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 Registered on : 05.06.2014
 Decided on : 10.10.2023
 Duration : Y M D
 09 -04- 11

IN THE COURT OF SESSIONS JUDGE, PUNE .
(Presided over by K.P Nandedkar Addl. Sessions Judge, Pune)

Form No. XXXII
Part 'A'
(Title page of Judgment)
(Para 44(i) of Chapter VI of Criminal Manual)

Spl Case Child Protection No. 124/2014
CNR NO: MHPU01-006424-2014

Bhosari Police Station C.R. No. 78/2014
u/s. 452-354-A of I.P.C., u/s. 11 and 12 of POCSO Act

Exh. No. 52

COMPLAINANT		STATE OF MAHARASHTRA
REPRESENTED BY		Ld. A.P.P. Mrs. Kale
ACCUSED		Imam Kasim Shaikh, Age: 38 Yrs., Occu.: Nil, R/at: Near Mhasoba Mandir, Hirabai Slum area, Kasarwadi, Pune.
REPRESENTED BY		Ld. Adv. Mr. N. H. Shaikh

Part 'B'**[Para 44(ii) of Chapter VI of Criminal Manual]**

Date of Offence	07.03.2014
Date of FIR	07.03.2014
Date of Charge-sheet	27.05.2014
Date of Framing of Charges	31.07.2014
Date of Commencement of evidence	04.10.2016
Date of which judgment is reserved	
Date of the Judgment	10.10.2023
Date of the Sentencing Order, if any	-

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr.PC.
	Imam Kasim Shaikh	07.03.2014 again on 04.05.2023	03.06.2016 again in jail till today	452, 354-A (2) of IPC, 11 & 12 POCSO Act	Acquitted	Nil	2 yrs. 2months 26 days

Part 'C'**[Para 44(iii) of Chapter VI of Criminal Manual]****LIST OF PROSECUTION / DEFENCE / COURT WITNESSES****A. Prosecution :**

RANK	NAME	NATURE OF EVIDENCE (Eye witness, Police witness, Expert witness, Medical witness, Panch witness, other witness)
PW-1	Vimalbai Rajendra Waghmode	Mother of victim
PW-2	Aarti Rajendra Waghmode	Victim
PW-3	Bhagwan Tanaji Mandalik	Panch witness of spot panchanama
PW-4	Satyawan Tukaram patil	Investigating Officer

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (Eye witness, Police witness, Expert witness, Medical witness, Panch witness, other witness)
DW1	-	-
DW2	-	-

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (Eye witness, Police witness, Expert witness, Medical witness, Panch witness, other witness)
CW1	-	-
CW2	-	-

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution :

Sr. No.	Exhibit Number	Description
1	Exh.31	Complaint
2	Exh.49	Spot panchanama

B. Defence :

Sr. No.	Exhibit Number	Description
1	Exhibit	-
2	Exhibit	-

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW1	-
2	Exhibit C-2/CW2	-

D. Material Objects :

Sr. No.	Material Object Number	Description
1	MO1	-
2	MO2	-

JUDGMENT

(Delivered on 10th October 2023)

Accused Imam Kasim Shaikh has faced the trial for the offence punishable under Section 452, 354-A of Indian Penal Code (hereinafter referred as IPC) and under Section 11 and 12 of Protection of Children From Sexual Offences Act (hereinafter referred to as POCSO) as he came to be prosecuted by the State through Bhosari Police Station, Pune.

2] Facts which gave rise to the prosecution case are that informant who is the victim of this case has lodged report

Exh.31 on 07.03.2014 contending that her age was 13 years, she was taking education and residing near Mhasoba Temple, Hirabai Zopadpatti, Kasarwadi, Pune, with her parents and elder sister aged 16 years. She was taking education in 8th standard in a Pimpri Chinchwad Municipal Corporation school, Kasarwadi, Pune. Her school timings were 11.30 a.m. to 5.30 p.m. but at that time 10th standard examination was going on. Hence, her school timings were in between 3.30 p.m. to 5.30 p.m.

