)(i)(n) of IPC and Sections 4 r/w Sec.3 and Section 6 r/w Sec.5(l) and (n) of the POCSO Act. Investigating Officer referred victim to Sassoon Hospital for her medical examination and obtained Medico Legal Examination Report of victim and also recorded statement of victim. Investigating Officer also got recorded statement of victim and informant under Section 164 of Cr.P.C. before Judicial Magistrate First Class. Investigating Officer visited spot of incidents and prepared spot panchanamas. Investigating Officer recorded statements of witnesses and seized clothes of victim, sent samples and clothes to FSL for analysis. Investigating officer arrested accused. Investigation revealed that accused committed penetrative sexual assault on victim repeatedly and therefore, after completion of investigation, investigating officer filed final report against accused for offences punishable under Sections 376(2)(f)(i)(n) of IPC, Section 4 r/w Section 3 and Section 6 r/w Section 5(l) & (n) of the POCSO Act.

4. Ld. Predecessor of this court had taken cognizance of final report and thereafter, framed charge against accused vide Exh. 3 and altered charge vide Exh.3-A for offences punishable under sections 376(2)(f)(n)(j)(k) and Section 376(3) of IPC and under Section 6 r/w Section 5(l)(n)(p) of the POCSO Act. Contents of charge were read over and explained to accused in his vernacular language. Accused pleaded not guilty and claimed to be tried. Statement of accused under Section 313 of Cr.P.C. is recorded vide Exh.57.

5. From statement of accused under section 313 of Cr.PC. and evidence of defence witnesses, it appears that, defence of accused is of total denial and false implication as he had transferred house at Lohgaon in the name of his first wife though informant was insisting him to transfer it in her name. Informant lodged false report against him by using his daughter as a tool.

6. Following points arise for determination and court has recorded it's decision thereon for the reasons stated thereunder :-

<u>No.</u>	<u>POINTS</u>	<u>DECISION</u>
1.	Whether prosecution proved that in between 07.11.2017 to 03.10.2018 victim was a child as per Section 2(d) of the POCSO Act?	Proved.
2.	Whether prosecution further proved that in between 07.11.2017 to 03.10.2018 in the field near Khindi and Supti Vasti and in the room at Pirangut, accused committed repeated penetrative sexual assault / rape on victim being relative / father of victim and being in position of control or dominance over victim who was unable to give consent?	Proved.
3.	Whether prosecution further proved that during the aforesaid period and places accused committed rape / penetrative sexual assault on victim a woman under 16 years of age?	Proved.

4.	Whether prosecution further proved that during the aforesaid period and places, accused committed repeated penetrative sexual assault on victim being relative of the victim and in position of trust or authority of the victim ?	Proved.
5.	What order ?	As per final order.

7. In order to prove guilt of accused, prosecution examined prosecution witnesses mentioned in list of prosecution witnesses and also relied on documents mentioned in list of prosecution exhibits and material objects mentioned in list of material object. On the other hand, in order to substantiate his defence, accused examined witness mentioned in list of defence witness. Accused did not rely upon any documents or any material object.

8. Heard arguments of Ld. Spl. P. P. Shri. Konghe and Ld. Advocate for the accused Shri. Purohit and Ld. Advocate Shri. Jachak for the informant. Ld. Spl. PP. vehemently argued that on the date of incidents, victim was a child of 13 years old. Birth Certificate Exh.14 proves date of birth of victim. Moreover, testimony of PW-1 and PW-2 about age of victim is not challenged. PW-1 who is victim of offence deposed in accordance with prosecution case and her testimony is corroborated by her previous statement recorded under Section 164 of Cr.P.C. at Exh.15 and PW-4 Medical Officer who had examined victim and medical report Exh.40. PW-2 who is mother of victim also corroborated testimony of victim and prosecution case. Accused is real father of victim and considering threats given by accused, delay

in lodging FIR is natural. Moreover, delay in lodging FIR is satisfactorily explained. Relations between victim, informant and accused are not disputed. Suggestions about affair of informant with some other person are not given to any prosecution witness. DW-2 admitted that house at Lohgaon was purchased by her mother in the year 2012. There is no reason for false implication of accused. Defence put forth by accused is not probable. Therefore, prosecution proved guilt of accused beyond reasonable doubt. Hence, accused be convicted. **Ld. Spl. PP and Ld. Advocate for informant kept their reliance on following citations -**

1. **Ramesh Harijan Vs. State of U.P [Criminal Appeal No.1340 of 2007 – 2012 ALL SCR 1720]**
2. **State Vs. PD.D. and Miss P and Others Vs. State of NCT Delhi & Anr. [CRL.A.295/2021 AND CRL.A.459/2020] decided by Hon'ble Delhi High Court on 14.05.2024.**
3. **Roop Lal Vs. State of Punjab (CRA-D-458-DB-2010(O&m) decided by Hon'ble High Court of Punjab and Haryana at Chandigarh on 15.09.2022)**
4. **Phool Singh Vs. State of Madhya Pradesh (AIR 2022 SC (Criminal) 306)**
5. **Ganesan Vs. State [2020(10) SCC 573]**

