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IN THE COURT OF SPECIAL JUDGE, PUNE (UNDER THE
 PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT,2012)
 AT PUNE.

(Presided over by J.T.Utpat, Special Judge and Addl. Sessions Judge, Pune)

SPECIAL (CHILD) SESSIONS CASE NO.22/2015

The state of Maharashtra)
 (Through Lashkar police station) ..Complainant

Vs.

Sumit Raju Jagtap)
 Age 29 years, Occ.Nil) .. Accused.
 R/o Vrundawan society, SRPF Group-1)
 Wanawadi and 1419/9 Bhimpura, Camp,)
 Pune.)

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Appearances:

Smt.H.K.Bari, Special Public Prosecutor for the State.
 Shri S.V.Deshmukh, Advocate for the accused.

...

:JUDGMENT:

(Delivered on 29th day of August, 2017)

The accused- Sumit Raju Jagtap has been charge sheeted in this case for the commission of offences punishable u/s 354 of the Indian Penal Code and u/s 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act, for short), on the allegations that on 26.04.2014 at about 1.30 a.m. near

Huseni Bakery, Tabut street,Camp,Pune, he used criminal force to minor victim girl (name withheld) by removing her nicker and by moving his hand on her hips intending to outrage her modesty.

2] The brief facts alleged in the complaint Ex.17 by the father of the victim girl viz.Babumiya Abdul Raheman Shaikh (P.W.3) are that he resides near Huseni Bakery,Tabut street,Camp,Pune along with his wife, 5 sons, one daughter (victim girl) and another married daughter and son in law etc.

3] According to the prosecution, the incident in question took place on 26.4.2014. On that day, he himself,his wife Mehaboobi (P.W.1), daughter-victim girl and son in law Salman Shaikh and other daughter Reshma were sleeping on the footpath. In that night, at 1.30 a.m., they heard the noise of shouts by the victim girl. Therefore, they all got awakened. Thereafter, they enquired with the victim girl as to why she raised her voice. That time, the victim girl disclosed that when she was sleeping, she felt somebody pulling her nicker. She further disclosed that as such,she was awakened and saw that one boy was moving his hand on her buttocks. Therefore,she got frightened and started making hue and cry. The victim girl further disclosed that thereafter, the said boy made his escape good from the place.

4] It is further alleged that after the victim girl disclosed the above incident, the complainant,his son in law and others took search of that boy but he was not found. As such,they came back to the place,where they were residing. That time,they noticed that one Pulsor motor cycle bearing No.MH-14-CA-5541 was there. As such, the complainant and others made enquiry with the residents of that

locality about the said motor cycle but they came to know that none of the residents of the said locality claimed that vehicle. Therefore, the complainant and others thought that the person who left the motor cycle would come to take it. As such, they kept watch on the said motorcycle and did not inform the said incident to police.

5] It is further alleged that in the night of 27.4.2014 at about 9.30 p.m., the complainant and his family members pretended that they were asleep. That time, they were having watch on the said motor cycle. Thereafter, at about 1.30 a.m., one boy came there near the said motor cycle and used the key of the said motor cycle and tried to start the said motor cycle. As such, the complainant and others accosted the said person (accused). However, he gave evasive answers, such as petrol is dried etc. Thereafter, the complainant and others showed the said boy to the victim girl and because of his hair, the victim girl identified the said person i.e. accused. As such, they took the accused to police station. On enquiry by police, the said person disclosed his name as Sumit Raju Jagtap (accused).

6] As such, the complainant lodged complaint Ex.17. On the basis of the said complaint, C.R.no.87/2014 was registered and the P.W.5 Sapna Vijaykumar Solanke, P.S.I., carried out the necessary investigation. In the course of investigation, the Investigating Officer prepared the spot panchanama Ex.20, sent the victim girl for ossification test to determine her age, recorded the statements of the witnesses and after completion of investigation, the charge sheet against the accused came to be filed in the Special Court, Pune.

7] The accused pleaded not guilty and claimed to be tried

when the particulars of the charge Ex.5 were read over and explained to him in vernacular. His defence is of false implication. No defence evidence has been led.

8] Upon hearing the Ld.Special Prosecutor Smt.H.K.Bari and the Ld.Adv.for accused Shri S.V.Deshmukh, the following points arise for my consideration:

- 1] Whether on 26.4.2014 at 1.30 a.m. near Huseni Bakery,Taboot street,Camp,Pune, on footpath, accused used criminal force on the minor victim girl(name withheld),aged 11 years,by removing her nicker and by moving his hand on her hips,intending to outrage her modesty and thereby committed an offence punishable u/s 354 of the I.P.C.?
- 2] Whether on the above date,time and place, accused with sexual intent, touched the hips of the minor victim girl,aged 11 years, and moved his hand on it,by removing her nicker and thereby committed sexual assault on the said victim girl and thereby committed an offence u/s 7 punishable u/s 8 of the Protection of Children from Sexual Offences Act?
- 3] What order?

