

MHNS070018262022



Received on : 07/10/2022

Registered on : 07/10/2022

Decided on : 08/11/2024

Duration : Y. M. D.
02 01 01

Ex. No. : 58

PART A

<u>IN THE COURT OF SPECIAL JUDGE, MALEGAON, TAL. MALEGAON, DIST. NASHIK</u>	
<u>(PRESIDED OVER BY S. U. BAGHELE)</u>	
Date of Judgment	: 08/11/2024
Special(POCSO) Case No.	: 116 of 2022
Details of FIR / Crime and Police Station	: C. R. No. 154 of 2022 of Chavani Police Station, Malegaon Tal. Malegaon, Dist. Nashik for the offences punishable under sections 363, 354, 354A, 354D, 341, 511 of the Indian Penal Code, 1860 and Section 8 of the Protection of Children from Sexual Offences Act, 2012.
Complainant	: The State of Maharashtra, Through – Chavani Police Station, Malegaon, Tal. Malegaon, Dist. Nashik.
Represented by	: Mr.M.S.Fulpagare APP; Mr. S.K.Sonawane, APP
Accused	: 1] Sahil Naval Mali, Age 25 yrs., Residing near Polytechnic College, Bhaygaon vicinity, Tal. Malegaon, Dist. Nashik. (A1)
Represented by	: Mr. M.D. Hiray, Adv. and Mr. H.V.Hiray Adv.

Part 'B'

Date of Offence	:	12/08/2022
Date of FIR	:	12/08/2022
Date of Charge-sheet	:	07/10/2022
Date of Framing of Charges	:	17/01/2023
Date of commencement of evidence	:	25/09/2023
Date on which Judgment is reserved	:	08/11/2024
Date of the Judgment	:	08/11/2024
Date of the sentencing order, if any	:	08/11/2024

ACCUSED DETAILS

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of section 428 of Cr. P. C.
A1	Sahil Naval Mali	12/08/2022	18/11/2022	363 r.w.511, 354 of the IPC and Section 8 of the POCSO Act.	Convicted	As per final order	From 12/08/2022 till 18/11/2022

PART 'C'**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A] PROSECUTION :-**

<u>Rank</u>	<u>Name</u>	<u>Nature of evidence</u> (Eye witness, police witness, expert witness, medical witness, panch witness, other witness)
PW 1	Anil Chagan Thakare, Exh.18	Panch
PW 2	xxxx (Name Suppressed, being victim), Exh.20.	Informant/Victim
PW 3	xxxx (Name Suppressed, being father of the victim), Exh.24.	Witness
PW 4	Abdul Sabur Abdul Khalid Exh.28.	Witness
PW 5	Sunil Yashwant Kharat, Exh.31.	Witness
PW6	Krushna Ramesh Mohite, Exh.33	Witness
PW7	Shobha Prabhakar More, Exh.37	Witness
PW8	Sunil Shivaji Ahire, Exh.44	Investigating Officer
PW9	Deepak Motiram Pimpalse	Investigating Officer

B] DEFENCE WITNESSES, IF ANY :-

<u>Rank</u>	<u>Name</u>	<u>Nature of evidence</u> (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
	Nil	

C] COURT WITNESSES, IF ANY :-

<u>Rank</u>	<u>Name</u>	<u>Nature of evidence</u> (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
	Nil	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A] PROSECUTION :-**

<u>Sr. No.</u>	<u>Exhibit number</u>	<u>Description</u>
1	Exhibit P-19/PW1	Spot Panchanama
2	Exhibit P-21/PW2	Report
3	Exhibit P-22/PW2	Printed FIR
4	Exhibit P-23/PW2	Statement of the victim u/s 164 of the Cr.P.C.
5	Exhibit P-29/PW4	Information filled by Registrar in the Birth Report Namuna No.1
6	Exhibit P-30/PW4	Birth certificate of the victim
7	Exhibit P-38/PW7	Letter for school leave certificate
8	Exhibit P-39/PW7	School leaving certificate of the victim
9	Exhibit P-40/PW7	Extract of entry No.12103 of School General Register.
10	Exhibit P-42/PW7	Certified copy of school leaving certificate

