

MHCC020033432019



Presented on : 02-03-2019  
Registered on : 02-03-2019  
Decided on : 20-12-2022  
Duration : 3 Yrs., 9 Months, 18 Days

Exh. 26

**IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM  
SEXUAL OFFENCES ACT, 2012, AT FORT GR. BOMBAY  
POCSO SPL. CASE NO. 154 OF 2019**

**State of Maharashtra**

(At the instance of Shivaji Park Police  
Station vide C.R. No. 08/2019).

... Prosecution

**Versus**

**Barun Baijnath Mandal**

Age – 21 years, Occ : Rickshaw Driver,  
Address : Ashapura Buildig, 7<sup>th</sup> floor,  
Near Guru Nanak Hospital, Bandra (E),  
Mumbai 400 051

... Accused

**APPEARANCES:**

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

**Mr. Ravi Dwivedi, Ld. Advocate for the accused.**

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

**DATED : 20<sup>th</sup> DECEMBER, 2022.**

**J U D G M E N T**

The charge-sheet is filed against the accused for the

offences punishable under sections 354-D, 509 and 506-I 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 is concealed in view of provisions of the POCSO Act].

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

2. Accused and minor victim girl aged 17 years old knows each other since 2 years prior to the incident. They were in love affair. But thereafter, the accused used to follow the victim at her college and was also asking her not to talk with other boys and was also threatening her. So the victim girl had informed about it to her mother and then her mother pursued him and even informed his parents. But thereafter also, accused was following the victim girl. On 08.01.2019 accused has followed victim girl at bus stop nearby her college. He shouted loudly and asked her to ride on his bike and threatened her that if she will not ride, he will see her. So the minor victim girl frightened and sit on his bike. At that time accused took her at Bandra and threatened her. Victim asked him not to contact her and not to meet her again. Again on 10.01.2019 accused went at her college and sit near to her bench and was threatening her by saying that why she was not talking with him and if she will not talk with him, he will see her. He has abused her in filthy language saying that “मै तेरी मॉ चुस दुंगा, और किसीने इससे बात की तो देख लुंगा” The victim has informed about it to her mother. Thereafter, they have lodged complaint against the accused.

3. Upon the said report, Crime No. 08/2019 was registered at Shivaji Park Police Station. It was investigated by API Ashwini Patil.

She has recorded the complaint and registered the FIR. Then she prepared Spot Panchnama in presence of panch witnesses. Then she arrested the accused by preparing Arrest Panchnama. API Ashwini Patil sent the victim for medical examination at Sion Hospital. She recorded the statement of mother of the victim. Thereafter, further investigation was handed over to P.I. Utekar. He recorded statements of the witnesses and filed charge-sheet against the accused.

4. In view of summons issued to accused, he has appeared before the Court. Charge is framed against accused vide Exh. 4 for the offence punishable under section 354-D, 509 and 506 of IPC and offence under Section 11(i)(iv) punishable under Section 12 of POCSO Act, to which the accused has pleaded not guilty and claimed to be tried vide the plea Exh. 5.

5. In order to prove the guilt of accused, prosecution has examined in all 4 witnesses i.e. P.W.1 -Victim at Exh. 9, P.W.2- Mother of victim at Exh. 13, P.W. 3 – Smruti Bharat Prabhu, a panch witness of spot panchnama at Exh. 15 and P.W. 4 – API Ashwini S. Patil (Investigating Officer), at Exh. 18.

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	FIR	10
2	Original Birth Certificate of Victim	11
3	Statement of victim under Section 164 of Cr.P.C.	12

4	Spot Panchnama	16
5	Arrest Panchnama	19

7. The prosecution has filed evidence close pursis at Exh. 21. After evidence of the prosecution, the statements of accused under section 313 of the Code of Criminal Procedure, came to be recorded at Exh. 22. The defence of accused is that he has been falsely implicated in this case. The accused has not preferred to examine the witness in his defence.