3] It is mentioned in First Information Report that informant knows Iman Kasim Shaikh, who resides in the neighbourhood of informant. Her parents daily leave the home in morning for work and they return back to home in the evening. Accordingly on the day of incident also her parents had left the house in the morning and her sister had gone to attend 10th standard examination paper at 10-00 a.m. Hence, informant was alone in the home. At about 12.00 noon informant alone was having the lunch by sitting on the cot from her house. That time Imam Kasim Shaikh forcibly entered in informant's house. It is alleged that Iman Kasim Shaikh removed his pant and became nude in front of informant and he had shown his penis to informant. That time informant got frightened and shouted loudly, therefore, Shabira Shaikh, who was residing in the neighbourhood of informant, came running to the house of informant and on seeing Shabira, Imam Kasim Shaikh left the house of informant. Thereafter, informant had

gone to the school and in evening after returning from the school, she had narrated the incident to her mother. Thereafter, her mother and informant went to Bhsoari police station Pune and lodged the report.

4] On the basis of above report CR No. 78/2014 for the offence punishable under Sections 452, 354-A of IPC along with offence punishable under Section 11 read with 12 of POCSO came to be registered with Bhosari police station and its investigation was carried out by PI Satyawar Tukaram Patil. During investigation on 07.03.2014 he had arrested accused Imam Kasim Shaikh, prepared spot panchanama Exh.49 with the help of two panchas, spot of incident was shown by victim, spot of incident was house of victim, on 08.03.2023 as he had to attend Chandrapur court, investigation was handed over to PSI Kadale, who has recorded statements of witnesses. After returning PI Satyawar Patil carried further investigation and as investigation was completed and it was revealed in investigation that accused had committed alleged offence, he filed charge-sheet against accused in the court.

5] My learned predecessor has framed charge Exh.2 for the offence punishable under Section 452, 354(A)(2) of IPC r.w. Section 11 and 12 of POCSO Act. Vide plea statement at Exh.3, accused pleaded not guilty and claimed to be tried. Hence, trial proceeded.

6] Prosecution has examined in all 4 witnesses and closed its evidence by filing evidence close pursis Exh.50. Thereafter, I have recorded statements of accused under Section 313 of Cr. P .C., which is at Exh.51. While cross examining prosecution witness and while giving answers to the questions put forth under Section 313 of Cr.P.C., accused has advanced defence of total denial. Thereafter, I have heard arguments of learned APP Mrs. Kale and defence advocate Mr. N.H. Shaikh.

7] Learned APP Mrs. Kale strongly argued that from the evidence on record prosecution has proved the charge levelled against the accused beyond reasonable doubt. It is pointed out that victim PW-2 has deposed that at the time of incident she was 13 years, taking education in 8th standard, her parents had gone for their work and as there was 10th standard examination was going on, her sister was also not at home, therefore, she was alone and accused took advantage of her being alone, did the act alleged by removing his pant he had shown his penis to victim, therefore, she shouted and her neighbour Shabira Shaikh rushed to her house and on seeing Shabira, accused left the spot.

8] Learned APP further argued that accused was jobless, used to wonder unnecessarily in the vicinity after consuming liquor, always there used to be quarrels between accused and his wife. According to learned APP the prosecution

has proved that accused committed house trespass by entering unlawfully into the house of informant and he had caused sexual harassment of informant by making physical advances viz by removing his pant before victim, who was minor having 13 years of age, he became naked, shown his penis to victim demanded and requested sexual favours from victim and caused sexual harassment to minor victim with sexual intent. Therefore, according to learned APP from the evidence of victim it becomes clear that prosecution has proved the charges levelled against accused beyond reasonable doubt. Further evidence Investigating Officer also supports prosecution story. Therefore, learned APP submitted that accused is necessary to be convicted.