		of the victim
11	Exhibit P-45/PW8	Letter for birth certificate.
12	Exhibit P-46/PW8	Letter for two wheeler information
13	Exhibit P-47/PW8	Letter from RTO office
14	Exhibit P-48/PW8	Muddemal receipt of two wheeler
15	Exhibit P-49/PW8	Letter for addition of section
16	Exhibit P-50/PW8	Letter for addition of section
17	Exhibit P-54/PW9	Letter to General hospital for treatment of the accused.

B] DEFENCE :-

<u>Sr. No.</u>	<u>Exhibit number</u>	<u>Description</u>
	Nil	

C] COURT EXHIBITS :-

<u>Sr. No.</u>	<u>Exhibit number</u>	<u>Description</u>
	Nil	

D] MATERIAL OBJECTS :-

<u>Sr. No.</u>	<u>Material Object Number</u>	<u>Description</u>
	Nil.	

ORAL JUDGMENT

(Delivered on 08 /11 /2024)

1. The accused herein has been facing the trial for the

offences punishable under Section 363 read with Section 511 and Section 354 of the Indian Penal Code, 1860 (Hereinafter referred to as 'the IPC' for short) and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (Hereinafter referred to as 'the POCSO Act' for short). With a view to suppress the identity of the victim child, the names of the victim and her father are being suppressed hereinunder, and they are being referred to as 'the victim' or 'PW2 victim' and 'PW2 Father', respectively, as the case may be.

2. The undisputed factual matrix is that the accused was present at the alleged scene of occurrence at Satana Naka, Malegaon, Dist. Nashik on the fateful date of the incident, i.e., on 11/08/2022, at the time of the alleged incident.
3. According to the prosecution, on that date, around 09:00 p.m., the mother of the victim sent the victim, aged about 17 years 5 months, for the purchase of spices at Satana Naka, by walk. The victim purchased spices from a grocery shop and was on the way to her house on foot. When she was about 50 feet away from her house on the road, the accused suddenly reached by scooter and he stopped the scooter in front of the victim. He caught hold the victim from her back side and pressed her mouth with his hand. He pressed her breast and attempted to kidnap her, by his scooter, by lifting her. The victim raised alarm, by shouting in Marathi language, "Mummy, Pappa Dhava-Dhava" (Mother, father rush-rush). She attempted to rescue herself, by pushing away the accused. The accused attempted to flee away by his scooter,

whereupon the victim pushed him, to prevent him from fleeing away. While the accused was trying to run away, the watchman, from the opposite building, namely, PW5 Sunil Kharat rushed there and nabbed the accused. In the mean time, the parents of the victim and their neighbours also reached over there. The name of the accused was asked for, whereupon he revealed his name. Thereafter, he was carried to Chavani police station, Malegaon.

4. The victim lodged a report with Chavani police station, Malegaon at 10:00 p.m., on the same day, on the strength of which, C.R.No.154/2002 came to be registered against the accused, for the offences punishable under Sections 363, 354, of the IPC and Section 8 of the POCSO Act.
5. PW9 Police Naik, Deepak Pimpalse, seized the bike, vide a seizure panchnama. He got the accused examined, by issuing a requisition. PW8 Police Sub Inspector Sunil Ahire investigated into the crime. He arrested the accused. He prepared a spot panchnama in the presence of panchas. He recorded the statements of witnesses. He collected the leaving certificate and the birth certificate of the victim. He collected the statement of the victim, recorded under Section 164 of the Cr.PC. He obtained the information in respect of the ownership of the bike. He added Sections 341 and 354D of the IPC. On the completion of investigation, he charge-sheeted the accused, for the offences punishable under Sections 363 354, 354A, 354D, 341 and 511 of the IPC and Section 8 of the POCSO Act.