6. State of Punjab Vs. Gurmit Singh and Others [AIR 1996 Supreme Court 1393]

7. Ramu Vs. State of Uttar Pradesh [Criminal Appeal No.309 of 2015 decided by Hon'ble Allahabad High Court on 18.12.2020 [2021(114) ALL CRI C 774]

8. Subramaniam Vs. State [Criminal Appeal No.269 of 2016 decided by Hon'ble Madras High Court on 04.08.2016).[(2016) 2 MADLW(CRI) 529]

Court has gone through observations made therein and written notes of argument filed on behalf of informant at Exh.71.

9. On the other hand, Ld. Advocate for accused argued that, there is huge delay in lodging FIR and it is not satisfactorily explained by the prosecution. Victim could have narrated incident to her mother, grandmother, friend or any other person. When first incident is alleged to be dated 07.11.2017, then in ordinary course of natural conduct victim would not have been to Pirangut with accused. Had it been the fact that repeated penetrative sexual assault was committed on victim then victim would not have been to the school regularly and informant would have noticed changes in the behaviour of victim. Opinion of medical officer is not final. C.A. report is negative. Therefore, there is no independent corroboration to the testimony of victim. Investigating officer did not prepare

panchanama of spot of incident near Supti vasti. There is delay of 7 days in seizing clothes of victim. There are serious lapses in investigation. Informant had affair with contractor of accused and she was insisting accused to transfer house at Lohgaon in her name and as the said house was transferred in the name of first wife of accused, accused is falsely implicated in the present case. Prosecution failed to prove foundational facts beyond reasonable doubt. Therefore, presumptions under Sections 29 and 30 of the POCSO Act are not attracted. Evidence of victim is not of sterling quality and there are inconsistencies in her previous statement and her testimony. FSL report does not support prosecution case. PW-1 i.e. victim was child and therefore, corroboration to her testimony in material aspect is necessary. Date of birth of victim is not mentioned in F.I.R. or statements recorded u/s 164 of Cr.P.C. Therefore, prosecution failed to prove victim was child as per procedure. PW-1 made material improvement in her testimony. PW-2 who is mother of victim is not direct witness and her testimony is hearsay in nature. Testimony of DW-1 and DW-2 also rebutted presumption under Sections 29 and 30 of the POCSO Act. Medical report Exh.40 is not conclusive to prove penetrative sexual assault on victim. Therefore, prosecution failed to prove the foundational facts beyond reasonable doubt. It is settled law that benefit of doubt is to be given to accused. Prosecution failed to prove guilt of accused beyond reasonable doubt. Hence, accused be acquitted.

Ld. Advocate for accused kept his reliance on following citations-

1. Ravi Anandrao Gulpude Vs. State of Maharashtra (Criminal Appeal No.412/2024 decided on 01.08.2016 by Hon'ble Bombay High Court, bench at Nagpur)
2. Santosh Prasad @ Santosh Kumar Vs. The State of Bihar (Criminal Appeal No.264 of 2020 decided on 14.02.2020 by Hon'ble Supreme Court of India)
3. Hardev Singh Vs. UT of J & K and another (Crl.A(S)No.08/2020, CrlM Nos.1236 & 1237 of 2021 decided on 07.02.2022 by Hon'ble High Court of Jammu & Kashmir and Ladakh at Jammu)
4. Eknath Yashwant Mude Vs. The State of Maharashtra & Anr. (Criminal Appeal Nos.149 of 2023 with Criminal Application No.2073 of 2023 with Interim Application No.1960 of 2023 decided on 30.1.2024 by Hon'ble Bombay High Court)
5. State Vs. Pritam Kumar (Major) (Criminal Appeal No.42 of 2018 decided on 20.8.2019 by Hon'ble Bombay High Court (2019(3) ABR (CRI) 433)
6. Vijay s/o Manoharrao Jawanjal Vs. State of Maharashtra (Criminal Appeal No.185 of 2021 decided on 14.8.2024 by Hon'ble Bombay High Court at Nagpur Bench)
7. Manirul Islam Vs. State of Assam (Cri.A.-64 of 2020 decided on 09.04.2021 by Hon'ble Gauhati High Court – AIROnline 2021 Gau 173)

Court has gone through observations made therein.

