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SPL.(POCSO)CASE.NO. 173/2018
CNR-MHPU01-005707-2018

Received on : 24.04.2018
Registered on : 24.04.2018
Decided on : 20.01.2021
Duration : Ys.Ms.Days
02 08 27

IN THE COURT OF SPECIAL JUDGE (POCSO), PUNE.
(Presided over by S. H. Gwalani)

SPL.(POCSO)CASE.NO. 173/2018
Exh.No. 70

The State of Maharashtra,
Through P.S.O. Dattawadi
Police Station, Pune.
(C.R.No. 50/2018)

... Prosecution

Versus

Atish Hansaraj Mane,
Age 19 yrs., Occu. Nil,
R/at Lane No. 25, Janata
Vasahat, Pune.

... Accused

Charge : U/Sec. 376, 506 of I.P.C., 4, 6, 12 of
the Protection of Children From Sexual Offences Act

Appearance :

A.P.P.Mr. Ghogare Patil for the prosecution
Adv.Mr. M. B Zanwar for the accused

J U D G M E N T

(Delivered on 20th day of January 2021)

The accused has been charged with the offence punishable U/Sec. 376, 506 of I.P.C., 4, 6, 12 of the Protection of Children From Sexual Offences Act (POCSO).

2. It is alleged by the prosecution that;

In the year 2016 the neighbourer of the complainant i.e. accused used to come to their house and used to talk with her victim daughter aged 16 yrs. Thereafter, complainant i.e. mother of the victim warned to the accused. Thereafter, on 05.02.2018 there was pain in the stomach of victim, thus, victim was taken to Sassoon Hospital, Pune, where it was informed by the medical officer that she was pregnant. On inquiry with victim it was informed by her that accused used to tell her that he will marry her and used to have sexual intercourse and also accused threatened her not to tell anyone about the said incident.

3. In pursuance of the report lodged by mother of the victim offence vide '0/2018' has been registered with Vishrambag Police Station. Thereafter, it was transpired that incident took place within the jurisdiction of Dattawadi Police Station. Thereafter, A.P.I.Madhuri Taware forwarded the report to Dattawadi Police Station. Thereafter, P.S.I.Anil Patil of Dattawadi Police Station registered the offence vide C.R.No. 50/2018.

4. P.S.I.Manoj Abhang, investigation officer carried out the investigation, recorded statements of the witnesses, arrested the accused, referred the victim to Sassoon Hospital and consequently after obtaining the medical certificate and

birth certificate of the victim filed charge-sheet.

5. Accused pleaded not guilty and claimed to be tried by the prosecution (Exh. 21, 22). In order to prove the guilt of the accused prosecution examined in all seven witnesses. Victim did not support the case of the prosecution. Thereafter, prosecution has closed their side by filing pursis Exh. 68 on record. Statement of accused under Sec. 313 of Cr.P.C. recorded vide Exh. 69. His defence is of total denial and performed the marriage with victim.

6. After considering submissions made at bar and considering evidence available on record, following points arise before me and I have recorded my findings against them for the reasons stated as under.

<u>P O I N T S</u>		<u>F I N D I N G S</u>
1	Whether the prosecution proved that from October 2017 to December 2017 at at Lane No. 25, Janata Vasahat, Pune accused committed rape on minor victim?	Not proved.
2	Whether the prosecution further proved that on the relevant date, time and place accused committed criminal intimidation by threatening minor victim with injury to her person with intent to cause alarm to her or to cause her to do an act which she is legally bound to do?	Not proved.
3	Whether the prosecution further proved that on the relevant date, time and place	

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	accused committed penetrative sexual assault on the minor victim?	Not proved.
4	Whether the prosecution further proved that on the relevant date, time and place accused committed aggravated penetrative sexual assault on minor victim?	Not proved.
5	Whether the prosecution further proved that on the relevant date, time and place accused committed sexual harassment upon the minor victim?	Not proved.
6	What order?	As per final order.

7. In order to substantiate allegations prosecution has examined following witnesses.

Sr. No.	Name of the witness	Relevancy	Exhibit No.
1	Complainant	Mother of the victim	29
2	Victim	Victim	32
3	Dr.Suryakant Deokar	Sub Registrar and Medical Officer	38
4	Dr.Preeti Sitaram Naikodi	Medical Officer	41
5	Abhijeet Suryakant Kalaskar	Carrier	47
6	Maduri Balaso Taware	I.O.	58
7	Manoj Shridhar Abhang	I.O.	61

8. In addition to oral testimony, prosecution has also placed reliance on following documentary evidence viz;

Sr. No.	Description of document	Exhibit Number	Manner of proof
1	Report	30	PW-1
2	F.I.R.	31	PW-1
3	Birth Certificate	33	PW-2
4	Statement of victim under Sec. 164 of Cr.P.C.	34	PW-2
5	Seizure panchanama of clothes	35, 36	Admitted by defence
6	Medical Certificate	42	PW-4
7	Arrest panchanama	43	Admitted by defence
8	Spot panchanama	44	Admitted by defence
9	Muddemal deposit letter	48	PW-5
10	Portion marked 'A' in the statement of victim	59	PW-6
11	Report to Dattawadi Police Station	60	PW-6
12	F.I.R. by Dattawadi Police Station	62	PW-7
13	C.A. Reports	63 to 67	PW-7
14	Evidence Close pursis	68	

R E A S O N S

9. All the points are interconnected to each other, therefore, I am taking them together for my discussion and deciding them simultaneously to avoid repetition.

