

MHPA040006892020



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IN THE COURT OF ADDITIONAL SESSIONS JUDGE, HINGOLI
DIST. HINGOLI
(PRESIDED OVER BY P.V.BULBULE, ADDL.SSESSIONS JUDGE-2)

Exh. No

Special Case (POCSO) No.48/2020
In
Cr.No.275/2020 of Police Station, Akhada Balapur
Dist. Hingoli

The State of Maharashtra
through Police Station, Akhada Balapur
Dist. Hingoli

..PROSECUTION**VERSUS**

Rama Kaman Dakhore
Age- 18 years, Occu.: labourer
R/o XXX, Tq.XXXXX
Dist. Hingoli

.....ACCUSED

Mr N.S.Mutkule, Addl.Public Prosecutor for State
Mr M.M.Ganjre, Advocate for Accused

JUDGMENT**(Delivered on the 10th day of May 2022)**

The accused is facing charges for the offences punishable under Section 376(2)(i)(j) of the Indian Penal Code (For the sake of brevity, herein-after, it shall be referred to as ' the IPC') and Section 4 of the Protection of Children from Sexual Offences Act (For the sake of brevity, herein-after, it shall be referred to as ' the POCSO Act ').

THE FACTS ARE AS UNDER :

2) The father of the victim lodged the report and stated that the victim is eight years old. On 31-07-2020 at 5.00 P.M. he and his wife returned from the work. At that time, the victim was crying and blood was oozing from her leg. They enquired about the victim at that time, the victim removed her pant and blood was oozing from her private part. On enquiry, she disclosed that while she was playing, the accused carried her to his house. He closed the door, pressed the mouth of the victim, and removed the pant of the victim. The accused entered something in her urinate place. She shouted due to the pain. The accused pressed her mouth. Thereafter, put the finger in the part of urinating. Thereafter, the accused opened the door and left her outside the house. She has shown the house of the accused after three houses of the informant. The informant searched and asked the elder brother of the accused but the accused was not present.

Therefore, he has lodged the report.

3) Police Station Akhada Balapur registered the crime for the offences under Section 376(2)(i)(j) of the IPC and Section 4 of the POCSO Act. The further investigation was handed over to A.P.I. Mr.R.M.Hundekar. He has referred the victim for medical examination, visited the spot, prepared the spot panchnama, seized the clothes of the victim as well as the accused, recorded the statement of the witnesses, sent C.A. sample for examination, obtained the report, obtained the age proof of the victim and recorded the statement under Section 164 of the Criminal Procedure Code. After completion of the investigation, he found sufficient evidence against the accused, therefore, filed the charge sheet.

4) I framed the charge against the accused at Exh.07 for the offences punishable under Section 376(2)(i)(j) of the IPC and Section 4 of the POCSO Act. The contents of the charge are read over to the accused in vernacular. The accused pleaded not guilty and claimed to be tried. The defence of the accused is total denial and false case is registered against him.

5) Heard rival submissions from both sides. Perused the evidence on record. The following points arise for my consideration. I have recorded my findings on the points for the reasons stated thereunder:

Sr. No.	POINTS	FINDINGS
1	Does the prosecution prove that the accused committed rape on the daughter of the informant, who was 8 years old, incapable of giving consent and thereby committed the offence ?	..Yes..
2	Does the prosecution prove that the accused subjected the victim girl to penetrative sexual assault and thereby committed the offence ?	 Yes..
3	What order ?	As per the final order

REASONS

6) To prove the charge, the prosecution examined
Spot and seizure panch Jayaji as PW-1 at Exh.10,
The informant as PW-2 at Exh.16,
The Victim as PW-3 at Exh.21,
Medical officer Dr.Priya as PW-4 at Exh.23,
Head-master of the school Ankush as PW-5 at Exh.31,
Photographer Digambar as PW-6 at Exh.40,
C.A. carrier Bharat as PW-7 at Exh.42 and
The Investigating Officer Ravi Madhavrao Hundekar as PW-8 at Exh.43.

AS TO POINTS NOS.1 AND 2 :

7) It is the case of the prosecution that the victim is a minor.

The accused was sexually assaulted by entering a finger into the private part of the victim.

