

Received on : 26.05.2014
 Registered on : 26.05.2014
 Decided on : 05.06.2015
 Duration : 1Y 9Ds.

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.120/2014

The state of Maharashtra)
 (Through Lonavala city police station)) ..Complainant

Vs.

Deepak Madhav Gaikwad)
 Age 33 years, Occ.private service)
 R/o Vighanahar Residency,) ..Accused.
 Flat no.3,B.Wing, No.1 Jadhav Colony,)
 Nangargaon,Lonavala,Tal.Maval,)
 Dist.Pune.)

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Appearances:

Smt.H.K.Bari,Special Public Prosecutor for the State.
 Shri R.B.Thombre, Advocate for the accused.

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:JUDGMENT:

(Delivered on 5th day of June,2015)

The accused Deepak Madhav Gaikwad stands prosecuted in this case for the commission of offences punishable u/ss 376(2)(h)(i), 506 of the Indian Penal Code and u/s 4 and 6 of the Protection of Children from Sexual Offences Act,2012, on the allegations that on 27.2.2014 and within two

months prior to it at Nangargaon, Tal. Maval, Dist.Pune,he repeatedly raped the victim girl (name withheld to keep her identity intact), aged 15 years.

2] The brief facts alleged against the accused in the complaint/First Information Report Ex.10 are that the victim girl is the resident of Pimpalgaon Hareshwar, Tal. Pachora, Dist.Jalgaon, and at the relevant time, she was residing in the house of her sister at Nangargaon Jadhav colony. Before about six months prior to 27.2.2014, at about 2.00 p.m., when the victim girl was alone in the house, one boy viz.Raju Banerjee, residing near the house of the victim girl,entered into the house,locked the door from inside, gave threats to her, removed clothes on his person as well as clothes on the person of the victim girl and had forcible intercourse with her. At that time, the said Raju Banerjee had threatened the victim girl not to disclose the incident to any person,otherwise, he would kill her parents. As such, the victim girl did not disclose the incident to her parents.

3] It is further alleged that the said Raju Banerjee was knowing that the parents of the victim girl do not remain present in the house. Taking disadvantage of this fact, the said Raju Banerjee on 10/15 occasions, raped the victim girl by giving threats to her. Out of the said relationship, the victim girl did not have her menses for four months. As such, her parents took her to General hospital at Talegaon Dabhade on 25.2.2014. That time, the doctors in the said hospital examined the victim

girl and disclosed that the victim girl was carrying pregnancy.

4] As such, the victim girl approached Lonavala city police station and lodged the complaint Ex.10. On the basis of the said complaint, C.R.no.33/2014 came to be registered and the P.W.6-Inayatulla Kazi was entrusted with the investigation of the offence. In the course of investigation, he recorded the statements of the witnesses, recorded disclosure panchanama Ex.26 and consequent discovery panchanama Ex.27, sent the fetus of the victim girl and the blood sample of the accused for DNA test and after completion of investigation, he submitted the charge-sheet against the accused in the Special Court,Pune.

5] The accused pleaded not guilty and claimed to be tried, when the particulars of charge Ex.2 were read over and explained to him in vernacular by my Ld.Predecessor in title. His defence is of total denial. No defence evidence has been led.

6] Upon hearing the Ld.Special Public prosecutor Smt. H.K.Bari and the Ld.Adv.for the accused Shri R.B.Thombre, the following points arise for my determination:

- 1] Whether prior to six months of 27.2.2014 from time to time for two months at Nangaongaon, Tal.Maval, Dist.Pune,in Jadhav colony,Vighnagar Residency,Wing No.1 B flat no.3, accused committed sexual assault on minor victim girl (name withheld) aged 15 years by giving threats to her who is incapable of giving consent to the said act and below 18 years of age, for

10 to 15 times and thereby committed an offence punishable u/s 376(2)(h)(i) of the I.P.C.?

- 2] Whether during the above period and place and during the course of same transaction, accused threatened the victim girl (name withheld) with injury to her person with intent to cause alarm to her and thereby committed an offence punishable u/s 506 of the I.P.C.?
- 3] Whether during the above period and place and during the course of same transaction, accused committed penetrative sexual assault on minor victim girl (name withheld) for 10 to 15 times by penetrating 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?
- 4] Whether during the above period and place and during the course of same transaction, accused committed aggravated penetrative sexual assault on victim minor girl (name withheld) aged 15 years repeatedly and made her pregnant of 18 weeks and 2 days and thereby committed an offence u/s 5(ii) punishable u/s 6 of the Protection of Children from Sexual Offences Act,2012?
- 5] What order?

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

REASONS

- 8] The prosecution in its endeavour to prove the offences

against the accused has examined the following six witnesses and closed the oral evidence vide pursis Ex.31:

- 1] The victim girl (name withheld) P.W.1 Ex.9.
- 2] Mandabai Kaduba Gite (mother of the victim girl) P.W.2 Ex.11.
- 3] Sanjay Laxman Vidhwans (Head Master) P.W.3 Ex.13.
- 4] Gajanan Dashrath Dagale (Carrier of DNA samples) P.W.4 Ex.15.
- 5] Dr.Shailendra Baliram Pawar (Medical Officer), P.W.5 at Ex.17.
- 6] Inayatulla Niyamatulla Kazi, P.S.I.(Investigating Officer) P.W.6 Ex.22.

