

Presented on : 20.10.2022

Registered on : 20.10.2022

Decided on : 06.02.2023

Duration : 00 Y 03 M 17 D

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-2

AMALNER,

AT : AMALNER

(Presided over by P.R.Choudhary)

SPECIAL CASE (POCSO) NO. 38/2022

Exh.No.:- 30

(CNR No. MHJG010007862022)

State of Maharashtra,

(Through Chopda City Police Station

C.R.No.94/2022)

... Prosecution

Versus

Sachin @ Tinglya Meva Mugalde

Age- 22 years, Occu- Labour

R/o. Kalikundi, Tal. Varla,

Dist- Badwani (Madhya Pradesh)

...Accused

**For the offence punishable u/ss.366, 376, 376 (2)(N) of
IPC and under sections 3, 4, 5(L), 6 & 7 of POCSO Act, 2012.**

APP Shri. S. R. Patil for the State.

Adv. Shri.R.V.Nikam for accused.

-: ORAL JUDGMENT :-

(Delivered on this 06 th day of February, 2023)

Accused is hereby charge sheeted by Chopada City Police Station, Chopada for committing offence punishable u/s. 366, 376, 376(2)(N) of IPC and Sections 3, 4, 5(L), 6 and 7 of the

Protection of Children From Sexual offence Act 2012.

2. It is the case of the prosecution that the informant resides at Kalikundi Dist-Badwani Madhya Pradesh on 06/08/2022 at about 11.55 p.m. the informant went to police station and lodged report against the accused alleging that on 03/02/2005 she has taken birth and in 2022 she has completed 17 years and 5 months. On 08/07/2022 she went to house of her sister Dipika at Chopada Tal. Chopada, Dist- Jalgaon the accused came there and forcefully abducted her with promise of marriage and taken to Hariyana where he had made forceful physical relationship with her. Thereafter, she came to her father's house and thereafter went to police station and lodged report.

3. On her report offence bearing No. 0 of 2002 u/s. 366, 376, 376(2) IPC u/s. 6 of POCSO Act was registered by Charil Chauki police station Badwani Madhya Pradesh and investigation was transferred to city police station, Chopada. The City Police Station Chopada have registered offence bearing CR. No.350 of 2022 u/s. 366, 376, 376(2) (N) of IPC and u/s. 3, 4, 5 (L) 6 of POCSO Act. The City Police Station Chopada have given investigation to PSI Santosh Chavan. He prepared the spot panchanama, record the statement of witnesses, made seizure panchanamam, record the statement of informant u/s. 164 of Cr. P.C. recorded the statement of other witnesses and after completion of investigation submitted the charge-sheet.

4. Thereafter, charge is framed against accused as per Exh.4, the plea of the accused Exh.5 was recorded, accused pleaded not guilty claimed to be tried. The defence of the accused is total denial. No incriminating evidence found against accused. Hence statement u/s. 313 of Cr. P.C. is dispensed with.

5. Prosecution examined following witnesses namely – PW1 informant victim as per Exh.07, PW2 Nanda Gangaram Bhugwade as per Exh.8, PW3 Lalita Nanda Bhugwade as per Exh.9, PW4 PSI Pooja Sanjivani Andhare as per Exh.10, PW5 Sunanda Pundlik Patil API as per Exh.13, PW6 Uni Jani Charel PSI as per Exh.15, PW7 Santosh Bhagwat Chavan Investigation Officer as per Exh.17.

6. I have gone through the report, the statement of the victim, evidence on record, argument advanced by APP Shri S.R. Patil for State and advocate Shri R.V.Nikam for the accused.

7. Thereafter, following points arise for my determination and I recorded my findings on each of it in the light of reasons given below.

POINTS	FINDINGS
1] Whether the prosecution has proved that on or before 15/07/2022 to 06/08/2022 at about 5.00 p.m. accused kidnapped the minor girl, aged 17 enticed her by keeping her out of the lawful guardianship without their consent and thereby committed an	.. In the negative.

	offence punishable under Secs. 366 of the Indian Penal Code. ?	
2]	Whether the prosecution has proved that on above date, time and place accused criminal intimidation with intent that she may be compelled to marry with accused and knowing that it is likely that the said victim will be forced to illicit intercourse with accused and thereby committed an offence punishable under Secs. 376 of the Indian Penal Code. ?	.. In the negative.
3]	Whether the prosecution has proved that in between 15/07/2022 to 06/08/2022 in the house of person known of accused at Satrasen, At Lakdya Hanuman Tal. Shirpur and also at State of Hariyana accused committed repeatedly rape on minor girl victim Age 17 years while accused is knowing that she is minor and thereby committed an offence punishable under Secs. 376 (2) (N) of the Indian Penal Code ?	.. In the negative.
4]	Whether the prosecution has proved that on above date, time and place accused committed penetrative sexual assault on said victim minor girl i.e. victim age 17 years by penetrative sexual assault and thereby committed an offences punishable under Secs. 3, 4 5(L), 6 & 7 of the Protection of Children From Sexual Offence Act, 2012 ?	.. In the negative.
5]	What order ?	.. As per final order.

