

MHCC020036482019



Presented on : 08-03-2019  
Registered on : 08-03-2019  
Decided on : 23-11-2022  
Duration : 3 Years, 8 Months, 15 Days

**IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM  
SEXUAL OFFENCES ACT, 2012, AT FORT GR. BOMBAY  
POCSO SPL. CASE NO. 169 OF 2019**

**State of Maharashtra**

(At the instance of Dadar Railway Police  
Station vide C.R. No.113/2019).

... Prosecution

**Versus**

**Omhari satyanarayan Singh**

Age - 32 years,

Residing at :

Chawl No. 15, Shivshakti Nagar,  
Aadarsh Colony, Near Kalwa Railway  
Station, Kalwa, District Thane

... Accused

**APPEARANCES:**

**Ms. Sulbha S. Joshi, Ld. SPP for State.**

**Mr. Anil Jadhav, Ld. Advocate for the accused.**

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

**DATED : 23<sup>rd</sup> NOVEMBER, 2022.**

**JUDGMENT**

The charge-sheet is filed against the accused for the offences punishable under sections 354, 354-A of the Indian Penal Code

(hereinafter referred as 'IPC') and under section 8 of the Protection of Children From Sexual Offences Act, 2012 (hereinafter referred as 'POCSO Act'). [Name and identity of the victim is concealed in view of provisions of the POCSO Act].

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

2. On the day of incident, minor victim girl aged 16 years old was traveling by train from Goregaon to Thane along with her friend. She left the Western side train at Dadar and shifted to Central side to go at Thane. At about 8.30 p.m., she was boarding on train going to Titwala at Dadar Railway Station, in general compartment. While she was boarding, the accused was behind her and he kept both his hand on her shoulder. She saw towards accused angrily. Thereafter, the accused has inserted his hands inside her top and pressed her breast. She shouted loudly. After she saw the accused, she caught him with the help of her friend. It was the Fast Train. Therefore, they could not get down at Kurla and Ghatkopar railway station. But they get down at Mulund Railway Station alongwith accused and handed over him to police at Mulund. Then police has taken accused as well as victim to Kurla Police Station. As incident has taken place at Dadar, they have further taken the accused to Dadar Railway Station. There, the complaint was lodged against the accused.

3. Upon the said complaint, the crime no. 113/2019 was registered against the accused. It was investigated by PSI Bodse. He has arrested the accused and sent him for medical examination. He has recorded the statement of witnesses. He has sent letter for collection of

C.C.T.V Footage. Thereafter, he has collected C.C.T.V. Footage. He has prepared panchnama of said C.D. He has collected the proof about birth date of victim. After completion of investigation, he filed charge-sheet against accused.

4. Charge is framed against the accused vide Exh. 5 for the offence punishable under Section 354, 354-A of IPC and Section 8 of POCSO Act. Accused has pleaded not guilty and claimed to be tried vide the plea Exh. 6. The defence of the accused is that he has been falsely implicated.

5. In support of the case, prosecution has examined in all 4 witnesses. P.W. 1 -Chintu Dhavlya Dighe (Exh. 17), P.W. 2 – Victim (Exh. 18), P.W. 3 – Sarika Venkateshwar Rao (Exh. 22) and P.W. 4 – Chandrashekhar Balbhim Bhodase (Exh. 26).

6. Besides the oral evidence, prosecution has relied on following documentary evidence :-

<u>Sr.No.</u>	<u>Description of documents</u>	<u>Exhibit No.</u>
1	Statement of victim unde rSection 164 of Cr.P.C.	10
2	F.I.R.	19
3	Birth Certificate of victim	21
4	Arrest panchnama	23
5	Search Panchnama	27
6	Seizure Panchnama	31
7	10 <sup>th</sup> Mark-sheet of victim	33

7. The prosecution has filed evidence close pursis at Exh.34. After evidence of the prosecution, the statements of accused under section 313 of the Code of Criminal Procedure, came to be recorded. The accused has not preferred to examine any witness in his defence. The defence of accused is that he has been falsely implicated, only due to misunderstanding.

