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Exh.

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

AT PUNE.

[Presided over by : Mr. Dilip G. Murumkar]

SPL.(C) SESSIONS CASE NO.128/2014
(CNR NO.MHPU01-006520-2014)

State of Maharashtra]
Through : Sangvi Police Station]
Pune.] **.....Prosecution.**

Versus

Akshay Gulabsing Prajapati]
 Age : 19 Years, Occu: Nil,]
 R/at – Bhalekarnagar,Pimpale Gurav]
 Pune.] **... Accused.**

Charges : The offences punishable u/ss 376,323,506 of Indian Penal Code and u/s 3 r.w.sec.4 of the Protection of Children from Sexual Offences Act,2012.

Appearances:-

The Learned Special APP - Smt.Raskar for Prosecution.
The Learned Advocate - Mr.Sudhir Shaha for Accused.

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JUDGMENT

[Delivered on 31-01-2019]

1] The accused stands charged for having committed an offences punishable u/ss 376,323,506 of the Indian Penal Code and u/s 3 r.w.sec.4 of the Protection of Children from Sexual Offences Act,2012. (hereinafter referred to as the POCSO Act,for short).

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

The victim minor girl, who was aged about 17 years and 4 months old at the time of incident, is daughter of First Informant Ramesh Narayan Adhagale. She was residing with her maternal uncle Sunil Chandrakant Sathe and his family at Bhalekarnagar, Pimpale Gurav, Pune, since her childhood for the purpose of education.

In the year 2012, victim minor girl was learning in 10th Std. in All Saints High School, Khadki, Pune, where accused was also learning. The accused was used to insist victim minor girl to love him as he loves her. He told her that if she refused to love him, he would commit suicide by keeping suicidal note in her name and her maternal uncle, grandmother and other family members would be sent to jail. Due to these threats, the victim minor girl constrained to give response to his love.

On 24.4.2013, the accused had taken away victim minor girl by giving promise of marriage to village Vairag, Tal.Barshi, Dist.Solapur and forcefully committed sexual intercourse with her. At that time, she did not disclose the incident to her parents or other relatives, as accused had given her threats of killing.

Thereafter, the victim minor girl took admission in 11th Std. in SNBP college, Pimpri, Pune. At that time, accused was used to meet her in her college. He was used to give her threats of throwing acid on her face, if she refused to maintain physical relations with him. Therefore, the victim minor girl constrained to act as per his say. The accused had taken the victim minor girl many a times to different Lodges by name Abhishek Lodge, Sawali Lodge, situated on Alandi-Pune road and by making false entries in fictitious persons in Visitor's Registers, by concealing true names, committed rape on her.

3 Judgment in Spl.(C)S.C.No.128 of 2014

On 5.2.2014, the accused called the victim girl to his home and by beating her, gave threats to kill her and committed rape on her. He also gave threats to her that if she discloses that incident to anybody, he would expose/defame her and kill her and her family members. However, the victim minor girl narrated whole incident to her parents and maternal uncle and other relatives. Therefore, on 6.4.2014, Ramesh Adhagale lodged F.I.R. against the accused at Sangvi police station. Accordingly, an offence punishable u/ss 376,323,506 of Indian Penal Code and u/s 3 r.w.sec.4 of the POCSO Act, came to be registered against the accused vide C.R.No.130/2014 and investigation commenced.

3] Investigating Officer API Shri Gade made Probe of this crime after recording F.I.R. by him. He recorded statements of witnesses and arrested the accused. He prepared spot panchanama of house of the accused. He also prepared panchanama of two Lodges situated on Alandi-Pune road as per disclosure statement of the accused. He obtained extract of Visitor's Register of dates of visits of accused and victim minor girl from Lodge owners/Managers. He prepared panchanama of house at village Vairag, Tal. Barshi, Dist. Solapur, where accused had taken the victim minor girl and stayed there for one day and committed rape. He obtained sample of blood, nail clippings, pubic hair, and sample of semen of accused and vaginal swab and smear of victim minor girl from Medical Officer, Sassoon hospital. He got examined the accused in respect of his potency from KEM hospital through Sassoon hospital and obtained Report. He also got examined the victim minor girl from Medical Officer, Sassoon hospital and obtained her Medical Examination Report. He seized clothes of accused and victim minor girl which they had worn at the time of incident, by preparing panchanamas.