:REASONS:**As to Point No.1 :**

10. As per prosecution case, date of birth of victim is 26.03.2005. PW-1 who is victim and PW-2 who is mother of victim categorically deposed that date of birth of victim is 26.03.2005. Birth certificate Exh.14 produced and proved by prosecution reveals that date of birth of victim is 26.03.2005. Testimony of PW-1 and PW-2 about date of birth of victim and birth certificate Exh.14 is not challenged by accused. Medico Legal Examination Report Exh.40 reveals age of victim 13 years. Moreover, accused has also not seriously disputed the age of victim. Therefore, testimony of PW-1 and PW-2 about age of victim which is corroborated by birth certificate Exh.14 appears to be cogent, clinching and reliable. Birth Certificate Exh.14 is issued by a public officer and it is a document forming the records of the acts committed by public officer and therefore, it is a public document as per provision of Section 74 of The Indian Evidence Act and same is admissible by mere production thereof in view of provisions of section 77 of The Indian Evidence Act. No doubt, in the present case, in FIR and statement recorded under Section 164 of Cr.P.C. Exh.19, informant had not stated date of birth of victim. Moreover, PW-1 in her statement recorded under Section 164 of Cr.P.C. Exh.15 and statement recorded by police, had not stated her date of birth. Admittedly, PW-1 and PW-2 deposed date of birth of victim for the first time in their evidence. However, birth certificate Exh.14 which is issued by Grampanchayat reveals

that name of victim, her father and mother and date of birth is mentioned therein and said certificate is issued in the name of victim. Moreover, report / FIR is not encyclopedia. Accused also did not dispute genuineness of birth certificate Exh.14 or testimony of PW-1 and PW-2 about date of birth of victim. Therefore, in the humble opinion of this court, facts of the present case are different than the facts of the judgment in the case of *Ravi Anandrao Gulpude Vs. State of Maharashtra cited supra*. As such, there appear no substance in the contention of accused that prosecution failed to prove date of birth of victim. Therefore, Court hold that prosecution proved fact that date of birth of victim is 26.03.2005 and on the date of first incident and during the period of incidents, victim was child under Section 2(d) of the POCSO Act and her age was 13 years. **Hence, point No.1 is answered in affirmative.**

As to point Nos.2 to 4 :

11. As all these points are interconnected with each other, they are decided simultaneously in order to avoid repetition of facts.

12. In order to prove guilt of accused for the offence punishable under Sections 376(2)(f)(n)(j)(k) of I.P.C., prosecution has to prove that -

- i] Accused committed rape / penetrative sexual assault on victim,
- ii] Accused is relative, guardian or a person in a position of trust or authority towards the victim,

- iii] Accused committed rape / penetrative sexual assault on victim repeatedly and;
- iv] Accused was in position of control or dominance over victim who was incapable of giving consent.

In order to prove guilt of accused for the offence punishable under Section 376(3) of I.P.C., prosecution has to prove that -

- i] Accused committed rape / penetrative sexual assault on victim,
- ii] Victim was a woman under 16 years of age on the date of incident,

In order to prove guilt of accused for offence punishable under Section 6 of the POCSO Act, prosecution has to prove fact that-

- i] Accused committed aggravated penetrative sexual assault on victim,
- ii] On date of incident, victim was a child as defined under Section 2(d) of the POCSO Act.

13. As to facts in point Nos.2 to 4, PW-1 who is victim of the offence deposed that her date of birth is 26.3.2005 and in the year 2018, she was 13 years old and since May - 2018 she was residing with accused at Pirangut and she was studying in 8th Standard. PW-1 deposed that first incident took place on 07.11.2017 and on that day her father (accused) had taken her with him for bringing chicken at Khindi and then he took her nearby field and there committed sexual

intercourse with her. PW-1 deposed that accused threatened to kill her mother and brother by assaulting them by stone, if said incident is narrated by her to anybody. PW-1 deposed that thereafter her father had taken her repeatedly in field in Supti locality and there he had committed sexual intercourse with her and her father used to give her white and black colour pills to eat and he forced her to consume said tablets and used to beat her. PW-1 deposed that in June - 2018, her father had taken her at Pirangut for her education and in the room at Pirangut, he used to had sexual intercourse with her twice or thrice in a week and he used to threaten her not to disclose incident to her mother. PW-1 deposed that on 29.9.2018 her father took her at Wadgaon-Shinde and left her with her mother and he went to Lohgaon. PW-1 deposed that she was trying to tell the incidents to her mother for 2 – 3 days and on 03.10.2018 she narrated above incidents of committing forcible sexual intercourse with her by her father and thereafter, her mother lodged report. PW-1 identified her clothes at Article-A and B and birth certificate Exh.14 and deposed that contents of statement recorded as per section 164 Cr.P.C. Exh.15 are correct.

