Judgment

Exh-. IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM

SEXUAL OFFENCES ACT, 2012 AT FORT, GR. BOMBAY

POCSO CASE NO. 449 OF 2020 (CNR : MHCC02-006322-2020)

Registered on Presented on Decided on Duration

The State of Maharashtra
(At the instance of Nirmal Nagar Police Station in C. R. No.).

Versus
Umesh Anandsingh Girase
Age:-24 years
Add:- S. No. 5859, Zunzar Mitra Mandal, B. M. C. School,Karve Nagar, Pune.
At/ Po. Palasdare, Tal. Malegaon,
Dist - Nashik

Appearance:

Ld. SPP Ms. Pranjali Joshi for the State. Ld. Advocate Ms. Nitu Singh for accused.

... Prosecution

... Accused

CORAM : HER HONOUR JUDGE MS. PRITI KUMAR (GHULE)

The Designated Court under Protection of Children from Sexual Offences Act,2012.

C.R. NO. 38.
DATED : OCTOBER 28th,2020.

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The accused is in jail, he is prosecuted for the offences punishable u/s. 363, 376 of the Indian Penal Code (here-in-after shall be referred to as “IPC”) and Sections 4,6, 8 and 12 of Protection of Children From Sexual Offences Act, 2012 (here-in-after shall be referred to as “POCSO”). In order to protect the privacy and confidentiality of the victim, the identity of the victim girl and her relatives, their names are not disclosed in the judgment.

2. Facts giving rise to prosecution case are as under:
The prosecutrix is 17 years old, studying in Std.12th . She resides

with her parents , elder brother and 3 elder sisters. On 14.01.2020 she had quarreled with her sister. She left her house and did not return. Her brother lodged FIR for the offence u/s. 363 of the IPC.

3. The prosecutrix had left the house without informing and met her friends. Thereafter she did not return home but took a bus from Dadar to Pune. In the bus she met the accused a co-passenger. There was bus break down. She and accused started talking, took tea. She went to the house of the accused for shelter. Next day , she purchased new clothes by using the debit card of the accused. They roamed in the gardens with his friends. They also roamed on bike, ate food in the hotel. They went for a movie in a theatre. On 18.01.2020 they both took a bus and went to Nashik. They had sexual relation. The prosecutrix returned back by bus to Bombay. She was confronted by the police. She refused to go home. She was kept in Shelter home at Dongri. Her statement was recorded by WPSI. She disclosed the incident of sexual intercourse to the police and the additional sections

were added in the FIR. She was sent for medical examination. The accused was traced and arrested. He was sent for medical examination. Clothes were seized under panchnama. Spot panchnama was prepared. Documents were collected. Statements of witnesses were recorded. The statement of prosecutrix was recorded u/s. 164 of the Cr.P.C. On completion of investigation, chargesheet is filed. Accused is in Jail. The Hon'ble Bombay High Court granted liberty to the accused to make application for expedition of trial. The trial was expediated.

4. Charge was framed by me on VC vide Ex.12 for offences punishable u/ss. 363, 376 of the IPC r/w Section 4, 8 and 12 of POCSO Act, to which accused pleaded not guilty. To establish the guilt prosecution has examined complainant, the prosecutrix and WPSI.

5. As no incriminating evidence, the statement u/s. 313 of Cr.P.C. is dispensed with. Taking into consideration the oral and documentary evidence of Ld. SPP Ms. Pranjali Joshi for the State and Ld. Advocate Ms. Nitu Singh for the accused, following points arise for my determination and I have recorded my finding thereon for the reasons given below.

Sr. No.	POINTS	FINDINGS
1.	Whether the prosecution has proved that on 14.01.2020 the accused has kidnapped the minor prosecutrix and thereby	Negative

	committed an offence punishable u/s. 363 of IPC?	
2.	Whether the prosecution has proved that on 18.01.2020 and 19.01.2020 the accused has committed rape on the minor	Negative

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Sr. No.	POINTS	FINDINGS
	prosecutrix and thereby committed an offence punishable u/s. 376 of IPC?	
3.	Whether the prosecution has proved that on 18.01.2020 and 19.01.2020 the accused has committed penetrative sexual assault on the minor prosecutrix and thereby committed an offence punishable u/s. 4 of POCSO Act?	Negative
4.	Whether the prosecution has proved that on 18.01.2020 and 19.01.2020 the accused has committed aggravated sexual assault on the minor prosecutrix and thereby committed an offence punishable u/s. 6 of POCSO Act?	Negative
5.	Whether the prosecution has proved that on 18.01.2020 and 19.01.2020 the accused has committed sexual assault on the minor prosecutrix and thereby committed an offence punishable u/s. 8 of POCSO Act?	Negative
6.	Whether the prosecution has proved that on 18.01.2020 and 19.01.2020 the accused has committed sexual harassment on the minor prosecutrix and thereby committed an offence punishable u/s.12 of POCSO Act?	Negative
7	What order?	As per final order

REASONS

As to Point Nos. 1 to 3 :
6. The points of offence under IPC and POCSO Act are dealt collectively as under:

The prosecution has examined following material witnesses: ¬ PW-1 – The complainant (brother)

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¬ PW-3 – WPSI Sonali Patil

7. The settled position of law “it cannot be disputed that, there can be a conviction solely based on the evidence of prosecution. However, the evidence must be reliable and trustworthy.