4 Judgment in Spl.(C)S.C.No.128 of 2014

He sent all seized articles and samples of accused and victim minor girl for chemical analysis by sending requisition letter and obtained Chemical Analyser's Report. He got Ossification Test of victim minor girl from Medical Officer of Sassoon hospital and obtained Report. He collected School Leaving Certificate of victim minor girl. After completion of investigation, he filed charge-sheet in this case.

4] My learned Predecessor framed charge against the accused for having committed the offences punishable u/ss 376,323,506 of the Indian Penal Code and u/s 3 r.w.sec.4 of the POCSO Act, at Ex.8, to which, the accused pleaded not guilty and claimed to be tried.

5] The defence of the accused is that of total denial and falsely implicating him as he refused to marry with victim girl.

6] The following points arise for my determination and I record my findings with reasons thereon as under :

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Does the prosecution prove that the accused on 5.2.2014 and before that, committed rape on victim minor girl on the pretext of marrying with her at Vairag, Tal.Barshi, Dist.Solapur, Abhishek Lodge,Sanvi Lodge on Alandi road and at his own house?	Proved.
2.	Does the prosecution further prove that the accused on the above mentioned date, and place and during the course of same transaction, voluntarily caused hurt to the victim minor girl?	Proved. .
3.	Does the prosecution further prove that the accused on the above mentioned date and place and during the course of same transaction,	

5 Judgment in Spl.(C)S.C.No.128 of 2014

	committed criminal intimidation by threatening the victim minor girl to kill if she refused to have sexual intercourse with him, with injury to her person,with intent to cause her alarm ?	Proved.
4	Does the prosecution further prove that accused on the aforementioned date and place and during the course of same transaction, committed penetrative sexual assault on the victim minor girl?	Proved.
5.	What order ?	As per final order

REASONS

7] In this case, the prosecution has examined the victim minor girl (P.W.1) at Ex.21, First Informant (P.W.2) Ramesh Narayan Adhagale at Ex.24, Witness (P.W.3) Sunil Chandrakant Sathe at Ex.27, panch witness (P.W.4) Sahebrao Shriram Dhundale at Ex.36, witness (P.W.5) Tanaji Kondiba Jagtap at Ex.44, Medical Officer (P.W.6) Dr.Manasi Vilas Gaikwad at Ex.52 and Investigating Officer (P.W.7) A.P.I.Shri Sunil Vitthalrao Gade at Ex.59.

8] The prosecution has relied on documentary evidence i.e.F.I.R. (Ex.25), missing reports (Ex.26 and 27), spot panchanama (Ex.37), copies of Visitor's Register of Sanavi Lodge dt.10.11.2013 and 24.10.2013 Ex.45 and Ex.47, Medical Certificate of victim girl (Ex.53), Memorandum and Seizure panchanama of accused showing the Abhishek Lodge and Sanavi Lodge, where the offence of rape had taken place (Ex.60 and 61), Another spot panchanama of the spot of incident at village Vairag, Tal.Barshi, Dist.Solapur, (Ex.62), Requisition Letters to Sassoon Hospital (Ex.63 and Ex.64), Reports of Potency of the accused (Ex.65 collectively), C.A.Reports (Ex.67, Ex.68, Ex.69), statement of

victim minor girl u/s 164 of Cr.P.C.(Ex.71)

9] The accused has admitted seizure panchanamas of clothes of accused (Ex.33), and of clothes of victim minor girl (Ex.34), Ossification Test Report (Ex.38).

10] **Point nos.1 to 4:**

 Since all these points are inter-connected with each other, I record my findings thereon simultaneously.

