

MHPU01-004845-2023



Received on : 28/02/2023

Registered on : 01/03/2023

Decided on : 04/04/2026

Duration : Y M D
03 01 07**Special Case No. 214/2023****Exh. No. 19****IN THE COURT OF SPECIAL JUDGE, PUNE
AT PUNE****Present : Mohan G. Chavan,
Special Judge (Under POCSO Act), Pune.**

FIR DETAILS	F.I.R. No. 608/2022, U/s 354(D) of the Indian Penal Code and u/s. 12 of Protection of Children from Sexual Offences Act, 2012. Police Station – Chaturshrungi, Pune.	
COMPLAINANT		STATE OF MAHARASHTRA Through Police Station – Chaturshrungi, District – Pune
REPRESENTED BY A.P.P.		Smt. A. S. Bramhe
ACCUSED		Suhas Bandopant Misal Age: 35 years, Occ.: Service, R/at : Kate Chawl, Bhatti, in front of Buddha Vihar, Behind the building of Mayur Vatika Dapodi, Pune.
REPRESENTED BY		Adv. Smt. Vyavhare for accused
Date of Offence		September 2022 to 08/11/2022

Date of FIR	31/11/2022
Date of Charge-sheet	28/02/2023
Date of framing of charges	02/12/2023
Date of commencement of evidence	12/02/2026
Date on which judgment is reserved	--
Date of the Judgment	04/04/2026
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 charges with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 of Cr.P.C.
1	Suhas Bandopant Misal	27/01/23	28/06/23	u/s 354-D of Indian Penal Code and section 12 of Protection of Children from Sexual Offences Act 2012.	Acquitted	--	--

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**A. Prosecution :-**

RANK	NAME	EXH	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Mother of victim	10	Informant and mother of victim
PW-2	Victim girl (XXX)	14	Victim

B. Defence :- Nil

C. Court witnesses :- Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :-

Sr. No	Exhibit Number	Description
1	Exh. No. 11 – PW 1	Statement of informant in the form of report
2	Exh. No. 12 – PW 1	Birth certificate standing on the name of victim

B. Defence Exhibits :- Nil

C. Court Exhibits :-

Sr. No.	Exhibit Number	Description
1	Exh. No. 15	Arrest panchanama of accused admitted by defence
2	Exh. No. 16	Spot panchanama admitted by defence
3	Exh. No. 17	Summons report standing on the name of investigating officer.
4	Exh. No. 18	Statement of accused u/s. 313 of Cr.P.C.

D. Material objects :- Nil.

1] Accused is charge-sheeted for commission of offence punishable under Section 354-D of Indian Penal Code (Hereinafter referred as ‘IPC’) and u/s. 12 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as “POCSO Act”).

Brief facts of prosecution case is as under :-

2] **Fact of prosecution case is that,** on 31/12/2022 on the basis of statement mother of victim, crime in question is registered against accused, alleging that, in the year 2022 she herself, her husband, victim and her son Kunal used to reside in rented premises situated at Ashanagar, near to Saibaba Temple, Pune, victim daughter was under education in 8th std at Hutatma Balveer Vidyalaya, accused is a brother of her husband, on account of dispute in between accused and his parents since from last two months accused used to reside at her house. It is further alleged that, prior to 10 days of 28/10/2022 victim daughter avoided to went of school, due to same, she asked reason to victim in the response victim stated to her that, since from last several days and accused started residing with them, trouble is going on to her at the instance of accused and accused frequently uttered word against her '*A dear, A Bayko*', victim also stated to her that, on 8/11/2022 at about 10.30 to 11.00 a.m. when she was proceeded towards school, accused followed to her upto Deep Bangla, and asked to her to sit behind back on vehicle, due to same, fear created in her mind and she avoided to went school and by stating so, victim daughter started crying, she was mentally depress, she used to stood alonely in dark place in house. According to informant, by doing so, offence in question committed by accused. Hence, her report.

3] On the basis of report of mother of victim, C.R. No. 608/2022 was registered at Chaturshrungi police station. Investigation of crime was entrusted to API Temgire, in the investigation he visited to spot of incident, statement of witnesses recorded by him, statement of witnesses got recorded by him before Magistrate under Section 164(5) of Cr.PC., correspondence made by him to school of victim for seeking bonafide certificate of victim, supplementary statement of informant recorded by him, on 27/01/2023 he arrested to accused, in the investigation birth certificate of victim also collected by him. After completion of investigation it was transpired to him that offence in question committed by accused. Hence, after completion of investigation on 28/02/2023 charge-sheet filed by him against accused in respect of offences punishable u/s. 354-D of IPC and section 12 of POCSO Act. Accordingly, Special case in question is registered and made over to this Court for disposal according to law.

4] Charge vide Exh. 08 was framed by the then presiding officer of the Court against accused in respect of alleged offences. Contents of charge read over and explained to accused in vernacular to which he pleaded not guilty and claimed to be tried. Statement of his denial of charge seems to be recorded vide Exh. 07. His defence is total of denial. According to him, he falsely implicated due to household and money dispute.

