

MHRG170013272020



Presented on : 13/07/2016
Registered on : 13/07/2016
Decided on : 19/06/2023
Duration : Ys. Ms. Ds.
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**IN THE COURT OF EXTRA JT. DISTRICT AND ADDITIONAL
SESSIONS JUDGE, PANVEL-RAIGAD.
(Presided Over by Shaida Shaikh)**

**Spl.Case (POCSO) No.182/2020
(Old Spl case (POCSO) no.69/2016)
Exhibit No.: 39**

The State of Maharashtra,)
Through the PSO,)
Panvel Taluka Police Station,)**Prosecution**
(C.R.No.65/2016))

V/s.

Manish Santosh Ganaure,)
Age : 26 yrs., Occu.- Driver,)
R/o Opp.Ambedkar statue, Laxmi)
Vasahat hutment, Panvel,)
Tal.Panvel, Dist.Raigad.) **Accused.**

Charge : Offences Punishable under Sections 363,
366 and 376(2)(n) of the Indian Penal Code
and u/s 5(1) r/w 6 of the Protection of The
Children from Sexual Offences Act, 2012

Appearances :

**Smt.Pratiksha Wade, Smt.Depali Patil, Shri.C.Y.Patil & Shri.Yerunkar, Ld.
APP for the State.
Smt.Mansi Mhatre, Ld. Advocate for the Accused.**

J U D G M E N T
(Delivered on 19th June, 2023)

01. Accused **Manish Santosh Ganaure** is tried before me, for the offences punishable under sections 363, 366 & 376 (2) (n) of the Indian Penal Code and u/s 5(1) r/w 6 of the Protection of The Children from Sexual Offences Act, 2012

02. The prosecution case in short is as under -

Informant Shalini Ravindra Pawar lodged report with the police that, on 13/04/2016, while she was in the house and she found mobile in the bag of her daughter/victim girl, she asked the victim from where she has brought that mobile phone, but she did not reply and, therefore, informant gave a call from that mobile to her mobile and she learnt that, it is mobile phone of a boy residing in their neighbourhood. His name is Manish Ganaure. She confirmed that it is the accused Manish Ganaure who has given mobile to the victim girl. The informant then scolded the victim and also beat her. Thereafter, she left the house for her workplace and at about 10.30 p.m., she returned back from her workplace. Victim was not in the house, hence she asked to another daughter where victim has gone and that daughter told her victim left the house. Then the mother has scolded her. Informant was under impression that she might have gone to her

grand mother's place. But there was no range at her mother's house, therefore, she could not call upon her mother. On 25/04/2016, she sent her another daughter at her mother's place at Panvel and that daughter after visiting grand mother's house, informed the informant that the victim is not at the house of grand mother. Thus, she lodged report against the accused u/s 363 of IPC. Thereafter, when the victim was found and enquiry was made to her, sections 366 and 376(2)(n) of IPC and sections 5(1) r/w 6 of the Protection of Children from Sexual Offences Act, 2012.

03. The charge was framed against the accused below Exh.07 for the offences punishable under Sections 363, 366 and 376 (2) (n) of the Indian Penal Code and offence p/u/s 5(1) r/w 6 of the Protection of The Children from Sexual Offences Act, 2012 and then explained to the accused in vernacular. Accused pleaded not guilty and claimed to be tried. His defence is that of total denial. Accused has not examined any witness in support of his defence.

04. To substantiate guilt of accused, the prosecution examined in all four witnesses, as follows :

PW-1	Shalini Ravindra Pawar	Informant	Exh.14
PW-2	Victim	Witness	Exh.23
PW-3	Gokul Ganu Naik	Witness	Exh.30
PW-4	Priyanka Pravin Gore	I.O.	Exh.32

05. On the aforesaid facts and evidence following points arise for my determination and I record findings against each of them for the reason stated below :

Sr.No.	Points	Findings
1.	Does the prosecution prove that, on 13/04/2016 during the period 16.00 to 22.30 hrs. at Wing no.F, Room no.09, Hindustan Nagar, Shantiwan Wakadi, Tal.Panvel, Dist.Raigad, accused kidnapped victim aged 16 years, from the custody of her lawful guardianship and thereby committed an offence punishable under Sec. 363 of the Indian Penal Code ?	No.
2.	Does the prosecution prove that, on the abovesaid date and place, accused kidnapped victim aged about 16 years with intent that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse and thereby committed an offence punishable under Sec. 366 of the Indian Penal Code ?	No.
3.	Does the prosecution prove that, during the period 19/04/2016 to 25/04/2016, at Koli Kopar, Chinchapada, Panvel, Dist.Raigad, accused repeatedly committed rape on victim aged about 16 years and thereby committed an offence punishable under Sec. 376 (2)(n) of the Indian Penal Code ?	No.
4.	Does the prosecution prove that, on the same date and place, accused committed aggravated penetrative sexual assault on victim aged 16 years and thereby committed an offence punishable u/s 5(1) r/w 6 of the Protection of The Children from Sexual Offences Act, 2012 ?	No
5.	What order ?	As per final order.