THE AGE OF THE VICTIM :

8) The informant/father of the victim PW-2 deposes that the date of birth of the victim is 02-03-2013. During the cross-examination, he is unable to state the date of birth of the elder son and younger son. He has clearly stated that there is a difference of two years between the elder son and the victim. It will not affect any credibility of this witness on this point as the prosecution examined Ankush PW-5. He is the Headmaster of the Zilla Parishad School XXX. He deposes that the police demanded Nirgam Utara of the victim and he has issued the same at Exh.33. He also brought the original record at the time of evidence. He has also confirmed the date of birth of the victim is 02-03-2013. He has also produced the photo copy of his official record at Exh.36. During the cross-examination, he deposes that the date of birth of the victim is taken from the Aadhar Card. The admission of the victim is completed by the class teacher. He has also deposed that he issued the Nirgam Utara of the accused and his date of birth is 04-04-2002. Learned APP relied on **Bhagwan Versus The State of Maharashtra, 2016 ALL MR (Cri) 4414**. It is held that the victim could be said to be minor in view of the school record, the oral evidence of the victim as well as medical evidence. On this point, he has also cited **Pintu Versus The State of Maharashtra, 2019 ALL MR (Cri) 2663**.

9) Doctor Priya PW-4 also deposes that the victim is minor and she has not attained the age of majority. The accused has not seriously challenged the age of the victim. It appears that the parents of the victim are illiterate and labour. They might have not registered the birth of the victim. The victim also appeared before me as PW-3. She is apparently below the age of 18 years. Therefore, the victim is a minor child and she has also stated the date of birth as 02-04-2013, hence, I accepted it.

**THE EVIDENCE ON THE POINT OF OCCURRENCE OF
THE INCIDENT :**

10) I have perused the evidence of Victim PW-3. Her evidence shows that she has identified the accused through video conferencing. She has also disclosed his name. She has also stated that the accused used to graze the she-goats. Her evidence shows that she was playing alone. Her parents went to work. The accused dragged her to his house. Thereafter, she made another statement that the accused carried her to his house. The accused removed his pant and her pant. The accused took the victim on thigh. The accused slept with her. The accused inserted urinate organ. The accused also inserted a finger in her private part and pressed the mouth. Thereafter, the accused left her outside the house. He has threatened her that if she stated the incident to her mother he would see. Thereafter, the accused ran away. She went to her mother. She was crying. The blood was oozing from her pant. Her mother enquired and she had shown her private part by removing the pant. She also deposes that she has shown the house of the accused. She also visited the hospital.

11) During the cross-examination of the victim PW-3 learned counsel for the accused brought on record the omission which amounted to the contradiction i.e., the accused inserted urinate organ, finger, and blood was oozing. She has also disclosed that her parents went to work. She and her brother were at home. She did not know the time of returning the parents from the work but, it was evening time. She also deposes that she was playing alone. She also discloses that on the day of recording the evidence, she wore a red colour top. She admitted that some colours cannot identify by her.

12) In this regard, the evidence of the father of the victim PW-2 is the material. He has also supported the version of the victim. He deposes that on the day of the incident, he and his wife went to work at Kurtali. In his police statement, there is no word of Kurtali, it is not a material omission. His evidence further shows that the children were at home. They returned from the work at 5.00 P.M. The victim was crying, and blood was oozing from her leg. Her mother asked the victim. The victim removed her pant and showed her private part. The blood was oozing from the private part. The victim told the name of the accused Rama of grazing she-goats. The victim has shown the house of the accused after three houses of his own house. The victim has also disclosed that the accused caught-hold her and carried her to his house while she was playing alone. The accused pressed her mouth and bolted the door from the inside. The accused removed the pant of the victim, and an article was put in the private part of the victim. The victim was suffering from pain. The accused pressed her mouth. After some time, the accused inserted the finger into the

private part of the victim. He also deposes that when enquiry is made to the brother of the accused, he has not disclosed the whereabouts of the accused and he was not present at the house. He has identified the clothes of the victim. During the cross-examination, he discloses that he has not asked the neighbour to look after the children but, he instructed the children if any incident occurs then told the neighbours. He has also disclosed that in his neighbourhood, all went to the work. The victim has immediately after the incident narrated the incident. Therefore, it is spontaneous evidence. The injury and blood clearly show that the incident occurred within a short period. This witness evidence is not shaken in any manner.

13) Learned APP relied on **Damodhar Versus The State of Maharashtra 2015 ALL MR (Cri) 4825**. It is held that the evidence of the victim is that the accused removed her nicker, made her lie on the ground and thereafter, also slept over her. It is corroborated by her grandmother by immediately filed FIR. The conviction is proper.

