

MHCC020053722018



Presented on : 21-04-2018  
Registered on : 21-04-2018  
Decided on : 11-10-2022  
Duration : 04 yrs, 05 Months, 19 Days

**IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM  
SEXUAL OFFENCES ACT, 2012, AT FORT GR. BOMBAY  
POCSO SPL. CASE NO. 214 OF 2018**

**State of Maharashtra**

(At the instance of Mahim Police  
Station vide C.R. No. 368/17).

... Prosecution

**Versus**

**Mohammad @ Zaid Gulamnabi Shaikh**

Age - 20 years,  
Room No. 05, Siya Post Wadi near  
Kala Bungalow, Mahim (W)

... Accused

**APPEARANCES:**

**Mr. R. V. Tiwari, Ld. SPP for State.**

**Mr. Dhananjay Singh (SA), Ld. Advocate for the accused.**

**CORAM : SMT. PRIYA P. BANKAR  
SPECIAL JUDGE, UNDER  
POCSO ACT. (C.R. NO. 18)**

**DATED : 11<sup>th</sup> OCTOBER, 2022.**

**JUDGMENT**

The charge-sheet is filed against the accused for the offences punishable under sections 354(A),(B), 504, 506 of the Indian Penal Code (hereinafter referred as 'IPC') and under section 12 of the Protection of Children From Sexual Offences Act, 2012 (hereinafter referred as 'POCSO Act'). [Name and identity of the victim girl is concealed in view of provisions of the POCSO Act].

**The allegations against the accused, as under : -**

2. Victim was studying in 10<sup>th</sup> standard and was 15 years old residing alongwith her family members. Accused used to stand in front of her house. When the family members of the victim came to know about it, they pursued the accused but, did not complain about it to Police. On 01.12.2017 at about 11.30 a.m., victim went nearby vicinity to purchase the household articles. On the way accused has pulled her dupatta and while she was proceeding further, he has hold her hand. So the victim shouted loudly saying that she will inform it to her father. At that time accused has threatened her that 'Tere pappa ko ghar me ghuske marunga'. Victim returned to the house and informed the said incident to her father. So her father has made a phone call to accused, at that time, he has abused him. So the complaint is lodged against the accused at Mahim Police Station.

3. Upon the complaint, C.R. no. 368/2017 was registered against the accused. It was investigated by API Yogesh Bendkule. He has recorded the statement of witnesses, issued letter to BMC for collecting Birth Certificate of victim. He has arrested the accused. He has issued letter and sent the victim for recording her statement under

Section 164 of Cr.P.C. After completion of investigation, he filed charge-sheet against the accused.

3. Charge is framed against accused vide Exh. 2 for the offence punishable under section 354, 506 of IPC and under Section 8 of POCSO Act, to which the accused has pleaded not guilty and claimed to be tried vide the plea Exh. 3.

4. In order to prove the guilt of accused, prosecution has examined in all 3 witnesses i.e. P.W.1 victim at Exh. 8, P.W.2 complainant at Exh. 13, P.W.3 API Yogesh Manohar Bendkule (Investigating Officer) at Exh. 18 and closed their evidence.

5. Besides the oral evidence, prosecution has also relied on documentary evidence i.e. Report at Exh. 9, FIR at Exh. 9-A, Statement of victim, recorded under section 164 of the Code of Criminal Procedure at Exh. 10 and Birth Certificate of victim at Exh. 12.

6. The prosecution has filed evidence close pursis at Exh.21. Thereafter, statement of the accused under Section 313 of Cr.P.C. was recorded at Exh. 22.

