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Decided on : 04.08.2018
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04 01 18
Exh. No. :

IN THE COURT OF SPECIAL JUDGE, NANDED.

(Presided over by : Sudhir P. Kulkarni)

SPECIAL (POCSO) CASE NO. 20 OF 2014

The State of Maharashtra,]
through Police Station Mahur,]
Tq. Mahur, District Nanded.] **COMPLAINANT**

V e r s u s

Nitin s/o Sugriv Dhupe,]
age 23 years, occu : Labour,]
R/o. Boudh Pura, Mahur,]
Tq. Mahur, District Nanded.] **ACCUSED**

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CHARGE:- For the offence punishable under Sections
307 & 376 of the Indian Penal Code and
under Sections 3 punishable with Section
4 of the Protection of Children from
Sexual Offences Act.

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Shri. Y.S.Ardhapurkar, APP for the State/Complainant.
Shri. P.N.Shinde, Advocate for Accused.

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J U D G M E N T

(Delivered on this the 04th day of August, 2018)

The accused faced trial for commission of offence
under Sections 307 & 376 of the Indian Penal Code and under
Section 3/4 of the Protection of Children from Sexual

Offences Act (hereinafter referred as POCSO Act for brevity).

02- It is the case of prosecution that on 04.03.2014 complainant Manisha Haresh Javade aged 16 years had been to the house of her grandmother at Mahagaon. Her mother Sangita Santosh Bhagat performed second marriage with Santosh Bhagat and resides with him at Ghatanji as her husband i.e. father of complainant died. Accused Nitin Dhupe resident of Boudha Pura Tq. Mahur is the son of elder sister of her mother, complainant used to go to her house every now and then and there fell in love with accused Nitin Dhupe since November 2013.

03- Thereafter, on 05.03.2014 accused Nitin gave mobile call to the complainant and told her to come to Mahur. She met accused at Mahur, they both roamed and wandered in the forest and thereafter accused brought her in one unknown hut and committed sexual intercourse forcibly upon her. Accused told her that he has no money and his parents are not ready to perform marriage with her and therefore, they both should consume poison and shall commit suicide. He picked one packet containing some powder and poured in water and gave it to the complainant. Complainant consumed said water containing the powder, but accused did not consume the same. On these allegations, complaint came to be lodged and after due investigation, charge sheet came to be filed for the offences stated supra against the accused.

04- Charge Exh.19 was framed against the accused by my learned Predecessor. The charge was read over and explained to the accused in vernacular to which he pleaded not guilty and claimed to be tried. His defence is that of total denial and false implication.

05- From the evidence on record and the submissions advanced by APP for the State and advocate for accused, following points arise for my determination and findings for them for the reasons stated below are as under.

Sr. No.	P O I N T S	FINDINGS
01	Whether prosecution proves that on 05.03.2014 at about 23.00 hours to 06.03.2014 at about 3.00 a.m. on the road at Devdeveshwar in a hut near hill, accused gave poison to complainant in a glass with drinking water with intention or knowledge and under such circumstances that by that act, accused had caused death of complainant aged 16 years and he would have been guilty of murder ?	In the negative.
02	Whether prosecution proves that on the aforesaid date, time and place, accused committed rape on the complainant ?	In the negative.

03 Whether prosecution proves that on the aforesaid date, time and place, accused committed penetrative sexual assault on the complainant Manisha aged 16 years ? In the negative.

04 What order ? As per final order.

REASONS

06- In order to prove its case, prosecution has examined two witnesses. Sangita Santosh Bhagat (PW-1) mother of complainant/victim is examined at Exh.28. Madhav Uttam Gawle (PW-2) the witness who saw accused and victim near Deodeveshwar temple is examined at Exh.33.

07- Besides, the oral evidence of aforesaid witnesses, the prosecution has placed reliance upon several documents. The spot panchnamas is at Exh.29. Seizure panchnama of clothes of accused at Exh.30. Seizure panchnama of clothes of victim at Exh.31. C.A. report are at Exhs.49, 50 & 51.