8. Heard learned S.P.P. Ms. Sulbha S. Joshi for prosecution and Ld. Advocate Mr. Ravi Dwivedi 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 followed minor victim girl to foster personal interaction repeatedly despite a clear indication of disinterest by her and has committed an offence ?   | ... Proved |
| 2. Whether it is proved by the prosecution that accused was threatening the minor victim girl to accompany him and has compelled her to ride on his bike and has abused in obscene language saying that “मैं तेरी माँ चुस दुंगा, और किसीने इससे बात की तो देख लुंगा” intending to insult the modesty of minor victim girl and has committed offence of sexual harassment ? | ... Proved |

3. Whether it is proved by the prosecution that accused threatened the minor victim girl on the ground that she was not talking with him and abused her and with intend to cause alarm compelled to do act which she is not legally bound to do and has committed an offence of criminal intimidation ?
- ... Proved
- 4 Whether it is proved by the prosecution that accused uttered the minor victim girl that“मैं तेरी माँ चुस दुंगा, और किसीने इससे बात की तो देख लुंगा” with intention that words shall be heard by victim, made gestures, which will be seen by her and repeatedly and constantly follows her directly and has committed an offence ?
- ... Proved
5. What order ?
- As per final order

**: REASONS :**

**AS TO POINTS NO.1. 2 AND 4 :-**

10. It is the prosecution case that the victim and the accused were in love relationship. But thereafter, the victim did not like the nature of the accused and she stopped to talk with him. Due to the same, accused got annoyed and he used to follow her at her college. He was repeatedly contacting her and asking her why she is not talking with him, abusing her in filthy language and threatening her. At the relevant time, victim was minor 17 years old, studying in 11<sup>th</sup> standard.

11. According to the prosecution, the incident has taken place with the minor victim girl. In support of the said case of the prosecution, P.W. 1 victim has stated that her birth date is 04.01.2002 and she has handed over original birth certificate to police which is at Exh.11. P.W. 2 is the mother of the victim. She has stated that at the time of incident her daughter was studying in 11<sup>th</sup> standard. In support of oral testimony of P.W. 1 and 2 about the age of the victim, birth certificate of victim is on record at Exh. 11. It shows, date of birth of victim is 04.01.2002. The incident has taken place since 08.01.2019 to 10.01.2019. It shows that at the time of incident victim was 17 years old. The accused has not specifically disputed the age of the victim and that she was minor at the relevant time. So the oral and documentary evidence on record clearly shows that at the time of incident, victim was 17 years old and she was minor as per definition of Section 2(d) of the POCSO Act.

12. As to the actual incident, the evidence of P.W. 1 i.e. victim is on record. She has stated that in the year 2018, they have shifted their house and since then, she knows the accused, who was their neighbour. On 14.02.2018, accused has proposed her. She has accepted the said proposal and then she and the accused were in relationship. The accused has not disputed the said evidence of victim. The accused has given suggestions during cross-examination of the PW no. 1-victim about their relationship. He has also relied upon photographs of himself and victim girl, in support of their relationship. As the evidence of the prosecution about the relationship between the victim and accused is not disputed, there is absolutely no reason to disbelieve the said evidence.

13. According to PW no. 1, the accused frequently asking her not to talk with other boyes and he was handling her Instagram account. According to the prosecution, the victim had ended up the relation with the accused, due to his nature and his mis-behaviour, but despite of that he was contacting the victim and following her at her college. As to the reason for the break-up between the accused and victim, she has not stated as per her statement before the police, in which she has stated that accused was suspecting her character and was not behaving properly. So, according to the accused, the evidence of PW no. 1 is not consistent with her statement recorded by police. But, it appears that the accused has not disputed the evidence of the victim about the reason for break-up and has given suggestion during cross examination of P.W. 1 that as he was prohibiting her by talking with other boys and also checking her Instagram account, she was angry upon him. The suggestion is replied in affirmative by the P.W. No.1. The accused has further given suggestion that since the victim is started to attend the college, she started to talk with the other boyes. The said suggestion is denied by P.W. No.1 and she volunteers that the behaviour of the accused was the same before she started to attend the college. So the suggestion given by accused during cross-examination shows that he has not disputing the reason about their break up. Even if, the victim has not stated the same words that the accused is suspecting her character as mentioned in her statement recorded by the police and deposed that the accused was prohibiting her to talk with other boys, these are of same meaning. It shows, due to suspect the accused was not allowing the victim to talk with other boyes. Besides this, there can be various reason for the break-up. What we have to see

that at the relevant time, the relations between the victim and accused was ended up and the accused was very well aware about the same and he knew that victim did not want to continue with relationship. The said fact can be gathered from the evidence on record.

