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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.13 of 2014.

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

Vs.

Anwar Suleman Ansari,
Age about 19 years, Occu. Labour,
Resident of : Tamboli Galli, Dais Plot,
Gultekadi, Pune. **Accused.**

Charge for the offence punishable under
S. 363, 366-A, 376 of IPC and Sec. 3 r/w 4
and S. 5(m) r/w 6 of The Protection of
Children from Sexual Offences Act, 2012.

Appearances :

Smt. H. K. Bari, Special. Addl. Public Prosecutor for the State.
Shri. V.A.Musale, Advocate for the accused.

J U D G M E N T
(Delivered on 12-08-2015)

The above-named accused is facing trial for committing
an offence punishable under Sections 363, 366-A, 376 of the Indian
Penal Code, and under Section 3 r/w 4 and Sec. 5(m) r/w 6 of The

Protection of Children from Sexual Offences Act, 2012.

2] The prosecution story, in brief, is as under :-

The victim minor girl (name withheld), is taking education in 9th standard at Anglo Urdu Girls High School and she resides with her maternal uncles Sanaulla Shaikh an Rajaula Shaikh. Her father died and her mother resides with her aunt at Mumbai. She had developed friendship with Sayada Suleman Ansari and she was frequently visiting her house. Due to her visits, she had acquaintance with her brother Anwar Ansari and there used to be talk between her and the accused whenever she was visiting Sayada's house.

3] It is her further case that on 24-09-2013, due to some work, she had not attended her school and was in her house. At about 8 p.m. her friend Sayada came to her house and told her that she was called by her brother. So, she informed her maternal aunts that she will return within few minutes after visiting the house of her friend. In their house, accused and Sayada both were present. Her brother Anwar informed her that in the night he is leaving for Ahmednagar for his work and returning on the next day and she should accompany him, to which victim girl refused. On that accused told her that they should get married and by leaving Pune city, reside somewhere else. Initially she was not inclined to accompany him, but due to force by accused, she in. They left their house at 8.30 p.m. and came to Golibar Maidan chowk by PMT bus. Thereafter, by another vehicle they reached at village Supe around mid night 12 o'clock. The accused took her to his one acquaintance and they resided there in that night there. On 25-09-2013, the accused took her for roaming at Ahmednagar. For whole day, they were roaming and when she asked accused in the night to go to Pune, he did not listen to her and by force he boarded her into one

rickshaw and brought her into the house of his acquaintance and kept there for a month and during that period, for four to five times committed sexual intercourse with her forcefully without her consent. The accused was not allowing her to go outside and threatening her not to disclose this fact to anybody. In the meanwhile, the maternal uncle of the victim girl lodged missing complaint with the police on 26-09-2013.

4] It is her further case that on 24-10-2013 at 10 p.m. police had information that accused and victim girl were coming to Swargate and so they were keeping vigil in that area. When they alighted from Sumo jeep around 10 p.m. they were taken in custody and brought to police station. Police inquired with her about the incident and she narrated them the incident happened with her. Then she lodged complaint against the accused.

5] On the basis of the said complaint, PSI L. R. Gaikwad attached to Swargate police station directed PSI Gitanjali Babar to record the statement of victim girl. During the course of investigation she recorded the statements of concerned witnesses. Further investigation was carried out by PSI Gaikwad. He arrested the accused and after completing necessary investigation, submitted charge sheet against the accused.

6] My learned predecessor, (Mrs. Prachi P. Kulkarni), framed charge (Exh.3) against the accused under section 363, 366-A, 376 of the Indian Penal Code, and under section 3 r/w 4 and Section 5(m) r/w 6 of The Protection of Children from Sexual Offences Act, 2012 on 24.07.2014. It was read over and explained to the accused in vernacular. The accused 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 three witnesses, viz. PW-1 victim girl at (Exh.5), PW-2 her maternal uncle Sannaulah Vahidul Shaikh at (Exh.6) and PW-3 Investigating Officer Gitanjali Tukaram Babar at (Exh.12). Since no any incriminating evidence was found against the accused, his statement under Section 313 of the Code of Criminal Procedure is dispensed with.

8] Perused the evidence on record. Heard learned Special APP for the State and the defence counsel.

9] The following points arise for my determination and I record my findings against them for the reasons given below :-

	POINTS	FINDINGS
1]	Whether prosecution proved that the accused kidnapped minor victim girl, aged 14 years by enticing her out of guardianship of her parents and without their consent and committed offence punishable under Section 363 of the Indian Penal Code ?	 Not proved.
2]	Whether prosecution has further proved that the accused, during the course of the same transaction, inducted minor victim girl, who is below 18 years of age, with intent that she may be forced or seduced to illicit intercourse and thereby committed an offence punishable under Section 366-A of the Indian Penal Code ?	 Not proved.
3]	Whether prosecution has further proved that the accused, during the course of the same transaction, committed rape upon victim minor girl and thereby committed an offence punishable under section 376 of the Indian Penal Code ?	Not proved.