5] In order to establish the guilt of accused, oral as well as documentary evidence as described above tendered on behalf prosecution. Thereafter, on the basis of incriminating material came on record statement of accused u/s. 313 of Cr.P.C. came to be recorded vide Exh. 17.

6] Heard Ld. APP Smt. A. S. Bramhe for State and counsel for accused at length.

7] During the course of argument Ld. APP has submitted that, testimony of informant is consistent with the case of prosecution, in the cross examination of her nothing is came on record to disbelieve her version. At the same time, she has fairly submitted that, victim is not supported to the case of prosecution. According to her, no reason to disbelieve to testimony of informant. By saying so, he claimed conviction of accused.

8] To the contrary, counsel for the accused has submitted that, testimony of informant is hearsay in nature, not a single word uttered by victim against accused as alleged by prosecution. She has further submitted that, to accept the hearsay evidence link is not established as victim herself is not supported to the case of prosecution. She has further submitted that, in the evidence it has came on record that, victim is step daughter of informant but that material aspect is conceal by informant herself vide giving report. She has further submitted

that, accused is a brother of husband of informant, there were household dispute in between accused and his parents, due to same, accused used to reside at the house of his brother i.e. husband of informant and informant was disliking about the same and due to same, accused is falsely implicated without having any reason. According to her, evidence placed on record is not adequate to hold guilty to the accused. By saying so, he claimed acquittal of accused. In support of her submission she relied on nature of evidence tendered by prosecution.

9] Considering the fact of prosecution case, rival submission advanced on both, following points arises for my determination and I have recorded my findings thereon for the reasons below :

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Does prosecution prove that on the day of alleged incident victim girl was child within the meaning of section 2(d) of POCSO Act ?	Yes.
2.	Does prosecution further proves that, in between period from September 2022 to 08/11/2022, in the area Ashanagar, near to Sai Baba temple, situated at Janwadi Chowk, Pune, accused made sexually colour remark against victim girl by uttering word ' <i>A dead, A Bayako</i> ' and followed to victim when she was proceeded towards school and contacted to her foster personal interaction repeatedly despite clear indication of disinterest shown	

	by victim girl, within the meaning of stalking, and thereby committed an offence as alleged ?	No.
3.	Does prosecution further proves that, on abovesaid day, date, time and place and during the course of same transaction, accused sexually harassed with sexual intent uttered word against victim girl ' <i>A dear, A Bayako</i> ', and thereby committed an offence as alleged ?	No.
3.	What order ?	As per final order.

REASONS

AS TO POINT NO. 1 :-

10] According to prosecution, incident as alleged occurred with victim in between period from September 2022 to 08/11/2022, when she was child. Certainly, to invoke the provisions of POCSO Act, victim must be child within the meaning of section 2(d) of the POCSO Act and on the basis of it, on the day of alleged incident age of victim child must be below the age of 18 years. Informant has stated that, birth date of victim is 06/12/2008 and birth certificate standing on the name of victim is at Exh. 12. In cross examination of informant as such nothing is came on record to disbelieve the version of informant concern with birth date of victim. Upon perusal of

birth certificate Exh. 12, in which birth date of victim is reported 06/12/2008. Certificate Exh. 12 seems to be issued by authority competent to issue it. No reason to disbelieve its contents. Considering the date of alleged incident occurred with victim and birth date of victim reported in Exh. 12, it is clear that, on the day of alleged incident age of victim was just exceeding 13 years and 09 months and that is prima facie below the age of 18 years. On the basis of it, it can be safely concluded that, on the day of alleged incident victim girl was within the meaning of child as defined in section 2(d) of POCSO Act. Hence, my answer as to point No. 1 in the affirmative.

AS TO POINTS NO. 2 and 3 :-

11] According to prosecution, in between period from September 2022 to 08/11/2022 offence within the meaning of Section 354-A of IPC committed by accused by passing sexual colour remark against the victim addressing to her “A dear, A Bayako’ and followed to her when she was proceeding towards school and also sexual harassed to her coupled with sexual intent by using above said words against her. To constitute the alleged guilt of accused as per the case of prosecution victim and informant were material star witnesses for prosecution. Let us see, the nature of evidence came on record from the mouth of informant and victim and whether on the basis of it, alleged guilt of accused established or not.

12] PW 1 claimed to her mother of victim and informant. She deposed vide Exh. 10. She has stated that, in the year 2022 her daughter was in 8th std., since before 10 days of 28/12/2022 victim was avoided to went at school, due to same, she asked reason to victim girl in the response victim stated to her that, accused uttered the word against her 'Bayako and a dear'. She has further stated that victim stated to her that, when she was proceeded towards school accused used to stop at Janwadi police chowkey and asked to her for sitting on vehicle for the purpose of leaving to her at school. She has further stated that, because of above said act of accused, victim was under fear and she used to sit at house at dark place. Accordingly, report Exh. 11 lodged by her. On the basis of testimony of informant, it reveals that, she deposed before the Court as per narration made by victim girl to her and it is crystal clear that, her testimony is prima facie hearsay in nature.