7 Heard learned S.P.P. Ms. S. S. Joshi for prosecution and Ld. Advocate Mr. Dhananjay Singh (S.A.) for accused.

8. Considering the facts of the prosecution case and submissions of both sides, following points arise for determination and are answered for the reasons discussed thereto:-

**POINTS**

**FINDINGS**

- |  |                    |
|--|--------------------|
| 1. Whether it is proved by the prosecution that on 01.12.2017 accused used criminal force to victim by pulling her dupatta and holding her hand and has outraged her modesty and committed offence ? | ... proved.        |
| 2. Whether it is proved by the prosecution that accused with sexual intention pulled the dupatta of minor victim and held her hand and thereby committed offence of sexual assault?                  | ... proved.        |
| 3. Whether it is proved by the prosecution that accused committed criminal intimidation by threatening victim to beat her father by entering in the house ?  | ...proved          |
| 4. What order ?  | As per final order |

**: R E A S O N S :**

**AS TO POINTS NO.1 & 3:-**

9. P.W. 1 is victim. She has stated that in the year 2017, she was residing alongwith her family and was studying in 10<sup>th</sup> standard. P.W. 2 is father of victim, he has supported the testimony of P.W. 1 that in the year 2017 his daughter was 15 years old.

10. The accused has not disputed the evidence of P.W. 1 and 2

about the age of the victim girl. The prosecution has further relied upon Birth Certificate of victim girl, in support of the oral evidence of the prosecution witnesses. The birth certificate shows, birth date of the victim is 15.05.2002. So considering the same the oral and documentary evidence on record about the birth date of the victim, in the year 2017 she was 15 years old. So, she was child as per the definition under section 2(d) of POCSO Act. So, considering the same, the provisions of the POCSO Act will be attracted to the present case.

11. As to the incident, P.W. 1 has stated that she has noticed that accused used to stand in front of her house. He used to call her and tease her. He was also following her at her school. P.W. 2 is father of victim has also supported the said testimony. According to him, accused used to stand in front of his house and was making gestures. So he has given understanding to him. The evidence of PW no. 1 and 2 is consistent with the behaviour of the accused prior to the incident. According to the prosecution, these type of the incidents were taken place, prior to actual incident dated 01.12.2017.

12. According to PW no. 2, due to the said incident, he has given understanding to the accused. PW no. 1 has also stated that her father has given understanding to the accused, prior to the incident. The accused has disputed the testimony of P.W. 1 on the said point, by giving suggestion during cross-examination that she has not stated before the Magistrate that her father has persuaded the accused. However, there is no denial by the accused, about the said type of incidents, as stated by PW no. 1 and 2 prior to the incident dated 01.12.2017.

13. As to the actual incident of sexual assault, P.W. 1 has stated that on 01.12.2017 while she was going to market, accused followed her. She was frightened. Accused pulled her dupatta and also hold her hand. He threatened her. She has informed the said incident to her father. P.W. 2 is father of victim has supported the same. According to him, the said entire incident has informed by his daughter to him. Thereafter, he made phone call to accused but, he threatened to kill him by entering in the house. P.W. 1 -victim has also supported the same. According to victim, after she has informed the incident to her parents, her father asked about the incident to accused on phone but, he abused to her father. Both P.W 1 and 2 identified the accused before the Court. The accused has also not raised any dispute about his identify. So, there is no dispute about the same.

14 According to P.W. 1, thereafter she went at Police Station and lodged report against the accused (Exh. 9). Accused has disputed the evidence of P.W. 1 about the incident on the point that she has not stated before the Magistrate, while her father made phone call, accused has used insulting words. Accused has come with the defence that he is having love affair with victim and therefore, he has been falsely implicated. The accused has given suggestion in this regard to P.W. 1 and 2 during cross-examination and it is denied by both the witnesses. Accused has also disputed the evidence of threatening by accused while the father of the victim made phone call. In this regard during cross examination it has come on the record that P.W. 2 received mobile phone number of accused through his friend. Further the evidence of PW no. 2 is disputed on the ground that he is not a eye witness of the

incident. It is admitted position that P.W. 2 has not witnessed the incident happened on 01.12.2017 and he came to know about it through his daughter i.e. P.W. no. 1.

15. P.W. 3 is Investigating Officer. According to him, on 01.12.2017 he was attached to Mahim Police Station and his duty hours were 08.00 a.m. to 08.00 p.m. At about 7.30 p.m., complainant has come and has lodged report against accused. Thereafter, FIR was registered. This evidence shows, on the day of incident has taken place, FIR was registered against the accused. No doubt, there is some delay to lodge FIR, as the incident has taken place at about 11.30 a.m. and FIR was registered at about 7.30 p.m. in such cases, time will be required to gather courage to inform the police about incident, as the reputation of victim and her family members is on stake. Further the evidence of P.W. 1 and 2 shows that prior to incident P.W. 2 persuade the accused not to follow the victim and not to do any act with victim girl. So, it seems that P.W. 2 has done his efforts not to inform the incident to police, but when accused has pulled the dupatta of his daughter and hold her hand in market place, he has decided to lodge report against the accused.