8. Heard learned S.P.P. Ms. Sulbha S. Joshi for prosecution and Ld. Advocate Mr. Anil Jadhav for accused.

9 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 accused used criminal force intending to outrage modesty of victim girl by putting his hands on her both shoulders and then inserting his both hands in her Tshirt and fondling her breast and has committed offence ?

... proved.

2. Whether it is proved by the prosecution that accused physically contacted to minand advances involving unwelcome and explicit sexual overtures by inserting his both hands in her Tshirt and fondling her breast and has committed offence ?

... proved.

3. Whether it is proved by the prosecution that accused with sexual intention by putting his hands on both shoulders of minor victim girl and then inserting his both hands in her T-shirt and fondling her breast has committed offence of sexual assault ? ...proved
4. Whether it is proved by the prosecution that accused manhandled minor victim and her friend and voluntarily caused hurt to them and thereby committed a offence ? ...Not proved
5. What order ? As per final order

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

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

10. It is the prosecution case that incident of sexual assault has taken place with minor victim girl, while she was boarding in general compartment of train at Dadar railway station. As stated by P.W. 2- victim that incident has take place in the year 2019. At that time, she was studying in 12<sup>th</sup> standard. She was also acting in Marathi serial and used to go for a shooting at Goregaon. According to her, her birth date is 19.04.2022. She has produced the Birth Certificate. According to witness, it is original birth certificate but, accused has disputed that it is not the original birth certificate. On perusal of said certificate, original seal have not been put on said birth certificate. The prosecution has further produced on record verified copy of 10<sup>th</sup> Mark-sheet of victim at Exh.33. On perusal of the said documentary evidence, birth date of the victim is mentioned on mark-sheet is 19.04.2022.

11. The accused has strongly disputed the prosecution case that victim was minor at the relevant time. Accused has disputed the evidence of P.W. 2 on the ground that when she lodged complaint, she has not handed over documentary evidence about her birth date. She has admitted the same during cross-examination. On perusal of FIR, P.W. 2 has mentioned her age as 16 years. Naturally at the time of FIR police has to rely upon the age mentioned by victim. It is a task during investigation, to collect the proof in support of statement of the victim. It is also difficult to accept that any person will carry his age proof, in anticipation of any incident. As it appears, the documentary evidence i.e. copy of the birth certificate of the victim was collected during investigation. Though the original birth certificate of the victim has not come on record, the verified marklist of the victim of X<sup>th</sup> standard produced on record during the trial. The said documentary evidence supports the oral evidence of the victim about her birth date. It appears that birth date of victim is 19.04.2002 and incident was taken place on 14.01.2019. So the oral as well as documentary evidence shows that at the time of incident, victim was 16 years old and she was child as per Section 2(d) of POCSO Act and therefore, provisions of POCSO Act is attracted.

12. As to the incident, according to P.W. 2-victim, at about 6.00 p.m. she proceeded for Goregaon by train alongwith her friend. She left the Western line train at Dadar and went towards Central line train. She caught Titwala train at about 8.30 p.m. from Dadar Station. When she was boarding on the train in general coach, from her behind accused kept both his hands on her shoulders. She saw towards him angrily. Then, he put both of his hands inside her top and pressed her

breasts.

13. The accused has strongly disputed the oral evidence of victim about sexual assault on various grounds. Even accused has disputed testimony of P.W. 2 that she was actress and has put the question that she has not produced Identity Card which is used to enter in premises of Film City at Goregaon. It is a fact that the documentary evidence about the same is not produced on record. As to the same, only oral evidence is on record. But, there is no evidence to discard the oral evidence of the victim that she was actress and used to go at Goregaon for shooting. It is a reason for her traveling by train at the relevant time and it does not directly relate to the incident.

