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**POCSO CASE NO:- 428 of 2017****EXH-58**

PART-'A'
(Title page of Judgment)

		IN THE COURT OF SPECIAL JUDGE UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT 2012 FOR GREATER BOMBAY Present : Jayshri R. Pulate, Special Judge (Date :- 21.02.2023) POCSO Case No. 428/2017 (CNR No.-MHCC-02-010253-2017)
		FIR No.:- 398/2017 Police Station :- Ghatkopar Under Sections 376 and 506 (II) of the Indian Penal Code and under sections 6 and 10 of the Protection of Children From Sexual Offences Act.2012.
Prosecution	:	State of Maharashtra Through- Ghatkopar police station
Presented by	:	Ms. Sanjana Sharma, Learned SPP for the State
Accused	:	Manoj Kamla Chouhan Age :- 33 years Occupation :- Service Address :- Sanjay Nagar, Sunderbaug, Room No.G-25, Hill No.03, Kamani Kurla, Mumbai. Permanent Address:- Gram- Tilmapur, Post-Singpur, Tahasil-Mehnnagar, District- Azamgad, State- Uttar Pradesh
Represented by	:	Mr. V. S. Tiwari, Advocate for the accused.

PART-'B'

Date of Offence	:	March 2017
Date of FIR	:	09.07.2017
Date of Chargesheet	:	11.09.2017
Date of framing of Charges	:	15.01.2019
Date of commencement of Evidence	:	06.12.2019
Date on which Judgment is reserved	:	--
Date of the Judgment	:	21.02.2023
Date of the sentencing order, if any.	:	21.02.2023

ACCUSED DETAILS

Rank of 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 of the Cr.P.C.
01	Manoj Kamla Chouhan	09.07.2017	Was on temporary bail from 16.06.2022 to 24.06.2022	Under Sections 376 and 506 (II) of the I.P.C. and Sections 6 and 10 of the POCSO Act.	Convicted u/s. 376 (2) (n) and 506 (II) of the I.P.C.	As per final order.	09.07.2017 to 16.06.2022 and from 27.06.2022 till date.

PART 'C'**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****'A'- Prosecution:-**

RANK	Exhibit Nos.	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	P-9	Victim	Victim
PW-2	P-11	Mother of victim	Informant
PW-3	P-15	Salim Mushtak Shaikh, Driver	Panch Witness
PW-4	P-40	Dr. Abhijit R. Patil	Medical Officer
PW-5	P-44	PSI Dinesh Haribhau Bodke	First Investigating Officer
PW-6	P-46	API Jyotiram Vahanmane	Second Investigating Officer
PW-7	P-51	Chandrabali Baladin Yadav,	Principal of the School.

'B' Defence Witnesses, if any :- Nil**'C' Court witnesses, if any :- Nil****LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS****'A' Prosecution :-**

Serial No.	EXHIBIT NUMBERS	DESCRIPTION
1.	Exh-10/PW-1	Statement of victim recorded u/s. 164 of Cr.P.C.
2.	Exh-12/PW-2	First Information Report.
3.	Exh-16/PW-3	Spot Panchnama
4.	Exh-41/PW-4	Medical Examination report of victim

5.	Exh-42/PW-4	DNA Report dated 27.11.2017
6.	Exh-43/PW-4	C.A./ report dated 27.11.2017
7.	Exh-45/PW-5	Arrest Form
8.	Exh-47/PW-6	Forwarding letter dated 16.07.2017 regarding sending the victim for recording her statement before the Magistrate.
9	Exh-52/PW-7	Original admission form of victim
10.	Exh-52-A/PW-7	Copy of original admission form of victim
11.	Exh-53/PW-7	Original affidavit of father of victim
12.	Exh-53-A/PW-7	Copy of affidavit
13.	Exh-54/PW-7	Original entry No. 3985 in General Register
14.	Exh-54-A/PW-7	Copy of entry No. 3985 in General Register
15.	Exh-55	Evidence closing pursis

'B' Defence :- Nil

'C' COURT EXHIBITS

Serial Nos.	EXHIBIT NUMBERS	DESCRIPTION
1.	Exh-3	Charge
2.	Exh-4	Plea of the accused
3.	Exh-56	Statement of accused u/s. 313 of the Cr.P.C.