POINT NOS.1 TO 4 :

08- In the instant case, the accused is charged with the serious offences of attempting to commit murder of minor girl Manisha by poisoning her and also of committing rape on her. The victim being minor, the provisions of Section 3 read with Section 4 of the POCSO Act are also attracted. In order to establish the charges, the prosecution examined mother of

victim Sangita Santosh Bhagat (PW-1) whose testimony is at Exh.28. The witness deposed that victim Manisha is her daughter and at the time of incident, she was 16 years old. She was born out of her first wedlock and after her re-marriage, she left Manisha with her mother at village Mahagaon Tq. Digras District Yeotmal. She further deposed that her brother Vishnu Kisan Waghmare informed her that Manisha was found in unconscious state in the forest of village Mahagaon, she was admitted to hospital at Arni and after gaining consciousness, Manisha told her that she was in love with accused and they resided together in a hut at Mahur having established physical relationship as that of marriage. The accused also assured to marry her. Accused supplied poison to Manisha in water bottle and administered it to her in bottle as he does not want to marry her. Police recorded her statement. But since last twelve months before her deposition, Manisha went on missing and is untraceable.

09- In the cross examination on behalf of the accused, the witness submitted that Manisha started residing separately but she do not know whether Manisha got employed in Ipso Research Nagpur. She further deposed that accused is related to them and they wanted to perform marriage of Manisha with brother of accused. She also deposed that she do not know whether accused was employed in hotel at Pune but admitted that Manisha fled with Rs.10,000/- from her house and did not return. She also admitted that she fixed the

marriage of Manisha with a person from Ghatanji, but she refused. In short, this witness is hearsay witness and does not have any knowledge of the incident.

10- The prosecution also examined Madhav Uttam Gawle (PW-2) who stated that he supplied 2-3 packets of Prasad and one bottle to accused. The witness turned hostile and did not support the story of the prosecution.

11- Despite of several chances granted, the prosecution failed to examine other witnesses and the most unfortunate state of affair is that the prosecution could not secure the presence of victim who is the most material witness for the prosecution. The C.A. reports Exhs.49 to 51 relating to the clothes of accused and victim which were seized during the course of investigation along with their blood and body products are of no avail as neither blood nor semen was detected on the clothes. Even the results regarding the grouping of the blood are inconclusive so far as the blood on the clothes of victim's is concerned. The blood group of accused was detected as "O", but it is of no consequence as no blood was detected on the clothes of accused. The panchnamas of seizure of clothes Exhs.30 & 31 are of no consequence as no blood or semen was detected. Similar is the position relating to spot panchnama Exh.28 as nothing incriminating has been seized from the spot which may be of use for the prosecution to establish the nexus between the

guilt of the accused and the crime with which he is charged. Therefore, considering the over all evidence of the prosecution, I find that the prosecution utterly failed to bring home the guilt of the accused on any count of the charges with which he is charged. Hence, I have no other alternative than to record my findings in the negative in respect of Point Nos.1 to 3 and pass following order.

O R D E R

- 1) Accused is acquitted of the offences punishable under Sections 307 & 376 of the Indian Penal Code and under Section 3 punishable with Section 4 of the Protection of Children from Sexual Offences Act vide provisions of Section 235(1) of the Code of Criminal Procedure.
- 2) The bail bonds of accused stand cancelled.
- 3) Muddemal articles seized in this crime i.e. clothes of accused and victim, being worthless, be destroyed, after expiry of appeal period.

Date : 04.08.2018

(**Sudhir P. Kulkarni**)

Special Judge, Nanded.

Certificate

I affirm that the contents of this P.D.F.file Judgment are same word to word, as per the original judgment.

Name of Stenographer	:-	R.A.Inamdar, Stenographer H.G.
Court name	:-	Sessions Court, Nanded.
Date	:-	04.08.2018
Judgment signed by		
Presiding officer on	:-	04.08.2018
Judgment uploaded on	:-	04.08.2018