9] Learned advocate for accused argued that prosecution has utterly failed to prove the charges levelled as there is no evidence to prove that accused committed house trespass by unlawfully entering in the house of complainant and victim so also caused sexual harassment by making physical advances as mentioned in the complaint because PW-1 complainant has admitted in her cross examination that the area where they reside is a hutment area, there is stream behind her house. PW-1 further admitted that if anybody stands in the door of her house, door of the house of accused is visible. Learned advocate for accused submitted that no documentary evidence about the date of birth of victim is produced before the court,

therefore, it cannot be believed that at the time of lodging First Information Report informant's age was 13 years and her date of birth was 18.10.1999. According to learned advocate for accused provisions of POCSO Act does not get attracted against accused unless there is evidence of proof of age of victim as on the date of incident. It is further argued that as mentioned in First Information Report that at the time of incident one Shabira had come to the house of victim and thereafter, accused left house of victim, however, said material witness is not examined by the prosecution. Hence, according to learned defence advocate except evidence of PW-2 victim, there is no evidence on record of any independent witness to prove the allegations made against accused.

10] It is pointed out that admittedly house of victim was in hutment area and the houses from hutment area are adjoining to each other, hence, according to advocate for accused if really alleged incident would have occurred and if really victim would have shouted loudly, the neighbours residing nearby the house of victim would have rushed to the spot but there is no such evidence on record. It is also argued that due to previous quarrels between family members of victim and accused, which used to take place on account of use of public toilet, accused is implicated in this case. Hence, according to learned defence advocate prosecution has failed in proving the charge levelled against the accused beyond reasonable doubt. It

is also argued that at the time of incident as contended in First Information Report school timing of victim was in between 3.30 to 5.30 p.m. and she has deposed that she did not feel it necessary to inform the incident to her mother by making phone call. It is also pointed out that victim has deposed in her cross examination that there is no bathroom at her house, hence, according to learned advocate for accused, there is possibility of quarrel between accused and victim's family on account of use of public toilet. Hence, according to defence advocate prosecution has failed in proving the charge levelled against the persons and to bring home the guilt of the accused beyond reasonable doubt and therefore, accused is entitled for acquittal.

11] From the prosecution case on record and from the arguments referred above which are advanced on behalf of the parties, following points arise for my determination and I am recording my findings against those points for the reasons discussed below -

<u>Sr.</u> <u>No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Whether prosecution has proved that accused on 07.03.2014 at about 12.00 noon the house of complainant i.e. near Mhasoba Mandir, Hirabai Zopadpatti, Ksasarwadi, Pune committed house trespass by entering unlawfully and having made preparation for causing rape into the house of complainant minor victim of 13 years which is used as	In the negative

human dwelling for the purpose of committing rape on said complainant ?

- | | | |
|----|---|---------------------|
| 2] | Whether prosecution has proved that on the aforesaid day, date, time and place and during the course of same transaction accused caused sexual harassment by making physical advances viz. By removing his pant before complainant victim minor aged 13 years, became naked and by showing his penis to victim demanded and requested sexual favours from her ? | In the negative |
| 3] | Whether prosecution has proved that on the aforesaid day, date, time and place and during the course of same transaction accused caused sexual harassment to minor victim girl aged 13 years by exhibiting his penis to her with sexual intent ? | In the negative |
| 4] | What order ? | As per final order. |

REASONS

AS TO POINTS NO.1 TO 4 :-

12] It is pertinent to note here that the fact that accused committed house trespass by entering unlawfully into the house of complainant minor victim of 13 years, caused sexual harassment by making physical advances viz. By removing his pant before complainant victim minor aged 13 years, became naked and by showing his penis to victim demanded and requested sexual favours from her caused sexual harassment to

minor victim girl aged 13 years by exhibiting his penis to her with sexual intent, are the facts related to each other and those facts are outcome of one and the same incident which allegedly occurred at the house of complainant victim on 07.03.2014 at about 12.00 noon at Hirabai Zopadpatti area, Kasarwadi, Near Mhasoba Mandir, Pune and are related to each other and they are subject matter of points No.1 to 3, I find it necessary to discuss reasons for my findings against points No.1 to 3 together. Hence, I am giving my findings to points No. 1 to 3 together.