14. The accused has further brought on record during cross examination of P.W. 2 that there is separate coach for women and for first class travelers. So, the accused has even disputed the testimony on the ground that at the relevant time, the victim was traveling by general coach, despite of special coach for women is available. The accused has tried to dispute the entire incident on the ground that due to separate coach for women, there was no need to victim to board in general coach. No doubt there are separate coach for women in train, but definitely entry of women in general coach is not restricted or prohibited and they can travel in general coach like any other passenger passenger. Besides this, it is a prosecution case that at the relevant time, the victim was traveling with her male friend. If they both have to travel together, the victim was required to travel in general coach alongwith her male friend. So, looking to the same, nothing is abnormal to travel with male friend in a general coach.

15. The accused has not disputed that the victim was traveling with her male friend. On the other hand, the accused has given suggestions that as she boarded in general coach, the passengers were telling her to travel in a women's compartment and on that reason passengers used criminal force against her friend. But the said suggestion is denied by P.W. 2 during cross-examination. It shows, the accused is not disputing the presence of the male friend with the victim at the relevant time.

16. It is further brought on record during cross examination of victim that Dadar railway station was very crowded at 8.30 p.m. The suggestions are given to PW no. 2 how many people were behind her and how many boarded on train. The PW no. 2 is unable to state the same. It is also not possible to anybody, to state about the people boarded in a train at rush hours at Dadar Railway Station. So, even if the PW 2 is unable to state about the exact passengers boarded on train at Dadar Railway Station, it is not sufficient to raise doubt about her presence on the spot.

17. It is further brought on record during cross-examination of P.W. 2 that due to rush, it is difficult to turn backside in crowd. The accused has given suggestion to show that, it was not possible for victim to turn back and see the face of the person, who has committed the act with her from behind. But the evidence of P.W. 2 is consistent that she saw towards accused angrily, after he kept hands on her shoulders. Besides this, to see a person behind, it is not necessary to turn back, even by turning neck it can be possible. So, on the admission of the



witness that it was not possible to turn back during rush hours, the inference cannot be drawn that the victim was not in a position to see the accused behind her.

18. The accused has further disputed the evidence of the victim that prosecution has not seized the top wore by the victim at relevant time. It is fact that there is no seizure of top. But it has come on record during cross examination of the victim that it was gray colour top, having strips. Even if , the description of the top was not brought on record by the prosecution and there was no seizure of top, the description came on record during cross examination is sufficient. The prosecution has not expected to prove that the victim was wearing cloths at the relevant time. The Ld. Advocate for the accused has further argued that the seizure of the top by the prosecution, will show whether it was possible to insert the hand inside. So, the accused has disputed the evidence of the victim on the ground that it will be difficult to insert the hand inside the top. In this regard, the description of the top brought on record during cross-examination is very relevant. The said description is sufficient enough to accept that due to strips of the top, it was very easy to insert the hands inside the top.

19. The accused has further disputed the incident on the ground that immediately said incident was not informed on help line. The victim has accepted during cross-examination that she has not informed the incident on helpline. But, the reaction of every person is different, even in a similar type of incident. Due to the shock, it will not be possible to the victim to dial helpline. She caught the accused in a train and handed over him to police, instead informing the helpline and

then search for unknown person/accused. It is also a natural act on her behalf. It is not expected that the victim should adopt the way to call helpline, otherwise her testimony will be doubted. The only fact that immediately victim has not informed the incident to police helpline is not sufficient to discard her testimony about incident.

20. According to victim, after the incident, she along with her friend caught the accused in train. When they reached at Mulund Railway Station, they get down from train and handed over him to the police. Then police took accused, victim and her friend at Dadar Police station and there the report is lodged against the accused. In support of the said evidence, the evidence of P.W. 1 -Chintu Dhavlya Dighe, who was on duty at Mulund Railway Station on the day of incident, is on record. According to him, while he was on platform No. 1, public has caught accused and brought towards him. The victim was also alongwith them. She has narrated the incident to him. So he took the accused at Kurla Police Station, but as the incident was taken place at jurisdiction of Dadar Police Station, as told to him, he took accused at Dadar Police station and handed over to PSI Bodse at Dadar Police Station.