16. As to the actual incident, it is argued on behalf of the accused that evidence of victim is not consistent as per her statement recorded before the Magistrate. She has not stated before the Magistrate that her dupatta was pulled by the accused. She has stated before Magistrate under Section 164 of Cr.P.C. at Exh. 10 that the accused has pulled her scarf. As there is difference of dupatta and scarf, Ld. Advocate for accused argued that the evidence of the victim is not

consistent and could not be believed. But there is no much difference in between dupatta and scarf. Both used nearby neck and the same type of cloth, which women wear. Absolutely, no difference even if, the victim has once, called it dupatta and other time as scarf. The said inconsistency, is not at all sufficient to disbelieve the entire incident which has taken place with the victim. The statement of the victim was recorded by the police, thereafter by Magistrate and thereafter, before court. There is time span between the said statements and therefore, if at all there is any discrepancy, it is bound to be happened, due to lapse of time. Even, here it cannot be considered on the ground that dupatta and scarf has same meaning. So on that reason the evidence of victim cannot be discarded.

17. The evidence has come on record that when, victim went in market, accused has pulled her dupatta and also hold her hand. It is sufficient to prove the allegations that the accused has used criminal force, with an intention to outrage modesty of the victim and has sexually assaulted her. Besides this, there are clear allegations that prior to incident accused used to stand in front of the house of victim and making gestures and used to follow her. The said allegations shows intention of accused since before the incident. He was following the victim girl and then committed sexual assault.

18. There is also presumption under Section 30 of POCSO Act about the culpable mental state of the accused and the accused has to prove that he had no such mental state with respect to the act charged as an offence by the prosecution. Section 30 reads as under:-



**“30. Presumption of culpable mental state - (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.**

**(2) For the purpose of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.”**

19. On perusal of the Section 30, it reveals that whenever a question of culpable mental state on the part of the accused is required to prove the guilt of accused, Court shall presume the existence of said mental state. Though accused can take the defence to prove the fact that he had no such mental state with respect to his act, but accused has to prove the said fact beyond the reasonable doubt and not by showing its existence by establishing preponderance of probability. Thus, under Section 30 of the Act, liberty is given to the accused to take a defence that he had no such mental state but, he has to prove the said fact beyond reasonable doubt. In terms of Section 30 of the Act, Special Court is bound to draw a presumption in favour of the prosecution that accused had such intention unless presumption is rebutted by the accused beyond reasonable doubt.

20. The accused has taken defence about the love affair between him and the victim, but the said defence is not acceptable, looking to the age of the victim. Even the suggestions to that effect are

denied by the PW no. 1 and 2 during cross-examination. The evidence of the victim and her father also consist that after the incident accused has threatened the victim that he will beat her father by entering in house.

21. According to P.W. 2, after his daughter informed the incident to him, he has made phone call to the accused. At that time accused abused him. P.W. 2 has not specifically stated the words used by accused. But, as to the incident happed with the victim, her evidence shows, accused has threatened to beat her father after entering in the house. So, said threat was causing injury to the father of victim , with intend to cause alarm and to do act, which she is not legally entitled to do by means of execution of such threats, is a criminal intimidation. In view of the evidence on record, the prosecution has proved the offence punishable under Section 506 of IPC.

22. Overall going through the evidence on record, prosecution has proved that accused has outraged the modesty of 15 years old child and has sexually assaulted her and thus, he has committed the offence under Section 354 of IPC as well as under Section 7 punishable under section 8 of POCSO Act. He has also threatened the victim and also committed offence punishable under Section 506 of IPC. The accused was present on the spot and he has committed offence with the minor victim girl with sexual intent and had a physical contact with the victim girl and thereby committed offence of sexual assault. The prosecution has brought on record sufficient evidence to prove that the accused has committed offence punishable under section 354 and 506 of Indian Penal Code and under section 7 punishable under section 8 of the

POCSO Act. With this, I answer points no.1 to 3, as proved. Hence, it is necessary to hear the accused on the point of sentence to be awarded.