9] In addition to it, the prosecution has relied on the complaint Ex.10, school leaving certificate Ex.14 and DNA report Ex.29 etc.

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

So far as the age of the victim girl is concerned, the prosecution has examined the P.W.3 Sanjay Vidhwans at Ex.13. According to his evidence, the victim girl is the ex student of his school i.e.Dr.B.N.Purandare Bahuvidh Vidyalaya, Lonavala. The victim girl was given admission in the same school on 15.6.2012 for 8th Std. and as per their general register, the date of birth of the victim girl is 3.5.1999. There is no cross examination to the above evidence. As such, it is seen that on the day of the incident, the victim girl was below 18 years of age.

11] It is alleged in the complaint Ex.10 that one Raju

Banerjee is the perpetrator of the offence of victim girl. However, it is the prosecution case that no such boy was residing in the vicinity and therefore, on making further investigation, it transpired that the accused is the real culprit.

12] The prosecution has examined the victim girl as the P.W.1 at Ex.9, however, it is pertinent to note that the victim girl has not supported the prosecution case. The P.W.1 was, therefore, treated as hostile witness and the Special Public Prosecutor Smt.H.K.Bari was allowed to cross examine her own witness. The Ld.Special Public prosecutor Smt.Bari cross examined the P.W.1 at length but she did not succeed in bringing on record anything which would help the prosecution. Therefore, the evidence of the star witness of the prosecution is not at all helpful for it.

13] Same is the case in respect of the evidence of Mandabai Gite, mother of the victim girl. She too has not supported the prosecution story on any count. The cross examination by the Ld.Special Public Prosecutor of the P.W.2 was futile in bringing on record anything against the accused. Thus, I find that there is absolutely nothing in the evidence of P.Ws.1 and 2 to prove the complicity of the accused in the crime in question.

14] On perusal of the evidence of the P.W.4, carrier of the samples for DNA test, the P.W.5-Dr.Shailendra Pawar and the P.W.6 Investigating Officer, it is seen that the victim girl had

been admitted in Sassoon hospital for unmarried primi four months of pregnancy. It is further seen from the facts on record that the victim girl was discharged from the hospital on 7.3.2014 and before her discharge, fetus with placenta and the blood sample of the patient was collected for DNA test. The facts on record further show that the blood sample of the accused had also been collected and both i.e. fetus with placenta and the blood sample of the victim and blood sample of accused had been sent for DNA test. The prosecution has produced on record the report of DNA test(Ex.29). The said report establishes that the victim girl and the accused are the biological parents of the fetus of the victim girl. Now, the question for consideration is whether this report can be relied upon in the absence of any other substantive piece of evidence to prove the involvement of the accused.

15] In this context, the Hon'ble Gujarat High Court in the case of **Premjibhai Bachubhai Khasiya Vs.State of Gujarat & Anr. (2009 Cri.L.J.2888)** has observed that positive DNA report can be of great significance, where there is supporting evidence, depending of course on the strength and quality of that evidence. It is further observed that even if it is positive, it cannot conclusively fix the identity of the miscreant but if the report is negative, it would conclusively exonerate the accused from the involvement of charge. It is further observed by the Hon'ble Gujarat High Court that the science of DNA is at a developing stage and when the Random Occurrence Ratio is not available for Indian society, it would be risky to act solely on a

positive DNA report,because only if the DNA profile of the accused matches with the fetus,it cannot be considered as a conclusive proof of paternity. It is further observed that contrarily if it is solitary piece of evidence with negative result,it would conclusively exclude the possibility of involvement of the accused in the offence. It is further observed that the positive DNA report cannot be therefore accepted by the trial Court in isolation i.e.as sole piece of evidence to record the conviction of accused u/s 376,366 of I.P.C.

16] The above ruling squarely applies to the facts of the present case. At the cost of repetition, it must be mentioned that the victim girl and her mother i.e.P.W.1 and 2 have not supported the prosecution case at all, showing the involvement of the present accused. Therefore, in my opinion, the DNA report Ex.29 cannot be accepted in isolation to base conviction of the accused.

17] The P.W.6,Investigating Officer has stated about the disclosure statement by the accused (Ex.26) showing his readiness and willingness to point out the place of offence. His evidence further shows that as per the said disclosure statement, the accused pointed the place of offence and accordingly, discovery panchanama Ex.27 was prepared. However, it is pertinent to note that the victim girl was knowing the place of incident because the incident in question had occurred six months prior to lodging the complaint. Therefore, the disclosure statement Ex.26 and discovery panchanama

Ex.27 cannot lead to any discovery of fact as contemplated by sec.27 of the Evidence Act.

18] Therefore, I am of the view that the evidence adduced on record by the prosecution, has not established the involvement of the accused in crime in question. Therefore, I record my findings on point nos.1 to 4 in the negative and proceed to pass the following order:

:Order:

1] The accused -Deepak Madhav Gaikwad is hereby acquitted u/s 235(1) of Cr.P.C.,1973, of the offences punishable u/ss 376(2)(h)(i), 506 of the Indian Penal Code and u/s 4 and 6 of the Protection of Children from Sexual Offences Act,2012.

2] The accused is in jail. Hence, he be set free forthwith, if not required in any other case or crime.

3] The accused to furnish personal bond of Rs.15000/- 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 -05.06.2015

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

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“ 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	: 06.06.2015
Judgment signed by	
Presiding Officer on.	: 05.06.2015
Judgment uploaded on.	: 06.06.2015