14. PW-2 who is mother of victim deposed in accordance with her report and FIR Exh.17 and 18 and prosecution case. PW-2 deposed that her marriage with accused was solemnized in the year 2004 and accused used to stay for sometime with her and their children at Wadgaon-Shinde and used to go to the house of his first wife at Lohgaon. PW-2 deposed that in June – 2018, accused had taken victim to Pirangut for education and then came at Wadgaon-

Shinde on 29.9.2018 and left victim with her. On 30.9.2018, accused had been to Pirangut. PW-2 deposed that at that time she noticed that victim was apprehended and she was weeping and she told that her father did bad act with her and she do not want to go with him. PW-2 deposed that victim told her that on 07.11.2017 accused had taken her to Khindi for bringing Chicken and took her in a field in Supti Vasti locality and there, he had committed sexual intercourse with her. PW-2 deposed that victim told her that accused had threatened victim to kill her mother and her brother, if she tell incident to anybody by assaulting by stone on their head and therefore, she did not tell said incident to anyone. PW-2 deposed that victim told her that thereafter, from time to time accused used to take her in the field at Supti Vasti and used to commit sexual intercourse with her and accused used to give her white and black colour tablets and told that said tablets were contraceptive and accused was threatening her. PW-2 deposed that in the year 2018, accused had taken victim to Pirangut and there, accused used to had sexual intercourse with victim twice or thrice in a week in the room at Pirangut and accused used to threaten victim not to tell incident to anyone and therefore, victim did not tell said incident to her. PW-2 deposed that therefore, she lodged the report and contents of report Exh.17 and FIR Exh.18 are correct. PW-2 also identified clothes of victim at Article-A and B and deposed that contents in her previous statement recorded by Magistrate at Exh.19 are true and correct.

15. PW-4 is medical officer, who had examined victim and

recorded history and issued Medico Legal Examination report Exh.40. PW-4 deposed that on 04.10.2018, S. D. Narvadi (Bakkal No.2649) of Lonikand Police Station had brought victim for her medical examination and consent was given by the victim and relative of victim and said consent letter is at Exh.39. PW-4 deposed that victim narrated history to him and stated that since 2016 her father was doing vaginal intercourse with her against her will and victim never told said fact to her mother as accused had threatened her. Accused did vaginal intercourse with victim multiple times and since January - 2018, accused was giving oral contraceptive pills to victim against her will and last episode of vaginal intercourse was dated 27.9.2018 and on 02.10.2018 she told history to her mother. PW-4 deposed that he along with Dr. Pallavi Nikam had examined victim and on local and genital, annus and oral cavity examination of victim, multiple old healed hymenal tears were present and his final opinion was from history and clinical examination, there is evidence of vaginal penetration. PW-4 deposed that he prepared medical examination report Exh.40 in his handwriting and contents therein are true and correct.

16. PW-3 is panch witness of spot panchanamas Exh.33, 34 and 35 and seizure panchanama of clothes of victim Exh.36. PW-3 deposed in accordance with prosecution case about spot panchanamas and seizure of clothes of victim and he also identified clothes of victim at Article-A and B to be same clothes which were seized in his presence.

17. PW-5 is investigating officer, who had recorded report lodged by informant at Exh.17 and to whom after registration of crime investigation of present crime was handed over. PW-5 deposed that during investigation, she recorded statement of victim on 04.10.2018 and sent victim for medical examination along with letter Exh.42 and she arrested accused and prepared arrest form Exh.43. PW-5 deposed that she collected medical examination report of victim, recorded statements of witnesses, sent victim and her mother before Judicial Magistrate First Class, for recording their statements under Section 164 of Cr.P.C. along with letter Exh.44 and sent accused for his medical examination along with letter Exh.45. PW-5 deposed that she sent samples of victim collected by doctor to FSL along with letter Exh.46. PW-5 deposed that thereafter, she had been to the spot of incidents and prepared spot panchanamas Exh.33, 34 and 35 and seized clothes of victim produced by her mother as per panchanama Exh.36. She deposed that after completion of investigation, she filed final report against accused in the Court and she identified accused and clothes of victim in the Court.

18. DW-1 is brother of accused. DW-1 deposed that in June- 2018, he and accused were doing labour work together at Pirangut and at that time, he, accused and his mother were residing together and victim's admission was taken in the school at Pirangut in 8th Standard. DW-1 deposed that when he returned to Pirangut at that time second wife of accused had been there and quarrel had taken place between accused and his second wife and thereafter, wife

of accused i.e. informant went to Police Station and police came and apprehended accused.

19. DW-2 is the daughter of accused from his first wife. DW-2 deposed that accused is her father and her mother Ratnamala Mule is the first wife of accused and informant is second wife of her father. DW-2 deposed that she has produced sale deed of their house and said house is in name of her mother. DW-2 deposed that informant used to come to their house and used to quarrel on account of house and used to give threats of Sanstha and she was asking her mother to mutate her name in the record of right of her house and on account of said house, quarrel had occurred.

20. While appreciating oral evidence the question in each case is whether the witness is truthful witness or not and whether there is anything to doubt his veracity. In present case, PW-1 i.e. victim is a child witness. Court can take judicial notice of judgment in the case of *Panchhi Vs State of U. P (1998 SCC (Cri) 1561* wherein Hon'ble Apex court observed that 'evidence of child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what other tell him and as a child witness is an easy pray to tutoring. Child witness evidence must find adequate corroboration before it is relied upon. It is more a rule of practical wisdom than of law. Child witness evidence can be relied upon if the court finds that child witness has sufficient intelligence and understanding of oath'. Therefore, court has closely scrutinized evidence of PW-1.