'D' MATERIAL OBJECTS

Serial No.	EXHIBIT NUMBERS	DESCRIPTION
		Nil

JUDGMENT

(Delivered on 21st February, 2023)

1. The accused stands prosecuted for having committed offences punishable under Sections **376 and 506 (II)** of the Indian Penal

Code (Hereinafter the Indian Penal Code is referred as the “I.P.C.”) and under Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (Hereinafter the Protection of Children from Sexual Offences Act, 2012 is referred as the “POCSO Act”). As per Section 33(7) of the POCSO Act, the name of the victim as well as her family members, relatives, neighborhood or any other information by which her identity will reveal, is concealed.

2. The genesis of prosecution case is rooted in the FIR filed by PW-2 the mother of victim. In the year 2017 she was residing with her husband, four daughters including victim aged 15 years and a son. Her nephew was also residing with them. Their house is having three floors. The third floor was given to the accused resident of Tilmapur, Uttar Pradesh, who is the friend of father of victim.

3. On 08.07.2017 the victim was having stomach pain. So, at 10.00 p.m PW-2 took her in a hospital at Ghatkopar (E). After her medical examination, doctor opined that victim was carrying four and half months pregnancy. She was admitted in the hospital. PW-2 inquired with victim and she informed that in March 2017 at 2.00 p.m when she was alone in the house, accused Monaj Chacha came there, fondled her breast. At that time, the victim asked him what he was doing. Accused threatened her to keep mum or he will kill her. It is alleged that thereafter accused removed his cloths, cloths of victim and committed sexual intercourse with her. Again after one week at 2.00 p.m. accused committed the said act with the victim when she was alone in the house. On disclosure of the said incidences, the police officers came to PW-2, inquired with her and she was called in the police station with her husband where PW-2 lodged report against accused.

4. During the investigation, accused was arrested, spot panchnama was prepared, victim and accused were sent for medical examination. Their blood samples were collected by medical officer, it handed over to investigation officer who forwarded the same to CFSL. Victim was sent before the Magistrate for recording her statement. Statements of witnesses were recorded and after completion of investigation, chargesheet was filed by API Joytiram Vahanmane.

5. My learned predecessor framed charge against the accused at Exh-03. The accused abjured the guilt and claimed to be tried.

6. Learned SPP submitted that the age of victim is duly proved on record through the evidence of PW-7 Chandrabali Yadav the principal of the school first attended by the victim. From the entries of general register, admission form and affidavit of father of victim it has come on record that birth date of victim is 02.09.2001. PW-7 is the in-charge of the record, so there is no reason to disbelieve his version. Nothing is brought on record by the defence to show that the birth date of victim recorded by the school authority, is false. Her next submission is that there is no need of seal on Exh.52 as it is school admission form of victim. PW-7 has clarified that the over writing in the birth date of victim is made as per the affidavit of her father. According to learned SPP if defence is denying the document, they have to prove u/s. 106 of the Indian Evidence Act, that PW-7 is not principal and not the custodian of the record.

7. Learned SPP further submitted that the evidence of the victim consistently reveals that Monoj Chacha done the alleged acts with her. Having stomach pain, it was revealed that the victim was pregnant.

Due to the act committed by the accused and the threats given by him, the victim suffered trauma, so she did not disclose the incidences immediately to her parents. So there is no delay in lodging the FIR. The cross-examination of victim taken by defence on the mobile numbers is of no relevance. Accused had taken advantage of absence of family members of victim and therefore, it is not necessary considering the strength of family members of victim that someone should remain present in the house. The victim has denied false implication of accused. The victim could not make uproar as accused gagged her mouth at the time of committing the offence. According to learned SPP the DNA report Exh-42 is positive. It reveals that the victim and accused are biological parents of the fetus of victim. The evidence of medical officer also supports the evidence of victim and there is no reason to disbelieve the version of medical officer. As regards the evidence of PW-3 Salim Shaikh, it is submitted by Learned SPP that though he acted as panch in two to three cases of Ghatkopar police station, it does not mean that he deposed false at the instance of police. Now a days, people are reluctant to act as panch, they avoid to face Court atmosphere. So, PW-3 need not be disbelieved as he has not stated that he took money and deposed false. The defence of false implication of accused is not proved nor any explanation is given by the accused in his statement recorded u/s. 313 of Cr.P.C. There may not be any independent witness if the nature of allegations are considered.