Bansari Lal Versus State of Himachal Pradesh 2017 ALL MR (Cri) Journal 361. It is held that the non-association of independent witnesses is not fatal as there is no contradiction found in the testimonies of the prosecution witnesses.

MEDICAL EVIDENCE :

14) After going through the evidence of the victim and her father, it is material to see what was the finding of the medical officer. Because the medical officer has the opportunity to observe the injuries immediately after the incident. Therefore, the medical officer is the

eye witness to the extent of the injuries seen immediately after the incident. Doctor Priya PW-4 is the medical officer. She deposes that on 31-07-2020, police constable Solapur, parents brought the victim at 8.10 P.M. for examination. The victim was crying. The victim was not in a position to state anything. Her mother stated the history. She conducted a medical examination of the private part of the victim. She found that the pubic hairs were absent, labia majora oedema present. Labia minora is redness and the clitoris. Fourchette and introitus are redness visualized. Very small vagina. With minimum blood in it. She further deposes that the victim is examined after 6 to 7 hours of the incident. No other injuries to the genitals and anus. **The evidence of injuries is suggestive of the application of force as the vagina is showing minimum bleeding, suggesting of application of force. The injuries were within 24 hours. Her opinion is that overall findings are consistent with sexual intercourse/ assault. She has given the final opinion after FSL reports that the possibility of sexual assault cannot be ruled out.** She has also deposed that tiny hymen injury was resented at 6 O'clock posterior edges were swollen.

15) The learned counsel for the accused cross-examined Dr. Priya PW-4 at length. She has categorically stated that she resided at Hingoli and her posting is at XXX place. She has also stated that there is no regular up and down to her house. She has given in all five opinion on the sexual assault or intercourse cases. **She has given the opinion ground that hymen rupture is associated with bleeding, swelling, and pain then, it is confirmed by sexual abuse.** She agreed that hymen can be torn due to cycling, swimming, physical

activity or inserting something etc. She has also admitted in this case, there is no perennial tear. She has also admitted that the child may insert a finger due to itching and irritation of the vagina. While inserting the finger, force is applied then the maximum bleeding is possible, and scratches and minor cuts are possible around the private part. She has sealed the clothes of the victim and handed them over to the police for C.A. examination.

16) In this evidence, the accused tried to show that the doctor has given an opinion about the maximum bleeding but while examining the victim, the doctor found the minimum blood. But the incident occurred before 5 O’Clock, the doctor examined the victim at 8.10 P.M. and in such circumstances, the flow of bleeding may be stopped and this possibility cannot be ruled out. Therefore, it is no ground to discard this medical evidence. Likewise, the accused also pointed out that the children may insert a finger due to itching and irrigation in the private part. Though, it is admitted by the expert the children cannot use the force to cause the pain and bleeding as seen in this case. Therefore, this possibility is also ruled out and I am not inclined to accept this defence of the accused. The cumulative effect of this evidence shows that within 3 to 4 hours after the incident, the examination of the victim, there was an injury in her private part, there was swelling and the doctor confirmed that force is used; therefore, it is the penetrative sexual assault by inserting the finger as narrated by the victim.

THE EVIDENCE OF SPOT PANCHNAMA

17) Jayaji Kakde PW-1 deposes that on 01-08-2020 as per oral order of the B.D.O., he went to the police station and along with police, visited the spot at XXX village. The informant has shown the spot house. On the backside of the door, on the floor, there was one blood stain. The police took a cement flooring blood sample. Police also took the plain soil sample. The police prepared the spot panchnama Exh.11 and took the photographs. The Investigating Officer Ravi PW-8 has supported this version. Likewise, Digambar PW-6 is the photographer, who also supported this version. But, the police have failed to bring on record the primary digital evidence or the certificate under Section 65-B of the Indian Evidence Act. Therefore, the said photographs are not material.

SEIZURE OF THE CLOTHES

18) Jayaji PW-1 deposes that in the Police Station at 4.30 P.M. the accused was present. The clothes accused seized i.e., jacket, black the pant, underwear and prepared the seizure panchnama Exh.12. Police also seized the four clothes of the victim at Exh.13. He has identified the said clothes. The learned counsel for the accused has pointed out that the clothes of the victim were not open and it was sealed by the medical officer; therefore, to this extent, the evidence of this witness is not acceptable. This witness identified the clothes of the accused before the court. Ravi PW-8 also supported the version of the prosecution. It is also pointed out that the witness Jayaji PW-1 has not

obtained the permission of the B.D.O. The witness has categorically stated that the B.D.O. orally ordered him to visit the police station; therefore, again he did not require to obtain permission from the B.D.O. He is unable to state the direction of the door of the said house. During the cross-examination, he is unable to state the colour of the jacket and underwear. He has stated that the accused was not present when the clothes were seized. It is the contrary statement as in examination-in-chief he stated that the accused was present. The nature of the above question is memory testing. It will not show that the witness has not visited the spot. Therefore, I proceed to examine the C.A. report.

