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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 Shri J.T.Utpat, Special Judge and Addl.Sessions Judge, Pune)

SPECIAL (CHILD) SESSIONS CASE NO.122/2014

The state of Maharashtra)
 (Through MIDC Bhosari police station)) ..Complainant

Vs.

Dnyaneshwar Trimbak Nalawade)
 Age 22 years, Occ.Labour.)
 R/o Balajinagar Zopadpatti,Bhosari,) .. Accused
 Pune.)

...

Appearances:

Shri S.S.More,Special Public Prosecutor for the State.
 Shri Devidas Tate-Deshmukh, Advocate for the accused.

...

:JUDGMENT:

(Delivered on 7th day of September,2016)

The accused Dnyaneshwar Trimbak Nalawade stands charge-sheeted in this case for the commission of offences punishable u/ss 363,366-A,376 of the Indian Penal Code and u/s 4 of the Protection of Children from Sexual Offences Act,2012 on the allegations that in between 21.11.2013 to 2.3.2014 from Balajinagar, Pune, he kidnapped minor victim girl (name

withheld) and committed rape on her.

2] Narrated briefly the facts alleged in the complaint Ex.14 by Sou.Mumtaz Munna Shaikh (mother of the victim girl) are that she resides at Balajinagar slum area,Bhosari,Pune. She has one son and three daughters .Out of them, two daughters are married. She runs one Canteen. However, since one of her daughters had come to her house for delivery, her son and the victim girl were managing the said canteen. According to the complainant, the accused Dnyaneshwar Trimbak Nalawade always used to come near her house to see the victim girl. So also,he used to visit her canteen along with his friends and tried to speak with the victim girl but she herself and her son objected for the same.

3] It is further alleged that on 21.11.2013, since the complainant was not feeling well, the victim girl prepared food for evening and thereafter, gave tea to the complainant and left the house at about 7.00 p.m. without informing her anything. Thereafter, after 10 minutes, the complainant called her daughter but she did not respond. As such, the complainant searched for the victim girl in the nearby area, her friends and relatives but she was not found. Thereafter, her both the daughters and son in laws on being called, came to the house of complainant and they all took search of the victim girl but she was not traced. The complainant further came to know that since that day, the accused is also not seen in his house. As such, the complainant went to the police station and lodged

missing report Ex.13.

4] It is further alleged that thereafter, son and son in law of the complainant came to know that the accused and the victim girl were having love affair and on 21.11.2013 at about 7.00 p.m. he called the victim girl out of the house and kidnapped her by saying that he would marry her.

5] As such, the complainant went to MIDC Bhosari police station and lodged the complaint Ex.14. On the basis of the said complaint, C.R.no.216/2013 came to be registered and the P.W.3 Savita Hanumant Bhagwat, P.S.I. was entrusted with the investigation of offences. In the course of investigation, the P.W.3 prepared spot panchanama and other seizure panchanamas, recorded statements of the witnesses, sent the victim girl and the accused for medical examination, sent the blood samples of the accused and victim for DNA examination and after completion of investigation, the charge sheet came to be filed against the accused in the Special Court,Pune.

6] The accused pleaded not guilty and claimed to be tried, when the particulars of charge Ex.6 were read over and explained to him in vernacular. His defence is of total denial. No defence evidence has been led.

7] Heard the Ld.Special Public Prosecutor Shri S.S.More and the Ld.Adv.for the accused Shri Devidas Tate-Deshmukh. Thereon, the following points arise for my consideration:

- 1] Whether on or about 21.11.2013 at 19 hours to 2.3.2014 till morning, at Balajinagar,Pune, in the house of complainant and at Mouje Pali, Tal.and Dist.Beed,accused kidnapped the minor victim girl (name withheld),age 16 years from Balajinagar,Pune,by taking or enticing her out of keeping of her lawful guardianship and without their consent and thereby committed an offence punishable u/s 363 of the I.P.C.?
- 2] Whether on the aforesaid date,time and place and during the course of same transaction, accused induced the minor victim girl (name withheld),age 16 yrs,who is under the age of 18 years to go with him at various places,with intent that the said victim girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with him and thereby committed an offence punishable u/s 366-A of the I.P.C.?
- 3] Whether on the aforesaid date,time and place and during the course of same transaction, accused committed rape on minor victim girl (name withheld) age 16 years and thereby committed an offence punishable under sec.376 of the I.P.C.?
- 4] Whether during the aforesaid period and place and during the course of same transaction, accused committed penetrative sexual assault on minor victim girl (name withheld) age 16 years, by inserting his penis into her vagina and thereby committed an offence u/s 3 punishable u/s 4 of the Protection of Children from Sexual Offences Act, 2012?
- 5] What order?

8] My findings on points no.1 to 4 are in the negative and the accused is acquitted for the following reasons:

REASONS

9] The prosecution in its efforts to establish the offences beyond reasonable doubt against the accused, has examined following three witnesses and closed the oral evidence vide purshis Ex.27.

1] Smt.Mumtaz Shaikh Munna Shaikh, complainant,P.W.1 Ex.12.

2] The victim girl(name withheld) P.W.2 Ex.15.

3] Savita Hanumant Bhagwat,P.S.I.(Investigating Officer) P.W.3 Ex.22.

10] In addition to it, the prosecution has relied on the complaint Ex.14, missing report Ex.13, various panchanamas and DNA report etc.