PLACE OF INCIDENT

 According to prosecution, the accused committed rape on victim minor girl on 24.4.2013 in room at village Vairag, Tal.Barshi,Dist.Solapur and thereafter, committed rape on her frequently at Abhishek Lodge,Sanavi Lodge,situated on Pune-Alandi Road and lastly,committed rape on her on 5.2.2014 at his house situated at Bhalekarnagar,Pimpale Gurav,Pune.The accused also gave threats to the victim girl for achieving his illegal goal of rape.

11] The Investigating Officer (P.W.7) API Shri Gade testified in his evidence that during Probe of this crime,he prepared panchanama of house of the accused,where accused had committed rape on victim minor girl. The panch witness P.W.4 Dhundale corroborates the prosecution case by testifying that on 6.4.2014, panchanama of house/flat of the accused situated at Bhalekarnagar, Pimpale Gurav,Pune,was prepared in his presence. The panchanama is produced at Ex.37. In the cross-examination, he testified that on the date of panchanama, he had not gone to his job as he was late and he had never accompanied police previously as panch, which shows that he is

not stocked witness of police. He being an independent witness, his evidence is reliable.

12] In respect of incidents of rape on victim minor girl by the accused at Abhishek Lodge and Sanawi Lodge situated on Pune Alandi road, the Investigating Officer (P.W.7) testified that as per disclosure statement of accused, he prepared panchanama of rooms in Abhishek Lodge and Sanavi Lodge situated on Pune-Alandi road, where rape was committed by the accused on victim minor girl frequently. The Memorandum and panchanama are produced at Ex.60 and 61. Though the panch witnesses to the said Memorandum panchanama are not examined, the evidence of Investigating officer (PW 7) is reliable as he has no animus against the accused.

That apart, the witness (PW 5) Jagtap, owner of Sanavi Lodge clinchingly corroborates the prosecution case by stating that the accused along with one girl had been to his Lodge by recording their different names in Visitor's Register of the Lodge. The extract of Visitor's Register dt.24.10.2013 (Ex.47) obtained by the Investigating Officer during Probe, glaringly shows that on that date i.e.24.10.2013, the accused had taken the victim minor girl to the said Sanavi Lodge from 9.00 a.m.to 4.40 p.m. It is pertinent to note that the accused has mentioned his true First Name and Surname and true address in the said Register.

13] So far as regards place of incident at village Vairag, Tal.Barshi, Dist.Solapur, the Investigating officer (PW 7) API Shri Gade testified that during Probe, it revealed that the accused had taken the victim minor girl to village Vairag, Tal.Barshi, Dist.Solapur. Hence, on 10.4.2014, he took the accused to village Vairag and prepared panchanama of one room owned by Sunil Ghongade, where the accused

and victim girl had stayed for one night. The said panchanama is at Ex.62. Though the panch witnesses to the said panchanama are not examined by the prosecution, it is to be noted that the panchas were from village Vairag, far away from Pune. That apart, as observed earlier, the Investigating officer has no grudge against the accused and therefore, his evidence is conceivable.

14] No doubt, in the cross-examination, the Investigating Officer (PW 7) admitted that he had not made entries in the Station Diary about his visit to places of incident and not obtained signature of owner of places of incidents on the relevant panchanamas. However, in my opinion, these are mere irregularities which should not be given much importance. The Memorandum panchanama (Ex.60 and 61) bears signature and thumb mark of the accused.

Consequently, I hold that the prosecution has proved places of incident.

MEDICAL EVIDENCE

15] According to prosecution, from 24.4.2013 to 5.2.2014, the accused committed rape on the victim minor girl frequently at different places. The victim minor girl (PW 1) testified in her evidence that she was raped frequently by the accused. After lodging FIR by her father, the Investigating Officer (PW 7) got examined her from Medical Officer, Sassoon hospital, in order to confirm whether sexual intercourse had taken place.