9] My findings on the above points are as under for the following reasons:

- 1] Affirmative.
- 2] Affirmative.
- 3] As per the final order.

REASONS

10] The prosecution in its efforts to prove the offences against the accused, has examined the following six witnesses and closed the oral evidence vide purshis Ex.30.

- 1] Mehabubi Babumiya Shaikh (mother of the victim girl) P.W.1 Ex.13.
- 2] Victim girl (name withheld) P.W.2 Ex.14
- 3] Babumiya Abdul Rehaman Shaikh (complainant) P.W.3 Ex.16.
- 4] Khandu Dattu Shitole (spot panch witness) P.W.4 Ex.19.
- 5] Sapna Vijaykumar Solanke,P.S.I. (Investigating Officer) P.W.5 Ex.22.
- 6] Dr.Sunny Vinayak Khandare,Medical Officer P.W.6 Ex.28.

11] In addition to it, the prosecution has relied on the spot panchanama Ex.20, F.I.R. Ex.17 and certificate in respect of ossification test of the victim girl Ex.29.

12] **Point nos.1 and 2:**

It is the prosecution case that at the relevant time,the victim girl (P.W.2) was 11 years old and therefore, a minor, within the meaning of sec.2(1)(d) of the POCSO Act. From perusal of the record, it appears that there is no documentary proof about the date of birth of the victim girl. Therefore, the Investigating Officer P.W.5 had sent the victim girl during the course of investigation for ossification test.

13] The record of the case further shows that the P.W.6 Dr.Sunny Vinayak Khandare was attached to B.J.Medical college and Sassoon Gen.hospital,Pune on 25.6.2014 as Asstt.Professor, Forensic

Medicine department. The evidence of P.W.6 further shows that on that day, Lashkar police had brought the victim girl for ossification test for ascertaining her age. Accordingly, the P.W.6 took x-rays of elbow, wrist, pelvic of the victim girl and from its examination, the P.W.6 found that the age of the victim girl was between 12 to 14 years. Accordingly, he has issued certificate Ex.29. It is pertinent to note that there is no cross examination of the P.W.6. As such, the prosecution has proved that at the relevant time, victim girl P.W.2 was below 18 years of age and therefore a minor.

14] Before I start discussing the evidence of other witnesses, I would like to mention that the P.W.4-Khandu Shitole is the spot panch witness, who has proved the contents of the spot panchanama Ex.20. There is nothing in the cross examination of the P.W.4 to disbelieve his evidence. The P.W.5 Sapna Solanke is the Investigating Officer. She has deposed to in her evidence the steps taken by her in the course of investigation. As such, I find that the evidence of the P.Ws.4 and 5 is not too much important and therefore, the case entirely rests on the testimony of the P.Ws.1 to 3.

15] Firstly, I will discuss the evidence of the victim girl P.W.2. The P.W.2 has stated in her evidence that she along with her family members, was sleeping on the foot path on the night of incident. At her one side, her brothers were sleeping and on the other side, her mother was sleeping. Around 1.30 a.m., when she was asleep, she felt that a string of her Salwar was being loosened and somebody was moving his hand on her body. Therefore, the P.W.2 raised alarm and her father got awakened. She has further stated that her father gave call to a boy asking him to stop but he ran away. She had seen that

boy. Thereafter, the P.W.2 narrated the incident to her family members who also were awakened.

16] The P.W.2 has further stated in her evidence that on the next day at 1.30 midnight, that boy again came for taking his vehicle and she identified that boy. He was caught-hold and was taken to police station. According to the P.W.2, nobody keeps vehicle there but on the previous night, one two-wheeler was found unattended and therefore, she felt that the said vehicle must have been of that boy. The further evidence of the P.W.2 shows that she has identified the accused as the said person, who did the above act.

17] The Ld. Adv. for the accused Shri Deshmukh has cross examined this witness. There is nothing in her cross-examination. It is seen from the cross-examination of the P.W.2 that she has stated that she cannot surely say whether that boy is the same boy, however, considering the tender age of the victim girl, I find that she might not have understood the exact nature of the said question. Further, it is seen that the suggestion is not given to the P.W.2 that the accused is or is not the same boy. I do not see any reason for the P.W.2 to falsely implicate the accused.

