

CNR	MHCC02-005669-2016		
Date of Institution	25.04.2016		
Date of Registration	27.04.2016		
Date of Judgment	22.02.2022		
Duration	Y 05	M 09	D 25

Exhibit No.25

IN THE COURT OF SESSIONS FOR GREATER BOMBAY**POCSO SPECIAL CASE NO. 177 OF 2016**

The State of Maharashtra,)
 At the instance of Wadala T.T. Police Station,)
 (C.R. No. 64/2016)) ...Prosecution

Versus

Prakash Ramsumer Jaiswal,)
 Aged 23 years, Occ. : Worker,)
 Residing at Durgamata Mandir, near Hanuman)
 Mandir, Vijaynagar, S.P. Road, Antop Hill,)
 Wadala (East), Mumbai.) ... Accused

Appearance :

Ld. SPP Sureeta Singh for the State.
 Ld. Adv. Priya Muthupandi h/f. V.S. Tiwari for accused.
 PC113641 attached to Wadala TT police station.
 Accused on bail present.

**CORAM : H.H. THE SPECIAL JUDGE
 UNDER POCSO ACT,
 SMT. KALPANA K. PATIL**

DATE : 22/02/2022, C.R. NO. 36

J U D G M E N T

**(Delivered on 22nd February, 2022 and pronounced in
 open Court)**

1. Accused is charged with offences punishable under sections 509, 506 of the Indian Penal Code and u/sec. 12 of the Protection of Children from Sexual Offences Act, 2012 under Crime No. 64 of 2016 registered with Wadala T.T. Police Station.

2. The prosecution case, in brief, is as under :-

In the year 2016 victim girl aged 17 years was residing alongwith her parents, brother and sister. (In order to avoid disclosure of identity of victim and her relatives, name of victim, informant, her school as well as her address are not mentioned in judgment). On 07.02.2016, at about 11.00 a.m. victim had been to public toilet which is situated near to her house. Accused Prakash Jaiswal was standing there. He is victim's neighbor therefore, she know him. After seeing victim, accused Prakash Jaiswal said to her that he love her. He also used to stare at the victim. Victim went to her house and narrated the incident to her mother. Victim's mother asked accused about the incident but, he has not responded her and give evasive answers. He also gave threat to victim's mother. On 31.01.2016, accused has winked at victim. Therefore, victim approached Wadala T.T. Police Station and filed report against accused.

3. C.R. No. 64 of 2016 is registered u/sec. 509, 506 of the Indian Penal Code and u/sec. 12 of the Protection of Children from Sexual Offences Act, 2012 against accused Prakash Ramsumer Jaiswal, on the basis of FIR. Mr. Hanumant B. Todkar, API attached to Wadala T.T. Police Station has investigated the said crime. He has visited the spot and drawn Spot Panchnama. He has also recorded statement of victim's mother and on the same day, he has arrested the accused. Investigating Officer has collected Birth Certificate of victim from BMC office. He has also sent victim to Metropolitan Magistrate, Court Room No. 15 for recording her statement. After completion of investigation, charge sheet is filed against accused.

4. After appearance of the accused before the Court, my Ld. Predecessor framed charge against the accused on 01.08.2019 vide Exh. 3 u/sec. 509 and 506 of the Indian Penal Code and u/sec. 12 of the Protection of Children from Sexual Offences Act, 2012. Accused pleaded not guilty to the said charge vide his statement (Exh.4) and claimed to be tried as per Law.