8. Per contra, learned advocate of accused vehemently submitted that leaving certificate of victim is not shown to PW-1. There is over writing in the birth date mentioned in the school admission form Exh-52. Though it is stated by PW-7 that the said over writing is made on the basis of affidavit of father of victim, the father is not examined by

prosecution to show the source of information as regards birth date of victim. There is difference in the name of father of victim in affidavit Exh.53 and in his name in charge sheet. There is no seal of the school on Exh.52. The original entry in GR at Exh.54 nowhere reveals that the said entry is taken on the basis of affidavit of father of victim. Therefore, according to learned advocate of accused the birth date of victim is not properly proved on record. His next submission is that spot panch is habitual witness therefore, his evidence is unreliable. The victim had not stated any date of incident and in her statement before Magistrate, she has not named the accused. The investigation officer has not recorded any statement of neighbor to show that accused was residing on rent in the house of victim and she used to call him 'Chacha'. Though the alleged incident occurred in March 2017, the victim and her family members attended the marriage of accused in May 2017 at their village.

9. Learned Advocate of accused further submitted that in the cross-examination of PW-1 she stated that college timing of victim in the year 2017 was between 12.00 p.m. to 5.00 p.m. So, it is hardly impossible that incident will occur in noon. PW-1 did not notice any change in physical appearance of victim though she was carrying four and half months pregnancy. She further admitted that she had not given document of birth of victim to police. Learned advocate further submitted that the evidence as regards collection of blood samples of victim is not brought on record by prosecution. In the medical history the victim had not stated that accused threatened her. The medical officer has not stated that blood samples of victim were collected. The carrier of blood sample is not examined by prosecution. EPR register is not brought on record by the prosecution. Therefore, according to learned advocate of accused there is no consistent and reliable evidence

brought on record to connect the accused with present crime nor age of victim is proved. So, according to learned advocate, accused deserves for acquittal.

10. In his statement recorded u/s. 313 of the Cr.P.C. accused submitted that his wife and other woman of locality beat the victim and therefore, he is falsely implicated in the present case.

11. Considering the evidence on record, submission of both the sides, following points arise for consideration. I have given findings against each of them with the reasons as stated below.

<i>SR. NOS.</i>	<i>POINTS</i>	<i>FINDINGS</i>
1.	Does prosecution prove that the victim was “Child” under Section 2 (1) (d) of POCSO Act at the time of incident ?	No
2.	Does prosecution prove that in March-2017 at 02.00 p.m. and after one week accused committed rape on victim at Kurla, Mumbai in the house of victim.? (Section 376 of the I.P.C.)	Yes, offence punishable u/s. 376 (2) (n) is proved.
3.	Does prosecution prove that on the above mentioned date, time and place, accused committed criminal intimidation to victim by threatening her to kill with intent to cause alarm to her or to cause her to do an act which she is not legally	Yes

bound to do.? (**Section 506 (II) of the I.P.C.)**

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|----|---|----------------------------|
| 4. | Does prosecution prove that on the above mentioned date, time and place, accused committed aggravated penetrative sexual assault on victim? (Section 6 of the POCSO Act.) | No |
| 5. | Does prosecution prove that on the above mentioned date, time and place, accused committed aggravated sexual assault more than once on victim.? (Section 10 of the POCSO Act.) | No |
| 6. | What Order ? | As per final order. |

REASONS

As to Point No. 1:-

12. The foremost question arising in this case is as to what is date of birth of victim. In this regard, the procedure has already been laid down by the Hon'ble Supreme Court of India in ***Jarnail Singh V/s. State of Haryana reported in (2013) 7 SCC 263***, wherein it is observed that the process of age determination as per Juvenile Justice (Care and Protection of Children) Act, 2000 (**In short the “J.J. Act ”**) is applicable to victims of crime as much as children in conflict with law.

13. It is pertinent to note that the J.J. Act of 2000 and J.J. Rules of 2007 have been replaced by the J.J. Act 2015 and J.J. Model Rules 2016 respectively. Section 94 of the J.J. Act 2015 provides for the

procedure to determine the age. As per sub section 2 of Section 94 of the Act, in case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the committee or the Board shall undertake the process of age determination, by seeking evidence by obtaining- i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available and in the absence thereof ii) the birth certificate given by a Corporation or a Municipal Authority or a Panchayat iii) and only in the absence of i) and ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