14. According to prosecution, there was continuous incidents happened with the victim girl. But the FIR shows only 2 incidents dated 08.01.2019 and 10.01.2019 on which the accused has gone at the college of the victim and he shouted loudly, abused her in filthy language, has threatened her compelled to accompany with him on his motorcycle at BKC and thereafter complaint is lodged against the accused. As to the incident dated 08.01.2019, according to the prosecution, on that date, the accused went nearby the bus stop of college of victim. There he shouted loudly upon her and threatened her and compelled to ride with him on his motorbike. Then he took her to BKC. There, victim has asked him not to contact her and thereafter the accused left her at her house. The said incident has been mentioned in the FIR. But, at the time of deposition victim has not stated that said incident has taken place on 08.01.2019. PW no. 1 -Victim has stated that the said incident has taken place on 10.01.2019, while she was returning from college. Further the victim has stated that on 09.01.2019 accused was standing on bus stop nearby her college. Thereafter, he came inside her classroom. He throws her water bottle and he asked her friends not to talk with her. He has shouted and then left the classroom. Though the victim has mentioned that the said incident has taken place on 09.01.2019, in the FIR at Exh. 10 it is mentioned that said incident has taken place on 10.01.2019.



15. P.W. 2 is the mother of the victim. She came to know about the incident through her daughter. She has stated about the incident dated 08.01.2019 that the accused was standing nearby bus stop and shouted loudly and has inflicted injuries on his chest by blade. Then he forcibly took her daughter on his motorcycle at BKC. After her daughter returned to the house, she has informed about the said incident to her. P.W. No.2 has specifically stated about the incident dated 10.01.2019 that the accused went at the classroom of her daughter. He sits nearby bench and has shouted loudly and has thrown water bottle of her daughter. According to P.W. 2, she has received the information about the incident through the victim.

16. On perusal of the evidence of PW-2, it shows it is not consistent with the dates of the incident as mentioned in her statement recorded by the police. She has not stated any incident dated 09.01.2019. She has stated incident dated 08.01.2019 and 10.01.2019. So the evidence of P.W. 1 and 2 is not consistent about the dates mentioned in their statements recorded by the police. However, the evidence of both these witnesses is consistent with the incident that the accused was not behaving properly, he was following the victim at her college, threatening her, abusing her and used obscene language in public to her.

17. It is strongly argued on behalf of Ld. Advocate for the accused that the evidence of the prosecution witnesses is not consistent with the dates mentioned in their statement before police. Even the accused has given suggestions to that effect, during cross-examination of PW nos. 1 and 2. According to accused, as the evidence of these

witnesses are not consistent with the statement recorded by the police, it cannot be accepted.

18. It is true that the evidence of P.W. No. 1 and 2 shows that they are unable to mention exact date of the incident as mentioned in their statement before the police. They have stated the other dates of the incident, but in between the 08.01.2019 to 10.01.2019. But the fact has to be accepted that incident has taken place in the year 2019 and the evidence of witnesses are recorded in September 2022 i.e. after 3 ½ years of the incident. So definitely, due laps of time, it is difficult to gather exact dates. Besides this, as per prosecution case, during 08.01.2019 to 10.01.2019, continuously three incidents has taken place. The PW 1 and 2 have mentioned the same dates and even deposed about the same incidents, but dates are not matched. The evidence of both witnesses is consistent about the acts of the accused. They have specifically stated that the accused used to follow victim at her collage, he contacted her and on two occasions, he abused, shouted at her and threatened her and used obscene words.

19. Evidence on record shows, the P.W. 1 do not want to continue the relationship and despite of that, the accused was following her up to her college, even he has visited her classroom and sitting on the bench near her. Accused has brought on record during cross-examination of P.W 1 that accused was not studying in her college. It shows, there was no need to accused to remain present near the college of victim or inside her classroom. The said act of the accused itself shows that he was following the victim girl and was trying to contact her repeatedly.

20. The victim has mentioned total three incident, on which accused repeatedly contacted her. He has shouted loudly, abused her and has also threatened her. P.W. No. 2 is mother of the victim has also supported her testimony. She is not eye witness of any of the incident and she came to know about the incident through her daughter i.e. victim. According to P.W. No. 2, prior to the incident she persuades the accused but he did not listen to her. Thereafter, she has informed it to the parents of the accused. They have asked her not to take any legal action against the accused. The said deposition has not found place in the statement of P.W. No.2 recorded by the police. But it shows that P.W. No. 2 who is mother of the victim has done the efforts to persuade the accused.

21. The accused has not disputed his relationship with victim. It is brought on record during cross-examination of P.W. 1 that accused was in visiting terms to the house of the victim. The victim has further stated during cross-examination that her mother was objected it but, the accused used to visit, in the absence of her mother. It shows, the accused used to visit the house of the victim and her mother aware about it. So, it supports the evidence of P.W. No. 2, that she persuade the accused prior to the incident.

