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MHCC050001742016



Exh.29

IN THE COURT OF SESSIONS AT DINDOSHI,
(BORIVALI DIVISION), GOREGAON, MUMBAI

POCSO SPECIAL CASE NO.11 OF 2016

The State of Maharashtra
(Malad Police station)
(C.R.No.442/2015)

...Prosecution.

V e r s u s

Walmick Ramdin Pal,
Age : 25 years, Occu.:Service,
Residing at : Domnik Colony,
Road No.3, Orlem, Malad (W),
Mumbai.

...Accused.

OFFENCES PUNISHABLE U/S 354-D OF THE INDIAN PENAL CODE
ALONGWITH 12 OF THE PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012

Shri R. C. Savle, A.P.P for the State.
Shri Chetan Bhosale, advocate for accused.

CORAM : A. Z. KHAN,
Additional Sessions Judge,
Borivali Division, Dindoshi, Mumbai.
(C. R. NO. 13)
DATE : 06th February, 2023.

J U D G E M E N T

1. In the present case, the accused has faced the trial for the charge of the offences punishable u/s 354-D of the Indian Penal Code alongwith 12 of the Protection of Children from Sexual Offences Act, 2012 on the basis of the charge sheet filed by The Malad Police Station, Mumbai before the concern court.

2. The case of the prosecution in short is that the complainant is the mother of the victim aged about 15 years and she used to go to school at about 07.00 a.m and return back at 01.00 p.m and also used to go for private tuition. However, the accused came on 01.09.2015 at 01.50 p.m when the minor victim girl was proceeding towards the private tuition from the Ludus Colony, Malad (West), Mumbai on bicycle and called the minor victim girl (Aaja, Aaja) whereby she frightened and asked help to the person standing nearby but the accused ran away. However, the accused again came from the backside of the minor victim girl on 03.09.2015 at about 04.15 p.m when she was going to Ludus colony, Malad (W), Mumbai for tuition and went away. The accused came to the building of the complainant on 04.09.2015 at about 04.00 p.m and keep watch on the minor victim girl. The minor victim girl narrated all the incident to the complainant and her husband whereby they tried to take the search of the accused on 06.09.2015 at about 07.45 p.m where the minor victim girl shown

and identify the accused in which the complainant and her husband asked to the accused as to why he is stalking and following their daughter and handed over the police. The complainant lodged the report on 06/09/2015 in which the police registered the offence vide Crime No. 442/2015 u/s 354-D of The Indian Penal Code alongwith 12 of the Protection of Children from Sexual Offences Act, 2012. The police prepared the spot panchnama and arrested the accused under the arrest panchnama in the presence of the panchas. The police also recorded the statements of the witnesses as per their say. After the completion of the investigation, the charge sheet came to be filed before the court.,

3. The charge came to be framed against the accused vide Exh.05 on 15/11/2017 u/s 354-D of the Indian Penal Code alongwith 12 of the Protection of Children from Sexual Offences Act, 2012 & explained the same in vernacular to the accused to which the accused has pleaded not guilty & claimed to be tried. The defence of the accused can be gathered from the record is that of the total denial.

4. Having carefully gone through the evidence oral as well as documentary & hearing the arguments advocated at bar, the following points arose for my determination to which I have answered for the reasons discussed below :-

P O I N T S

F I N D I N G S

I. Does the prosecution prove that the accused on or about 01.09.2015 & 03.09.2015 at 16.15 hrs followed the

girl and made attempt repeatedly by saying that 'आजा आजा', despite a clear indication of disinterest by a minor girl and thereby committed an offence punishable u/s 354-D of The I.P.C.?

...Yes

II. Does the prosecution further prove that accused on or about 04.09.15 and 06.09.2015 at about 19.45 hrs when the informant and her husband asked him as to why you are stalking the girl and prior to it i.e 01.09.2015 and 03.09.2015 by making a gesture & uttering the words such as 'आजा आजा' and committed sexual harassment to the minor girl and thereby committed an offence punishable u/s 12 of The POCSO, Act, 2012 ?

...Yes.

III. What order ?

...As per the final order.