21. As per report Exh.17 and F.I.R. Exh.18, victim had narrated incident to PW-2 on 03.10.2018. In view of affirmative finding as to point no.1, it is proved fact that victim was 13 years old during the period of occurrence of incident. As such, it is clear that victim was of tender age on the day of first incident and during the period of incidents. Therefore, she was not expected to narrate incident like adult person.

22. From evidence of PW-1, who is victim of present crime, it appears that in the inquiry made to her before recording her statement under section 164 of Cr.P.C. at Exh.15 and before administering oath while recording her evidence which is recorded in question-answer form and in her evidence, she has given rational answers to the questions put to her. From the answers given by PW-1 it is clear that PW-1 had sufficient intelligence and understanding of obligation of oath. Moreover, on the date of recording evidence, victim was 15 years old. Statement of victim recorded under Section 164 of Cr.P.C. at Exh.15 corroborates her testimony about first incident of penetrative sexual assault committed by accused on her on 07.11.2017 and subsequent incidents of commission of penetrative sexual assault by accused in field in Supti locality and incidents of commission of penetrative sexual assault by accused in the room at Pirangut and fact that accused had threatened to kill her mother and brother, if she narrate said incident to anyone and fact that she narrated above incidents to her mother on 03.10.2018. Thus, testimony of PW-1 is corroborated by her previous statement recorded under section 164 of Cr.P.C. at Exh.15 in material aspects.

23. Moreover, her testimony that she was taken to hospital, she narrated history to doctor and doctor examined her is also corroborated by PW-4. Moreover, testimony of PW-1 that on 03.10.2018 she narrated the incidents to her mother is also corroborated by previous statement of PW-2 who is mother of victim which was recorded under Section 164 of Cr.PC. and which is at Exh.19 in material aspects. Fact that after incidents when victim had been reached to informant's home on 29.9.2018 at that time she was apprehended and she was weeping and she told her mother that she does not want to go with accused and her father had done bad act with her, is subsequent natural conduct of victim which is influenced by fact in issue and a fact which forms part of same transaction and therefore, it is relevant under section 6 and 8 of the Indian Evidence Act. PW-1 is the daughter of accused and accused has not disputed his relation with victim and informant. Therefore, identity of the accused is not in dispute in the present matter.

24. Moreover, it appears that victim had narrated incidents to her mother on 03.10.2018. Accused is father of victim and victim has deposed reason as to why she had not earlier narrated incidents to her mother. Reason for delay narrated by PW-1 appears to be just and satisfactory. In the case of *Roop Lal Vs. State of Punjab cited supra*, Hon'ble Apex Court has relied on its judgment in the case of *State of Uttar Pradesh Vs. Chhotey Lal* wherein it is observed that an Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge. The observations of Hon'ble Delhi High Court in the case of

Miss P and others Vs. State of NCT Delhi and another cited supra

support the contention of prosecution that delay in lodging FIR in the present case is not fatal to the prosecution. Considering relations between victim and accused, tender age of victim and social status of party, and fact that all household expenses of informants family were borne by accused, explanation offered by the prosecution for delay in lodging FIR appear to be satisfactory. As the delay is satisfactorily explained by prosecution, there appear no substance in the contention of accused to discard the prosecution case on the ground of delay in lodging FIR.

25. Testimony of PW-2 also corroborates testimony of victim. Statement of victim to her mother is admissible as previous statement and it is relevant under Section 6 of the Indian Evidence Act.

26. Testimony of PW-1 that accused had committed repeated penetrative sexual assault on her is also corroborated by PW-4 Medical Officer who had recorded history and examined victim and Medico Legal Examination Report Exh.40. Testimony of PW-4 and Medico Legal Examination report Exh.40 is first and important corroborative evidence to the version of victim and prosecution case. There is no reason for disbelieving version of PW-4 about medical condition of private part of victim and his opinion that there is evidence of vaginal penetration. Testimony of PW-4 is also not shaken in his cross-examination. As such testimony of PW-4 inspire confidence. Therefore, testimony of PW-1, PW-2 and PW-4 proves

prosecution case that during 07.11.2017 till 27.9.2018 repeated penetrative sexual assault were committed on victim who was of 13 years old during the period of incidents.

27. Admittedly, FSL report in the present case is inconclusive. However, in the present case, medical evidence of PW-4 corroborates prosecution case and it reveals that multiple old healed hymenal tears were present and there is evidence of vaginal penetration. There are no material contradictions in the deposition of prosecution witnesses and PW-2 and PW-4 have corroborated testimony of PW-1. Therefore, in the humble opinion of this Court, facts of the present case are different than the facts in the case of *Santosh Prasad @ Santosh Kumar Vs. State of Bihar cited supra*.

28. In the case of *State of Punjab Vs Gurmit Singh AIR 1996 SC 1393*, cited supra, Hon'ble Apex Court has observed that 'Court should examine broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of prosecutrix /victim, which are not of a fatal nature to throw out otherwise reliable prosecution case. The testimony of prosecutrix must be appreciated in the background of entire case and trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations'.