6. The cognizance of the offences came to be taken. Charge came to be framed against the accused, for the offences punishable under Section 363 read with Section 511 and Section 354 of the IPC and Section 8 of the POCSO Act, which came to be read over and explained to the accused in vernacular, whereupon he pleaded to be not guilty, and preferred to face the trial.
7. The defence taken by the accused in his statement, recorded under section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.' for short) and the suggestions put the witnesses, examined by the prosecution, is that of total denial. It is his specific defence that he came to be falsely implicated, due to personal dispute with the victim. It is his further defence that quarrel took place between him and the watchman. There was the incident of beating the accused. Hence, the accused came to be falsely implicated.
8. Looking to the rival contentions taken by the prosecution as well as the defence, the following points cropped up for my determination, and I record my findings thereon, with the reasons to follow thereunder :

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the prosecution proved that the accused attempted to kidnap the victim minor girl, from out of keeping of her lawful guardian without the consent of her lawful guardian, by picking up the victim ?	In the Negative.

2. Whether the prosecution proved that the accused assaulted or used criminal force to the victim, intending to outrage or knowing it to be likely that he will thereby outrage her modesty ? In the affirmative.
3. Whether the prosecution proved that the accused committed sexual assault on the victim child, with sexual intent, which involved physical contact ? In the affirmative.
4. What order ? As per the final order.

REASONS

POINT NOS. 1 TO 3 :-

9. In order to substantiate the case of the prosecution, the prosecution examined 9 witnesses, and relied upon certain documents, whereas the accused did not lead any evidence. Before advertng to the testimonies of the witnesses, it would be more convenient to deal with the arguments advanced on behalf of the parties, and to consider the evidence in the light thereof.
10. It is submitted by Mr. M.S.Fulpagare, the learned APP for the prosecution, that PW1 Pancha's evidence on spot panchnama is unshaken. PW2 victim deposed about the incident and identified the accused. PW3 is the father of the victim, who stated that the accused was caught hold by a watchman. PW4 proved the date of birth of the victim. PW5 stated that he caught hold the accused.

PW6 stated about the seizure of the bike from the accused. PW7 stated the date of birth of the victim. The accused was present at the spot, as per the evidence on the record. He was beaten up, as the incident occurred. There is corroboration in the evidence. There is no reason to disbelieve the witnesses. He submitted that the prosecution proved its case.

11. *Per contra*, it is submitted by Mr. M.D.Hiray, the learned counsel for the accused, that there are different versions in the report and the statement recorded under Section 164 of the Cr.P.C., as to whether there was an attempt to kidnap or not. PW2 victim could not state, whether it was a scooty or scooter. No registration number is stated. It is not proved that the bike belonged to the accused, as its owner is not examined. She changed her versions repeatedly, due to which, she is not reliable. PW3 is not an eye witness to the incident. The timings of the spot panchnama stated by PW1 are different from the timings mentioned in the spot panchnama. There is nothing to show that PW5 was a watchman. It is not proved that the information at Exh. 29 was given by the victim, as the name of the victim is in different handwriting. The address of the victim, mentioned in the birth certificate is different. The date of birth of the victim is not mentioned in the leaving certificate, on the basis of birth certificate. The age of the victim is not proved. The accused was beaten up, as per the investigating officer. It was an incident of beating only, but a different colour was given to it. The accused came to be falsely implicated. The accused may be acquitted, as the prosecution failed to prove its

case.

12. Now, coming to the evidence on the record. Before dealing with the testimonies of the star witnesses, examined by the prosecution, it would be convenient to deal with the other evidence on the record.
13. PW1 Anil Thakare is a spot panch, who testified that the informant showed the spot of incident, whereupon the police prepared the panchnama Exh.19 and drew a map. He denied the relevant adverse suggestions put to him in the cross-examination. There is no substance in the submission made by the ld. counsel for the accused that this witness must have stated the correct time of spot panchnama, as mentioned in the spot panchnama. To my view, the time of spot panchnama is not material, nor does it have any bearing on the incident in question.
14. PW6 Krushna Mohite stated that the police seized a bike, namely, Activa from the accused, vide the panchnama Exh.34. He too denied the relevant adverse suggestions put to him in the cross-examination.
15. PW9 Police Naik, Deepak Pimpalse stated that he registered the crime, while acting as the PSO on the relevant date. He seized the bike, vide the panchnama Exh.34. He issued a requisition Exh.54 for the medical examination of the accused, in respect of beating. He admitted in his cross-examination that the bike was not seized from the accused. He denied the other relevant adverse suggestions put to him in the cross-examination.