The Medical Officer (PW 6) Dr. Manasi Gaikwad testified in her evidence that on 7.4.2014, victim minor girl was brought to her for medical examination, who gave history of rape by the accused. Thereafter, she examined her and found that hymen was torn at

multiple sites. Therefore, she opined that there was multiple penetrative vaginal intercourse. Though in the cross-examination, she testified that the victim minor girl was habituated to sexual intercourse, at this juncture, it is to be noted that she was frequently raped and therefore, this admission was given by this witness i.e.P.W.6 in the cross-examination. From this suggestion, the accused has clinchingly admitted that the victim minor girl was raped. The medical Certificate (Ex.53) also corroborates the evidence of Medical Officer (PW 6). Resultantly, I hold that the victim minor girl was raped during the above mentioned period.

The Investigating Officer (PW 7) testified that he collected Report of Potency of the accused by sending letter (Ex.64) to Medical Officer of Sassoon hospital, who orally referred him to KEM Hospital. The Reports of KEM Hospital (Ex.65 collectively) show that the accused is Potent to commit sexual intercourse. Hence, I hold that the accused is capable to perform sexual intercourse.

INCIDENT

16] It is held that the prosecution has proved the places of incident and victim girl was raped frequently. Now, the prosecution has to prove that the accused is author of offence of rape as well as offences of assault and giving threats to victim minor girl. For this, prosecution relied on aforementioned oral and documentary evidence.

At the outset, the accused is facing trial for having committed an offence u/s 3 punishable u/s 4 of the POCSO Act apart from I.P.C. provisions. Therefore, at the first, I scan the evidence, as to whether the victim girl was child i.e. below the age of 18 years at the time of incident.

17] The victim minor girl (PW 1) testified that her birth date is 16.11.1996. No doubt, her birth date is neither mentioned in FIR (Ex.25) nor in her statements before police or before JMFC u/s 164 Cr.P.C.(Ex.71). However, the age about 17 years is mentioned in FIR (Ex.25) and statement recorded u/s 164 of Cr.P.C.(Ex.71). That apart, the Investigating Officer (P.W.7) had collected School Leaving Certificate of the victim minor girl during Probe of this crime. He also produced original Birth Certificate of victim girl issued by Pune Municipal Corporation (Ex.70), during his testimony which candidly shows that the date of birth of victim girl is 16.11.1996. No doubt, Birth Certificate (Ex.70) was not collected and produced at earlier stage but there is no rule of law that it should be collected and produced at the earlier stage. The production of original Birth Certificate of the victim minor girl issued by proper Authority during evidence of Investigating Officer does not hamper the prosecution case.

 No doubt, Ossification Test of the victim minor girl was made during the investigation and its Report (Ex.38) is produced on record, which shows that she was above 17 years and below 19 years including margin of error. However, Birth Certificate issued by the Pune Municipal Corporation is authenticated document, which is admissible in evidence as a conclusive proof. Therefore, evidence of Ossification Test Report Ex.38 is out of consideration.

18] The first incident of rape on victim minor girl took place on 24.4.2013. Having regard to her birth date mentioned in Certificate (Ex.70) and date of first incident of rape, I hold that the victim girl was about 16½ years of age at the time of first incident of rape. Thus, since she was below 18 years of age at the time of first incident of rape, she was 'child' as per the provisions of POCSO Act.

19] Now, I switch over to the incident of giving threats to victim minor girl and committing rape on her by the accused.

 The victim minor girl (PW 1) testified in her evidence that she was residing with her maternal uncle, his wife and his children at Pimpale Gurav. The accused was her class-mate in 10th Std. while she was taking education in All Saints High School, Khadki, Pune. They were going to school together in school-bus but never talked with each other. She further testified that the accused had taken a house in front of her house. On 5.2.2012, there was religious function at his house and, therefore, he had called her and her aunt for the said function. Accordingly, they had gone to attend the said function at his house. Some school friends and classmates had come there for the function. After taking food, she was chit chatting with her friends there and her aunt left for the house. When she left his house for going to her house, the accused followed her. He stopped her and expressed that he wanted to speak with her. When she asked him what he wanted to speak, then he replied that he loved her. She asked him why he was talking in such manner all of a sudden and she refused his gesture. Therefore, he gave threats that he would expose her and her family. He would not allow to live anybody and he would kill all her family members. He also gave threats that he would write a chit in her name and would send all persons in her family to jail. She asked him what was his problem with her family.