29. No doubt, there are some variations in the history narrated by victim to the doctor about year of first incident and date of narrating incidents by victim to her mother. However, said variations

are not material in nature and said history also corroborates testimony of PW-1 and prosecution case in material aspects. Moreover, considering observations of Hon'ble Apex Court in above case and after examining broader probabilities of present case and considering tender age of victim, the above discrepancies in the history in medical examination report Exh.40 narrated by PW-1 appears to be insignificant discrepancies in the prosecution case which are not of a fatal nature to throw out otherwise reliable prosecution case. Moreover, maxim falsus in uno falsus in omnibus has no application in India. In the case of *Ramesh Harijan Vs. State of U.P. cited supra*, Hon'ble Apex Court has observed not to give undue importance to minor discrepancies which do not shake the basic version of prosecution case. The discrepancies in the testimony of prosecution witnesses and in the history in Exh.40 are minor discrepancies which do not go to root of the matter.

30. Considering evidence of PW-1 in its entirety in the light of observations in the judgment cited supra, PW-1 victim does not appear to be tutored witness and it is clear that she has given rational answers to questions put to her and testimony of PW-1 is also corroborated in material aspects by PW-2 and PW-4. Moreover, PW-1 appears to have sufficient intelligence and understanding of obligation of oath. Testimony of PW-1 appears to be reliable and truthful and it is corroborated by other witnesses on record in material aspects. Hence, it inspires confidence.

31. PW-4 i.e. Medical Officer is a public servant. There is no

reason for him to tell lie. PW-4 is an independent witness. There are no allegations on behalf of accused that there was any enmity between him and PW-4. Moreover, evidence of all prosecution witnesses is not shaken in their cross-examination. Testimony of DW-1 also reveals that victim had been taken to Pirangut by accused for her education and there, she was studying in 8th Standard. Testimony of DW-2 also reveals that house property was purchased in the name of her mother i.e. first wife of accused in the year 2012 itself. Moreover, testimony of DW-2 that informant used to come their house and used to quarrel with them on the count of mutating her name in the record of right of said house and testimony of DW-1 that informant had been to Pirangut and there, quarrel had taken place between informant and accused is not consistent with the defence put-forth by accused in his statement recorded under Section 313 of Cr.P.C.

32. No defence has been brought on record regarding any enmity, inducement or any promise to the prosecution witnesses. Informant is admittedly second wife of accused and victim is daughter of accused. Marriage of informant with the accused is taken place in the year 2004 and house in which first wife of accused is residing was purchased by the first wife of accused in the year 2012 itself. No material has been brought on record by accused to show that he had mortgaged said house and thereafter got it released and again transferred same in the name of his first wife. As observed in the case of *Ramu Vs. State of Uttar Pradesh cited supra*, in heinous offences like sexual assault on minor, mother of victim would not

falsely implicate an innocent person. Matrimonial discord is not likely to be cause for false implication of accused for such heinous offences. Moreover, accused also failed to produce any reliable oral or documentary evidence to show that as to why he might be falsely implicated. Therefore, defence put-forth by accused about his false implication for non transferring house in name of informant by using victim as a tool does not appear probable. Totality of circumstances emerging on record discloses that victim, her family members and other prosecution witnesses do not have any motive to falsely implicate accused. Evidence of all prosecution witnesses is unblemished and is free from any kind of doubts. On the other hand, in this case, motive of accused seems to gain a pleasure by forceful penetrative sexual assault upon minor victim of a tender age of merely 13 years old.

33. In the present case, victim narrated incidents to her mother and doctor has given conclusive opinion about vaginal penetrative sexual assault on victim. Moreover, in the present case, substantial evidence of victim corroborates prosecution case and corroborative evidence is also available on record. Medical evidence is not inconsistent with the prosecution case and medical report Exh.40 also contains history narrated by victim. Evidence of victim is of sterling quality. Therefore, in the humble opinion of this court, facts of present case are different than facts of cases relied by accused cited supra and observations made therein are not applicable to present case.

34. Ratio in the case of *Hardev Singh Vs. UT of J & K and Another* and *Vijay Manoharrao Jawanjal Vs. State of Maharashtra cited supra*, that presumption under Section 29 of the POCSO Act is not absolute and it would operate only upon the prosecution first proving foundational facts against accused beyond reasonable doubt is not disputed. Moreover, ratio of Hon'ble Guahati High Court in case of *Manirul Islam Vs. State of Assam* that in absence of cogent evidence to *prima-facie* establish foundational facts, conviction of accused cannot be based solely on presumption of guilt is also not disputed.

35. Considering evidence on record and all attending circumstances in the present case, prosecution proved all the foundational facts required to be proved for proving guilt of accused for offences charged beyond reasonable doubt. Therefore, in view of observations of Hon'ble Bombay High Court in the above case relied by accused presumption under sections 29 and 30 of the POCSO Act will operate against accused.

