

Exh.No. 18.

Presented on : 24.01.2020

Registered on : 24.01.2020

Decided on : 08.02.2021

Duration : Y : M : D.
01 : 00 : 12**IN THE THE COURT OF FAST TRACK SPECIAL COURT,
PUNE AT PUNE**

(Presided over by Shri K. K. Jahagirdar).

Spl. Case (POCSO) No. 59 of 2020.The State of Maharashtra,
Through Jejuri Police Station, Pune
District Pune.

}

COMPLAINANT

vs.

Anil Rajendra Limbhore.
Age : 24 years, Occupation : Labour.
Resident of : Shivari, Taluka Purandar,
District Pune.

}

ACCUSED

Charge :- Under Section 354-A of the Indian Penal Code and under Sections 8 of the Protection of Children from Sexual Offences Act, 2012.

Advocates :-

Smt. A. S. Bahme, learned A.P.P. for the State.

Shri P. R. Kale, learned Advocate for accused.

J U D G M E N T(Delivered on this 8th the day of February, 2021.)

1. Accused Anil Rajendra Limbhore is charge-sheeted with the allegation of committing offence punishable under Section 354-A of the Indian Penal Code and offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012.

2. It is the case of prosecution that victim is residing at Walunj, Taluka Purandar, District Pune. In the year 2019 she was taking education at Shankarrao Mukutrao Kamthe Jr. College. Every day she was going to college by walk from rough road situated near the field of Sahebrao Kamthe. The birth date of victim is 08.06.2003. On 08.11.2019 at about 2:45 p.m. the victim was returning from school towards the house. When she came near the field of Sahebrao Kamthe by walk, at that time accused came from her backside and caught hold of hand of victim saying that he wants to talk with her. Thereafter victim shouted and got rescued her hand and rushed to the house. She narrated the incident to her mother. When she returned to house she was under fear. Thereafter victim and her mother had been to the police station and victim lodged complaint. Police registered FIR at C.R.No.328/2019. The investigation was handed over to P.S.I. Nandkumar Sonwalkar. The investigating officer investigated the crime and found that there is sufficient evidence against accused about committing offence punishable under Section 354-A of the Indian Penal Code and under Section 8 of the Protection of Children from Sexual Offences

Act, 2012. He arrested accused and then filed charge-sheet in the Court.

3. Charge is framed against accused below Exh.3 for offence punishable under Section 354-A of the Indian Penal Code and for offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012. The contents of charge are read over and explained to accused in vernacular to which he pleaded not guilty and claimed to be tried.

4. Prosecution has examined in all four witnesses and closed the evidence by filing pursis at Exh.16. After completion of evidence, I have recorded statement of accused under Section 313 of Cr.P.C. at Exh.17. The defence of accused is that due to dispute with Pramila Kolhe on account of throwing garbage in the stream, false case is filed. Accused has contended that he has not committed any offence, he is innocent and prayed for acquittal.

5. After hearing submissions of both the sides, following points arise for my determination and I have recorded my findings against each of them for the reasons given below :-

<u>Points</u>	<u>Findings.</u>
1 Does prosecution prove that on 08.11.2019 at about 3:00 p.m. near the field of Sahebrao Kamthe situated at Walunj to Walunj Fata on road accused caught hold of hand of victim a minor girl intending to outrage her modesty and committed sexual harassment ?	Proved
2 Does prosecution further prove that on	

	the above date, time and place accused committed sexual assault on victim a minor girl ?	Proved
3	What order ?	Accused is convicted.

Reasons

As to all points:-

6. It is the case of prosecution that on 08.11.2019 at about 2:45 p.m. victim was returning to the house from school by walk on road near the field of Saheberao Kamthe. At that time accused came from back side and caught hold hand of victim. The victim shouted. Thereafter PW-3 Shivaji Baban came there. Accused also stated victim that he wants to talk with her. When accused saw PW-3 Shivaji Baban, he went away. The victim was under fear and she immediately rushed to house and narrated the incident to her mother. Victim has lodged complaint to the police station and then this case is filed

7. In order to prove the case, prosecution has examined in all four witnesses i.e. victim as PW-1 at Exh.5, victim's mother Pramila Kolhe as PW-2 at Exh.10, Shivaji Baban as PW-3 at Exh12 and lastly investigating officer Nandkumar Sonwalkar as PW4 at Exh.13.

