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**IN THE COURT OF THE SPECIAL COURT, PUNE.**  
**AT : PUNE.**

[ Presided over by Shri. S. J. Kale Special Judge, and  
District Judge, 01, Pune under The Protection of Children from  
Sexual Offences Act, 2012 ] —

Exh. No.  
Special (Child ) Sessions Case No.04 OF 2014

The State of Maharashtra,  
( Through PSO Vadgaon Mawal police station ) .... **Complainant.**

Vs.  
Umesh Madhukar Kadam,  
Age 28 years, Occu. Service,  
R/o. Malwandi Thule, Tal. Mawal,  
Dist. Pune.

.... **Accused.**

Charge for the offence punishable under  
S. 376, 323, 506 of IPC and Sec.3, 7 and 11  
of The Protection of Children from Sexual  
Offences Act, 2012.

**Appearances :**

Smt. H. K. Bari, Special. Addl. Public Prosecutor for the State.  
Shri. S. R. Bhosale, Advocate for the accused.

**J U D G M E N T**  
( Delivered on 31-03-2016 )

The above named accused is facing trial, for the offence

punishable under Sections 376, 323, 506 of the Indian Penal Code, and under Sections 3 r/w 4, S. 7 r/w 8 and S. 11 r/w 12 of The Protection of Children From Sexual Offences Act, 2012. ( In short, the Act. )

2] Brief facts of the prosecution case, are as under :-

The victim girl ( name withheld ) resides with her parents and two brothers and her parents are agriculturist and doing labour work to eke out their livelihood. Her both the brothers are taking education and she was in 10<sup>th</sup> standard at the time of the incident.

3] According to the prosecution story, the uncles of the victim girl also reside adjacent to her house. Her elder uncle has two sons and accused is one of them and working in Sankalpa English School, Pawananagar, Tal. Mawal, Dist. Pune as a teacher. He used to visit victim girl's house during all Saturdays and Sundays to inquire about the progress of their study. On the day of incident, taking disadvantage of absence of the parents on one Sunday, he came to her house on the pretext of watching the television and locked the door of the room and indulged in undue intimacy with her by pinching to her body and assaulted her with his hands and committed forcible sexual intercourse with her. He also threatened her not to disclose the said incident to anybody, else she will have to face dire consequences. So, due to fear she did not disclose this incident to anybody. She only informed to her mother that accused used to pull her clothes and taking pinches to her body and then informed about the incident to her. The mother of accused blamed her for such behaviour saying that she is speaking lie about the acts of the accused. Thereafter, accused for four times committed sexual intercourse with her against her wish by assaulting her and also

assaulted her brother Nilesh by removing him out of the house. Due to act of the accused, she became helpless.

4] According to the victim girl, she was not feeling well on 14.9.2013 and, therefore, went to dispensary at Kamshet for medical check up along with her brother. On examination, doctor informed her that she is carrying pregnancy of four months. Her mother came to know about it and she inquired with her from whom she became pregnant, she disclosed the name of the accused and his acts with her to her mother. Then, she went to Vadgaon Mawal police station and lodged complaint against the accused.

5] On the basis of the said complaint, offence bearing C. R. No. 152/2013 came to be registered against the accused. PSI Shahid Sayyad Pathan, attached to Vadgaon Mawal police station carried out the investigation in the crime. During the course of investigation, I.O. visited the spot of incident and prepared spot panchanama in presence of panchas. He also seized the wearing apparels of the victim girl and seized the clothes of the accused by preparing two separate seizure panchanamas in presence of the panchas. He also recorded the statements of the concerned witnesses as per their say and referred victim girl to Sassoon Hospital for medical examination and included the certificate received from the Sassoon Hospital in the case papers regarding the ossification test of victim girl. He sent seized Muddemal articles to Forensic Science Laboratory (C.A.) along with his report for chemical analysis. During investigation, he collected DNA kits and part of fetus and sent them to CA at Kalina, Mumbai with his letter. After completing necessary investigation, he submitted charge sheet against the accused.

6] My learned predecessor ( Smt. P. P. Kulkarni ) framed charge (Exh.5) against the accused initially under Sections 376, 323, 506 of the Indian Penal Code, and under Section 7 r/w 8 and S. 11 r/w 12 of The Protection of Children From Sexual Offences Act, 2012. However, while dictating the judgment, it was noticed by me that the charge under Section 3 r/w 4 of the Act, ought to have been framed against the accused, considering the allegations made by the victim girl against him. Therefore, on 17.3.2016 by passing order below Exh.1, I have framed additional charge against the accused under Section 3 r/w 4 of the Act and opportunity was given to prosecution and the defence to lead evidence, if any. However, both of them have filed joint Purshis (Exh. 37 ) to the effect that both of them are not adducing any additional evidence after the amendment of the charge. The charges framed against the accused are read over and explained to him in vernacular. He pleaded not guilty and claimed to be tried.

