

|                                                                                                                 |               |   |            |        |      |
|-----------------------------------------------------------------------------------------------------------------|---------------|---|------------|--------|------|
| (CNR No. MHPU010175442019)<br> | Presented on  | : | 22/11/2019 |        |      |
|                                                                                                                 | Registered on | : | 27/11/2019 |        |      |
|                                                                                                                 | Decided on    | : | 01/11/2023 |        |      |
|                                                                                                                 | Duration      | : | Years      | Months | Days |
|                                                                                                                 |               |   | 03         | 11     | 05   |

Special Case Child Prot. No.558/2019.Exh. No.35.**FORM No. XXXII****Part 'A'****(Para 44(i) of Chapter VI of Criminal Manual)**

| IN THE SESSIONS COURT, AT PUNE                                                                                                    |                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Presided over by Varsharani Patravale, Special Judge)                                                                            |                                                                                                                                                                      |
| (Sections 376(2)(f), 376(2)(i) and 506 of Indian Penal Code & punishable under Section 5 punishable under Section 6 of POCSO Act. |                                                                                                                                                                      |
| Complainant / Informant                                                                                                           | : <b>State of Maharashtra – Through Marketyard</b> Police Station, Pune.                                                                                             |
| Advocate for Complainant / Informant                                                                                              | : APP Shri. V. M. Satpute                                                                                                                                            |
| Accused                                                                                                                           | : <b>Madhukar Bhimrao Gaikwad</b> ,<br>Age : 35 years, Occupation : Electrician,<br>R/at : S. No.580, Anand Nagar, Near Ashish Mutton Shop, <b>Marketyard</b> , Pune |
| Advocate for Accused                                                                                                              | : Smt. Priyanka R. Goranti                                                                                                                                           |

**Part 'B'**

|                                      |   |                         |
|--------------------------------------|---|-------------------------|
| Date of Offence                      | : | July-2017 to 20/09/2019 |
| Date of Filing Complaint             | : | 22/11/2019              |
| Date of Framing of Charges / Plea    | : | 16/12/2020              |
| Date of Commencement of Evidence     | : | 21/09/2023              |
| Date on which Judgment is reserved   | : | 01/11/2023              |
| Date of the Judgment                 | : | 01/11/2023              |
| Date of the Sentencing order, if any | : | 01/11/2023              |

**Accused Details**

| Rank | Name                     | Date of Arrest | Date of Release on Bail | Offence charged with                                                           | Whether acquitted or convicted | Sentence imposed | Period of detention Undergone during Trail for purpose of Section 428 Cr.PC. |
|------|--------------------------|----------------|-------------------------|--------------------------------------------------------------------------------|--------------------------------|------------------|------------------------------------------------------------------------------|
| 1]   | Madhukar Bhimrao Gaikwad | 24.09. 2019    | <b>In Jail</b>          | S.376(2)(f), 376(2)(i) & 506 of I.P.C. & S.5 punishable under S.6 of POCSO Act | Acquitted                      | —                | —                                                                            |

**Part 'C'****LIST OF PROSECUTION / DEFENCE / COURT WITNESSES****A. PROSECUTION WITNESSES :-**

| Rank | Name of Witness  | Nature of Witness | Exh. No. |
|------|------------------|-------------------|----------|
| PW-1 | XXX              | Victim            | 13       |
| PW-2 | Mother of Victim | Witness           | 15       |

**B. DEFENCE WITNESSES :-**

| Witness No. | Name | Nature of Evidence |
|-------------|------|--------------------|
|             | NIL  |                    |

**C. COURT WITNESSES :-**

| Witness No. | Name | Nature of Evidence |
|-------------|------|--------------------|
|             | NIL  |                    |

**LIST OF EVIDENCE OF PROSECUTION / DEFENCE / COURT****A. PROSECUTION EVIDENCE :-**

| Exh. No. | Nature of document                                   |
|----------|------------------------------------------------------|
| 18       | Search Panchanama                                    |
| 19       | Muddemal Receipt dated 24/09/2019                    |
| 20       | Letter dated 25/09/2019                              |
| 21       | Spot Panchanama                                      |
| 22       | Letter about accused medical examination             |
| 23       | Clothes Seizure Panchanama                           |
| 24       | Muddemal Receipt dated 29/09/2019                    |
| 25       | Medico Legal Examination Report of Sexual Violence   |
| 26       | Seizure Panchanama dated 08/10/2019                  |
| 27       | Muddemal Receipt dated 08/10/2019                    |
| 28       | Letter to C.A. dated 08/10/2019                      |
| 29       | Letter to Marketyard police station dated 24/10/2019 |
| 30       | Step-Up Foundation Report dated 26/10/2019           |
| 31       | Step-Up Foundation Letter dated 30/10/2019           |