8. PW-1 victim has fully supported case of prosecution. She has stated that in the year 2019 she was taking education at Shankarrao Mukutrao Kamthe Jr. College in 11th std. On

08.11.2019 at about 2:45 pm when she was returning back to house from college, near the field of Sahebrao Kamthe accused came there from backside and caught hold of hand of victim and stated that he wants to talk with her. Victim afraid of and shouted for help. Thereafter victim got herself rescued from the hands of accused and rushed towards house and narrated incident to her mother. Thereafter victim has lodged complaint to police station. The complaint is at Exh.7 and printed FIR is at Exh.8. The statement of victim under Section 164 of Cr.P.C. is also recorded by the Magistrate which is filed at Exh.9. In the complaint as well as in the statement under Section 164 of Cr.P.C. victim has clearly stated that accused came behind her and caught hold of her hand and stated that he wants to talk with her. During cross-examination there is nothing come on record against prosecution. The version of victim is not at all damaged during cross-examination. During cross-examination, learned Advocate for accused has asked only about distance between school and house, spot and house etc. Nowhere it is suggested that why false case is filed against accused. There is no enmity for filing false case against accused. Even no reason is suggested for filing false complaint by complainant. The version of complainant is fully supported the case of prosecution. Her version is not at all damaged in any way during recording entire evidence, therefore, there is no reason to disbelieve this witness as she is trustworthy witness. This witness is victim and eye witness of the incident. There is no reason for victim to depose falsely against accused and filed false complaint against him. Therefore, this witness is very important and reliable to base conviction of accused.

9. Prosecution has examined complainant's mother Pramila Kolhe as PW-2 at Exh.10. She has deposed before the Court that on 08.11.2019 victim came back to the house from school. She was in frightened condition and she stated to her mother that when she returned to home, in the way accused came from back side and caught hold of her hand and outraged her modesty. Victim shouted for help and thereafter she got herself rescued from the hand of accused and rushed to house. During cross-examination there is only one suggestion that there is some dispute between her and accused, but it is not disclosed what is the dispute and what is the reason for dispute. Only in one line it is simply suggested that there is dispute between accused and PW-2 prior to incident which is not sufficient to discard the evidence of PW-2. Though PW-2 Pramila Kolhe is hear say witness, but being the mother of victim, victim has firstly disclosed about the incident to her and thereafter PW-2 took victim to the police station where victim has lodged complaint. The version of this witness is also not damaged during cross-examination. Therefore, there is no reason to disbelieve this witness. The spot panchnama is filed at Exh.11 which is admitted by accused, therefore, it is stated to be proved.

10. Prosecution has further examined PW-3 Shivaji Tamhane . He has clearly stated that at the time of incident he was working in the field. He heard shouting of victim, therefore, he rushed towards spot. At that time he saw accused holding hand of victim. When accused saw PW-3 Shivaji, he went away from the

spot. Thereafter victim went back to her house and this witness also returned back on his work. So far the cross-examination of this witness is concerned, accused has asked only about the distance from various places. Thereafter it is tried to suggest that the land of victim's father is situated near the stream and chicken shop of accused is situated near the field of father of victim. It is also tried to suggest that accused used to throw garbage in the stream and on that count there was quarrel between accused and Kolhe for one or two times, therefore, false case is filed by the father of victim through victim. It is also suggested that there is good relations between victim's family and family of PW-3 Shivaji Baban. On the day of incident at evening PW-3 Shivaji has visited the house of victim and also discussed about incident and thereafter he has given statement before police. Admittedly PW-3 is neighbor of victim and they have good relations, therefore, there is every possibility of visiting the house of victim by PW-3 Shivaji. But it does not mean that PW-3 Shivaji is deposing falsely. There is also no enmity or cross terms between accused and PW-3. There is no any reason for PW-3 to depose against accused. The evidence of PW-3 is fully supported case of prosecution and it corroborates the evidence of victim PW-1. The evidence of PW-1 to PW-3 is strong and sufficient to prove the case against accused.

11. Prosecution has examined investigating officer PSI Sonwalkar. He has stated that the crime was registered against accused at C.R.No.328/2019 and handed over to him for investigation. He arrested accused on 08.11.2019. Thereafter he

has prepared spot panchnama below Exh.14, and recorded statements of witnesses. The victim was sent to Magistrate for recording her statement under Section 164 of Cr.P.C.. He has also collected birth certificate of victim and also school certificate. After investigation he has filed charge-sheet against accused in the Court.

12. Learned Advocate for accused has submitted that PW-3 is an interested witness and not eye witness of the case. In this case it is submitted that PW-3 has good relation with the victim's family members. He is neighbour of victim, therefore, he is not reliable witness. But the learned Advocate for accused has not suggested why this witness is deposing falsely against accused though he is knowing the family of victim and is a neighbour, it is not the reason to discard his evidence. There must be some suggestion or some reason to depose against accused in the Court. In this case PW-3 has clearly stated that he is having land situated at the distance of 500 feet from the spot of incident. At the time of incident he was working in his field and he heard shouting of the victim and rushed towards the spot. This fact was not denied during cross-examination. Learned Advocate for accused has submitted that PW-2 Pramila is hear say witness and she cannot be relied upon, But she is the first witness to whom victim has narrated the incident. There is no reason to disbelieve her. Learned Advocate for accused has not made any submission about PW-1 victim. He has submitted that the victim has not disclosed that which hand i.e. left or right was caught hold by accused, but that is not the question. He can also not asked said question during cross-examination of the victim.