23. The accused is explained with the observations recorded above and the sentence which can be awarded for the proved offences. As submitted on behalf of the accused that the accused do not having criminal antecedents. He is only earning member of his family and he is 23 years old. Hence, submitted to show leniency while awarding the sentence and minimum sentence be awarded.

24. On the other hand, it is submitted by the Ld. A.P.P. for the State that such type of incident are rising with minor victim girls in the society. The parents are not reporting the incident due to fear. Even in the present case, despite of understanding given to the accused by the father of the victim, he has continued his acts and proceed further to assault her sexually. So, it is submitted to award maximum punishment to the accused.

25. There is increase in sexual offences against the child. There is very adverse impact of the incident on victim girl, on her family members and even on the society. They are under impression that house and nearby vicinity is not safe for children and it is going to cause the alarming situation in the society. Definitely, such type of incident causes terror in the mind of people, victim and her family members and leave scar for longer time. Considering all these aspects, and in view of the arguments advanced on behalf of the accused, looking to the antecedents of the accused and nature of offence, I proceed to pass following order :-

**: O R D E R :**

- 1) Accused **Mohammad @ Zaid Gulamnabi Shaikh** is hereby convicted vide Section 235(2) of the Code of Criminal Procedure, of offence under Section 07 punishable under Section 08 of the Protection of Children From Sexual Offences Act, 2012 and is hereby sentenced to suffer **Imprisonment for 03 years (three years)** and to pay **fine of Rs.10,000/- (Rs. Ten thousand only)**, in default to pay fine, to suffer **Simple Imprisonment for the period of 1 month (one month)**.
  
- 2) Accused – **Mohammad @ Zaid Gulamnabi Shaikh** is hereby convicted vide Section 235(2) of the Code of Criminal Procedure, of offence punishable under Section 354 of Indian Penal Code and is hereby sentenced to suffer **Imprisonment for 01 year ( one year)** and to pay **fine of Rs.10,000/- (Rs. Ten thousand only)**, in default to pay fine, to suffer **Simple Imprisonment for the period of 1 month (one month)**.
  
- 3) Accused – **Mohammad @ Zaid Gulamnabi Shaikh** is hereby convicted vide Section 235(2) of the Code of Criminal Procedure, of offence punishable under Section 506 of Indian Penal Code and is hereby sentenced to suffer **Imprisonment for 01 year (one year)** .
  
- 4) All the sentence has to be run concurrently.

- 5) Set off be given to the accused, as per Section 428 of the Code of Criminal Procedure. He was in Police/Judicial Custody since 01.12.2017 to 20.12.2017.
- 6) Out of fine amount, if paid by the accused, an amount of **Rs.15,000/- (Rs. Fifteen thousand only)** be paid to the victim girl, as compensation, under Section 357(1) of the Code of Criminal Procedure.
- 7) If amount of compensation cannot be paid out of the fine amount, Legal Services Authority, Mumbai to pay the amount of compensation under Victim Compensation Scheme.
- 8) Copy of this judgment and order be provided to the accused, free of costs.
- 9) A copy of this judgment be also forwarded to Ld. Secretary, District Legal Services Authority, Mumbai for information and necessary action.

(Dictated and pronounced in open Court)



**(PRIYA P. BANKAR)**  
**Special Judge under POCSO Act,**  
**Gr. Mumbai.**

**Date : 11.10.2022.**

Dictated on : 11.10.2022  
Transcribed on : 11.10.2022  
Signed on : 11.10.2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGEMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
11.10.2022	5.25 p.m.	Aparna V. Lele (H.G.)
Name of the Judge		HHJ Smt. Priya P. Bankar (CR No.38)
Date of Pronouncement of Judgment/Order.		11.10.2022
Judgment/order signed by P.O on		11.10.2022
Judgment/order uploaded on		11.10.2022