36. Section 29 of the POCSO Act lays down that, where a person is prosecuted for committing or attempting to commit any offence under sections 3, 5, 7 and 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. Moreover, section 30 of the POCSO Act provides presumption of culpable mental state. Therefore, presumption under sections 29 and 30 of the POCSO Act will have to be raised in present

matter. DW-1 and DW-2's testimony is of interested witnesses and it does not prove fact that incident in question did not happen. Therefore, defence failed to rebut above presumption envisaged under sections 29, 30 of POCSO Act in any manner i.e. either by cross-examination of prosecution witnesses or leading defence evidence or by means of any other direct or circumstantial evidence and failed to prove contrary.

37. Prosecution has also proved principles and conditions required to be fulfilled for proving circumstances from which conclusion of guilt of accused can be drawn. In present case, direct evidence and also the circumstances are of conclusive nature and are consistent only with the hypothesis of guilt of accused.

38. It is also well settled law that minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The whole evidence of prosecution inspires confidence in the mind of Court and can be accepted by test of prudence. In present case, presence of accused and occurrence of incident is proved by direct testimony. Therefore, accused was bound to give explanation in regard to incriminating circumstances against him. However, accused failed to give any plausible explanation. Defence of accused also does not appear probable. The evidence of PW-1 to PW-5 is consistent with prosecution case. Their evidence inspires confidence. Delay in lodging F.I.R. is satisfactorily explained. None recording of statements of neighbourers at Pirangut or first wife of accused by

investigating officer, delay in seizure of clothes of the victim and other lapses in investigation does not appear fatal to prosecution case. As observed in the case of ***State of Punjab Vs. Gurmit Singh and Others cited supra***, as prosecutrix had no control over the investigation agency and the investigating officer did not conduct investigation properly it cannot become a ground to discredit testimony of prosecutrix and testimony of victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration to her statement, court should find no difficulty to act on testimony of a victim of sexual assault alone to convict an accused where her testimony inspire confidence. In the present case, victim has fully supported case of prosecution and her testimony is consistent right from beginning and there is no reason to doubt credibility of her testimony. As observed in the case of ***Ganesan Vs. State cited supra***, as per the settled proposition of law even there can be a conviction based on the sole testimony of victim, if her evidence is found reliable and trustworthy. There are no material contradictions or discrepancies brought on record and evidence of victim is of sterling nature. FSL report is always not necessary to connect accused with the crime when there is no reason to doubt sterling evidence of victim. In the humble opinion of this court, facts of the case of ***Eknath Yashwant Mude Vs. The State of Maharashtra & Anr. and State Vs. Pritam Kumar cited supra*** are different than the facts of the present case. All the circumstances brought by prosecution leads towards the complicity of accused and his involvement in present crime beyond all reasonable doubt.

39. On going through prosecution case and evidence in its entirety and considering material on record and fact that there are no material discrepancies brought on record in the evidence of prosecution witnesses which go to root of matter and all attending circumstances, testimony of prosecution witnesses in respect of facts in issue in point nos.2 to 4 appear to be cogent, clinching, reliable and sterling in nature and it inspire confidence. In view of affirmative finding as to point no.1, it proved fact that age of victim during period of incidents was 13 years only. Admittedly, accused is father of victim and therefore he was in position of control or dominance over victim, who was unable to give consent and accused was in position of trust or authority of victim. As such, Court hold that there is cogent, clinching, reliable and sterling evidence on record that, in between 07.11.2017 to 03.10.2018 in the field near Khindi and Supti Vasti and in the room at Pirangut, accused committed repeated penetrative sexual assault / rape on victim being relative / father of victim and being in position of control or dominance over victim, who was unable to give consent, accused committed repeated rape / penetrative sexual assault on victim a woman under 16 years of age, accused committed repeated penetrative sexual assault on victim being relative of the victim and in position of trust or authority of the victim, who during period of incidents was a child as defined under section 2(d) of the POCSO Act.

40. Therefore, considering matter on record and above discussion, Court hold that, prosecution proved beyond reasonable

doubt all facts required to be proved for proving guilt of accused for the offences punishable under Sections 376(2)(f)(n)(j)(k) and 376(3) of I.P.C. and for offences punishable under Section 6 read with Section 5(l)(n)(p) of the POCSO Act. Therefore, prosecution proved beyond reasonable doubt guilt of accused for offences punishable under sections 376(2)(f)(n)(j)(k), 376(3) of I.P.C. and under Section 6 read with Section 5(l)(n)(p) of the POCSO Act. Hence, point Nos.2 to 4 are answered in affirmative.