16. PW8 PSI Sunil Ahire stated that he prepared the spot panchnama Exh.19. He arrested the accused. He recorded the statements of witnesses. He collected documents in respect of the age of the victim. He collected other documents, also. He charge-sheeted the accused, upon the completion of the investigation. He denied the suggestion put to him in the cross-examination that no incident took place, as alleged, and that, the incident was pertaining to beating the accused.

17. The deposition of PW8 PSI Sunil Ahire, the investigating officer, is of formal character.

18. PW4 Abdul Sabur Abdul Kahlid testified in his examination-in-chief that he was working with Municipal Corporation, Malegaon. There was an entry with the Municipal Corporation in respect of the birth of the victim, thereby showing her date of birth to be 16/02/2005. The said entry came to be taken in the register, maintained by the Municipal Corporation on 17/02/2005. The copy of the said information is at Exh.29, whereas the birth certificate of the victim is at Exh.30.

He admitted in his cross-examination that the name of the victim was mentioned in Exh.29 with a different pen in a different handwriting. He admitted that two registration numbers are mentioned in Exh.29, but he did not bring the documents in respect of one of those registration numbers. He admitted that as the name of the victim is not mentioned in Exh.29 in handwriting, he is unable to state as to whether the birth certificate pertains to

the victim or not.

19. From the testimony of PW4 Abdul Sabur, it can be seen that there is an entry, thereby mentioning the particular date of birth, with the Municipal Corporation. The said document at Exh.29 shows the names of the parents of the victim. It is not the contention of the accused that they are not the parents of the victim. The only thing, which is sought to be objected to, is that the name of the victim came to be written therein in different handwriting. It is a matter of common understanding that no child is named immediately upon the birth, due to which, the entry in respect of the name of child has to be taken subsequently. The only thing is that the date of taking the entry in respect of the name of the victim in Exh. 29 is not mentioned. In that connection, it would be apposite to consider the testimony of PW7 Shobha More.

20. PW7 Shobha More deposed in her examination-in-chief that she has been working with Sou. Rukhminibai Zumbarlal Kakani Girls School, Malegaon. She issued the leaving certificate of the victim at Exh.39, showing the date of birth of the victim to be 16/02/2005. She stated that the date of birth of the victim in the general register of the school at Exh.40 is also the same.

She admitted in her cross-examination that the entry in the general register was taken on the basis of the certificate issued by the previous school, in which the victim studied. She stated in her re-examination that Exh.42 is the true copy of the leaving certificate issued by the previous school. She stated in her further

cross-examination that she was unable to state as to whether the contents of Exh.42 are true or false.

21. From the testimony of PW7 Shobha More, it becomes crystal clear that the date of birth existed in the school record of the victim is 16/02/2005 itself, which is in consonance with the date of birth, mentioned in the record of Municipal Corporation. Thus, the date of birth mentioned in the record of Municipal Corporation, by mentioning the name of the victim therein, is duly corroborated by her date of birth mentioned in the school record. Thus, it is seen that, it is not the case that the record in respect of date of birth of the victim was newly prepared. PW3 father also stated the date of birth of the victim to be 16/02/2005. The victim appears to be 17 years and around 6 months old at the time of incident. I am in agreement with the submission made by the Id. APP that the age of the victim is proved. There is no substance in the submission made on behalf of the accused that it is not proved that the information Exh.29 pertains to the victim. There is no substance in his next submission that there should not have been a different address of the victim in the birth certificate, for the simple reason that no suggestion came to be put to any of the witnesses that the said address did not belong to the victim. There is no substance in his next submission that the date of birth must have been mentioned in the leaving certificate, on the basis of birth certificate. *Per contra*, it is seen that the school record was maintained with the particular date of birth, which appears to be the date of birth of the child of the parents of the victim, as

maintained by the Municipal Corporation, thereby giving rise to a safe inference that the said date of birth belonged to the victim. There is no substance in his submission that the age of the victim is not proved.