21. Accused has strongly disputed the said evidence and testimony of P.W. 1 and 2 that though the accused has taken first to Kurla Police Station, complaint was not lodged there. As it appears that incident has taken place at Dadar Railway Station, the police have not lodged FIR at Kurla Police Station. They asked them to go to Dadar Police Station. The accused has given suggestion to P.W. 1 during cross-examination that as the incident has not taken place the police

have not registered the FIR. But the evidence of P.W. 1 and 2 is consistent that due to jurisdiction issue, Kurla Police Station have not registered offence and informed to take accused at Dadar Police Station.

22. The accused has further disputed the evidence of PW no. 1 and 2 on the ground of time, when they took the accused at Dadar Police Station. So, according to the accused, the inconsistency in their statement about the time is to raise doubt about their veracity. It is brought on record during cross-examination of P.W. 1 that he was at Dadar Police Station upto 12.30 a.m. at night. P.W. 1 has stated that they reached at Dadar Police Station at about 10 p.m. and after handing over the accused he left the spot. But the victim has stated that she was there till 12.30 at night and her statement was recorded by police. Statement of victim was recorded at Police Station and thereafter on next date also her statement was recorded in question answer form. P.W. 2 has deposed to that effect.

23. P.W. 3- WHC Sarika Rao has stated that on 15.01.2019 the victim and accused were brought at Police Station. She has recorded the complaint of the victim as per her say. P.W. 4 PSI Chandrashekar Bodase is Investigating Officer. He was on night duty as SHO at Dadar Railway Police Station on 14.01.2019. According to him, at about 11.00 p.m. victim has come to police station and the police person has also brought one person. The victim has informed the incident. Accordingly, her statement was recorded and he has registered offence against the accused.

24. The evidence of P.W. 4 is consistent with P.W. 1 and 2 that

they reached at Dadar Police Station alongwith accused. Further according to P.W. 4 he has arrested the accused and sent him for medical examination. The arrest panchnama is at Exh.23, which shows the accused was arrested at about 12.45 a.m. and it is prepared between 12.45 a.m. to 1.15 a.m. on 15.01.2019. Though the prosecution witnesses have not stated the exact time and there are some discrepancies in their evidence about the time, when they reached at Dadar Railway Station, the prosecution witnesses stating the time in between the 10.00 p.m. to 11.00 p.m. The said discrepancy is very natural due to lapse of time and even in a natural course, it is not expected to remember the exact time of the incident. There is no huge difference in the time mentioned by the prosecution witnesses and therefore, it is not sufficient to discard their evidence. The documentary evidence is also consistent with the oral evidence of the prosecution witnesses.

25. The accused has tried to dispute his identity, on the ground that due to crowd and the person committed offence was standing behind the victim, there was no opportunity to victim to see that person. Therefore, there is mis-identification of the accused. But the evidence of the victim shows that the accused has kept his hands on her shoulder prior to the incident and therefore, she saw towards him angrily. Said evidence shows, even for some moment, victim got opportunity to see the face of accused. It is sufficient to identify him. Besides this, the further incident is very important. The victim alongwith her friend caught the accused in the train itself. Then they handed over him to the police, at Mulund Railway Station. The evidence of P.W. 1 shows that after the accused was handed over to

him, he has taken the accused at Dadar Police Station. P.W. 4 who was SHO at Dadar Railway Police Station has supported that one person has brought at Police station by police person. After complaint was lodged, he has arrested that person. So there are chain of evidence to show that accused was caught immediately after the incident, till he was arrested by arrest panchnama at Exh. 23. Though the accused is unknown to victim, as immediately she has caught him in train and the further evidence till production of accused at Dadar Police Station is consistent. Looking to the said evidence, it is absolutely difficult to accept the arguments of advocate for accused about mis-identification of accused. Prosecution witnesses 1, 2 and 3 have identified the accused before the Court. Their evidence is consistent and not raise any doubt about the identification of the accused.