 She further testified that on 24.4.2013 accused informed her that they would marry and took her to Solapur Vairag. He hired a one room there. They stayed there for one day. They had physical relations there against her will. When she was weeping, he had threatened her that he would expose her. He also threatened her not to disclose to anybody, otherwise he would expose her. On 25th they returned back. When she was at Vairag, she informed her maternal

uncle and father on phone that they were at Vairag and asked them to take her back. She did not inform this fact to the accused. Her father and maternal uncle came to Vairag and took her to the police and taken to the house of her maternal uncle. She did not narrate the incident that occurred with her to anybody.

She further testified that thereafter she started to go to the college, but the accused started to visit her college and started to harass her. He was threatening her that in case she did not accompany him, then he would throw acid on her face. He was using vulgar words while threatening her. The accused had taken her to various Lodges on Alandi road, including one Abhishek Lodge, Savli lodge and ravished her there.

She further testified that lastly on 5th February,2014, the accused called her at his house from his mobile to her mobile on the pretext that his mother wanted to talk something with her. Accordingly, she went to his house. He was alone at the house. He gave heavy slap below her and asked her to go inside the house and then pushed her in the bed room. He again ravished her against her wish. He also bite her hand. She started to weep there and she got fed up of him. Thereafter, she came to her house and narrated the incident to her father and maternal uncle. Her father then lodged report at the police station._

20] In the cross-examination, she (PW 1) candidly admitted that on 24.4.2013, when accused had taken her to village Vairag, Tal.Barshi,Dist.Solapur and raped her in a room, she did not make complaint to people present on the Pune railway station or passengers in train and even landlord or landlady of room,which was taken on rental by the accused at village Vairag or neighbours at that place or her parents or maternal uncle,with whom,she was residing, though phoned them and called them at village Vairag for taking her or police. From these admissions,the accused tried to show that this conduct of

not disclosing alleged incident to anybody by the victim minor girl clearly shows that she had consent to accompany the accused and for sexual intercourse. However, this defence is not probable because the accused had given threats of exposing her and her family and threats of killing her all family members and also had given threats that he would commit suicide by leaving a chit mentioning her name and would send all persons in her family to jail and also gave threats of throwing acid on her face and he was using vulgar words while threatening her and these facts came on record through her evidence, which are also described in F.I.R.(Ex.25) lodged by her father. When such kinds of threats are given to a girl, naturally, she would be scared, confused and she would have no option except to act as per say of culprit. Same thing happened in this case. The accused was giving dire threats to victim minor girl and therefore, possibility that she was frightened and constrained to give response to his acts without disclosing to anybody, could not be ruled out.

21] Another defence of accused is that the victim minor girl had come in physical contacts with her friends Abhishek Deokar, Mangesh, Rohit and Mayur Chavan, who were her school-mates and residing in her locality and therefore, she had left home on 24.4.2012 along with her sister Divya, without intimating to family members and Missing Reports (Ex.26 and Ex.27) were filed.

 However, though she admitted that these boys were her school mates and though she admitted that she along with her sister Divya were missing on 24.4.2012 and Reports (Ex.26 and Ex.27) in that regard were filed to police, she flatly denied the suggestion that she had come in physical contacts with them. Therefore, this defence is also not probable.