18] The above evidence of the P.W.2 is further corroborated by the evidence of her father-P.W.3 Babumiya Abdul Rehaman Shaikh. The P.W.3 has also deposed to near about the same story as has been alleged in the complaint Ex.17, which needs no repetition. There is absolutely nothing in the cross examination of the P.W.3 to disbelieve his evidence.

19] The evidence of the P.W.2 is further corroborated by the evidence of her mother P.W.1-Mehabubi Shaikh. She too has reiterated in her evidence the prosecution story as has been stated by the P.Ws.2 and 3. There is also nothing in the cross-examination of the P.W.1 to disbelieve her evidence. Thus, the evidence of P.Ws.1 and 3 shows that after the incident, the P.W.2- victim girl immediately disclosed the incident to them. It is pertinent to note that no material has been elicited in the cross-examination of the P.Ws.1 to 3 to show that the accused has been falsely implicated in this case. On the contrary, F.I.R. shows that the material prosecution witnesses were not even knowing the accused. Therefore, possibility of false implication is not there.

IMPROBABLE DEFENCE

20] The facts on record further show that the person (accused) who did the above offences with the victim girl left the motor cycle on the spot and ran away. On perusal of the cross-examination of the P.W.5-Investigating Officer, it is seen that the accused has raised the defence that at the relevant time, his vehicle was there as it got dried. The Ld.Adv.for the accused submitted that at 2.30 a.m.,the accused had been to the spot and since his vehicle dried,he went to his house by rickshaw and on the next day,when he came to take the motor cycle,he was caught on suspicion only. I do not find that this defence is probable at all. No explanation has been given by the accused as to for what purpose,he had been to the spot at odd time i.e.at 2.30 a.m. Therefore, the defence of the accused proves that at the relevant time,he was on the spot.

21] Further more, the accused has no any explanation as to why prosecution witnesses would falsely depose against him. In view of the improbability of the defence, no reason for the witnesses to falsely implicate the accused and the presumption of the guilt of the accused u/s 29 of the POCSO Act, I am of the view that the prosecution has proved the offences against the accused beyond reasonable doubt. Therefore, I answer point nos.1 and 2 accordingly.

22] This takes me to the fulfillment of mandatory requirement of law to hear the accused on the point of sentence. I heard the accused on the point of sentence. He submitted that his age is 31 years and his career would be spoiled. Hence, he prayed for lenient view.

23] I could not hear the Ld.Adv.for accused Shri S.V.Deshmukh on the point of sentence, as he was found absent when called.

24] I also heard the Ld.Special Prosecutor Smt.H.K.Bari on the point of sentence. She submitted that the prosecution witnesses were sleeping on the footpath at the relevant time and were thus unsecured persons. She further submitted that if the persons like accused start doing the above acts, the prosecution witnesses may feel very much unsecured and therefore, she prayed to take stern action against the accused.

25] Considering the above facts on record and the submissions of the Ld.Special Prosecutor Smt.Bari and the accused in person, I think that the following order will meet the ends of justice. Hence, the order:

:ORDER:

1] The accused- Sumit Raju Jagtap is hereby convicted u/s 235(2) of Cr.P.C. of the offence punishable under section 354 of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 1000/-(Rs.One Thousand only), in default to suffer further R.I. for one month.

2] The accused -Sumit Raju Jagtap is also hereby convicted u/s 235(2) of Cr.P.C. of the offence punishable under section 8 of the Protection of Children from Sexual Offences Act,2012 and he is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 1000/-(Rs.One Thousand only), in default to suffer further R.I. for three months.

3] The above substantive sentences shall run concurrently.

4] The accused to surrender to his bail bonds.

5] The accused was in jail from 26/04/2014 to 27/05/2014. The said period is given as set off u/s 428 of Cr.P.C.

6] The muddemal article i.e.seized vehicle be returned to its registered owner, if not already returned, in view of the provisions in para.73(1)(d) of Chapter 6 of Criminal Manual.

Date : 29.08.2017

(J.T.Utpat)
Special Judge, Pune
(Under the Protection of Children
from Sexual offences Act)

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

Name of steno	: Sou.S.V.Sane
Name of Court	: Shri J.T.Utpat, Special Judge, & Addl.Sessions Judge, Pune. (District Judge-1, Pune.)
Date	: 31.08.2017
Judgment signed by	
Presiding Officer on.	: 29.08.2017
Judgment uploaded on.	: 31.08.2017