7] In order to bring home the guilt of the accused, the prosecution has examined in all four witnesses. The statement of the accused under Section 313 of the Criminal Procedure Code came to be recoded. According to the defence of the accused, he is falsely involved in the present case.

8] I have heard learned Spl. APP for the State and the senior counsel Shri. S. R. Bhosale, for the accused at length.

9] Considering the evidence on record and submissions of both the sides, following points arise for my determination, and I record my findings thereon, for the reasons given below :-

|    | <b><u>POINTS</u></b>                                                                                                                                          | <b><u>FINDINGS</u></b>         |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| 1] | Whether prosecution proved that the accused, committed rape on victim minor girl ?                                                                            | ..... No.                      |
| 2] | Whether prosecution further proved that the accused, during the course of same transaction, voluntarily caused hurt to victim minor girl by assaulting her ?  | ..... No.                      |
| 3] | Whether prosecution further proved that accused, during the course of same transaction, threatened victim minor girl ?                                        | ..... No.                      |
| 4] | Whether prosecution further proved that accused, during the course of same transaction, committed penetrative sexual assault on victim minor girl ?           | ..... No.                      |
| 5] | Whether prosecution further proved that accused, during the course of same transaction, committed sexual assault, with sexual intent on victim minor girl ?   | ..... No.                      |
| 6] | Whether prosecution further proved that accused, during the course of same transaction, committed sexual harassment with sexual intent of victim minor girl ? | ..... No.                      |
| 7] | Whether any other offence is made out against the accused ?                                                                                                   | ..... No.                      |
| 8] | What order ?                                                                                                                                                  | .... The accused is acquitted. |

### **REASONS**

10] **POINT NOS. 1,4, 5 AND 6 :-** The prosecution has examined in all four witnesses. Out of them, PW-1 is the victim girl

and a vital witness. Meena (PW-2) is the mother of PW-1, Nagesh ( PW-3 ) is her elder brother and Shahid Pathan (PW-4) is the Investigating Officer. The alleged incident of ravishment occurred with PW-1 for more than one occasion. There is no dispute regarding the relation of the accused with the victim girl and her relatives. In all probability, the accused being a teacher, must be visiting the house of victim girl frequently on the pretext of knowing the progress of her and her brother in academics. In these circumstances, I have to consider the evidence of star witness-PW-1.

11] She has deposed in her evidence that at the time of incident, she was taking education in 10<sup>th</sup> standard. The accused being her cousin and teacher, used to visit her house for teaching her and her younger brother. In the beginning, he was teaching them properly and thereafter started to flirt with her by pulling her scarf and pinch her. He was also beating her younger brother and driving him out and then he used to do physical relations with her. She narrated her plight to her parents, but they did not pay much heed and rather put blame on her of not studying properly. Interestingly, she did not inform the fact that physical relations kept by the accused with her to her parents. The accused also used to express that either he would beat her or her brother and, therefore, she did not tell about the physical relationship to her parents.

She has unequivocally deposed that on 14-09-2013, as she got indisposed, she had gone to the hospital with her mother and elder brother Nagesh. The doctor, on examining her, informed that she was carrying four months pregnancy. Ultimately, her mother became angry with her and thereafter report came to be lodged. The said report is proved at Exh.14.

12] The witness was subjected to searching cross-examination. She has given number of admissions, including the fact that she did not lodge the report anywhere regarding flirting of the accused. She could not tell the dates on which the physical relations were kept with her. She did not lodge the report after first incident. She has also admitted that her mother did not inquire from her about missing of menses for four months. She has admitted the vital suggestion given in the cross-examination by the learned senior counsel for the accused that she got an idea that she became pregnant when she missed the menses, but she did not lodge any complaint with anybody during the four months. Her evidence is also having certain improvements, as pointed out by the learned defence counsel in the cross-examination.

13] The most important thing that has been brought on record by the learned defence counsel is that the witness after recalling her for further cross-examination, has admitted that the accused is not concerned with her pregnancy and he did not ravish her. She has also admitted that her signature was obtained on a complaint, which was already prepared by the police. All these vital admissions clearly indicate that though the victim girl initially supported the prosecution case, has totally resiled from her testimony in further cross-examination after recalling the witness. It is also to be noted that the DNA Examination Report (Exh.6) filed by the prosecution, clearly indicates that Umesh Madhukar Kadam is **excluded** to be the biological father of DNA in fetus of victim girl though she is **concluded** to be biological mother of DNA in her fetus. This examination report rather supports the defence side and the accused, therefore, cannot be held to be responsible for the pregnancy of the victim girl though she claimed it in her report

(Exh.14). Therefore, prosecution has failed to establish the ingredients of Section 375 of the Indian Penal Code and Section 3 of the Act.

14] The prosecution has also failed to establish the fact that the victim girl was below 18 years at the time of incident, so as to bring her within the ambit of definition of “**child**” laid down in Section 2(d) of the Act. PW-1 has also admitted in her evidence that she had not given any document regarding her date of birth and regarding her progress card. Considering such evidence, I am of the view that the prosecution has not been able to establish the fact that the victim girl was a child, within the ambit of Section 2(d) of the Act.