14. In this case, the first option namely the matriculation or equivalent certificate is not available. Since the child was school drop out, the second option is the date of birth certificate from the school. The victim testified that her birth date is 02.09.2001. Prosecution has examined PW-7 Chabdrabali Yadav, the Principal of the School. He testified that from 01.08.2016 he is the Principal of the School and he further testified about the process of admission followed in the school. According to him, victim was given admission in the said school in first standard in the year 2007-2008 on the basis of the affidavit filed by her father. She studied in the said school up to 4th Standard. Original admission form of victim is at Exh-52, its copy is at Exh-52-A, original affidavit of father of victim is at Exh-53, its copy is at Exh-53-A, original entry No. 3985 in the General Register is at Exh-54 and its copy is at Exh-54-A. In cross-examination, PW-7 admitted that Exh-52 was submitted before 2016 and he do not know about the same. He admitted that there is no seal of the school on Exh-52, there is over writing in the birth date

of victim in Exh-52. PW-7 could not tell whether father of victim had given any proof of her birth in village. He further admitted that in General Register it is nowhere mentioned that the entry of the birth date is taken on the basis of affidavit Exh-53, there is typing mistake after the words 2nd September in Exh-53. The legal position is not in dispute that mere production and marking of the document as exhibit by the Court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is by the evidence of those persons who can vouchsafe for the truth of the facts in issue. In my opinion, the aforesaid burden has not been discharged by the prosecution. When there is over writing in birth date of victim in Exh-52 and in the birth year of victim in Exh-53, it was necessary for the prosecution to examine the father of victim on the basis of whose affidavit the birth date of victim was recorded in the school. He could have been the best person to state as to on what basis the birth date of victim is recorded in the school. He could have explained as to why there is overwriting in his affidavit as regards the birth year of victim and why there is some difference in his name in affidavit Exh-53. So, I am of the opinion that the prosecution failed to categorically prove that the age of victim as less than 18 years at the time of occurrence of incident that is in March-2017. Eventually, point No.1 is answered in Negative.

As to Point Nos. 2 to 6 jointly:-

15. Since all the points inter-alia being connected with each other requires common discussion, they are considered together.

16. The victim has categorically deposed that she was forced into the act. She deposed that accused was residing on one of the floor in their house. Learned Advocate of accused submitted that the

Investigating Officer has not recorded any neighbor's statement to show that accused was residing on rent in the house of Informant and was called 'Chacha' by the victim. In this respect, the tenor of cross-examination of victim reveals that she was suggested that after college, she used to rang the accused at least 4 times in a day. She denied that after returning from College, she used to go on 2nd floor of her house to meet the accused. So, impliedly defence has admitted that accused was residing in the house of Informant and therefore, it was not necessary for the Investigating Officer to record any statement of the neighbor to prove the same. Similarly, there is no statement of neighbor recorded by the Investigating Officer to show that accused was called as 'Chacha', is no ground to disbelieve the statement of victim as it has to be seen whether accused committed rape on the victim.

17. According to victim, on 08.07.2017 she had stomach pain and was taken by the Informant PW-2 in the hospital where it was revealed that she was carrying four and half months pregnancy. She further deposed that in the month of March-2017, when she was alone in the house, accused came home at 02.00 p.m. and touched her breast. She pushed him, then he closed her mouth with hands and threatened her to kill. She further deposed that accused committed sexual intercourse with her and again after one week, he repeated the said act. As she was scared, she did not disclose the incidences to anyone. The omission as regards closing mouth of victim by hands of accused is brought on record by defence in her cross-examination but the fact on record reveals that the victim categorically stated that the accused committed sexual intercourse with her against her will by threatening her to kill. Statement of victim was also recorded u/s. 164 of the Cr.P.C. wherein also she has stated that 'Chacha' had committed forcible sexual

intercourse with her and she got pregnant. Now she has not stated name of 'Chacha' in her statement u/s. 164 of the Cr.P.C. but it has to be appreciated that the statement recorded u/s. 164 of the Cr.P.C. is used for the purpose of corroboration and in her evidence victim deposed against the accused. So, not mentioning name of accused before the Magistrate, would not falsify the evidence of victim. The victim was cross examined by defence but except suggestions nothing has come on record. It was suggested to victim that she was in love with the accused at the time of alleged incident but the said suggestion is refuted by the victim.

18. The prosecution has also relied on the evidence of Informant who is mother of the victim. She deposed that on 08.07.2017 she took the victim in the hospital on her complaint of stomach pain where it was revealed that victim was carrying four and half months pregnancy. Then, she inquired with victim who disclose the incidences of committing sexual intercourse by accused with her.