22. PW2 victim stated in her examination-in-chief that on 11/08/2022 at 09:00 p.m., while she was about 50 to 60 feet away from her residence, a boy stopped his scooty in front of her. He pressed her mouth with one hand and pressed her breast with another hand. He attempted to make the victim to sit on the bike, by lifting her. The victim pushed him away. He attempted to flee away by his scooty, whereupon the victim applied the brake of the bike. That boy started running away towards the opposite building. The watchman of that building caught hold of him. The victim raised an alarm for her parents. People gathered over there. Her parents carried the boy to the police station. She stated about the lodging of the report Exh.21 and the FIR at Exh.22 with the police. She identified the accused before this court, to be the said boy. She stated that she gave the statement Exh.23 before the Magistrate.

In the cross-examination, she showed her inability to state the registration number of the scooty. She stated that she was confused as to whether it was a scooter or a scooty. She denied the suggestion that there was personal dispute between the accused and her and that, the accused came to be falsely implicated due to the same. She denied the other relevant suggestions also.

23. It is seen from the testimony of the victim that she stated

in her evidence that the accused pressed her mouth and breast, and attempted to make the victim sit on his bike, by lifting her. Her testimony could not be shattered in the cross-examination. The testimony of the victim is quite natural, clear and convincing, which inspires the confidence of this court. There is no plausible reason for her to depose falsely against the accused. There is absolutely no suggestion put to the victim, as to what was the alleged personal dispute between the victim and the accused, so as to clarify the gravity thereof, so as to enable this court to conclude as to whether the alleged personal dispute was so grave, as to cause the victim to implicate the accused falsely, by leveling the serious allegations, as levelled. It can be seen that the testimony of the victim is duly corroborated by the report lodged by her with the police at Exh.21, promptly on the date of the incident, as to the material facts deposed to by her. That apart, her testimony duly gets corroborated by her statement Exh.23, recorded by the Magistrate, under Section 164 of the Cr.P.C., as regards the material facts of pressing of her mouth and breast. I am in agreement with the submission made by the ld. counsel for the accused that the victim did not state about an attempt to kidnap her, in her statement Exh.23, recorded by the Magistrate. There is no substance in the next submission made by the ld. counsel for the accused that the victim must have stated whether it was a scooty or scooter, including its registration number. It is not unusual for a child to get confused, as to whether a bike is a scooter or a scooty, more particularly when the child steps into the witness box after the lapse of one year, for the simple reason that a

scooty and a scooter somewhat look alike, except the distinguishing factor of being either with or without gear, as the case may be. There is no substance in his next submission that the owner of the bike should have been examined, to prove that the bike belonged to the accused. There is no substance in his next submission that the victim changed her version repeatedly and that she is not reliable.

24. The testimony of the victim gets corroboration to certain extent from the testimony of PW3 father, who stated that, while the victim was returning back from a shop to her residence on foot, he heard her shouts, as “Mummy-Mummy, Pappa-Pappa”. He and his family members rushed out of the house. The accused was nabbed by the watchman of the opposite building. The victim narrated the incident to him, as deposed to by her before this court. The accused revealed his name and address, on being questioned. He identified the accused before this court.

He admitted the suggestion in his cross-examination that the accused was nabbed by PW5 watchman Sunil Kharat. He admitted that the entire incident was over at that time. He denied the suggestion that, as quarrel had taken place between watchman Sunil Kharat and the accused, the accused was nabbed by him. He denied the other relevant adverse suggestions put to him.