Ordinarily the evidence of a prosecutrix, should not be suspected and should be believed, no corroboration is necessary.

The presumption u/s. 29 of Pocso Act, has to be rebutted by the accused if the prosecution proves the foundational facts."

On the basis of the above principles the evidence is dealt with.

8. It is seen that as the prosecutrix is studying in Std 12th. She has deposed that her date of birth as 21.07.2002. On day of deposition she was 18 years old. She was few months less for 18 years at the time of FIR. She is not below 16 years. She was about 17 1⁄2 years at the time of incident. She is college going. It is clear from her deposition that she travels alone by means of Auto, bus and train.

9. PW-1 the complainant is the elder brother of the prosecutrix. He deposed that as prosecutrix was missing, he gave complaint. FIR u/s. 363 of the IPC was registered. Prosecutrix returned on her own. PW-1 deposed that as she returned home , they were okay. He deposed that she was kept in Children Home at Dongri. It is seen that prosecutrix refused to go home and therefore, she was sent to children Home at Dongri is deposed by the WPSI PW-3.

10. The prosecutrix deposed that she left the house to meet her friend at Pune. She did not inform anyone in the house because she

thought she will return back in one day. She herself went to Dadar Station and took the bus to Pune is deposed by her. She left the house due to fight with her sister is further deposed by her. It is clear that there is no role of the present accused in meeting the prosecutrix to leave her house. The accused has not made her take bus to Pune. The accused has not kidnapped her is clear. The prosecutrix herself, used to travelling alone , took bus to Pune. Thereafter she herself returned home. The prosecutrix deposed that , as her brother had given complaint to the police. After she returned home, they went to the police station to close the complaint and apologies to the police. Her deposition further makes clear that nothing happened with her. She never met any boy in the bus. She never met accused or anybody even at Pune. She never did shopping of clothes with the accused or herself. According to her, no untoward incident occurred with her. She has deposed that , she was going to Pune to her friend's house. When she went to the washroom, she lost the address of her friend. Hence, she took a lodge for herself at Pune. She was alone in the lodge, where she watched TV and slept. After her money got over , she returned back. She got down at Dadar and went home by walk. She deposed that everything was normal. She never gave any history to the doctor. Her statement u/s. 164 of the Cr.P.C.was pointed to her, she admitted her signature on it but deposed that she did not state everything to the Magistrate. Statement u/s. 164 of the Cr.P.C

is in Marathi and she understand only Urdu and English. According to her, she was made to sign on Marathi Statement, which was not explained to her. The prosecutrix do not know why the police recorded contents about which she is not ready to depose. The learned SPP had seek permission to declare her hostile. It is clear that no direct evidence of rape , sexual assault, penetrative sexual assault , sexual harassment is forthcoming.

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The prosecutrix is not ready to agree that any bad incident occurred with her. She has voluntarily given explanation that why she would say anything false. She has reiterated that she went alone to Pune, was alone in the room, eating and watching TV. She returned alone back to Bombay. She has refused any tablet given to her by accused she was kept by her in purse. She voluntarily stated that , as she was alone, there was no question of anything wrong happening with her. It is seen that prosecutrix is now completed 18 years and she is aware of deposition before Court. The prosecutrix has confidentiality refuted the allegations against the accused as mentioned in the police statement. Her evidence is not consistent with the police statement and statement u/s. 164 of the Cr.P.C. She has totally refuse connection of accused with her. She do not know any such person. She has given evidence that she travels alone. It is seen that she is in the age of maturity and understanding. Her evidence do not establish any foundational facts for raising presumption u/s. 29 of the Pocso Act against the accused. The evidence of WPSI becomes formal in nature. The ingredients of offence not established. Hence, I answer point nos.1 to 6 in the negative. In these circumstances, the accused is entitled for acquittal. Hence I proceed to pass the following order :-

ORDER
1. Accused – Umesh Anandsingh Girase is hereby acquitted for the offences punishable under Sections 363, 376 of the Indian Penal Code r/w Section 4, 6, 8 and 12 of

Protection of Children From Sexual Offences Act, 2012.

2. Accused is in Jail. He be released forthwith if not required in any other offence.

Date : 28.10.2020.

(Priti Kumar (Ghule)) Special Judge under POCSO Act,

Gr. Mumbai.

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3. Accused is directed to furnish P.B and SB of Rs.10,000/- (Rupees Ten Thousand Only), under Section 437(A) of the Code of Criminal Procedure. Time to furnish surety granted for three weeks from his released from Jail. 4. The muddemal articles i.e. clothes, if any being worthless, be destroyed after appeal period is over.

5. POCSO Case No. 449/2020 stands disposed off accordingly.
(The judgment is dictated and pronounced in open Court.)

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CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER" 28.10.2020, 01.40 pm. (Mayuresh P. Tathe) UPLOAD DATE AND TIME NAME OF STENOGRAPHER	
Name of the Judge (with Court room no.)	HHJ Smt. Priti Kumar (Ghule), C.R. No.38.
Date of Pronouncement of JUDGMENT/ORDER	28.10.2020.
JUDGMENT/ORDER signed by P.O. on	28.10.2020.
JUDGMENT/ORDER uploaded on	28.10.2020.