4]	Whether the prosecution has further proved that, during the course of the same transaction, accused committed penetrative sexual assault by penetrating his penis into her vagina and thereby committed an offence punishable under section 3 r/w 4 of The Protection of Children from Sexual Offences Act, 2012 ?	 Not proved.
5]	Whether the prosecution has further proved that, during the course of the same transaction, accused committed aggravated penetrative sexual assault upon victim minor girl, who is below the age of 18 years and thereby committed an offence punishable under section 5(m) r/w 6 of The Protection of Children from Sexual Offences Act, 2012 ?	 Not proved.
6]	Whether any other offence is made out against the accused ?	 No.
7]	What order ?	 The accused is acquitted.

REASONS

10] **POINT NOS. 1 TO 6 :-** In order to bring home the guilt of the accused, the prosecution has examined victim minor girl at Exh.5, who stated that at present she is not taking education and at the time of alleged incident, she was residing with her maternal uncle. Her mother resides at Mumbai and she is having no father. According to her, her date of birth is 10-12-1999. She admitted that Sayada, the sister of accused is her friend and she used to visit house of accused and, therefore, knowing the accused and she never talked with the accused whenever she had been to the house of her friend Sayada. She has further stated that she does not know the date of incident. On that day her maternal uncle had beaten her

and so she left the house and resided in the house of her friend for 10 to 12 days and accused had not kidnapped her at any time and not promised her anything. In short, she has not supported the prosecution case. Therefore, she was declared hostile by the learned Special APP for the State and subjected to cross examination. However, during the course of her cross examination, nothing material has come out to help the prosecution story. It was revealed in the cross examination that her parents wanted to get her married with the boy from Bihar and, therefore, they are avoiding any animosity with the accused, keeping her future in mind. A suggestion to that effect was given by the learned Spl. APP for the State to the victim girl in her cross examination, which she denied flatly. It appears that the complainant and the accused have settled their dispute out of the court and, therefore, victim girl is reluctant to state true facts before this court. Therefore, it is unsafe to rely upon the evidence of the victim girl.

11] In order to support the prosecution case, it has also examined the maternal uncle of victim girl PW-2 Sannaulah Shaikh, who also did not state anything against the accused in material particulars, so as to prove the guilt of the accused. He merely stated that he scolded victim girl as she was not doing her studies with proper attention and, therefore, she left the house without informing anybody. He made inquiry about her from her mother and grand mother but could not trace out her whereabouts and, therefore, he lodged missing report regarding the victim girl with the police, which is at Exh.7. According to him, since the accused was also missing from the city, he thought he might have taken the victim girl and, therefore, he lodged report against him. He even declined to take oath before commencing his evidence in the court. The evidence of this witness only show that he filed missing complaint of victim girl with the police and nothing more than that. He has not uttered

anything incriminating against the accused. So, his evidence is of no use to the prosecution to bring home the guilt of the accused as it is of formal nature. In such background, it is certainly not possible for the learned Special APP for the State to get any help.

12] So far as the evidence of PW-3 API Gitanjali Babar is concerned, she recorded the statement of the victim girl as instructed by his superior Shri. Gaikwad, PSI of Swargate police station. According to her, further investigation in this case was carried out by PSI Gaikwad and after completing necessary investigation, he submitted charge sheet before the court. Therefore, the evidence of this witness is also of formal nature and nothing incriminating is found against the accused through the examination of this witness.

13] Thus, considering the aforesaid evidence of the prosecution witnesses, as stated above, I am of the view that prosecution has not established the guilt of the accused and as such, I have no hesitation to give clean chit to the accused in the aforesaid circumstances mentioned above. I, therefore, answer point Nos. 1 to 6 accordingly in the negative and proceed to pass the following order.

ORDER

1] The accused Anwar Suleman Ansari, is hereby acquitted under the provisions of Section 235(1) of the Criminal Procedure Code, for the offence punishable under Section 363, 366-A, 376 of the Indian Penal Code, and under section 3 r/w 4 and Section 5(m) r/w 6 of The Protection of Children from Sexual Offences Act, 2012.

2] His bail bonds stand cancelled.

3] The Muddemal property being worthless, be destroyed

after the appeal period is over.

Pune,

Dated/-12-08-2015.

(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 :

Court Name : Shri. V. V. Bannur, PA.

Judgment signed by P,O. on : 20-08-2015

Judgment uploaded on : 20-08-2015

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