As to Point No.5 :

41. In view of the affirmative findings of Point Nos.1 to 4, accused is liable to be convicted for the offences punishable under sections 376(f)(n)(j)(k), 376(3), of I.P.C. and under Section 6 read with Section 5(l)(n)(p) of the POCSO Act. Considering nature of offences and fact that offence is committed against a child/woman below age of 16 years benefit of provisions of Probation of Offenders Act can not be given in such matter. Therefore, accused will have to be heard on the question of sentence. Hence, I stopped to hear accused, learned advocate for accused and learned Spl. P. P. on the question of sentence.

Date : 12/11/2024.

**(K.P. Kshirsagar)
Additional Sessions Judge,
Pune.**

42. It was argued by Ld. Spl. P. P. that accused committed heinous offence against minor victim of 13 years, who is his own

daughter. Accused committed above offences for fulfilling his lust. Offences have caused physical and mental trauma to victim. There are no chances of his reformation as he is a 59 years old. Therefore, accused does not deserve any leniency. Hence, maximum punishment be awarded.

43. It was argued by Ld. Advocate for accused that accused is 59 years old and old age of accused be considered. No criminal antecedent is attributed to accused. Hence, lenient view be taken and minimum sentence be imposed. Accused also prayed that, lenient view be taken and minimum sentence be imposed.

44. From material on record, it reveals that no previous conviction is attributed to accused. Accused is a man aged about 59 years and at the time of commission of offence, he was 52 years old. Accused is father of victim. Considering nature of offence, gravity of offence and circumstances in which offence is committed and effect of such offences on society, traumatic effect on victim, age of victim, age of accused, manner of committing offence and considering aggravating and mitigating circumstances in the opinion of this Court, present case does not come within purview of rarest of rarest case and therefore, following sentence will serve the purpose and would meet the ends of justice.

45. As per section 42 of the POCSO Act- Where an Act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then,

notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.

46. As the punishment provided for offence of committing aggravated penetrative sexual assault on woman below 16 years is greater in degree under the POCSO Act, and considering fact that victim is child as defined under section 2(d) of POCSO Act, it will be appropriate to punish accused under the POCSO Act for committing aggravated penetrative sexual assault on victim. So accused is liable for punishment for offence punishable under Section 6 read with Section 5(l)(n)(p) of the POCSO Act.

47. Considering nature of crime and physical and mental trauma caused to victim due to commission of aggravated penetrative sexual assault on her by accused in addition to punishment to accused, victim is entitled for compensation as per section 396 of the B.N.S.S. and section 33(8) of the POCSO Act. However, as there is no material on record to determine compensation amount therefore, it will be appropriate to make recommendation to Pune District Legal Services Authority to pay compensation to victim under one of the various government Victim Compensation Schemes.

48. Seized property in present crime requires to be disposed off in accordance with provision of para no.73(1)(d) of Chapter VI of

Criminal Manual. Seized property i.e. pant of victim (Article-A) and knicker of victim (Article-B) appears to have no value. Therefore, it will be appropriate to destroy same. Hence, in answer to point no.5, Court proceeds to pass the following order -

ORDER

1. Accused **Bhausahab Kisanrao Mule** is hereby convicted under Section 258(2) of The Bharatiya Nagrik Suraksha Sanhita, 2023 for the offence punishable under Section 6 read with Section 5(l)(n)(p) of the Protection of Children from Sexual Offences Act, 2012, and he is sentenced to suffer rigorous imprisonment for 25 (Twenty Five) Years and to pay fine of Rs.10,000/- (Rs. Ten thousand only) and in default of payment of fine, to suffer simple imprisonment for one month.
2. In view of provision of Section 42 of the Protection of Children from Sexual Offences Act, 2012, separate sentence is not awarded for the offences punishable under Sections, 376(2)(f)(n)(j)(k), 376(3) of the Indian Penal Code.
3. Accused is given set off for the period of detention already undergone by him during investigation, inquiry and trial as per Section 468 of the Bharatiya Nagrik Suraksha Sanhita, 2023.
4. Muddemal property Article-A and B be destroyed.
5. The order of disposal of property shall take place after one year from today unless appeal is preferred as per para No.73(1)(d) Chapter VI of the Criminal Manual.
6. Recommendation is made to Pune District Legal Services Authority under Section 396 of the Bharatiya Nagrik

Suraksha Sanhita, 2023 to award compensation to victim under victim's compensation scheme of the Government as per rules.

7. Accused is appraised of his right of appeal before Hon'ble High Court.
8. Copy of judgment be forwarded to the District Magistrate, Pune as per section 406 of The Bhartiya Nagrik Suraksha Sanhita, 2023.
9. Copy of judgment be supplied to accused free of costs.
10. Dictated and pronounced in the open Court.
11. Special (POCSO) Case No.529/2018 is disposed of accordingly.

Date : 12/11/2024.

(K.P. Kshirsagar)
Additional Sessions Judge,
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 : Shri. G. M. Patil, Grade-I

Name of Court : K.P. Kshirsagar, District Judge-
19 and Addl. Sessions Judge,
Pune

Date of Decision : 12.11.2024

Judgment signed by P.O. : 12.11.2024
on

Judgment uploaded on : 12.11.2024