

POCSO Spl. Case
No. 307 of 2017
MHCC020074612017

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Date : 09.01.2023



Presented on	:	03.07.2017
Registered on	:	04.07.2017
Decided on	:	09.01.2023
Duration	:	Y 05 M 06 D 03

**IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012 AT FORT, GREATER BOMBAY.**

(Presided over by Kalpana K. Patil, Special Judge, under POCSO Act,
Mumbai

(CNR-MHCC02-007461-2017)

SPL CASE NO. 307 OF 2017

EXHIBIT-28

(Crime No. 190/2017 of Pant Nagar Police Station)		
Complainant	:	The State of Maharashtra
Represented by	:	Smt. Bansode, Spl. P.P.
Accused	:	Gautam Jagannath Shirsath, Aged 25 years, Occ. : Nil, Residing at Sai Baba Mandir, Netaji Subhashchandra Bose Udyan, Pant Nagar, Ghatkopar (East), Mumbai – 75.
Represented by	:	Advocate Mr. Anil Jadhav
Date of offence	:	05.04.2017
Date of FIR	:	08.04.2017
Date of Chargesheet	:	03.07.2017

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Date : 09.01.2023

Date of Framing of Charges	:	17.03.2022
Date of Commencement of Evidence	:	03.11.2022
Date on which judgment is reserved	:	09.01.2023
Date of the Judgment	:	09.01.2023
Date of the Sentencing Order, if any	:	09.01.2023

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 Trial for purpose of Section 428 Cr.PC
1.	Gautam Jagannath Shrisat	19.04.17 again arrested on NBW on 24.11.21 till date.	09.04.18	363 of IPC and Section 8 of POCSO Act.	Acquitted	--	02 years, 1 month, 6 days.

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	EXH. NO.	NAME	NATURE OF EVIDENCE
P.W.1	P-1	Victim	Victim
P.W.2	P-21	Archana Naresh Kshirsagar	Investigating Officer

B. Defence Witnesses, if any : Nil

C. Court Witnesses, if any : Nil

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LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr.No.	Exhibit Number	Description
1	P-22/PW.2	First Information Report.
2	P-22-A/PW.2	FIR Form
3	P-23/PW.2	Arrest Panchnama
4	P-24/PW.2	Spot Panchnama
5	P-25/PW.2	Letter dated 01.05.2017 to Kurla Court for recording statement of victim u/sec. 164 of Cr.P.C.

B. Defence : NIL

C. Court Exhibits :

Sr. No.	Court Exhibits	Description
1	Exh.9	Charge
2	Exh. 10	Plea of the accused
4	Exh.27	Statement of accused u/s. 313 of Cr.P.C.

D. Material Objects :

Sr. No.	Material Object No.	Description
NIL		

J U D G M E N T

(Delivered on 09/01/2023)

1. Accused is charged with offences punishable under sections 363 of Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 under Crime No. 190 of 2017 registered with Pant Nagar Police Station.

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

(In order to avoid disclosure of identity of victim and her relatives, her school as well as their address are not mentioned in judgment). On 05.04.2017, at about 5.00 p.m. informant received phone call of his cousin sister that at about 12.30 p.m. his real sister left home. Informant made search of his sister for two days but, she was not found. On 08.04.2017, informant went to Pant Nagar Police Station and filed kidnapping report against unknown person. When victim returned home, she told her brother that Gautam Shirsat took her for roaming in Kalyan area. He touched her breast under bridge. Then, she went to her brother's house.

3. C.R. No. 190 of 2017 is registered u/sec. 363 of the Indian Penal Code against accused, on the basis of FIR. Archana Naresh Kshirsagar, WPSI attached to Pant Nagar Police Station has investigated said crime. She has recorded statement of informant (Exh.P-22). She has registered Crime no. 190 of 2017 (Exh.P-22-A). She has checked CCTV footage of the area from where girl went missing. She made inquiry with the victim and recorded her statement. She has arrested accused and prepared Arrest Panchnama (Exh.P-23). She referred victim for medical examination. She has visited the spot and prepared Spot Panchnama (Exh.P-24). She has referred victim for recording statement u/sec. 164 of Cr.P.C. She has recorded statements of witnesses. She has collected medical reports from Rajawadi Hospital. She has filed charge sheet against accused.

4. After appearance of the accused before the Court, charge is framed against the accused on 17.03.2022 vide Exh. 9 u/sec. 363 of

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Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012. Accused pleaded not guilty to the said charge vide his statement (Exh.10) and claimed to be tried as per Law.

5. The prosecution has relied upon oral evidence of in all 2 witnesses.

P.W. No.	Name of the Witnesses	Exh. No.
1	Victim	P-20
2	Archana Naresh Kshirsagar, Investigating Officer	P-21

6. The prosecution has mainly relied upon following documents :

Sr. No.	Description of documents	Exh.No./ Art. No.	Proved/ admitted.
1	First Information Report.	P-22	Proved in the evidence of PW.2
2	FIR Form	P-22-A	Proved in the evidence of PW.2
3	Arrest Panchnama	P-23	Proved in the evidence of PW.2
4	Spot Panchnama	P-24	Proved in the evidence of PW.2
5	Letter dated 01.05.2017 to Kurla Court for recording statement of victim u/sec. 164 of Cr.P.C.	P-25	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. 27. He has denied all the incriminating circumstances against him. The accused has put forward defence of total denial.