19. On going through the evidence of Informant, it appears that she got information of alleged incident from the victim and on the basis of same, she lodged FIR in the police station. The evidence of Informant also reveals that she was informed about the sexual intercourse committed with the victim by the accused. It is also observed that victim has categorically stated that accused committed sexual intercourse with her without her consent and also threatened her. Therefore, she did not disclose the incident of rape to anybody till she was examined by the Medical Officer. On the basis of the evidence of victim and Informant, learned Advocate of accused submitted that the alleged incident occurred in March-2017, victim was taken in the hospital on 08.07.2017, FIR was

lodged on 09.07.2017 and there is delay in recording statement of victim on 25.07.2017. Therefore, it creates doubt as regards prosecution case. On perusal of FIR, it appears that when the victim was admitted in the hospital for stomach pain, she disclosed the incident to her mother and then FIR was lodged. Victim deposed that she was discharged from hospital on 15.07.2017. So, considering the trauma suffered by the victim due to alleged incidences and disclosure of the same to her mother, I am of the opinion that the delay in recording her statement is not fatal to prosecution case. On inquiry in the hospital by Informant, victim disclosed that she conceived pregnancy from the accused. Therefore, as it was late on 08.07.2017, FIR came to be registered on 09.07.2017. So, there is no delay in lodging the FIR. In view of the observations of the Hon'ble Apex Court in the matter of **Satpal Singh V/s. State of Haryana MANU/SC/0537/2010** '*the delay in lodging the FIR in sexual offences has to be considered with different yardstick*'. According to the victim, the incident of rape was committed in the month of March-2017. Neither Informant nor the victim has given exact day and date of the alleged incident. But it is the fact that Informant lodged FIR on 09.07.2017. In the FIR, it is made clear that as soon as the victim was admitted in the hospital for stomach pain, the Informant made inquiry with her regarding her pregnancy and victim disclosed the involvement of accused in the offence and thereafter, immediately FIR came to be lodged. The Informant was diligent to lodge the FIR as soon as she got the information of the offence from the victim.

20. It has come in the cross-examination of PW-2 that victim was in 12th standard and used to attend the College between 12.00 p.m to 05.00 p.m.. So, according to learned Advocate of accused, the alleged incident of rape could not be committed at noon. To me, the victim has

categorically deposed that incident occurred at noon. No suggestion is given to her by defence that on the day of incident she had not gone to College or School. So, there is no substance in the submission of learned Advocate of accused that the offence could not have been committed at noon. Learned Advocate of accused further argued that victim is having three sisters, a brother and Informant is house wife. The nephew of Informant was also residing in their house. So, it is possible that any one of the family member must have remained present in the house and therefore, the alleged offence could not have been committed. To me, the sexual offences are invariably committed in secrecy and when the victim has deposed that accused committed sexual intercourse with her by threatening to kill, there is no reason to disbelieve her version. Now it has come on record in the cross-examination of PW-2 that if anyone screams in their house, neighbors will gather. There are other houses located by the side of Informant's house. In my opinion, victim deposed that accused committed sexual intercourse with her twice by threatening her to kill. So, it is quite natural that she could not raise alarm and therefore, neighbors could not get any knowledge of the same.

21. It has further come in the cross-examination of PW-2 that she did not notice the behavior of victim that she was vomiting, feeling giddiness and not consuming food properly. She did not notice any change in the physical appearance of victim though she was carrying four and half months pregnancy. To me, it is not necessary that victim should feel vomiting or feel nausea about the food due to her pregnancy. It is also not necessary that every pregnant women should go through the same pregnancy causes and therefore, it is possible that Informant could not notice any change in the behavior of victim till she make complaint of stomach pain. Thus, the said argument of learned Advocate of accused

needs to be turned down.

22. The prosecution has examined PW-3 Salim Shaikh who is panch witness of spot panchnama. He has proved spot panchnama Ex-16. He admitted in cross-examination that he had acted as panch in two to three cases of Ghatkopar police station. So, according to learned Advocate of accused he is not reliable witness. The evidence of panch witness is corroborative piece of evidence. Prosecution has proved the spot panchnama through the evidence of PW-5 PSI Dinesh Bodke. He is the person who has drawn the panchnama. Hence, his evidence is substantive piece of evidence as regards spot panchnama Exh-16.