-: R E A S O N S :-

As to point nos.1 to 5 :-

8. As to point nos.1 to 5 are interlinked with each other and for sake of convenience they are discussed together.

9. Prosecution examined PW1 victim in her evidence she stated that she is taking education in 12th standard. She is having five sisters. Her elder sister Dipika is married and residing at Chopada other sisters are residing with her at her parental house at Kalikundi, Dist- Badwani.

10. The witness was answering in the English language and she knows the Hindi, so I recorded her evidence in Camera by sending translation out of the court. She also stated that she also understanding Marathi language.

11. She further deposed that accused did not kidnap her and did not make physical relationship with her. She deposed that she is in love with accused. She lodged complaint under pressure as per her elder sister Dipika. As she loved with accused she want that court may released him. She was cross-examined by declaring hostile, but no fruitful evidence came from her mouth.

12. Prosecution examined PW2 Nanda Gangaram Bhaguwade father of victim and PW3 Lalita Nanda Bhaguwade mother of the victim. Both these witnesses in their evidence stated that the victim was not kidnapped by the accused. Accused did not

make physical relationship with victim. Dipika pressurized the victim to file report. So there is quarreled between Dipaka and victim and Dipika beat victim. Dipika told them that accused and victim was having love affair and she disliked it.

13. They further deposed that victim went alongwith accused at Hariyana and returned to their house on her own accord. She did not stated them that accused make physical relationship with her either by consent or by forcefully. Both these witnesses declared hostile. But no fruitful evidence came to their mouth.

14. Prosecution examined PW4 Pooja Sanjivani Andhari who recorded the statement of the victim. She deposed that she recorded the statement of victim Exh.11 as per her say. But victim denied it then though this statement is exhibited it cannot be called as true.

15. Prosecution examined PW4 PSI Pooja Andhare according to prosecution in her presence statement of victim was recorded, but when victim denied it. Its mere exhibition did not prove the statement of victim. Prosecution examined PW5 Sunanda Patil. In her presence statement of victim were recorded by child welfare committee. But when victim denied her statement in her evidence is having no value. Prosecution also examined PW6 Uni Jani Charel Station diary officer of police station Chauki Chachriya who recorded the first information report and

registered office bearing No.00/22 and transferred the investigation to police station Chopada. Her evidence is technical evidence and need not to be reproduced on record. Prosecution examined PW7 Santosh Bhagwat Chavan investigation officer. He recorded the statement of witnesses and sent the witnesses for recording their statement u/s. 164 of Cr. P.C. The spot panchanama and other panchanamas are admitted.

16. I have heard APP Shri. S.R.Patil for State and advocate Shri. R.V.Nikam for accused. In this case the medical examination report of the victim is admitted. Spot panchanama is admitted. Arrest panchanama of accused is admitted. The seizure panchanama and memorandum panchanama of clothes of the accused and victim are admitted. The medical examination of the victim as per Exh.23 does not indicate about no violence of sexual intercourse or evidence of sexual intercourse.

17. The victim denied that accused have made physical relationship with her and denied that accused have kidnapped her. The other co-witnesses her father and mother were material witnesses. Though they are not eye witnesses but their evidence is material. If their evidence is accepted true and correct without considering the contradiction in their statement with the statement of victim. It can be said that victim went to Hariyana and returned from Hariyana on her own accord. There is no evidence that accused has abducted her or accused has kidnapped her. Victim denied that accused made physical relationship with

her, even the medical certificate of the victim also indicates that no physical relationship is made between accused and informant victim. So I came to conclusion that prosecution proves that accused have kidnapped the victim and made physical relationship with her against her will or with her consent. So I record my finding on point nos.1 to 5 and I proceed to pass following order.

ORDER

1. The accused Sachin @ Tinglya Meva Mujalde, Age- 22 years, Occu- Labour, R/o. Kalikundi, Tal. Varla, Dist- Badwani (Madya Pradesh) is hereby acquitted u/s. 235(1) of Cr.P.C. for committing offence punishable u/s. 366, 376, 376(2)(n) of IPC and under sections 3, 4, 5(L), 6 & 7 of The Protection of Children from Sexual Offences Act, 2012.
2. The bail bond stands cancelled.
3. The muddemal property clothes of victim and accused be destroyed after appeal period is over.
4. The seized muddemal property mobile of VIVO company Y20 G model alongwith Airtel sim be returned to the accused after appeal period is over.
5. The accused should comply the direction as per section 437 (A) of Cr.P.C.

Date - 06/02/2023

(P.R.Choudhary)
Additional Sessions Judge-2,
Amalner