REASONS

Point Nos.1 to 4 :-

06. To substantiate the guilt of the accused, the prosecution has examined P.W.1 Shalini Ravindra Pawar who deposed that, prior to one and half month, she was residing at Ghatkopar, thereafter, she came to reside at Wakadi, Panvel. Her mother is residing in Laxmi Vasahat hutment. In the year 2016, she was serving at Santacruz in call center. Her duty hours were from 10.30 a.m. to 10.00 p.m. Her duty was mobile duty. She is having two daughters and one son. Victim is her elder daughter and at the relevant time, she was taking education in 11th standard in V.K.High School, Panvel. At that time, her classes were closed. Victim used to visit some times at her grand mother's house. On 13/04/2016, when she found one mobile phone in the bag of victim, she asked from where she has got that mobile phone, but she did not reply. Therefore, informant made call from that mobile phone and found that it belongs to her neighbour Manish Ganore. He is the accused in the present case and she knows him well since her was her neighbour. One day when she scolded to victim and then left for her workplace. When she returned back, victim was not in the house. She had a doubt that it is the accused Manish Ganore who might have eloped her. The victim was at that time below 18

years of age. Therefore, complaint was lodged with the police. Birth date of the victim is 19/03/2000. Her school leaving certificate filed on record shows her correct birth date. Verified copy of school leaving certificate is at Exh.15. FIR bears her signature, contents are correct. It is at Exh.16.

07. In cross examination, she deposed that accused was her neighbour and he was of equal age that of the victim. Therefore, there was friendship between victim and the accused. But since the victim was missing and she did not find for 2 days, a doubt was created in her mind that someone might have eloped her. Since the victim was not found for 2 days, a missing report was lodged with the police. Police asked her the name of victim's friend and she told to police name of the accused as a friend of the victim. The police have recorded her FIR and she only signed it. At the time of lodging report victim was of major age.

The learned APP Smt.Wade re examined the informant since she did not support in her cross examination to the case of the prosecution. In cross examination on behalf of the prosecution, she admits that without court summons, she came to Court today. She has deposed in examination in chief that only due to misunderstanding. Her daughter/victim is now married to one Ajit Baban Kakade, r/o Gavkhed, Dist.Beed. Her marriage was performed in the year 2018.

Another suggestions put by the prosecution were denied by her.

08. PW.2 is victim girl who deposed that when she was at her grand mother's house near Ambedkar statue, accused was their neighbour. Her mother has told her to go to Panvel Court and to depose in the matter. Therefore, she came today in Panvel Court on the direction of her mother and deposed in the matter. Her mother has lodged report against the accused and, therefore, she told her to go and depose in that matter. FIR was lodged only because one day she went to the college and did not return back house and, therefore, her mother lodged missing report. In fact, she went to her grand mother's house and stayed there for 3-4 days and thereafter, she went to her friend's house where she stayed for 4 days. Her mother was not knowing as to where she was staying, therefore, she lodged report with the police. At the time of lodging FIR, she has completed 18 years of age. Whatever allegations were made by her mother against the accused are not correct. She does not have any grievance against the accused.

This witness has been cross examined by the learned prosecution at length, but nothing has come out against the accused.

09. On the contrary, in her cross examination on behalf of the accused, she admits that only because accused was her neighbour, therefore, she identified him. Accused has not committed any offence

and she has no grievance against him.

10. P.W.3 is Gokul Ganu Naik who turned down completely since he has categorically deposed that, he does not know who is Manish Ganore and who is victim girl. He does not possess any chawl or room in the chawl. Since he does not own any chawl or room, therefore, there arise no question to let out room on rent.

11. Lastly, prosecution examined Investigating Officer P.W.4 Priyanka Pravin Gore, who has investigated the offence and recorded FIR. She deposed that FIR was recorded as stated by the complainant. Portion marked A, B, C & D were stated by her and they are marked at Exhs.33 to 36. She has also referred the victim for medical examination and her medical report is at Exh.25. Spot panchnama is at Exh.26 & 27. She also got recorded statement of the victim u/s 164 Cr.PC., which is at Exh.37. On collecting evidence, she filed chargesheet in the Court.

12. From the evidence of all the 4 prosecution witnesses, though in this case, the informant was somehow stick up to her contentions in the FIR, in examination in chief, however, during cross examination, she was completely turned down and did not favour the case of the prosecution. Though she was sufficiently cross examined by the prosecution, but nothing has come on record. P.W.2 who has been examined in the matter, has specifically supported the accused. She

has deposed that when the FIR was registered, she has completed 18 years of age. She knows accused only because he was their neighbour. The accused did not commit any offence against her. She has no grievance against the accused.

13. In this case, undisputedly, victim is married to some other man in the year 2018 from whom she is having 3 children and now she is staying at Gavkhed, Dist.Beed alongwith her husband and family. She has no grievance against the accused and she deposed that, her age was completely 18 years when FIR was filed. When the victim and her mother totally turned down and did not support case of the prosecution, therefore, nothing material has come on record against the accused. The age of the victim is not at all proved since no witness has been examined by the prosecution to prove the age of the victim girl. Her testimony is that, she was 18 years of age when FIR was filed. Anyhow, she was of understanding mind and she has categorically stated that, now she has no grievance against the accused and she has already married to some other man and residing at Beed having 3 children. To my humble opinion, the offences with which the accused is charged, are not at all proved beyond all reasonable doubts and he deserves for acquittal. Accordingly, I answer point nos.1 to 4 in the negative and proceed to pass the following order.

:: ORDER ::

1. Accused **Manish Santosh Ganaure** is hereby acquitted under section 235(1) of the Code of Criminal Procedure, of offences punishable Sections 363, 366 and 376 (2) (n) of the Indian Penal Code and offence p/u/s 5(1) r/w 6 of the Protection of The Children from Sexual Offences Act, 2012
2. His bail bond stands cancelled.
3. Muddemal property being worthless be destroyed after the appeal period is over.
4. The accused to comply under Section 437-A of the Code of Criminal Procedure, 1973.

(Dictated and pronounced in the open court)

Panvel.

Dated:19/06/2023.

(Shaida Shaikh)

**Extra Jt.District & Addl. Sessions Judge,
Panvel-Raigad.**