

MHPU01-006579-2023



Received on : 31/03/2023
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 Decided on : 07/02/2023
 Duration : 00 Y. 10 M. 07 D.

Exhibit No. 20

IN THE COURT OF SESSIONS JUDGE, PUNE
 (Presided over by D.V. Kashyap, Addl. Sessions Judge)

SPL. (POCSO) CASE NO. 323/2023

(Crime No. 30/2023, Police Station Samarth)

PROSECUTION .. The State of Maharashtra, through Police Station Officer, Samarth Police Station, Pune.

REPRESENTED BY.. Shri Javed Khan, Addl. Public Prosecutor.

ACCUSED .. Yash Krushna Mohite,
 Age 20 yrs, Occu. Education,
 R/at. 77, Mangalwar Peth, Parge Chowk,
 near Swarupvardhini, Pune 411 011.

REPRESENTED BY.. Shri J.J. Bhosale, advocate for the accused.

Part 'B'

Date of Offence	..	29/01/2023
Date of FIR	..	30/01/2023
Date of Charge-sheet	..	31/03/2023
Date of Framing of Charges	..	13/04/2023
Date of commencement of evidence	..	27/09/2023
Date on which judgment is reserved	..	07/02/2024
Date of the Judgment	..	07/02/2024
Date of the Sentencing Order, if any	..	No.

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 the trial for purpose of Section 428 Cr.P.C.
1)	Yash Krushna Mohite	02/02/2023	03/03/2023	Sec. 363 & 376(2)(n) of IPC and Sec.6 of POCSO Act.	Acquitted	No	No

JUDGMENT**(Delivered on 07th February 2024)**

The accused is charged of the offences punishable under Sections 363 and 376(2)(n) of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and Section 6 of the Protection of Children from Sexual Offences Act (hereinafter referred as “POCSO Act”).

2) Brief facts of the prosecution case are that, on 30/01/2023 child victim’s mother approached police station Samarth, Pune and stated that her daughter, born on 11/04/2005, was in F.Y.B.B.A.C.A. in Desai College, Pune. On 29/01/2023 at 11.00 a.m. her daughter told her that she was going to attend threading ceremony at Mulshi and left the home. When she was contacted on her mobile, it was switched off. She was searched but did not find. It revealed that she was kidnapped

by somebody so she gave information. On her information crime no. 30/2023 was registered under Section 363 of the IPC and its investigation was entrusted to PSI Deepak Yadav.

3) During the investigation, it surfaced that the victim was in the company of the accused. They were apprehended from Gulbarga. Victim's statement was recorded and she was medically examined. It was told by the victim that the accused did penetrative sexual assault on her before one month at her house when she was alone. Thus, Sections under IPC and POSCO Act were added in the crime and the investigation was made in that direction. After completion of the investigation, the accused was charge-sheeted.

4) Charge is framed against the accused at **Exh. 04** on 13/04/2023 under Section 363 of the IPC, Section 6 of the POCSO Act and and 376(2)(n) of the IPC. The accused pleaded innocence and claimed trial.

5) The prosecution has examined two witnesses i.e. the victim and the informant to prove the charges. Statement of the accused under Section 313 of the IPC was recorded at exh. 19. The accused raised defence of total denial.

6) Heard learned APP Shri Javed Khan and learned advocate Shri Gopal Bhosale for the accused.

7) Following points arise for my determination and I have recorded my findings as under.

POINTS**FINDINGS**

1)	Does the prosecution prove that, on 29/01/2023 at 11.00 a.m. the accused kidnapped the victim from lawful guardianship of her parents ?	No.
2)	Does the prosecution further prove that, one month before 02/02/2022 and more than once before that the accused did penetrative sexual assault on the child victim ?	No.
3)	Does the prosecution further prove that, one month before 02/02/2022 and before that the accused repeatedly committed rape on the victim girl ?	No.
4)	What order ?	As per final order.