5. The prosecution has relied upon oral evidence of in all 3 witnesses.

Prosecution witness/ Exhibit	Name of Witness	Document, if any, proved its Exhibit Number.
PW.1 Exh.9	Victim Girl's mother	---
PW.2 Exh.10	Victim Girl.	Birth Certificate of Victim (Exh.11), FIR (Exh.12), Statement u/sec. 164 of Cr.P.C. (Exh.13)
PW.3 Exh.35	Mr. Hanumant B. Todkar, API	---

6. The prosecution has mainly relied upon following documents :

Sr. No.	Description of documents	Exh. No.	Proved/ admitted.
1	Birth Certificate of Victim	11	Proved in the evidence of PW. 2
2	FIR	12	Proved in the evidence of PW. 2
3	Statement u/sec. 164 of Cr.P.C.	13	Proved in the evidence of PW. 2

7. After recording the prosecution evidence, statement of the accused u/sec. 313 of Cr.P.C. is recorded vide Exh. 24. He has denied all the incriminating circumstances against him. The accused has put forward defence of total denial.

8. Heard Ld. SPP Sureeta Singh for the prosecution and the Ld. Advocate Tiwari for accused. Ld. SPP has submitted that victim has narrated the incident and her evidence is supported by her mother's evidence. Investigating Officer has collected the Birth Certificate of victim which shows that victim was minor at the time of incident. She has submitted that prosecution has proved the charge against the accused. Ld. Advocate Mr. Tiwari appearing for accused has submitted that Prosecution Witness No. 1 who is victim's mother is not aware about the date of incident. There is material contradiction between the evidence of PW.1 and PW.2 about the exact place of incident. Spot of incident is not proved by the prosecution. Independent Witness is not examined to support the victim's evidence.

9. From the prosecution case and defence of accused, following points arose for my determination and I record my findings on those points for the reasons recorded hereinafter as follows :-

Sr. No.	Points	Findings.
1.	Whether prosecution has proved that age of victim girl at the time of commission of offence was below 18 years?	In the affirmative.
2.	Whether the prosecution has proved that on 07.02.2016 at 16.30 hrs. near Hanuman Mandir, Vijay Nagar, Antophill, Wadala, the accused told minor girl aged 17 years that "he loved her whether she will come with him" and winked at her, did gestures by his eyes so as to intrude upon her privacy and thereby committed an offence punishable u/sec. 509 of Indian Penal Code?	In the negative.

3.	Whether the prosecution has proved that the accused on 07.02.2016 at 16.30 hrs. near Hanuman Mandir, Vijay Nagar, S.P. Road, Antophill, Wadala told minor victim girl aged 17 years that he loved her whether she will come with him and winked at her, did gestures by his eyes and gave threats and thereby committed an offence punishable u/sec. 506 of Indian Penal Code?	In the negative.
4.	Whether the prosecution has proved that the accused on 07.02.2016 at 16.30 hrs. near Hanuman Mandir, Vijay Nagar, S.P. Road, Antophill, Wadala told minor victim girl aged 17 years that he loved her whether she will come with him and winked at her, did gestures by his eyes and gave threats and thereby committed an offence of sexual harassment punishable u/sec. 12 of Protection of Children from Sexual Offence Act, 2012?	In the negative.
5.	Whether any other offences are proved?	NO
6.	What Order?	As per final order

R E A S O N S

AS TO POINT NO.1 :-

10. Victim has stated in her evidence that her date of birth is 09.11.1999 and incident occurred on 07.02.2016. Prosecution has filed on record certified copy of Birth Certificate issued by Municipal Corporation of Greater Mumbai vide Exh.11. Accused has not disputed the correctness of Birth Certificate (Exh.11). Hence, from the oral evidence of victim and Birth Certificate (Exh.11) which remained unchallenged, I come to the conclusion that age of the victim was below 18 years on 07.02.2016. In the result, I answer point no. 1 in the affirmative.

AS TO POINT NO. 2 to 4 :

11. All the points for determination are based on same set of facts and are interconnected. Therefore, in order to avoid repetition of facts, all the points are discussed together. PW.1 who is victim's mother has stated that incident occurred with her younger daughter prior to 4-5 years. Her daughter had been to public toilet at about 10.00 am. Accused Prakash was standing outside the toilet. He was teasing her saying "I love you" and used to wink at her. Victim came crying home and told her about the incident to her. Thereafter, one of the relative of accused by name Shivpujan came and gave threat to her therefore, victim filed report with police. From the oral evidence of this witness it is clear that she has received knowledge about the incident from the victim. In the cross examination, this witness has stated that incident occurred near the bathroom which is near to her house.