No single suggestion was given for deposing falsely against accused. Neither there is any enmity nor any dispute, nothing. What is the reason for victim to file false case against accused. Considering all these facts it is clear that the version of victim is most reliable and trustworthy and conviction can be based on the evidence of victim alone. Hear in this case PW-3 is an independent witness and he has fully supported the case of prosecution.

13. So far the age of victim is concerned, birth certificate is filed at Exh.6 in which date of birth of victim is shown as 08.06.2003. Thus, victim is proved to be below 18 years. At the time of incident the age of victim was 16 years and 4 months. This certificate was not challenged. No where the defence has submitted that this is the false certificate of victim etc. The statement of victim was recorded by the Magistrate which is filed below Exh.9. In that statement also she has clearly stated that accused came from back side and caught hold of the hand of victim and saying that he wanted to talk with her which is absolutely consistent with the complaint filed on record and thirdly victim has deposed in the Court as per contents of complaint and her statement recorded by Magistrate under Section 164 of Cr.P.C.. The evidence of PW-1 is also consistent , reliable and trustworthy.

14. Learned Advocate for accused has further submitted that no independent witness is examined. There is possibility of presence of student of the school returning to the house at the time of incident, but no such student is examined by the prosecution. But

in this case it is not brought on record that whether at the time of incident students were present, they have seen the incident, but their statements were not recorded by the police nor they were produced in the Court as witness. Generally such act i.e. outraging modesty would be happened when victim found alone. Accused cannot dare to touch the victim when the victim was present along with so many person. Considering these facts it is clear that at the time of incident except PW-3 no other independent witness is available. The victim was shouted and it was heard by the PW-3 and immediately he rushed to the spot and saw accused holding the hand of victim. When the accused saw PW-3, he left the spot. All this evidence on record is sufficient to prove the case against accused beyond shadow of doubt. The prosecution has proved the case against accused beyond shadow of doubt, therefore, accused is liable to be convicted for committing offence punishable under Section 354-A of the Indian Penal Code and offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012.

15. As the case is proved by the prosecution against accused, therefore, he is liable to be punished for the offence punishable under Section Section 354-A of the Indian Penal Code and offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012, therefore, I heard the accused on the point of sentence.

16 He has stated that he is coming from poor family. He is only earning member in the family. His parents are old aged persons, therefore, lenient view may be taken. I also heard learned Advocate for accused. He has submitted that minimum sentence may be awarded. I heard learned A.P.P. on the point of sentence. She has submitted that maximum sentence may be awarded.

17. After hearing submissions of both the parties and accused, it is found that accused is coming from poor family and he is only bread earner of his family. Considering all these facts and circumstances, accused is entitled to lenient view. The punishment provided for offence punishable under Section 8 is not less than three years, but up to five years. Punishment provided for offence punishable under Section 354-A is also less. As per law at least minimum three years sentence is to be awarded, therefore, I sentenced the accused to under go R.I. for three months. In the result, I pass following order.

Order

- i) Accused Anil Rajendra Limbhore is hereby convicted for committing offence punishable under Section 354-A of the Indian Penal Code and offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012.
- ii) Accused Anil Rajendra Limbhore is sentenced to suffer rigorous imprisonment for three years and to pay a fine

of Rs.5000/- (Rupees Five Thousand) i/d to suffer simple imprisonment for three months.

- iii) The accused is directed to surrender his bail bond.
- iv) The fine amount of Rs.5000/- (Rupees Five Thousand), if deposited, be paid to victim after appeal period is over.
- v] Accused is entitled to benefit of set off for his judicial custody period, if any.
- v) Copy of judgment be given to accused free of costs.

Dictated and pronounced in open Court.

Date:-08.02.2021.

(K. K. Jahagirdar)
Extra Jt. Addl. Sessions Judge,
Pune.

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

Name of the Stenographer	:K.D.Pawar.
Name of the Court	: Shri K.K. Jahagirdar. : Fast Track Special Court, : Court, Pune.
Date of Judgment	: 08.02.2021
Judgment signed by the P.O.	: 08.02.2021
Judgment uploaded on	: 08.02.2021

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Advocates :-

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OPERATIVE ORDER

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 - vi) Copy of judgment be given to accused free of costs.
- Dictated and pronounced in open Court.

Date:-08.02.2021.

(K. K. Jahagirdar)
Extra Jt. Addl. Sessions Judge,
Pune.