REASONS FOR FINDING

8) In support of its case, the prosecution has examined following witnesses :-

Sr. No.	P.W. No.	Name of witness	Exh. No.
1	1	Child Victim	07
2	2	First informant (mother of the victim)	10

9) The defence has not disputed following documents-

Sr. No.	Description of documents	Admitted	Exhibit No.
	NIL		

10) Following documents are proved during the evidence of witnesses -

Sr. No.	Description of documents	Proved by PW No.	Exhibit No.
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1)	Complaint	2	11
2)	FIR	2	12
3)	Birth certificate of the victim	2	13
4)	Statement u/s 164 of Cr.P.C. of victim	2	14

11) The Articles marked during trial by the prosecution as under :-

Sr. No.	Description of documents	Proved by PW No.	Articles
	NIL		

POINTS 1 to 3 :-

12) All the points are discussed together to avoid recurrence of evidence.

13) For Section 363 of the IPC and Section 6 of the POCSO Act, the prosecution has to prove that on the day of incident the victim was below 18 years i.e. child within the meaning of Section 1(d) of the POCSO Act. In the instant case, the victim has not stated about her date of birth. she was subjected to questions as per Section 154 of the Evidence Act. She showed her unawareness about her date of birth. Her mother stated in her evidence that her daughter born on 11/04/2005. She proved date of birth of the child victim by stating about birth certificate at exh. 13. Being a public document, the date of birth mentioned in this certificate needs to be accepted. This certificate shows that the victim was born on 11/04/2005. On the day of incident i.e. when she was allegedly kidnapped on 29/01/2023 and subjected to penetrative sexual assault for more than once before that, she was child within the meaning of Section 1(d) of the POCSO Act.

14) Neither the child victim nor her mother have stated anything about the accused that he kidnapped the child victim and subjected her to penetrative sexual assault for more than once. They both were subjected to questions as per Section 154 of the Evidence Act but they did not admit any of the suggestions put to them. The prosecution succeeded in proving victim's statement recorded under Section 164 of the Code of Criminal Procedure. It was marked as exh.14.

15) During the course of arguments, learned advocate for the accused submitted that statement of the victim at exh. 14 cannot be treated as substantive piece of evidence because the victim has not stated anything before the court. He further submitted that statement of the victim at exh. 14 can be used only for the purpose of corroboration to the victim's evidence. This argument needs consideration because the victim has disowned her statement before the police stated nothing against the accused during her examination in chief and during her questioning as per Section 154 of the Evidence Act. In absence of the same her statement at exh. 14, which was recorded as per Section 164 of the Code of Criminal Procedure, cannot be used against accused to base his conviction.

16) During the evidences of the victim and her mother, it transpired that the victim married to the accused after the incident and this may be a reason for the witnesses to abstain themselves from stating anything against the accused, who is now husband of the victim and son-in-law of the informant. In absence of any credible evidence for the charge framed against the accused, this court comes to the conclusion that he needs to be acquitted. This results in answering

points 1 to 3 in the negative. In answer to point no. 4, following order is passed.

ORDER

1) Accused viz : Yash Krushna Mohite is acquitted vide Sec. 235 (1) of the Code of Criminal Procedure of the offence punishable under Section 363 of the Indian Penal Code and Section 6 of the POCSO Act and Section 376(2)(n) of the Indian Penal Code.

2) His personal bond stands cancelled and surety is discharged.

3) Accused to furnish personal bail bond of Rs. 15,000/- and surety in like amount in compliance of Section 437-A of the Code of Criminal Procedure.

4) The seized muddemal property i.e. four clothes of the child victim and three clothes of the accused, be destroyed after one year from the date of this judgment, if no notice of appeal is received from the Hon'ble Appellate Court as per Chapter VI, paragraph 73(1)(d) of Criminal Manual.

5) Dictated and pronounced in open court.

Pune.
Date: 07/02/2024

Sd/-xxx
(D.V. Kashyap)
Additional Sessions Judge, Pune.