22] The next defence of the accused, which explicit from cross-examination of victim minor girl (PW 1) and his written statement (Ex.77) furnished at the time of recording statement u/s 313 of Cr.P.C., is that the victim minor girl had love affair with accused and she was insisting him to marry with her but he was not willing to marry with her and therefore, in order to pressurize him for marriage, false prosecution has been launched against him. No doubt, in the statement (Ex.71) recorded u/s 164 of Cr.P.C., the victim minor girl had stated that “thereafter, he (accused) gave refusal for marriage”. However, in my opinion, her whole statement (Ex.71) has to be considered which shows that the accused had committed rape on victim minor girl by giving threats and promise of marriage. Therefore, in my view, in this context, aforementioned statement that “thereafter, he (accused) gave refusal for marriage” was made by her. Therefore, this defence is also not probable.

23] It is pertinent to note that there is no shred of evidence on record that the victim minor girl or her parents or maternal uncle and his family have enmity or grudge against the accused. Therefore, evidence of victim minor girl who is sole eye witness to the incidents of threats and beating and rape on her by the accused, inspire my confidence and therefore, her evidence is conceivable. The witnesses- First Informant (PW 2) Ramesh Adhagale and witness (PW 3) Sunil Sathe, maternal uncle of victim minor girl, clinchingly corroborates the prosecution case. Though some omissions appeared in their evidence, they being of minor nature, should not be given much importance.

 The evidence of witness (PW 5) Tanaji Jagtap, Lodge owner and documentary evidence of Visitor's Registers (Ex.45 and Ex.47) also clinchingly corroborates the prosecution case in respect of taking victim minor girl by the accused to his Lodge twice.

24] The Investigating Officer (PW 7) testified in his evidence that he seized clothes of victim minor girl and accused, which they had worn at the time of incident under panchanamas (Ex.33 and Ex.34) (admitted by accused), and collected their blood sample, nail clippings, pubic hair, vaginal swab, vaginal smear of victim minor girl and semen of the accused by sending letters to the Medical Officer (Ex.63 collectively) and sent all those articles for chemical analysis along with Requisition Letter (Ex.66) and collected Reports from Chemical Analyser (Ex.67, Ex.68 and Ex.69). The C.A. Report (Ex.69) is important amongst other Chemical Analyser's Reports. It shows that semen was not detected in vaginal swab and vaginal smear or pubic hair of victim minor girl. However, this documentary evidence should not be given much importance because last incident of rape was occurred on 5.2.2014 and sample of semen of accused was collected on 11.4.2014, after laps of two months which is seen from copy of letter (Ex.63). Therefore, possibility that due to this big span between last incident of rape and collection of sample of semen of accused, semen of the accused was not found in vaginal swab and smear of victim minor girl, could not be ruled out. Therefore, this circumstantial evidence in the form of Report of Chemical Analyser (Ex.69) is out of consideration. Any how, the oral evidence of the victim minor girl (PW 1) and documentary evidence of her Medical Examination Certificate (Ex.53) inspires my confidence and therefore, believable. Therefore, I hold that the accused has committed rape on victim girl repeatedly under threats and promise of marriage.

25] It is true that the First Informant (P.W.2), father of the victim minor girl came to know about incidents on 5.2.2014 and F.I.R. was lodged on 6.4.2014. Thus, delay of two months ensued in lodging

F.I.R. However, having regard to facts of the case, in my judgment, this delay does not create doubt about prosecution case. Hence, prosecution could not be put out of Court on ground of such delay in lodging F.I.R.

Resultantly, I hold that the prosecution has proved that the accused is author of offences charged against him. Hence, I answer these points as **proved**.

26] **Point No.5:**

I heard arguments of both the parties. The Ld.Special A.P.P.for the prosecution submitted that the prosecution has proved guilt of the accused by producing abundant and cogent evidence. Therefore, he may be convicted and punished.