23. Learned Advocate of accused submitted that the alleged incident occurred in March-2017 and victim admitted in her cross-examination that she alongwith her family members had attended the marriage of accused in Uttar Pradesh in May-2017. So, it shows that victim was not having any grievance against the accused. In my opinion, attending marriage ceremony of accused by the victim and her family members is no ground to disbelieve the version of victim as she consistently deposed that she was threatened by the accused to kill if she discloses the incident to anyone. The defence of false implication of accused is thus not proved on record.

24. PW-4 Dr. Abhijeet Patil testified that on 08.07.2017 he was on duty in Rajawadi Hospital. On that day, he examined victim. The pregnancy of 19 weeks of victim was confirmed. According to PW-4 victim's abortion was done on 12.07.2017 and part of fetus was handed over to the WPC 080874. The medical examination report of victim Exh-41 is proved by PW-4. The history narrated by victim to PW-4 also

reveals that accused had committed sexual intercourse with her against her will. In his cross-examination nothing has been brought on record to disbelieve his version. There is no cross-examination of PW-4 on the statement that part of fetus after abortion of victim, was handed over to WPC. The papers of the Sonography of victim were also brought by PW-4 at the time of leading evidence. PW-4 stated in cross-examination that as DNA report was not received, final opinion was not given in Exh-41. In the evidence of PW-4 DNA report dated 27.11.2017 and C.A. report dated 27.11.2017 are marked at Exh-42 and Exh-43 respectively. PW-6 PSI Jyotiram denied that samples of victim were collected on 12th and it remained in his custody till 13th. As per Exh-42, it is opined that victim and accused are concluded to be biological parents of the aborted fetus. Learned Advocate of accused vehemently submitted that it is not brought on record by prosecution that victim's blood samples were collected by the Medical Officer. The Medical Officer who examined the accused is also not examined by prosecution to show that blood samples of accused were collected. The carrier of the samples is not examined by prosecution. So, according to learned Advocate of accused DNA report is doubtful.

25. Learned Advocate further submitted that the C.A. report Exh-42 reveals that analysis started on 01.05.2017 and it is highly impossible because FIR is lodged on 09.07.2017 and victim's pregnancy was confirmed on 08.07.2017. On perusal of Exh-42 and Exh-43 it reveals that the date of receipt of samples of victim and accused in CFSL is 13.07.2017 and 11.07.2017 respectively. As rightly submitted by learned SPP that the recitals of the report has to be considered wholly and therefore, I do not find that the date of starting analysis mentioned in Exh-43 is advantageous to defence. Further, the DNA report and C.A.

report are exhibited in the evidence of PW-4 in view of Section 293 of the Cr.P.C. So, defence was having opportunity to call the Chemical Analyst for cross-examination. A positive result of the DNA test would constitute clinching evidence against the accused. Non examination of Medical Officer who collected blood sample of accused would not falsify the reliable evidence of victim. So, even if the DNA report is not considered, there is unblemished evidence of victim to connect the accused with the present crime that he had repeatedly committed rape on her against her will.

26. Learned Advocate of accused cited the Judgments in the matters of *The State of Maharashtra V/s. Vishnu Tulshiram Karwate & Ors. 2021 ALL MR (Cri) 277*, wherein it is laid down by the Hon'ble High Court of Bombay Bench at Nagpur Court that :-

“ Prosecution failed to prove that prosecutrix was below 16 years of age at time of incident as alleged by them. Prosecutrix neither lodged police report nor complained to her parents. She disclosed relationship with accused to her parents only when she was 07 months pregnant. Prosecutrix gave birth to child. The chemical analyst who conducted DNA test of prosecutrix and her son is not examined by prosecution. Only on basis of report of chemical analyst it cannot be concluded that accused is biological father of child. No evidence to connect accused with offence u/s. 376. Dishonest or fraudulent intention of accused not to marry prosecutrix since beginning, also not proved. ”

In that case, the victim disclosed her relationship with the accused when she was 7 months pregnant. She gave birth to child and the first incident of sexual intercourse with her alleged to have occurred two years prior to lodging of FIR. The accused had done the said act by

promising her to marry. Such are not the facts of the present case. So, with due respect to the observations laid down in the cited Judgment, it is not applicable to the present set of facts.

Kisan Dashrath Tambile & Anr. V/s. The State of Maharashtra & Anr. 2021 ALL MR (Cri) 4240, wherein it is laid down by the Hon'ble High Court of Bombay that :-

“ Love affair between accused and prosecutrix led to her pregnancy. Trial Court convicted accused on the ground that prosecutrix's consent was immaterial since she was below 16 years of age. School leaving certificate proved by Headmistress of school showing age of prosecutrix to be 13 to 14 years at the time of incident. Doctor opined prosecutrix's age as 15 years from her appearance but advised to ascertain her correct age. Prosecution did not make any efforts to determine prosecutrix's age, by conducting ossification test or otherwise. Prosecution unable to produce definite evidence to show that prosecutrix was under 16 years of age. Consensual sexual intercourse, proved. Question of rape does not arise.”