**B. DEFENCE EVIDENCE :-**

| Exh. No. | Nature of document |
|----------|--------------------|
|          | NIL                |

**C. COURT EVIDENCE :-**

| Exh. No. | Nature of document |
|----------|--------------------|
|          | NIL                |

**D. PROPERTY DETAILS :-**

| Exh. No. | Nature of document |
|----------|--------------------|
|          | NIL                |

## **J U D G M E N T**

**(Dictated and delivered on the 01<sup>st</sup> day of November, 2023)**

1] Accused is charged for the offences punishable under Sections 376(2)(f), 376(2)(i), 506 of the Indian Penal Code, 1860 and Section 5 punishable punishable under Section 6 of the POCSO Act.

2] The prosecution case in nutshell is as under :-

The F.I.R. is given by one Mrinal Rudrawar, a counselor of N.G.O. Step-Up Foundation. As per the F.I.R. the counselor was taking sessions of sensitization regarding sexual harassment, drug additions, information regarding HIV Aids career etc. in the school of the victim. On 20/09/2019, during one of this sessions the victim started crying. On 23/09/2019, the counselor again visited the school, at that time the victim told that for last three years her father is sexually abusing her. She told that after her mother goes to work and her siblings go to school, her father makes her to remove her clothes and does penetrative sexual intercourse and also sexually harasses her. She also agreed to give it in writing. Therefore, the counselor alongwith the victim and her mother went to the police station and gave F.I.R.

3] The C.R. No.176/2019 is registered at Marketyard Road Police Station. The investigation is carried out. After completion of investigation the charge-sheet is filed against accused.

4] The charge is framed at Exh.3. It was read-over and explained to the accused in vernacular language. He pleaded not guilty and claimed to be tried. The defence is total denial.

5] I have recorded the evidence of witnesses. The statement of accused under Section 313 of the Cr.P.C. is recorded. His defence is of total denial. Heard both the Ld. Advocates. On perusal of the evidence following points arise for determination and I have recorded my findings thereon as follows :-

| Sr. No. | POINTS                                                                                                                                                                                                                                                                                                                                           | FINDINGS     |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| [1]     | Does prosecution prove that accused father of victim a person in a position of trust during the period from July 2017 to 20.09.2019 at the house of victim situated at S. No.580, Anand Nagar, Marketyard, Pune repeatedly committed rape on her and thereby committed an offence punishable under Section 376(2) (f) of the Indian Penal Code ? | : <b>No.</b> |
| [2]     | Does prosecution prove that a accused during the aforesaid period and place committed rape on victim a minor girl, under sixteen years of age and incapable of giving consent and thereby committed an offence punishable under Section 376(2)(i) of the Indian Penal Code ?                                                                     | : <b>No.</b> |
| [3]     | Does prosecution further prove that accused during the aforesaid period and place committed criminal intimidation by threatening to kill victim, a minor girl with intent to cause alarm and thereby                                                                                                                                             |              |

|            |                                                                                                                                                                                                                                                                                      |   |                                                 |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------------------------------------------|
|            | committed an offence punishable under Section 506 of the Indian Penal Code ?                                                                                                                                                                                                         | : | <b>No.</b>                                      |
| <b>[4]</b> | Does prosecution further prove that accused during the aforesaid period and place committed aggravated penetrative sexual assault on victim a minor girl more than once or repeatedly and thereby committed an offence under Section 5 punishable under Section 6 of the POCSO Act ? | : | <b>No.</b>                                      |
| <b>[5]</b> | What order ?                                                                                                                                                                                                                                                                         | : | <b>As per final order accused is acquitted.</b> |

### **REASONS**

**6] Points Nos.1 to 5 :**

In order to avoid repetition of evidence all the points are discussed together.

7] It is the case of prosecution that the victim girl was sexually abused by her own father for last three years. She disclosed about it for the first time while the sensitization session was held by the N.G.O. Step-Up Foundation. Accordingly, the counselor to whom the incident was disclosed, gave F.I.R.

8] The prosecution has examined the victim as PW-1 and her mother as PW-2. The victim has stated that on 24/09/2019, she had written one note. The note was shown to her, she admits that it is in her hand-writing. However, denied that the contents are correct. She has stated that there were quarrels between her parents, she was having grudge against her father, therefore, she

wrote these things in the note. She has agreed that the social worker and first informant Mrinal Didi had come to the school and told about good touch and bad touch. She has also admitted that she had told her that in absence of her mother, her father sexually abused her. However, she added that since she had grudge against the father, she told so. She has further stated that no incident as such had occurred.