13] For proving its case prosecution has placed reliance on the documentary evidence, which is referred in the initial part of the judgment. Apart from above documentary evidence prosecution has examined in all four witnesses. Out of those witnesses PW-2 is victim of the incident, who has deposed vide Exh.30 that her date of birth is 18.10.1999, at the time of incident she was of 13 years and taking education in 8th standard at Corporation High School at Kasarwadi, having school timing 11-30 p.m. to 5-30 p.m. She has deposed that as there was board examination of 10th standard at that time, her school timing was from 3.30 p.m. to 5.30 p.m. She further deposed that at the time of incident her parents had gone outside the house for doing labour work, her elder sister Kirti had gone to solve 10th standard examination paper, the incident took place on 07.03.2014, on that day at about 12 in the noon, she was taking meal while sitting on a cot in the house. She

deposed that at that time her neighbour Imam Shaikh had come to her house, removed his pant, shown his penis to victim, therefore, she raised alarm due to which her neighbour Shabira Shaikh rushed to her house and on seeing her, the accused left the spot. She further deposed that thereafter, she went to her school and on returning from the school, she narrated the incident to her mother in the evening at about 6 to 7 p.m., somebody contacted the police on phone and police had come to her house, herself and her mother went to the police station and complainant lodged the report Exh.31.

14] During her cross examination she has admitted that her mother is having mobile phone, she know that said mobile phone was working, accused resides in her neighbourhood, therefore, she daily see him and his wife. She has admitted that accused remains at the house and his wife goes for work, accused loiter in the vicinity on consuming liquor as he is jobless. She has denied that she heard on number of occasions about quarrels between the accused and his wife, accused had come to her house without her permission. She further deposed that she did not feel it necessary to contact her mother on phone at that time but volunteered that she was not having money at that time, she told incident to Sabira Shaikh, Sabira did not console her but volunteered that she was in scared condition. She has denied that she felt that the said incident was so serious therefore, she decided to inform her mother in the evening after

coming from the school. She has deposed that she did not tell to her mother that whilst she was taking meal, she heard something had struck to the tin shed wall of her house.

15] She has denied that when she came out of the house, she found that the accused was urinating in the bathroom which was behind her house. She has denied that on informing to her mother, there was quarrel between her mother and the accused, her aunt contacted police on phone and then police came. She has denied that there was discussion among all of them as to go to the police station and in the matter in which the complaint should be lodged. She has admitted that in the evening her aunt Gokulbai Narute, Smt. Fatru Shaikh, Smt. Kamal Parshu Dharma and Malan Sindagi had been to her house. She has denied that her mother had called them to the house and on their arrival, they all discussed about how to lodge the complaint and then they all went to the police station and complaint was lodged. She has denied that on the day of incident accused had been to the bathroom of her house and was found urinating there and therefore, she got enraged and quarreled with him, at the instance of her mother and aforementioned women, she lodged the false complaint against accused, no such incident had occurred with her as narrated and she deposed false.

16] PW-1 Vimalbai Rajendra Waghmode, the mother of victim has deposed vide Exh.29 that she reside with her husband

and two daughters, victim is her younger daughter, she is of 16 years but PW-1 does not remember date of birth. She has deposed that at the time of incident victim was taking education in 8th standard, her school timing was 12 in the noon till 5.30 p.m. She has deposed that at that time final examination of her elder daughter Kirti was going on, timing of said examination was 10 a.m. to 1.00 p.m., she does not remember the date of incident, she knows accused as he resides in her neighbourhood. She has deposed that on that day she along with her husband had gone to do labour work, at about 5.30 to 6.00 p.m. she returned from her work, her daughter victim informed her that the accused had been to the house and asked about herself and her husband. PW-1 further deposed that the accused had removed his pant and got naked and had shown her his penis/private part, due to which she raised alarm, therefore, her neighbour Shabira Shaikh rushed there and on seeing her the accused left the house. She has deposed that thereafter, she along with her daughter had been to police station and complaint was lodged by her daughter, police interrogated with her and recorded her statement.