In that case, there was love affair between accused and prosecutrix which led to her pregnancy and consensual sexual intercourse between the accused and prosecutrix was proved on record. So, the said observations are not applicable to the case in hand.

Nagesh s/o. Samayya Made V/s. The State of Maharashtra 2019 ALL MR (Cri) 2224, wherein it is laid down by the Hon'ble High Court of Bombay Bench at Nagpur Court that :-

“ Victim girl did not disclose act on part of accused though her mother was available and accused was also present in her house after incident. Victim told about

incident to her mother only after accused left house. Thus, finding of guilt cannot be upheld only on basis of version of victim and her mother. Medical evidence as to injuries on private parts of victim cannot be used as corroborative piece of evidence to versions of victim and her mother. Scientific evidence of DNA report not reliable in absence of proof as to taking all precautions in extracting blood samples of victim and accused in DNA kits, its sealing, seizure etc. and non examination of doctor. Moreover, said incriminating piece of evidence not put to accused in his examination u/s. 313 of the Cr.P.C. Prosecution thus failed to prove its case beyond reasonable doubt. ”

In that case, after the incident, mother of victim came in the house when accused was also present but the victim did not disclose the incident to her mother and the DNA report was not put to the accused in his statement u/s. 313 of the Cr.P.C. In the present case, the accused is asked about DNA report and C.A. report in his statement u/s. 313 of the Cr.P.C. So, the observations in the cited Judgment are not applicable to the present set of facts.

Amol @ Ratan Pralhadrao Tayade V/s. State of Maharashtra 2022 ALL MR (Cri) 801, wherein it is laid down by the Hon'ble High Court of Bombay Bench at Nagpur Court that :-

“Accused allegedly threatened his sister-in-law and repeatedly sexually ravished her. Victim did not disclose this fact to her mother or sister. Victim was 5 months pregnant when she disclosed it to her mother. Defence by accused that victim on date of offence was above 18 years of age. Mother, sister and brother of victim not examined. Original school certificate showing date of birth, not produced on record. Investigating Officer failed to collect other scientific evidence to establish age of victim in view of self contradictory documents with

regard to her birth date. Appellant admitted that he had sexual intercourse with victim. Long period of intimate relations between appellant and victim would clearly indicate that victim was consenting party. Defence of accused made probable by evidence of victim. Chemical Analyzer, who analyzed DNA sample, not examined. Prosecution failed to prove its case beyond doubt. Failure to produce primary evidence i.e. main entry from admission Register and supporting documents for making said entry in School Admission Register. Cause prejudice to accused.”

In that case, there was intimate relation between victim and accused. Her mother, sister and brother were not examined by the prosecution to support her testimony and the age of victim was also not proved. In that circumstances, accused was acquitted in the said case. Thus, the facts of the cited Judgment being different from the case in hand, the said observations are not applicable to the present case.

Balasaheb V/s. The State of Maharashtra 1994 CRI. L.J. 3044, wherein it is laid down by the Hon’ble High Court of Bombay that :-

“ Prosecutrix going with accused on her own. Staying with him for two days in his house with his relatives and having sexual intercourse with him. Neither trying to escape. Nor making any grievance to his relatives. Conduct of victim showing her consent. According to medical jurisprudence error in case of age based on ossification test may be + three years. Ossification test showing age of prosecutrix between 14 to 16 years. Accused entitled to advantage of marginal error based on ossification test.”

In that case prosecutrix stayed with the accused in his house for two days on her own. Relatives of the accused were also residing in

the said house. The victim did not try to escape nor disclose the incident of rape to the relatives of accused. In that circumstances, the accused was acquitted. Such are not facts of the present case. So, with due respect, the said observations are not applicable in the present case.

Alamelu & Anr. V/s. State represented by Inspector of Police 2011 ALL MR (Cri) 1278 (S.C.), wherein it is laid down by the Hon'ble Apex Court that :-

“Date of birth. As noted on transfer certificate. Father of girl who gave the date of birth or person who recorded the date not examined. Cannot be treated as reliable evidence. Conviction can be recorded on the sole, uncorroborated testimony of victim provided it does not suffer from any basic infirmities or improbabilities which render it unworthy of credence.”