8. Heard Ld. SPP Bansode for the prosecution and the Ld. Adv. Anil Jadhav for accused.

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 were below 18 years?	In the negative.
2	Whether the prosecution has proved that on 08.04.2017 from Galli No. 34, Vasant Rao Naik Marg, Kamkaj Nagar, Ghatkopar (East), Mumbai, the accused kidnapped minor victim girl, aged 16 years from lawful guardianship of her parents and thereby committed an offence punishable u/sec. 363 of Indian Penal Code?	In the negative.
3	Whether the prosecution has proved that on above mentioned date under bridge of Kalyan the accused touched all over body of minor victim girl aged 16 years and pressed kissed minor victim girl and moved his hand on her breast and thereby committed an offence punishable u/sec. 8 of POCSO Act?	In the negative.
4	Whether any other offences are proved?	NO
5	What Order?	As per final order

R E A S O N S

AS TO POINT NO.1 :-

10. *Hon'ble Supreme Court in the case of Jarnal Singh V/s. State of Hariyana reported in (2013) 7 SCC 263* held that on the issue of determination of age of a minor victim, one only needs to make reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. The procedure to be followed in determining age of Juvenile has been set out in Rule 12. It is stated in Rule 12(3) that age determination inquiry shall be conducted by the Court or the Board or as the case may be, by the Committee by seeking evidence by obtaining

- (a)(i) *The matriculation or equivalent certificate if, available and in the absence whereof;*
- (ii) *the date of birth certificate from the school (other than a play school), first attended and in the absence whereof;*
- (iii) *The birth Certificate given by a corporation or a Municipal Authority or a Panchayat.*

In absence of documents described above, medical opinion can be sought for.

11. Victim has not stated anything in her oral evidence about her birth date. Prosecution has not filed on record any original document in the form of *matriculation or equivalent certificate, date of birth certificate from the school first attended birth Certificate given by a corporation or a Municipal Authority or a Panchayat*. Hence there is absolutely no evidence for proving age of the victim girl. Therefore, I answer point no. 1 in the negative.

AS TO POINT NOS. 2 and 3 :

12. 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. As I have discussed above, prosecution has been failed to prove that age of the victim was below 18 years at the time of incident, Section 8 of the POCSO act are not attracted in this case.

13. Victim girl (PW.2) has stated in her oral evidence that her mother and brother are rag picker. She know accused. She met him when she went out for rag picking. The accused was residing in Pant Nagar, Ghatkopar area. On that day, accused took her to Kalyan for roaming. He took her under one bridge and touched her on her breast. Someone came there therefore, he ran away. She went to her brother's house at Ambernath. Her brother dropped her to mother's house at Ghatkopar. She told her mother that, accused touched her breast, then, herself, her mother and brother went to police station. Her brother filed complaint. She went to one Court. She was taken to the hospital.

14. From the oral evidence of the victim girl referred above, it appears that it is vague in nature. There is no reference of any force by the accused to the victim for leaving her mother's house. She has not specifically pointed out the day, date, time or the exact place where accused touched her breast. During the course of cross examination, victim has admitted that she was taking intoxicants at that time. She stayed in her brother's house for Ambernath for two

days but, she has not disclose the incident to her brother at Ambernath. Delay in disclosing the incident to her brother and the fact that victim used to take intoxicants her single sentence that accused touched her breast under the bridge is not sufficient for proving charge against accused u/sec. 8 of POCSO Act. In absence of date or time of the incident, delay in approaching police can not be ascertained. As per oral evidence of Archana Kshirsagar (PW.2), FIR is filed on 08.04.2017 and on 19.04.2017 victim came to the police station and her statement is recorded. After recording victim's statement, first time police came to know about touching of victim's breast by accused. There is no explanation by the victim for not disclosing this fact immediately to her brother or mother. She has not explained as to why she has not approached police immediately after the incident. Hence, from the entire prosecution evidence, it appears that prosecution evidence is vague in nature and not sufficient for proving guilt of the accused. Hence, I answer point no. 2 and 3 in the negative and proceed to pass the following order :

ORDER

1. Accused **Gautam Jagannath Shirsath**, Aged 25 years, Occ. : Nil, Residing at Sai Baba Mandir, Netaji Subhashchandra Bose Udyan, Pant Nagar, Ghatkopar (East), Mumbai – 75, is hereby acquitted off offences punishable u/sec. 363 of Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 under Crime No. 190 of 2017 registered with Pant Nagar Police Station.
2. Accused is in jail. He be released and set at liberty forthwith, if not required in any other case/crime.
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.

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4. Marked and unmarked Muddemal articles if any, be destroyed as per rule after appeal period is over.
5. Accordingly, POCSO Spl. Case no. 307 of 2017 is disposed off.



Mumbai:

Date: 09.01.2023

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

Dictated on : 09.01.2023

Transcribed on : 09.01.2023

Signed on : 09.01.2023

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Date :

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

09/01/2023
at about 4.25 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	:	09/01/2023
Judgment/Order signed by Hon'ble Judge on	:	09/01/2023
Judgment/Order uploaded on	:	09/01/2023 at about 4.25 p.m.