C.A. REPORT

19) Bharat PW-7 is the C.A. carrier. He deposes that he carried the C.A. sample as per the letter and deposited it in the Nanded office. The C.A. letter is at Exh.57. The C.A. report from Exh.63 to 67. In the C.A. report Exh.66, the article is the small the pant of the victim. It has found the blood stains ranging from about 0.1 cm to 5 cm in diameter on the middle portion but the group of the blood cannot be determined as the results are inconclusive. As per C.A. report Exh.67, the frock of the victim is examined and it did not find any incriminating thing. As per Exh.64 C.A. report, vaginal swabs were human blood and the blood group cannot be determined but the blood group in a test tube is 'O'. The pant C.A. report Exh.66 clearly shows the human blood stains on the pant of the victim. Therefore, it is confirmed the case of the prosecution.

20) In view of the above evidence, the accused has taken the defence of the denial. He has not given any positive defence. There is no possibility of the falsity of the prosecution case. The entire evidence is consistent, trustworthy, reliable and acceptable. By this evidence, the prosecution categorically proved that the accused inserted the finger in the private part of the victim which is the offence under Section 376(2)(i)(j) of the Indian Penal Code as well as Section 3 punishable under Section 4 of the POCSO Act. Therefore, the prosecution established the ingredients of the offence and I am inclined to answer Point Nos.1 and 2 in the **Affirmative**.

21) I heard the accused on the point of the sentence. He has claimed that he is innocent. His age is 21 years approximately. The accused prayed for leniency in his sentence. On the contrary, learned A.P.P. submitted that it is an offence against the children. He prayed to impose a maximum sentence to deter other criminals.

22) The offence is against the child and the accused is not entitled to get the benefit of the Probation of Offender's Act. The offence under Section 376(2)(i)(j) of the Indian Penal Code is punishable by 10 years, it may extend to life imprisonment and the offence under Section 4 of the Protection of Children from Sexual Offences Act is punishable 10 years, and the maximum sentence is life imprisonment. The accused is a neighbour. The accused is too young. The accused used to graze the she-goats. The accused has prayed for leniency. Considering the age of the accused, an income of the accused and the prosecution has not brought on record criminal

antecedent. Hence, there is the possibility of improvement of the accused. Therefore, the minimum sentence is just along with a fine of Rs.1,000/- each under both Sections and in default, sentence of rigorous imprisonment for one month will serve the purpose. Likewise, it is necessary to give the direction to the District Legal Services Authority, to grant the compensation under Section 357-A of the Criminal Procedure Code.

23) I have gone through the Muddemal Pawati Exh.2, it appears to be worthless. Therefore, it would be appropriate to direct to dispose of the muddemal after appeal period is over. In the result, I pass the following order :

ORDER

- 1** The accused is convicted for the offences punishable under section 376(2)(i)(j) of the Indian Penal Code and Section 4 of the PCSCO Act, vide Section 235 (1) of the Code of Criminal Procedure.
- 2** The accused is sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs 1000/- (Rupees One thousand only) in default, to suffer rigorous imprisonment for one month in respect of the offence punishable under section 376(2)(i)(j) of the Indian Penal Code.
- 3** The accused is sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs 1000/-(Rupees One thousand only) in default, to suffer rigorous imprisonment for one month in respect of the offence punishable under Section 4 of the Prevention of Children from Sexual Offences Act.
- 4** The substantive sentences shall run concurrently.

- 5 The Set off be granted to the accused from 01-08-2020 till today vide Section 428 of the Code of Criminal Procedure.
- 6 The seized clothes being worthless, be destroyed after the appeal period is over.
- 7 The accused to surrender to his bail bonds.
- 8 The District Legal Services Authority, Hingoli shall decide the quantum of compensation to be awarded to the victim, vide Section 357-A of the Code of Criminal Procedure.
- 9 A copy of the Judgment is ordered to be provided to the convicted accused free of costs.

The Judgment is pronounced in open Court.

Dated: 10/05/2022

(**P.V.Bulbule**)
Addl. Sessions Judge-2,
Hingoli