12. PW.2 who is victim girl has stated that on 07.02.2016 at about 10.00 a.m. she went to the bathroom which is in the market because the bathroom next to her house was under construction. While she was going from the lane, accused came behind her. He started telling her that he loved her. Victim told accused that she will tell this fact to her mother, on that accused said she can tell her mother. After returning home, she told this fact to her mother. But, accused refused that he has said any such thing to the victim. Thereafter, there was quarrel. Victim went to police station and filed FIR against accused. Witness has also stated that earlier also accused has troubled her and he used to stare at her but she has ignored. There is no reference of winking by accused towards victim in the

victim's evidence which is stated by her mother. From the oral evidence of victim, accused used to stare at her but, she has not given the details as to day, date, time and place of act of staring by accused. From the oral evidence of PW. 1 and PW. 2 it has come on record that accused said "I Love you" to the victim while she went to public toilet but, there is contradiction in the evidence of PW.1 and PW.2 about the exact place i.e. public toilet where incident occurred. Considering the material contradiction about the spot of incident and the vague nature of evidence about the exact act of accused, evidence of PW. 1 and PW. 2 is not sufficient to prove the guilt of accused. Furthermore, as per victim on the day of incident, accused said "I love you" to her. It is not the case of victim that accused has repeatedly followed her and said "I love you".

13. Single incident of saying I love you to the victim will at the most amount expressing the feeling of love of accused towards the victim. This act can not be said to be done with an intention to insult the modesty of the victim. Prosecution has not brought on record and overt act of accused which will amount to insult the modesty of victim. Prosecution has not brought on record any evidence establishing that accused has committed any act with respect to the victim with sexual intent. Therefore, prosecution evidence fall short to attract ingredients Section 509 of Indian Penal Code as well as Section 12 of the Protection of Children from Sexual Offences Act, 2012. There is nothing in the prosecution evidence to prove that accused has given any kind of threat to victim or her mother. Therefore, ingredients of Section 506 of Indian Penal Code are also not attracted in this case. Therefore, I came to the conclusion that prosecution has been failed to prove the charge against accused.

Hence, I answer point no. 2 to 4 in the negative and proceed to pass the following order :

ORDER

1. Accused **Prakash Ramsumer Jaiswal**, Aged 23 years, Occ. : Worker, Residing at Durgamata Mandir, near Hanuman Mandir, Vijaynagar, S.P. Road, Antop Hill, Wadala (East), Mumbai is hereby acquitted of offences punishable u/sec. 509, 506 of the Indian Penal Code and u/sec. 12 of the Protection of Children from Sexual Offences Act, 2012 under Crime No. 64 of 2016 registered with Wadala T.T. Police Station.
2. His Bail Bond shall stand cancelled.
3. Accused shall furnish P. R. Bond of Rs.15,000/- with one surety in the like amount vide Sec.437-A of Cr.P.C.
4. Marked and unmarked Muddemal property if any, be destroyed as per rule after appeal period is over.
5. Accordingly, POCSO Spl. Case no. 177 of 2016 is disposed off.



Mumbai:
Date: 22.02.2022

(KALPANA K. PATIL)
Special Judge under POCSO Act,
Court Room No.36, Gr. Bombay.

Dictated on : 22.02.2022
Transcribed on : 22.02.2022
Signed on : 22.02.2022

“Certified to be true and correct copy of the original signed order”.

22/02/2022
at about 5.30 p.m.

(Ms. Varsha V. Sawant)
Stenographer (H.G.)
Court Room No.36

Name of the Hon'ble Judge	:	Smt. Kalpana K. Patil (Court Room No.36)
Date of pronouncement of Judgment/Order	:	22/02/2022
Judgment/Order signed by Hon'ble Judge on	:	22/02/2022
Judgment/Order uploaded on	:	22/02/2022 at about 5.30 p.m.