25. It is seen that the testimony of PW3 father could not be shaken in the cross-examination, as to the material particulars deposed to by him. It is further seen that a different suggestion

came to be put to PW3 father, than the one put to PW2 victim, for suggesting the reason for the alleged false implication, to which I shall be coming in the forthcoming paragraphs.

26. The testimony of the victim is further corroborated by PW5 Sunil Kharat, who deposed in his evidence that he used to work as a watchman, in the building, namely, Anand Heights. On 11/08/2022, around 09:30 p.m., he heard the shouts of a girl, whereafter he caught hold of a boy. The parents of the girls also rushed over there, whereupon he handed over that boy to the father of the girl. He identified the accused, to be the said boy, before this court.

He stated in his cross-examination that he does not have any document at all, to show that he used to work at Anand Heights. He admitted the suggestion that as it was dark, he could not identify that boy. He denied the other relevant adverse suggestions put to him.

27. It is seen from the testimony of PW5 Sunil Kharat also that the same could not be shattered, as to the material particulars deposed by him, to the extent of raising of alarm by the victim and the nabbing of the accused by him. Even otherwise, the presence of the accused at the scene of occurrence and the nabbing of the accused by this witness has not been disputed to, in the light of the suggestion put to PW3 father, that the accused was nabbed by this witness. It is worthwhile to mention here that although a suggestion came to be put to PW3 father that quarrel took place

between the accused and PW5 watchman Sunil Kharat, no suggestion came to be put to PW5 Sunil Kharat, in that regard, which would *per se* reflect that a false suggestion was put to PW3 father.

28. There is absolutely no consistency in the different defences taken by the accused. His defence in the suggestion put to PW2 victim is the existence of personal dispute between him and the victim, whereas his defence in the suggestions put to PW3 father is the occurrence of quarrel between the accused and the watchman, whereas his defence in the suggestions put to PW8 PSI Sunil Ahire is that there was the incident of beating only. Thus, the accused himself does not appear to be firm on his defence, due to which, the different defences taken by him appear to be afterthought. One more thing, that cannot be lost sight of, is that the accused could not offer any explanation in his statement, recorded under Section 313 of the Cr.P.C., as to why the witnesses deposed against him. No reason for the victim, her father and the watchman to depose falsely against the accused is forthcoming on the record. I am in agreement with the submission made by the ld. APP that the testimony of the victim gets corroboration from the other witnesses. I am in agreement with his next submission that there was no reason to disbelieve the witnesses. I am not in agreement with the submission made by the ld. counsel for the accused that it must have been proved, by producing documentary evidence, that PW5 Sunil Kharat was a watchman. In fact, the same is not either fact in issue or a relevant fact, which is required to be proved, by

leading some cogent evidence. I am not in agreement with his next submission that a different colour was given to the incident of beating to the accused and that, the accused was falsely implicated.

29. Though, PW2 victim is a trustworthy witness and though she stated that the accused attempted to make her sit on his bike, by lifting her, it cannot be concluded that it was an attempt to kidnap her, for the simple reason that no prudent person can expect a single person to kidnap another on a bike, more particularly, when the kidnapping of person would require the person to be kidnapped to be caught hold at least with one hand, if not with both the hands. For the ridding of the bike, the said person is required to use both the hands, for operating its brake or clutch, as the case may be, with one hand, and for operating its accelerator with another hand. Hence, though the victim pursued it to be an attempt to kidnap her, it cannot be said to be an attempt to kidnap the victim, by any stretch of imaginations. That apart, the *factum* of lifting of the victim, so as to render her to sit on the bike, was not stated by the victim before the Magistrate, recording her statement under Section 164 of the Cr.PC. In the light of these observations, I do not have any hesitation in holding that the prosecution miserably failed to prove that the accused attempted to kidnap the victim, which is an offence punishable under Section 363 read with Section 511 of the IPC.