27] Per contra, the Ld.Adv.for the accused submitted that the victim minor girl has made improvement regarding her birth date first time in her evidence. In the F.I.R. or statement of victim minor girl, birth date is not mentioned. The Birth Certificate issued by Pune Municipal Corporation in respect of victim girl is produced at belated stage through the evidence of Investigating Officer, which cannot be considered. He further submitted that Ossification Test Report (Ex.38) clearly shows the age of victim girl was between 17 to 19 years with marginal error. Therefore,she was not below the age of 18 years i.e.not minor at the time of alleged incident. Therefore, the prosecution has failed to prove that victim girl was minor or child at the time of incident and therefore, offences levelled under the provisions of POCSO Act, are not attracted.

Further, he submitted that there is delay of more than two months in lodging F.I.R.,which goes to the root of the case and creates doubt as to occurrence of alleged incidents at the hands of accused. The

conduct of victim minor girl of leaving home without intimation to family members and not making complaints to anybody while accused was committing the alleged offences, is suffice to hold that she is not trustworthy witness. Further, there are important improvements in the evidence of prosecution witnesses, which should be given serious consideration. Further, he submitted that accused was pressurized by the victim girl for marriage with her and after refusal, he has been falsely implicated in this case. Therefore, the accused may be acquitted by giving benefit of doubt. For these contentions, he placed reliance on following authorities:

For these contentions, he has placed reliance on following authorities:

- 1] Ravi Anandrao Gorpude Vs.State of Maharashtra [2017 ALL MR(Cri)1509].
- 2] Deepak s/o Jitendra Sawant Vs.The State of Maharashtra.(2017 ALL MR(Cri) 2058)
- 3] Rohidas s/o Manik Chavan & Anr.Vs.State of Maharashtra. (2017 ALL MR(Cri) 4504).
- 4] State of H.P. Vs.Shri Dharam Dass (1992 Cri.L.J.1758)
- 5] Roop Kishore Vs.State of U.P.(2015 Cri.L.J.4453)

It has been commonly observed in the above authorities that-

“However, to maintain conviction under POCSO Act, it is required to be proved that victim was “child” on date of incident-Birth certificate of prosecutrix requisitioned from Gram Panchayat-It was not produced at earliest opportunity-Though date of requisition is 25th September, date of issuance of said certificate is prior, viz. 16th September.

Date of birth of siblings of prosecutrix also not brought on record-Prosecution failed to prove age of prosecutrix-Conviction under POCSO Act, not sustainable”

- 6] Geeta Marine Services Pvt.Ltd.& Anr.Vs.State & Anr. (2009 ALL MR(Cri) 672). It has been observed therein that-

“Proof of document-Marking a document as exhibit-Held merely because a document referred to in cross-examination is marked as an exhibit, the same

does not dispense with the proof of document in accordance with law of evidence.”

7] State of Sikkim Vs.Amit Darjee (Darnal) (2016 Cri.L.J.523)

8] Lalta Prasad Vs.State of M.P. (1979 Cri.L.J.867)

9] Bhoop Singh Vs.State of Haryana (2015 Cri.L.J.1655).

It has been commonly observed in the above authorities that-

“(B)Protection of Children from Sexual Offences Act (32 of 2012),S.3-Sexual assault-Age of victim-Ossification test report showing age of victim 17-18 years-Variation of 3 years possible-Victim cannot be held to be below 18 years of age on date of incident.

(C) Protection of Children from Sexual Offences Act (32 of 2012),S.3-Sexual assault-Consent-Accused alleged to have committed sexual intercourse with victim against her wishes- Evidence of victim clearly showing that she knew accused very well and she went to several places with him on day of incident and ultimately reached school in which she was studying in night, stayed there for whole night where sexual intercourse was performed- Keeping silent and not disclosing act of accused to anyone either in school premises or even when victim returned from school to her friend's house showing that she was consenting party to sexual intercourse- Acquittal of accused,proper.”

10] Hamidkhan Vahidkhan Pathan Vs.State of Gujarat (2015 Cri.L.J. 3215)

11] Rajesh Patel Vs.State of Jharkhand (AIR 2013 S.C.1497)

It has been commonly observed in the above authorities that-

“Fact that prosecutrix did not raise alarm when she was locked all alone in house-Makes prosecution case more vulnerable-FIR lodged 11 days after offence.