17] During cross examination PW-1 has deposed that she is residing in Hirabai hutment area near Mhasoba temple since last 20 years. She has admitted that therefore, she is acquainted with that area and also persons in that area, there is stream behind her house, houses in her neighbourhood area are having

tin sheets, there are small lanes in her hutment area. She has deposed that she knows Zubeda Shaikh, wife of accused. She has denied that if one stand in the door of her house, door of the house of accused is visible.

18] She has admitted that there was no bathroom in her house in 2014, there was temporary arrangement of bathroom in her house in 2014, there was temporary arrangement of bathroom behind her house which was just adjacent to stream, if somebody want to go to stream, he or she has to pass by the door of her house, which is the last house at the end and there are no houses of others behind her house, there are no public toilets in hutment area and as such, the residents have to use land beyond stream. She has deposed that she does not know whether accused is having habit of drinking liquor, she does not know whether the accused on getting inebriated hurls abuses and caused disturbance in neighbourhood. She further deposed that she used mobile phone and her daughter has knowledge of her mobile phone number. She has admitted that in case of any need, her daughters contact her on phone.

19] As deposed by PW-1 on the day of incident she returned to house at about 6.00 p.m. She had been to police station with victim at about 7-00 p.m. and from her house she had been to police station in a police vehicle, her daughter had contacted police on phone and police had come to her house.

She again deposed that somebody else had contacted police on phone, she had been to police station for about one hour, she returned to her house around 9 to 10 p.m. She returned with her daughters. She has admitted that police had not come with her to reach her at her house. She deposed that police interrogated with her on that day. She has admitted that police recorded her statement, like that of her daughter, thereafter she did not come in contact with the police.

20] She has deposed that she had stated before police that accused had enquired with her daughter about herself and her husband. However, she is unable to assign any reason as to why said fact is not mentioned in her statement. She has denied that accused had gone to temporary bathroom raised behind her house for urination and on that count there was quarrel between herself and accused, there was commutation and police had come to that place. She has also denied that accused was under influence of liquor and accused was taken away by police. Lastly she has denied that incident as stated by her has not occurred with her daughter and she has deposed false against accused.

21] PW-3 Bhagwan Tanaji Mandlik has deposed at Exh.32 that on 7th March 2014 Bhosari police had called him at police station. He did not accompany police anywhere but police obtained his signature on one document, he does not

know contents of said document. It is pertinent to note here that learned APP has cross examined PW-3 and suggested him that PW-3 and another panch were called at the house of victim and the victim had shown said spot to the police. He has denied that police prepared panchanama of the spot in his presence. He has denied that he has deposed false against prosecution.

22] PW-4 PI Satyawar Tukaram Patil, who is presently serving with Prevention of Civil Rights Cell, Mumbai Police has deposed at Exh.48 that in the month of March 2014 he was serving as PI Crime at Bhosari police station Pune. On 07.03.2014 victim from this case had come to Bhosari police station and she had lodged First Information Report in presence of PW-4. It was recorded by LPN Angal of Bhosari police station. On the basis of said First Information Report Cr. No. 78/2014 came to be registered with Bhosari police station for the offence punishable under Section 452, 354, 509 of IPC along with Section 11 and 12 of POCSO Act and its investigation was handed over to him.

23] PW-4 has further deposed that in investigation he had arrested accused Imam Kasim Shaikh and on 7th March 2014 itself he has prepared spot panchanama Exh.49 with the help of two panchas, said spot of incident was shown by victim and it was victim's house. Said panchanama bears his signature with signatures of panchas namely Mandlik and Khutwad. He

has further deposed that on 8th March 2023 he was required to attend Chandrapur court, hence, investigation of above crime was handed over to PSI Kadale., who has recorded statements of witnesses from this case. After PW-4 returned back from Chandrapur again investigation of the crime was handed over to him but already investigation was completed and it was revealed in investigation that accused had committed alleged offence hence, he has filed charge-sheet against accused in the court. PW-4 has deposed that he can identify accused.