30. From the forgoing discussion, the prosecution proved it beyond every reasonable doubt that the accused used criminal

force to the victim, obviously with the intention of outraging her modesty or at least knowing it to be likely that he would thereby outrage her modesty, and thus, the prosecution proved that the accused committed the offence punishable under Section 354 of the IPC. Moreover, the prosecution proved the commission of offence of sexual assault, punishable under Section 8 of the POCSO Act against the accused beyond every reasonable doubt, as the accused pressed the breast of the victim, which shows an obvious sexual intent, apart from the presumption, as envisaged under Section 29 of the POCSO Act.

31. In the light of the foregoing observations, I answered the point No.1 in the negative, and the point nos.2 and 3 in the affirmative.
32. As per section 42 of the POCSO Act, the accused is liable to punishment, only under the law, which provides for the punishment, which is greater in degree. Section 354 of the IPC does not provide for punishment greater than, as provided for by section 8 of the POCSO Act. Hence, the accused deserves to be punished, under section 8 of the POCSO Act, only.
33. I take a pause for hearing the accused on the question of sentence.

Date : 08/11/2024
Place : Malegaon

(S.U. Baghele)
Special Judge, Malegaon.

POINT NO. 4 :-

34. Heard the accused, his learned counsel and the learned APP, on the question of sentence. It is submitted by the accused that he has to maintain his mother. His elder brother is mentally affected. He submitted that minimum punishment may be awarded. On the questions put by this Court, the accused stated that he is performing labour work in a hotel and earning wages to the tune of Rs.8000/- per month. He does not own any property. Mr. H. V. Hiray, the ld. counsel for the accused, submitted that minimum sentence may be awarded, by considering the age of the accused to be between 23 to 24 years and also considering that he has got the responsibility to maintain his entire family and there is no other offence registered against him. It is submitted by Mr. M. S. Fulpagare, the ld. APP, that the accused outraged the modesty of a schooling going girl. He caused irreparable loss to her mental health. He submitted that maximum punishment may be awarded and compensation be granted to the victim.

35. In the case at hand, the accused took the disadvantage of a vulnerable child and assaulted her sexually, in-discriminatory, while the accused found the victim on the road at night. It is needless to mention about the psychological impact, which would occur permanently on the mind of the victim. The offence is very serious in nature. The accused does not deserve any leniency on the grounds put forth. He deserves the maximum punishment, as provided for. The victim deserves to be compensated, in consonance with the income of the accused. Thus, reasonable fine

amount needs to be directed, from out of which, compensation can be granted. Thus, I proceed to pass the following order :-

ORDER

1. The accused, namely, Sahil Naval Mali, is hereby acquitted of the offence punishable under Section 363 read with Section 511 of the Indian Penal Code, 1860, vide Section 235 of the Code of Criminal Procedure, 1973.
2. The accused is hereby convicted of the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012, vide Section 235 of the Code of Criminal Procedure, 1973, and is hereby sentenced to undergo rigorous imprisonment for a term of five years, and is further sentenced to pay fine of Rs.5,000/- (Rs. Five Thousand only), and in the case of default in the payment thereof, to undergo further rigorous imprisonment for a term of two months.
3. The accused is hereby convicted of the offence punishable under Section 354 of the Indian Penal Code, 1860, vide Section 235 of the Code of Criminal Procedure, 1973. However, no separate punishment is being awarded, in view of Section 42 of the POCSO Act.
4. The accused shall be entitled to set off under Section 428 of the Code of Criminal Procedure, 1973, in respect of the period of detention undergone by him.

5. If the fine amount is deposited in the Court, the same be paid to the victim, towards compensation, after the lapse of period of appeal.
6. The Muddemal property, i.e., one black colour Activa scooter, bearing registration No.MH-41-L-2275, be returned to its owner after the lapse of period of appeal.
7. An authenticated copy of this Judgment be provided to the accused, free of cost, immediately.
8. An authenticated copy of this Judgment be sent to the Collector, for information.

Date : 08/11/2024
Place : Malegaon

(S.U. Baghele)
Special Judge, Malegaon.