AS TO POINT NO. 1 TO 6 :

10. PW-1 mother of the victim has narrated in her

evidence in terms of report Exh. 30 and F.I.R. Exh. 31. Admittedly, testimony of PW-1 is hear-say in nature. PW-2 victim in her evidence stated that her birth date is 26.05.2002. Accused being her neighbour used to visit her house. She resiled from her previous statement and disowned portion marked 'A' in her statement. During cross-examination she has admitted that on 17.11.2020 she had performed the marriage with accused. There was consent of her parents to said marriage and all relatives were present in the said marriage. Now she is residing along with her husband accused and she has no complaint.

11. PW-3 Suryakant Deokar who was working as Sub Registrar and Medical Officer in the Pune Municipal Corporation and he had issued birth certificate Exh. 33. As per report and certificate the victim was born on 26.05.2002 in Ramabai Ambedkar Hospital.

12. PW-4 Dr.Preeti Naikodi in her evidence stated that she examined victim and as per history and clinical examination there was evidence of sexual vaginal intercourse with intra uterine pregnancy (15 + 6 weeks) as per the ultra sonography report dated 07.02.2018 and clinical examination. There was no evidence of fresh genital injury. No evidence of any physical injury on body and accordingly she had issued medical certificate Exh. 42. During searching cross-

examination she has admitted that she had not brought medical papers relating to the present case as well as sonography report was not placed on record by her.

13. PW-5 Abhijeet Kalaskar has deposited seized muddemal at Laboratory, Ganesh Khind Road. PW-6 Madhuri Taware in her evidence stated that she had reduced the report of victim. Thereafter, she had recorded the statement of the victim and portion marked 'A' Exh. 59. Thereafter, she forwarded report to Dattawadi Police Station.

14. PW-7 Manoj Abhang, who carried out the investigation in his evidence stated that F.I.R. came to be registered by P.S.I. Anil Patil vide Exh. 62. Thereafter, he had arrested the accused and seized the clothes of victim and accused and recorded statement of the witnesses. Thereafter, received C.A. Report Exh. 63 to 67. During cross-examination he has admitted that he is within knowledge that accused and victim had performed the marriage and they are residing as husband and wife.

15. Today victim, accused along with their respective counsels and Ld.A.P.P. appeared before me. Victim and accused made joint statement that they have performed the marriage and they are residing happily. After evaluation of the evidence, which is available on record, it appears that the

testimony of the complainant is not corroborated by the victim itself. It further appears that during statement under Sec. 164 of Cr.P.C. (Exh. 34) as well as during cross-examination victim has admitted that there was no force on the side of accused, on the contrary there was love relationship between victim and accused. During cross-examination victim has also disowned portion marked 'A' in her statement. Admittedly, there is no corroboration to the testimony of medical officer. Testimony of police officer PW-6, PW-7 is formal in nature. C.A. reports (Exh. 63 to 67) are also not corroborative to the prosecution case.

16. Similarly, victim resiled from her previous statement and during cross-examination by Ld.A.P.P. she is stick-up with hostility. After attaining majority she has performed marriage with accused.

17. Considering the evidence of the witnesses it cannot be said that offence has been out against the accused, as such I answer point Nos. 1 to 5 in the negative and pass the following order.

O R D E R

1. Accused Atish Hansraj Mane is hereby acquitted of the offences punishable under Sec. 376, 506 of I.P.C., 4, 6, 12 of the Protection of Children From Sexual Offences Act (POCSO)

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2. Bail bonds of the accused stand cancelled.
2. The accused in compliance of provisions of Sec. 437-A of Cr.P.C. shall submit a P.R.Bond of Rs. 15,000/- with like amount surety.
3. Seized muddemal i.e. clothes of accused and victim being worthless be destroyed after appeal period.

Dt. : 20.01.2021

(S. H. Gwalani)
Special Judge (POCSO), Pune.

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I affirm that the contents of this P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	:	Smt. N. A. Surve
Court Name	:	Shri S. H. Gwalani Special Judge(POCSO),Pune.
Date of Decision	:	20.01.2021
Judgment signed by Presiding Officer on	:	20.01.2021
Judgment Uploaded on	:	20.01.2021