24] PW-4 has admitted in his cross examination that for the purpose of investigation he had visited Hirabai Hutment area and there are about 200 huts in said area, which are small huts adjoining to each other. He does not remember that whether the hut in which victim was residing was at the end of said locality and whether there was stream existing behind the hut of victim. He has deposed that house of accused was adjoining to the hut of victim. While lodging report Exh.31 victim had not stated in his presence that bathroom was constructed near her hut. He has admitted that public toilet is constructed in said locality for the residents of said locality and said toilet is behind hut of victim. He has denied that quarrel used to take place between victim and other residents of the locality on account of use of said public toilet. It did not happen that constables of Bhosari police station were called in said locality by making phone call and those constables carried

victim to police station. He has deposed that it was revealed in investigation that accused used to raise quarrels with parents of victim on account of previous enmity but he does not know that said enmity was due to use of public toilet.

25] PW-4 has deposed that birth certificate of victim was not obtained for the purpose of investigation of this case. No documents were collected to show that on 07.03.2014 there was examination of 10th standard in the school of victim. No documents related to the ownership of house of victim were collected in investigation. He has denied that on 7th march 2014 quarrels took place between victim's parents and accused near public toilet. He has denied that accused has not committed alleged offence but on the basis of false complaint he had carried out incorrect investigation and filed incorrect charge-sheet against accused.

26] From above referred evidence it becomes clear that no documentary evidence about the date of birth of victim is field on record and there is no documentary evidence to show that victim's age was 13 years at the time of alleged incident. As such, accused cannot be held guilty for the offence punishable under Section 12 of POCSO Act.

27] In respect of the offence punishable under Section 452 and 354 (A)(2) of IPC it is pertinent to note here that in

First Information Report it is mentioned that at the time of alleged incident victim got frightened and she shouted loudly, hence, Shabira Shaikh came running to the house of victim and on seeing Shabira Shaikh accused ran away from the house of victim. Prosecution has not examined the material witness Shabira Shaikh. Further panch of spot panchanama has not supported prosecution case. Not only it none of the independent witness has entered into witness box. Admittedly PW-1 the mother of victim was not present at the house at the time of alleged incident and she has admitted that she was having the phone and her daughters used to make her phone call in case of any need. In this case victim has deposed that she did not felt it necessary to make phone call to her mother. Thus, considering the lacuna from prosecution evidence and considering the fact that no independent witness has entered into witness box to support prosecution case, I find that benefit of doubt is necessary to be given to accused in respect of allegations made against him about house trespass and about demanding sexual favours from victim. For all above reasons by giving benefit of doubt I find that prosecution has failed in proving the charge levelled against accused beyond reasonable doubt. Hence, I have recorded my findings against points No.1 to 3 in negative and proceed to pass following order -

ORDER

- 1] Accused Imam Kasim Shaikh is acquitted under Section 235 of Cr.P.C., of the offences punishable under section 452, 354 (A)(2) IPC and under Section 11 and 12 of POCSO Act.
- 2] Accused is in jail, he be released forthwith if not required in any other crime.
- 3] No property is seized in this crime, hence, no order as to disposal of seized property.
- 4] Accused in compliance of Section 437-A of the Criminal Procedure Code, shall execute PR and SB of Rs.7,500/- after his release from Jail from the date of this order.

Pune.

Dated : 10th October 2023

(K.P. Nandedkar)
Additional Sessions Judge, Pune.

CERTIFICATE

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

Name of Steno	Mrs. S.M. Khisti Stenographer Grade I
Name of Court	Shri. K.P. Nandedkar Additional Sessions Judge, Pune.
Date of Order	10.10.2023
Order signed by PO on	13.10.2023
Order uploaded on	13.10.2023