22. It is the prosecution case that the incident dated 10.01.2019 has taken place in the classroom of the victim. P.W. No. 4 is Investigating Officer. According to her, after the offence was registered, she has visited the spot and prepared Spot Panchnama in presence of panch witnesses. P.W. No. 3 – Smruti Bharat Prabhu, is

panch witness. She has stated that police came to her school alongwith victim girl and asked her to act as a panch witness. Then victim girl shown class room on second floor as spot of incident, where the accused abused her. Accordingly, Panchnama at Exh. 16 is prepared. This witness has supported the prosecution case about the spot of incident. The victim has also stated that the accused had come in her classroom and the incident has taken place.

23. According to P.W. No. 4, on the same day she has arrested the accused and has informed the CWC. Then she sent the victim for medical examination at Sion Hospital. Then recorded statement of mother of the victim. This witness has partly investigated the offence. The accused has disputed the evidence of P.W. No. 4 on the ground that she has not collected the documentary evidence to show that the victim was studying in said college. The suggestion has also given to P.W. No. 1 during cross-examination that she has not produced any documentary evidence before police that she is studying in particular college. She has admitted the same. So the accused has disputed the evidence of P.W. 1 and 2 that the victim was studying in the particular college. But only the denial of accused in this regard is not sufficient. There is evidence on oath of P.W. 1 and 2 that she was studying in the said college. Even P.W. No.3 Smruti Bharat Prabhu panch witness of spot panchnama, who is independent witness has supported the prosecution case that the victim has shown spot of incident. Even if, there is no documentary evidence collected by the Investigating Officer that at the relevant time, the victim was studying in the said particular collage, the said fact is not sufficient to discard evidence of prosecution witnesses on oath in this regard. There is no reason to the prosecution witnesses to

state false about the collage and standard, in which she was studying. It is also not directly connected to the allegations against the accused.

24. The accused has further disputed the evidence of P.W. No. 4 on the ground that Investigating Officer has not examined the CCTV footage from the college. In this regard, P.W. No. 4 has admitted during cross-examination that she did not know whether CCTV cameras were installed in the college or not. Further question was put up to the Investigation officer that whether she has inquired about the duty of the security guard of the college. So, according to the accused, the prosecution has not collected other evidence, though easily available in support of the case of the prosecution.

25. It is true that such type of evidence has not been collected by the prosecution in support of prosecution case. But, as the investigating in this regard has not been done, the evidence of victim cannot be viewed suspiciously. It appears from the evidence of P.W. 4 that she did not investigate in respect of CCTV footage, therefore, there is no clear evidence on record that CCTV cameras were installed and therefore footage were available. As to the duty of security guard in the college, according to the prosecution the incident has taken place in the classroom and the security guards are not appointed nearby classroom. So, there is no possibility that the security guard witnessed the incident. So on that grounds, evidence of P.W. 1 and 2 cannot be discarded.

26. According to prosecution, accused has used filthy language to the victim and has abused her. In this regard, evidence of P.W. 1 shows that accused abused her in filthy language. Her evidence also

shows that accused has tried to contact her repeatedly and was following her. He has also threatened her for the consequences. She has also stated that accused threatened her asking to accompany him at his house. He has himself inflicted injury on his chest by blade. He has forcefully asked her to ride on his bike and taken her at BKC. So, according to victim, accused was repeatedly contacting her, following her and abusing in filthy language and asking her to do certain things, which she was not ready to do. Looking to the words used by the accused like 'teri ma chod dunga' are definitely used with intention to insult her modesty. These are words used with sexual intend only with intention that the victim will hear it. The evidence on record also shows, the accused was repeatedly following her and contacting her directly.

27. According to the accused, to end up the relationship, he has been falsely implicated. But, the evidence on record shows that the victim has already informed to the accused not to contact her. She had an intention to end up the relations. The accused must respect her decision. On the other hand, the evidence shows, the accused was compelling her to talk with him and continue with the relation. The victim girl was minor at the relevant time, and therefore, the provisions of POCSO Act are applicable in the present matter. There is presumption under section 30 of POCSO Act about the culpable mental state on the part of the accused. No doubt, the presumption under section 30 is rebuttable and the accused has to prove that he has no such mental state with respect to act charged. But, no such evidence has brought on record by the accused, to rebut the said presumption. There is no single reason to disbelieve the evidence of PW no. 1 about

the incident. The act of the accused amounts to sexual harassment to the victim. Even if, prosecution has not examined any independent witness, it is not sufficient to discard testimony of victim. The evidence of victim is raising confidence and there is no need to corroborate her testimony. So, looking to allegations, prosecution has proved that accused has committed offence punishable under Section 354-D, 509 of IPC and offence under Section 11(i)(iv) punishable under Section 12 of the POCSO Act. With this, I answer point nos. 1, 2 and 4 as proved.