Acquaintance and fact that accused and prosecutrix were on meeting terms and she had gone to house of accused probalilises consensual sex- Held in circumstances prosecution cannot be said to have proved its case against accused-Conviction of accused liable to be set aside.”

28] The arguments made on behalf of the prosecution are to be

upheld and arguments made on behalf of accused are not acceptable for the findings recorded above.

29] With great regards, I mention that the authorities cited supra on behalf of accused are not applicable to the present case as they turn on different point than the facts of case in hand.

30] From the oral and documentary evidence on record, I hold that the prosecution has proved beyond reasonable doubt that the accused is author of an offences punishable u/ss 376,323,506 of the Indian Penal Code and u/s 3 r.w.sec.4 of the POCSO Act. Therefore, he is liable for conviction and punishment. However, I stop to pronounce further Judgment for hearing the accused on the point of sentence.

Date : 31/01/2019

[Dilip G. Murumkar]
Special Judge,Pune.
(Under the POCSO Act)

31] The accused submitted that it is his first offence and his parents and unmarried sister are dependent on him. Therefore, lenient view may be taken and minimum punishment may be awarded.

Per contra, the Ld.Special APP for the prosecution submitted that the accused by threatening the victim minor girl, committed serious offence of rape repeatedly. Therefore, maximum punishment provided by law,may be awarded.

32] On consideration of submissions of both the parties and serious nature of offences committed repeatedly, I am of the opinion

that the accused does not deserve for leniency but adequate punishment is necessary. Therefore, by answering this point accordingly, I proceed to pass the following order:

ORDER

01] The accused- Akshay Gulabsing Prajapati is hereby convicted of an offence punishable u/s 376 of the Indian Penal Code vide Section 235(2) of Criminal Procedure Code.

02] He shall suffer **Rigorous Imprisonment for ten years** and **pay fine of Rs.5000/-** [Rupees Five Thousand Only], in default of payment of fine, he shall suffer Simple Imprisonment for one year.

03] The accused- Akshay Gulabsing Prajapati is convicted of an offence punishable u/s 323 of the Indian Penal Code vide Section 235(2) of Criminal Procedure Code.

04] He shall suffer **Rigorous Imprisonment for one month.**

05] The accused- Akshay Gulabsing Prajapati is convicted of an offence punishable u/s 506 of the Indian Penal Code vide Section 235(2) of Criminal Procedure Code.

06] He shall suffer **Rigorous Imprisonment for six months.**

07] The accused- Akshay Gulabsing Prajapati is convicted of an offence u/s 3 punishable u/s 4 of the Protection of Children from Sexual Offences Act vide Section 235(2) of Criminal Procedure Code.

21 Judgment in Spl.(C)S.C.No.128 of 2014

08] He shall suffer **Rigorous Imprisonment for ten years** and **pay fine of Rs.5000/-** [Rupees Five Thousand Only], in default of payment of fine, he shall suffer Simple Imprisonment for one year.

09] All the substantive sentences shall run concurrently.

10] The accused was in jail from 6.4.2014 to 15.7.2014 and this period of detention undergone by him be set off vide Section 428 of the Code of Criminal Procedure.

11] The muddemal property, being worthless, be destroyed, after the appeal period is over.

12] The accused be surrendered to his bail bonds.

Pronounced in open Court.

Date : 31/01/2019

Place : Pune.

[Dilip G. Murumkar]
Special Judge,Pune.
(Under the Protection of Children from
Sexual Offences Act)

CERTIFICATE

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of Steno	:	Sau.S.V.Sane
Court Name	:	Shri. Dilip G. Murumkar Special Judge (Under the POCSO Act, Pune. (District Judge-1,Pune)
Judgment Date	:	31/01/2019
Judgment signed by Presiding Officer on	:	02/02/2019
Judgment uploaded on	:	02/02/2019