- 9] Ld. APP asked her leading questions. However, nothing incriminating against the accused is revealed by her. She was read-over the incriminating portion marked as “A” in her statement. However, she has stated that she did not tell so to the police. She has stated that her statement was not read-over to her.
- 10] PW-2 is mother of the informant. She has stated that she does not know what happened on 24/09/2019. She has stated that the victim never told her that her father commits rape on her. She has stated that she has no knowledge that her daughter told her teacher in school that her father sexually abuses her.
- 11] Ld. APP asked leading questions to her. However, nothing incriminating is revealed. She was read-over the portion marked as “A” in her statement. However, she has stated that she did not tell so to the police. She has denied that she produced clothes of her daughter and showed ignorance as to whether medical examination of her daughter was done.

12] The accused has admitted house search panchanama at Exh.18, the receipt of muddemal at Exh.19, the letter given by I.O. to the President C.W.C. that the victim and her mother have denied to undergo medical treatment at Exh.20, the spot panchanama at Exh.21, letter given for medical examination of accused at Exh.22, seizure panchanama at Exh.23, the muddemal receipt at Exh.24, medical certificate at Exh.25, seizure panchanama regarding the blanket and shawl at Exh.26, the muddemal receipt regarding it at Exh.27, the letter sent to C.A. at Exh.28, the letter issued by I.O. to the school regarding organization of a session by Step-Up Foundation at Exh.29, the documents given by Step-Up Foundation at Exh.30 and 31.

13] It would be pertinent to note here that the C. A. Report is not received. Therefore, the seizure of clothes is not of much use. It would be pertinent to note here that PW-1 the victim has admitted that she wrote a note in a book and also told about sexual abuse by her father to the social worker from Step-Up Foundation. The panchanama at Exh.18 and 19 is regarding said note. It is seen that in this note she has written about the harassment at the hands of her father. However, she has retracted her statement in the substantive evidence. Though she admits of doing these things, she has stated that there were quarrels between her parents and she was having grudge against her father. Therefore, she wrote a note and told these things to social worker at school.

14] It would be pertinent to note here that initially she denied to undergo medical examination. The letter regarding it is at Exh.20. It is seen that after the F.I.R., she was kept at Maharshi Karve Institute. After the initial denial she underwent medical examination. The M.L.C. Report is at Exh.25. It is seen that as per the clinical examination there is evidence of vaginal penetration with no evidence of fresh injuries, genital or external. It would be pertinent to note here that PW-1 the victim has categorically stated that she has stated that her father sexually abused her because she was having grudge against her father. At the relevant time, the victim was 13 years old and was studying in 9<sup>th</sup> Standard. Considering her age, it cannot be said that she was not knowing about the sexual abuse and came to know about it only after the session held in the school. It would be pertinent to note here that the victim never told about the sexual abuse by her father to her mother. Therefore, only because there is evidence of vaginal penetration, it cannot be attributed to the accused.

15] Considering the evidence of the prosecution, it is seen that there is no substantive evidence against the accused. Though there is medical evidence, in view of statement of the victim before the court that she falsely told such things due to grudge, the documentary evidence is not of much use to convict the accused.

16] Both the material witnesses of prosecution have turned hostile. In such circumstances, the charge against the accused is

not proved satisfactorily and with clinching evidence. In absence of clinching evidence, the accused is entitled to be given benefit of doubt. The prosecution could not prove guilt of the accused with satisfactory evidence. Hence, I have answered all the questions in the negative and proceed to pass following order :

**ORDER**

- 1] Accused **Madhukar Bhimrao Gaikwad** is acquitted of the offence punishable under Sections 376(2)(f), 376(2)(i) and 506 of Indian Penal Code & offence under Section 5 punishable under Section 6 of POCSO Act vide Section 235 (1) of the Code of Criminal Procedure, 1973.
- 2] The bail bonds of the accused are cancelled and his sureties are discharged.
- 3] The muddemal at Sr. No.1 to 9 clothes and Sr. No.10 one letter, all being worthless, be destroyed after appeal period is over.
- 4] The accused to furnish PR. Bond of Rs.15,000/- with one surety in the like amount in compliance of Section 437-A of the Code of Criminal Procedure, 1973.

Place : Pune.  
Date : 01/11/2023.

Sd/-XXX  
(V. A. Patravale)  
Special Judge, Pune.

**CERTIFICATE**

“ I affirm that the contents of this PDF file are word to word as per the original.”

Name of the Steno : Shri. P. B. Jadhav (Grade-III)

Name of the Court : Smt. V. A. Patravale  
Special Judge, Pune

Date of Judgment : 01/11/2023

Judgment signed by PO on : 01/11/2023

Judgment uploaded on : 02/11/2023