**AS TO POINT NO. 3:-**

28. It is a prosecution case that the accused has committed the offence of the criminal intimidation to the victim and has committed the offence punishable under section 506 of IPC. The evidence of the PW no. 1 shows, the accused was shouting and abusing to the victim nearby her collage and even at her classroom. Such type of act definitely causing alarm to the victim. He has threatened to the victim, and has even compelled her to ride on his motorbike and took her at BKC and compelled her to do the act, which she was not intended to do. So, the said behaviour of the accused is definitely come under the offence of criminal intimidation. The evidence on record shows, the accused has also committed offence punishable under section 506 of IPC. The prosecution has proved the same. With this, I answer point no. 3 as proved.

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

29. The prosecution has proved that the victim was 17 years old at the time of incident, hence the provisions of POCSO Act are

attracted. This is separate enactment to protect the child from sexual harassment. As the prosecution has proved the offence as charged against the accused, he is liable for the punishment as provided for the proved offence. As the offence punishable under section 354-D and 509 of IPC are similar offence under section 11 of POCSO Act, the accused is liable to be punished, under section 11 punishable under section 12 of POCSO Act. Considering the same, the accused is liable for the punishment under section 506-I of IPC and under section 12 of the POCSO Act. Hence, it is necessary to hear the accused on the point of sentence to be awarded.

30. The accused is explained with the observations recorded above and the sentence which can be awarded for the proved offence. Heard Ld. Advocate for the accused Mr. Ravi Dwivedi on the point of sentence. It is submitted that the accused is 21 years old boy, having a bright future. He is only earning member of the family. He do not having criminal antecedents. He is auto rickshaw driver and from poor family. It is submitted to show leniency while awarding the sentence and minimum sentence be awarded.

31. On the other hand, it is argued by Ld. SPP that such type of incidents are increasing and therefore, the maximum punishment be awarded.

32. Considering all 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 :-



**: ORDER :**

- 1) Accused **Barun Baijnath Mandal** is hereby convicted vide Section 235(2) of the Code of Criminal Procedure, for offence under Section 11(i) and (iv) punishable under Section 12 of the Protection of Children From Sexual Offences Act, 2012 and is hereby sentenced to suffer **Imprisonment for 01 year (one year)** and to pay **fine of Rs.20,000/- (Rs. Twenty thousand only)**, in default to pay fine, to suffer **Simple Imprisonment for the period of 02 months (Two months)**.
- 2) Accused **Barun Baijnath Mandal** is hereby convicted vide Section 235(2) of the Code of Criminal Procedure, for offence punishable under Section 506-I of the Indian Penal Code and is hereby sentenced to suffer **Imprisonment for 06 (Six) months**.
- 3) Accused **Barun Baijnath Mandal** is hereby convicted vide Section 235(2) of the Code of Criminal Procedure, for the offence punishable under Section 354-D and 509 of Indian Penal code, however no separate sentence is passed, as accused is convicted and sentenced under Section 11 punishable under Section 12 of POCSO Act, which is similar offence under special Act.
- 4) Accused to surrender his bail bonds.
- 5) Both substantive sentence to run concurrently.
- 6) Set off be given to the accused, as per Section 428 of the Code of Criminal Procedure. He was in Police/Judicial Custody since 10.01.2019 till 30/01/2019.
- 7) 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.
- 8) 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.

- 9) Copy of this judgment and order be provided to the accused, free of costs.
- 10) 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 : 20.12.2022.**

Dictated on : 19.12.2022 & 20.12.2022  
Transcribed on : 20.12.2022  
Signed on : 20.12.2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGEMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
23.12.2022	11.00 a.m.	Aparna V. Lele (H.G.)
Name of the Judge		HHJ Smt. Priya P. Bankar (CR No.18)
Date of Pronouncement of Judgment/Order.		20.12.2022
Judgment/order signed by P.O on		20.12.2022
Judgment/order uploaded on		23.12.2022