In the case in hand, there is consistent and cogent evidence of victim which reveals that accused repeatedly committed rape on her. So, the observations in the cited Judgment are not applicable to the present case.

27. In this case, the age of victim is not proved by prosecution but the evidence of victim coupled with the evidence of medical officer and DNA report reveals that accused repeatedly committed rape on victim. Though, charge u/s. 376 of the IPC is framed against the accused, he is liable to be convicted u/s. 376 (2) (n) of the I.P.C as victim deposed about repeated rape by accused on her. It has also come on record that accused threatened to kill the victim and thus committed criminal intimidation u/s. 506 (II) of the I.P.C. As the minority of victim is not proved on record, the accused needs to be acquitted u/s. 6 and 10 of the POCSO Act. In the result, I answer point Nos.2 and 3 in

affirmative and point Nos. 4 and 5 in negative. So, I find it proper to hear the accused on the point of sentence.

(Jayshri R. Pulate)
Special Judge
Under POCSO ACT, 2012
Gr. Bombay.

Date :- 21.02.2023

28. Heard Advocate for accused, the accused and learned SPP for the State on the point of sentence. Accused submitted that he has five years old child and old aged parents. They have ailments. Learned Advocate of accused submitted that the mother of accused is 70 years old and suffering from diabetes. He has already suffered imprisonment of Six years and therefore, he be released on the imprisonment undergone by him. On the contrary, learned SPP submitted that accused had committed heinous offence against victim, impregnated her and thus created terror in her mind. So, maximum punishment be awarded. Sexual exploitation and sexual abuse of victim are heinous crimes and needs to be effectively addressed. Considering the acts committed by accused by taking advantage of absence of family members of victim, I am of the opinion that following sentence would meet the ends of justice. In the light of the aforesaid discussion, for the answer of point No.6, I proceed to pass following order :

ORDER

1. Accused **Manoj Kamla Chouhan** is hereby **convicted** vide Section 235 (2) of the Code of Criminal Procedure for the offences punishable under Sections 376 (2) (n), 506 (II) of the Indian Penal Code.

2. Accused **Manoj Kamla Chouhan** is hereby **acquitted** vide Section 235 (1) of the Code of Criminal Procedure for the offences punishable under Sections **6 and 10** of the Protection of Children From Sexual Offences Act, 2012.
3. Accused is sentenced to suffer **Rigorous Imprisonment for 10 (Ten) years** and to pay a fine of **Rs.5,000/- (Rupees Five Thousand only)**, for the offence punishable under **Section 376 (2) (n)** of the Indian Penal Code. In default of payment of fine, he is further sentenced to suffer **Rigorous Imprisonment for Two (02) months**.
4. Accused is sentenced to suffer **Rigorous Imprisonment for 01 (One) year** and to pay a fine of **Rs.1,000/- (Rupees One Thousand only)**, for the offence punishable under **Section 506 (II)** of the Indian Penal Code. In default of payment of fine, he is further sentenced to suffer **Rigorous Imprisonment for One (01) month**.
5. On realization of fine amount, an amount of **Rs. 6,000/- (Rs. Six Thousand Only/-)** be paid to victim, after appeal period is over.
6. All the substantive sentences shall run concurrently.
7. Accused is in jail. Set off for the period of detention already undergone by the accused be given as per Section 428 of Code of Criminal Procedure.
8. Marked and unmarked articles, if any, being worthless, be destroyed after appeal period is over.

9. Copy of this Judgment be provided free of cost to accused as per Section 363(1) of the Code of Criminal Procedure.
10. Pronounced in open Court.
11. As the matter is disposed off by this Judgment, the record and proceedings be sent to Record Department.



(Jayshri R. Pulate)
Special Judge
Under POCSO ACT, 2012
Gr. Bombay

Date :-21.02.2023

Directly Dictated on Computer on : 16.02.2023 and 21.02.2023
Signed on : 21.02.2023

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”		
UPLOAD DATE	TIME	STENOGRAPHER NAME
21.02.2023	05.38 p.m.	Ms. Ujwala J. Bhagat

Name of the Judge	H.H.J. Jayshri R. Pulate. (Court Room No.34)
Date of pronouncement of Order	21.02.2023
Order signed by P. O. on	21.02.2023
Order uploaded on	21.02.2023