15] Now, turning to the evidence of PW-2 Meena, she has deposed that the accused used to come to her house to see the progress of her children in the education on every Sunday and used to teach them. She has also deposed that, she did not pay attention to the complaint of her daughter that the accused used to pinch her and used to pull her clothes. She has also deposed that on 14.09.2013, when her daughter was not feeling well, she was taken to the hospital of Dr.Dange at Kamshet, who declared that she was carrying pregnancy. When she inquired from her daughter, she told the name of accused and she got shocked. After talking with her husband, her daughter lodged report against the accused.

In the cross-examination, she has admitted that her daughter had never complained about the ravishment by the accused. She has admitted that she gave a statement before JMFC, Vadgaon Mawal in a fit of anger. She has also admitted that on knowing the fact that Pratibha was carrying, all family members got



disturbed and annoyed and all had been to the police station, informing that somebody had ravished her daughter and police had coloured the papers. She has emphatically admitted that she and her daughter had not named the accused to the police. She has lastly admitted that accused was not concerned with the fetus of her daughter. From such evidence, it is clear that the witness has not supported the prosecution case in any manner. She has also not deposed anything regarding ravishment by the accused. Therefore, the testimony of this witness is not going to help the prosecution story.

16] Lastly, the witness Nagesh (PW-3) is of very formal nature. He was taking education at Kothurne at his maternal uncle's house at the time of incident. Therefore, he must not be having any knowledge about the activity of the accused. He has deposed that on 14-09-2013 when Dr. Dange of Kamshet declared that PW-1 was carrying, she put blame on the accused. This much evidence cannot be believed, in view of the fact that PW-1 and PW-2 have not supported the said fact in the cross-examination. Moreover, DNA report is also not in favour of the prosecution. Therefore, in my view, the evidence of this witness is hardly of any help.

17] Considering aforesaid discussion, I am of the view that the prosecution is not able to establish by clinching evidence that accused had ravished victim girl and she was below 18 years at the time of incident. Therefore, I answer these points in the negative.

18] **POINT NOS. 2 AND 3 :-** PW-1 in her evidence has deposed that the accused used to beat her younger brother and drive him out. She also deposed that the accused was also expressing

that he would either beat her or her brother. It is to be noted that the victim girl was quite mature and was in 10<sup>th</sup> standard. In ordinary course, she must have deposed about the behaviour of beating to her parents, but she kept mum. On going through the FIR (Exh.14), the fact regarding giving threats and beating does not find place. Therefore, her bare testimony to that effect cannot be believed. The prosecution has failed to examine younger brother of victim girl. He would have been the best witness to throw light regarding the allegations of beating and threats alleged to have been given by the accused. Having not examined the said vital witness, without any justification, the sole testimony of PW-1 cannot be accepted. Even PW-2 and PW-3 in their evidence have not referred the fact regarding beating by the accused either to PW-1 or Nilesh. Therefore, I have no hesitation to hold that the prosecution has failed to establish these two points emphatically.

19] The learned defence counsel has admitted all Panchanamas, which are at Exh.22, 23 and 24. Those Panchanamas are relating to spot Panchanama and seizure of clothes. Even on considering those documents, I do not find that the prosecution case has been established.

20] Lastly, there is evidence of Investigating Officer PW-4 Shahid Pathan, who has given all the details regarding the various steps he had taken during investigation. But, in my view, same cannot be held to be sufficient to prove the guilt of the accused. His evidence is of formal nature. The evidence of vital witnesses, is not inspiring confidence in the mind. DNA report is also not supportive to the prosecution story. Considering all these facts and circumstances, I have no hesitation to hold that the prosecution has failed to establish

the charges levelled against the accused. Accordingly, I answer these two points in the negative and proceed to pass the following order.

**ORDER**

1] The accused Umesh Madhukar Kadam is hereby acquitted under the provisions of Sec.235(1) of the Criminal Procedure Code, for the offence punishable under Sections 376, 323, 506 of the Indian Penal Code and under Sections 3 r/w 4, S. 7 r/w 8 and S. 11 r/w 12 of The Protection of Children from Sexual Offences Act, 2012.

2] His bail bonds stand cancelled.

3] The Muddemal property, viz. clothes, being worthless, be destroyed, after appeal period is over.

4] The accused Umesh Madhukar Kadam shall execute SB and PB of Rs. 15,000/- fresh, as per Section 437-A of the Criminal Procedure Code.

Pune,

Dated/- 31-03-2016

( S. J. Kale )

Special Judge & District Judge,01,Pune  
( Under The Protection of Children from Sexual  
Offences Act, 2012 )

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

Name of Steno : Shri. V. V. Bannur, PA

Court Name : Shri. S.J.Kale, District Judge,01, Pune.

Judgment signed by PO : 1-4-2016

Judgment upload on : 1-4-2016