13] PW 2 i.e. victim girl deposed vide Exh. 14. She has stated that, in the year 2022 she herself, her parents and brother used to reside at Ashanagar, she was in 8th std., she know to accused as he is brother of her father. She has further stated that, accused used to reside with them. She has further stated that, she does not remember as to what happened with her at the instance of accused. She has further stated that, it did not happen that, accused used to utter the word against her

that, '*A dear, A Bayako*' and used to follow her whenever she used to proceed towards school.

14] In examination-in-chief of victim girl just it is came on record that, accused is her uncle but as such nothing is came on record as alleged in report Exh. 11. APP cross examined her at length. In the cross-examination she has denied trueness of contents of portion marked 'A' of her statement. She has also denied that, contents of portion marked 'A' was narrated by her to her mother i.e. informant. In the cross-examination of victim girl as such no fruitful material came on record in favour of prosecution in respect of alleged accusation leveled against the accused. Consequently, testimony of PW 2 victim girl herself is not consistent with the case of prosecution.

15] During the course of argument, Ld APP tried to convince that, testimony of informant is consistent with the case of prosecution. At the same time, counsel for the accused has submitted that, testimony of informant is hearsay in nature and from the mouth of victim girl nothing is came on record that, she discloses to informant as stated by informant before the Court. According to her, as testimony of informant is linkness in nature is not acceptable and reliable to hold guilty to the accused.

16] Upon perusal of contents of report Exh. 11, it is very

well gathered that, contents of report are prima facie hearsay in nature. Even testimony of informant before Court as discussed above is also hearsay in nature. Considering the rival submission advanced on behalf of both, it is important to note here that, to accept the testimony of hearsay witness link must be established and to accept the hearsay evidence there must be consistency in the testimony of both witnesses i.e. hearsay witness and witness who possessed status as a source of information.

17] In case in hand, though the informant stated before the Court as per the case of prosecution but as per the case of prosecution itself, basic source of information to her at the instance of PW 2 victim girl, but PW 2 victim has flatly denied that, she narrated the incident to informant, even her examination-in-chief except having relation with accused as an uncle as such nothing came on record from her mouth about the accusation leveled against the accused. In presence of said facts, testimony of informant i.e. PW 1 is linkness in nature and consequently, is not found reliable and trustworthy to hold guilty to the accused. Hence, I found substance in the submission advanced on behalf of accused.

18] It is matter of record that, prosecution is pending since February 2023 till today period exceeding 03 years already over. *As per the mandate of section 35(2) of the*

POCSO Act, prosecution like in nature needs to be disposed off within a period of one year from the date of taking cognizance of offence. In addition to that, as per implied direction of the Hon'ble High Court, trial like in nature needs to be conclude in expedite manner. In case in hand, as discussed above, testimony of PW 1 is prima facie hearsay in nature, no corroboration received to the testimony of PW 1 from the mouth of victim girl i.e. PW 2 that alleged incident was narrated by her to informant. In addition to that, victim girl herself totally silent before the Court about the alleged act of the accused. In order to giving opportunity to prosecution summons were issued to remaining witnesses. As per summons report Exh. 17 summons reported duly served on witness, but he is not turn up before the Court. As testimony of PW 1 is linkness in nature and found unreliable. So also, PW 2 i.e. victim girl herself is totally keep mum before the Court about the alleged act of the accused. In presence of said fact and keep in mind the mandate of section 35(2) of POCSO Act, certainly, no purpose would be served by keeping matter pending again. Whatever evidence tendered by prosecution is not adequate and sufficient to hold that, offences within the meaning of section 354-A, 354-D and 11 r/w. 12 of POCSO Act committed by accused. Hence, my answer as to points No. 2 and 3 in the negative.

19] In view of above said discussion and my negative

finding as to points no. 2 and 3, I have come to conclusion that, whatever evidence tendered by prosecution is not adequate and sufficient to hold guilty to the accused in respect of alleged offences beyond reasonable doubt. In the result, accused is entitled for acquittal. Hence, I proceed to pass following order :

-: ORDER :-

1. Accused viz. **Suhas Bandopant Misal** is hereby acquitted for the offences punishable under Section 354-A, 354-D of the Indian Penal Code and section 11 r/w. 12 of Protection of Children from Sexual Offences Act, 2012 vide Section 235 of Cr.P.C.
2. Bail bond of accused stand cancelled.
3. Accused shall furnish the P. R. Bond of Rs. 25,000/-, within the meaning of compliance of Section 437-A of Cr. P. C for the period of six months from today.
4. Muddemal property if any pending concern with Crime be destroyed after appeal period is over.

Dictated on PC directly, delivered and pronounced in open Court.

Place - Pune.

Date - 04/04/2026

(Mohan G. Chavan)
Special Judge (under POCSO Act),
Pune.

CERTIFICATE

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

Name of Steno	A. S. Shivapurkar Stenographer Grade I
Name of Court	Shri. M.G. Chavan, Special Judge (under POCSO Act), Pune.
Date of Order	04/04/2026
Order signed by PO on	04/04/2026
Order uploaded on	04/04/2026