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

As mentioned earlier, the prosecution in order to prove the offences beyond reasonable doubt, has examined the above referred three witnesses. Out of them, the P.W.3 is the Investigating Officer and as such, her evidence is not too much important. Therefore, there remains on record the testimony of the P.Ws.1 and 2 and I have to scan their evidence with a view to see whether their evidence inspires the confidence.

12] The complainant P.W.1 Mumtaz Shaikh Munna Shaikh has deposed in her evidence as regards both the incidents are concerned at Ex.12 that she does not remember the date of birth of the victim girl. Today, she(victim girl) is 20 years old. She has further stated that on 21.11.2013, her daughter victim girl was found missing. They searched for her but she was not found and therefore, on 22.11.2013, she lodged missing report Ex.13. According to the P.W.1, thereafter, they came to know that her daughter, victim girl, was with her mother. She has specifically stated that the accused had not kidnapped the victim girl.

13] Thus, it is quite clear from the conduct of the P.W.1 that she has resiled from her previous statement i.e.complaint. Therefore, the Ld.Special Prosecutor was allowed to cross examine his own witness. However, there is nothing in the cross-examination of the P.W.1 to prove that the accused had kidnapped the victim girl as alleged and had raped her. The P.W.1 has denied that date of birth of victim girl was 14.5.1997. In the cross-examination by the defence, the P.W.1 has admitted that the victim girl was born in Nanded and she personally admitted her in her school. But that time,she had not stated the date of birth of the victim girl as 14.5.1997. She further stated that said date of birth was written in the school record only to give admission to her daughter in the school by school authority. Thus,the evidence of the P.W.1 in no way helps the prosecution.

14] Same is the case in respect of the evidence of the

victim girl P.W.2. The P.W.2 has also turned hostile, did not support the prosecution case on any count. At the time of her evidence, the P.W.2 stated her age to be 21 years. Since the P.W.2 also resiled from her previous statement, the Ld.Special Prosecutor was allowed to cross examine his own witness. The Ld.Special Prosecutor Shri S.S.More cross examined this witness at length but nothing could be brought on record to prove the offences against the accused. Thus, I find that the evidence of the P.W.1 and 2, star witnesses of the prosecution, is of no help for the prosecution.

15] On perusal of the facts on record, it is seen that the victim girl had been sent for medical examination and the said medical certificate Ex.24 (admitted by the defence) shows that there was evidence of penetrative sexual vaginal intercourse. Now, therefore, the question for consideration is whether the accused is a person who had sexual intercourse with the victim girl.

16] So far as the age of the victim girl is concerned, though it is mentioned in the medical certificate Ex.24 that the victim girl stated her age to be 16 years, however, as mentioned earlier, the mother of the victim girl P.W.1 has denied of having given the date of birth to the school authority at the time of her admission in the school, P.W.2 victim girl has also stated her age to be 21 years on the date of her deposition. The incident in question has taken place on 23.11.2014. Therefore, simple mathematical calculation will show that on that day i.e. on 23.11.2014, the victim girl was above 18 years of age.

The facts on record clearly show that the victim girl was a consenting party and if she was above 18 years of age, there cannot be any offence u/s 376 of the I.P.C.

17] There is DNA report Ex.25 on record. The said report shows that the accused and the victim girl are the biological parents of Ex-three products of conception of the victim girl. It is well settled law that DNA report is not the conclusive proof. The cross examination of the victim girl P.W.2 by Special Prosecutor shows that she delivered a baby boy after she performed marriage with the accused. She has further stated that prior to that, she was pregnant but she cannot tell whether the pregnancy was because of sexual intercourse with the accused. In view of these facts on record, I am of the opinion that no importance can be given to the DNA report.

18] The Ld.Adv.for the accused Shri Tate-Deshmukh has relied in the case of 1] **Sanjay Vijay Nawghade Vs.State of Maharashtra (2015 DGLS (Cri) Soft 1338** 2] **Ram Kishan Singh Vs.Harmit Kaur and another (AIR 1972 S.C.468)** 3] **State of Delhi Vs.Shri Ram Lohia 1960 Cri.J.679.** The aforesaid rulings have been relied on in support of the legal proposition that the statement recorded u/s 164 of Cr.P.C.is not substantive piece of evidence and it can be used only for the purpose of corroborating or contradicting the witness thereof etc. I have gone through the said rulings. There cannot be two views in the law laid down in it. However, I have given above the reasons as to how the prosecution has failed to prove the

offences against the accused. Therefore, I do not want to delve on the said aspect in detail.

19] Considering the above facts on record, I am of the view that prosecution has miserably failed to prove the offences against the accused. Therefore, I answer point nos.1 to 4 in the negative and proceed to pass the following order:

:ORDER:

1] The accused- Dnyaneshwar Trimbak Nalawade is hereby acquitted u/s 235(1) of Cr.P.C.,1973, of the offences punishable u/ss 363,366-A,376 of the Indian Penal Code and u/s 4 of the Protection of Children from Sexual Offences Act,2012.

2] His bail bond stands cancelled.

3] Muddemal property, being worthless, be destroyed, in view of the provisions in para.73(1)(d) of Chapter 6 of Criminal Manual.

4] The accused to furnish personal bond of Rs.15,000/- with surety in the like amount, as required u/s 437-A of Cr.P.C. for the period of six months for service of notice/warrant, in case, State files appeal against the order of acquittal.

Date -07.09.2016

(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-3, Pune.)
Date	:08.09.2016
Judgment signed by	
Presiding Officer on.	: 07.09.2016
Judgment uploaded on.	: 08.09.2016