26. There is clear evidence on record that while the victim was boarding at train, accused has put his both hands on her shoulder then he put both his hands inside her top and pressed her breasts. The said act of the accused shows that he has intention to outrage the modesty of victim. He knowingly and intentionally inserted his hand inside the t-shirt of the victim. The act itself is sufficient to show that it is done with sexual intend. So, the prosecution has proved that the accused has touched the breast of the victim, by inserting his hand inside the top of the victim. Thus, the prosecution has proved that the accused has committed offence of outraging modesty of the victim, sexual harassment as he done the physical contact with advances involving unwelcome and explicit sexual overtures and sexually assaulted her. With this I answer Point Nos. 1 to 3 as proved.

**AS TO POINT NO. 4 :-**

27 It is the prosecution case that while the victim and her friend Ashutosh, taking accused towards police to Mulund Railway Police Station, accused has used criminal force against them and thereby voluntarily caused hurt to both of them. But evidence of the victim is silent on the said point. She has not stated that accused has voluntarily caused hurt to her and her friend Ashutosh. Prosecution has not examined the friend of victim namely Ashutosh and evidence of said witness is not on record. So there is no evidence on record to prove that accused has used criminal force and voluntarily caused hurt to victim and her friend Ashutosh at Mulund Railway Station. Therefore, I answer Point No. 4 as not proved.

**AS TO POINT NO. 5 :-**

28. The prosecution has proved that the victim was 16 years old at the time of incident, hence the accused has committed the offence punishable under the POCSO Act, which is the separate enactment to protect the child from sexual harassment. The offences punishable under section 354, 354-A of IPC and under section 7 punishable under section 8 of POCSO Act are similar nature. In that case, the accused is liable for the punishment, which is greater in degree as per section 42 of POCSO Act. Considering the same, the accused is liable for the punishment as provided under section 8 of the POCSO Act. Hence, it is necessary to hear the accused on the point of sentence to be awarded.

29. The accused is explained with the observations recorded above and the sentence which can be awarded for the proved offences. It is argued on behalf of Ld. Advocate for accused that accused is 38 years old. He has wife and two children. He do not having criminal antecedents. He is doing labour work. So, looking to the nature of the offence and the antecedents of the accused, it is prayed to show leniency while awarding the sentence and minimum sentence be awarded.

30. On the other hand, it is submitted by the Ld. A.P.P. for the State that the offence has taken place against the minor girl and has submitted to award maximum punishment.

31. The incident has taken place in a very crowded area. There is very adverse impact of the incident on victim girl, on her family members and society. Such type of incident causing alarm in the minds of people and shows that the girls are not safe in the society, even when they are surrounded by many people. Looking to the act done by the accused and 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 **Omhari Satyanarayan Singh** is hereby convicted vide Section 235(2) of the Code of Criminal Procedure, of offence under Section 7 punishable

under Section 8 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.25,000/- (Rs. Twenty Five Thousand only)**, in default to pay fine, to suffer **Simple Imprisonment for the period of 04 months (four months)**.

2. The accused is further convicted vide Section 235(2) of the Code of Criminal Procedure, of offence punishable under Section 354-A and 354 of the Indian Penal Code, however, no separate sentence is passed, as the accused is sentenced for the offence punishable under Section 8 of the Protection of Children From Sexual Offences Act, 2012, which provide punishment greater in degree.
3. Set off be given to the accused, as per Section 428 of the Code of Criminal Procedure. He was in Police/Judicial Custody since 15.01.2019 to 11.04.2019.
4. Muddemal Property i.e. C.D. which is unmarked being worthless, be disposed of as per law and procedure after appeal period is over.
5. Unmarked muddemal property, if any, being worthless, be disposed of as per law and procedure after appeal period is over.
6. Out of fine amount, if paid by the accused, an amount of **Rs.20,000/- (Rs. Twenty 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 : 23.11.2022.**

Dictated on : 22.11.2022 & 23.11.2022  
Transcribed on : 23.11.2022  
Signed on : 23.11.2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGEMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
23.11.2022	5.30 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.		23.11.2022
Judgment/order signed by P.O on		23.11.2022
Judgment/order uploaded on		23.11.2022