REASONS

5. AS TO POINT NOS.1 & 2:-Both the Points are inter connected with each others & thus their discussion is clubbed together. In order to bring home the guilt within the premises & ambit of the charges leveled against the accused, the prosecution has examined in all

four witnesses i.e. The Victim P.W.1 at Exh.9, The Complainant P.W.2 Mrs Jasmin Nilesh Gogri at Exh.12 , P.S.I.P.W.3 Manjushree Shankar Ghule at Exh.15 & P.S.I. P.W.4 Shrikant Vasantraon Suryawanshi at Exh.19. The learned APP filed the evidence closing pursis vide Exh.27 & thus the case has been closed. The prosecution filed the documents i.e. The F.I.R at Exh.13, The Report at Exh.16 & The Arrest Form at Exh.17.

6. In this context, the Victim P.W.1 has deposed that she was studied in the school namely Saint Joseph High School and her school in the year 2015 & her timing was 7.00 a.m to 1.00 p.m. She was going to attend French Class on 01.09.2015 & she was started to walk from her lane by reading notes. She cross some distance, at that time, one boy came from back side and he had made dirty sound such as “Aaja Aaja” and that boy took round around her & thus she proceedes towards her back side. Thereafter, She proceeded further and entered towards left side land. At that time she has not seen that fellow.

7. This witness has further deposed that the accused again came from her back side on bicycle. Some two three uncles were stood up alongwith motor cycle. She informed one of them that one boy is comming from her backside on bicycle and trouble her. Thereby seeing that she made request for help. That boy fled away towards back side on his bicycle. The motor cycle uncle chased that boy but could not succeed. Thereafter, she went to her French Class. She has informed the said fact to her teacher in class and after completion of class, she returned to her house and narrated the entire incident. Thereafter, nothing had happenned on 02.09.2015.

8. The victim has further specifically deposed that the accused again came on 03.09.2015 at about 4.00 p.m on the bicycle when she was proceeding towards her tuition class and took 2-3 rounds but she ignored it and went to her class & informed the said incident to her mother. The accused again came on 04.09.2014 in the noon time nereby their building whereby she informed to her mother. On 06.09.2015 at evening time, they were returning towards their house alongwith her mother, father and sister, they saw that the accused is in other building. They came to know that he was night watchman in that building. She intimated to her mother that the same boy is present in that building who gave trouble to her. Her mother went towards that boy and assaulted him. She had called the uncle who helped her on previous date incident. Thereafter, she went to home. Her parents were stopped there. Police called her at the same building and thereafter, they went to the police station, the police took that the accused to the police station where her mother lodged the report. She was taken to the learned M.M Court where his statement vide Exh.11 is recorded which bears her signature & The accused before the Court is the same.

9. The complainant P.W.2 Mrs Jasmin Nilesh Gogri has deposed that she has two daughters who is victim and Manswi. The date of birth of the victim is 09.08.2000. The victim was studying in Saint Joseph School in 10th standantd at Orlem, Malad. The victim came from the school on 01.09.2015 at about 1.00 p.m & she was going to her french class at about 1.45 p.m through a lane, the accused came on bicycle and he was troubling her by uttering "Aaja Aaja". Her daughter was scare and she just start to runn towards her classes. Before 2-3

building of that class some people were stood up there. She requested for help. They were on motyor cycle. Immediately they started by the motor Cycle and went for searching to the accused who was on bicycle. One uncle was with her who stopped there took the victim to her class. Then she went in the class and narrated the incident to her teacher. Thereafter, completion of the class her daughter returned to the home & narrated the incidnt to her. The accused took the round arround the victim on 03.09.2015 when she was going towards the class by walking. The accused again stalking on 04.09.2015 nearby their building.

10. They all family members were returning after dahi handi festival on 06.09.2015 or 07.09.2015 in the evening time, her daughter identified the accused who was stood up in the gate of the second building of that lane. They alight from their car and went towards the accused. Firstly, she assaulted him. She made call to the police on 100 number. Police came there and took the accused to the police station. They also went to the police station along with the victim where she lodged the report. Police have reduced into writing her report as per her say vide Exh.16 which bears her signature & the contents are correct. The accused before the court is the same who did the above act.

11. P.S.I.P.W.3 Manjushree Shankar Ghule has deposed that she was attched to police staion, Malad as a PSI since 2013 to 2017. She was on duty on 06.09.2015 from 8.00p.m to 8.00 a.m as Police Station officer. The informant came to the police station on 06.09.2015 & lodged the report vide Esh.16. She recored her statement as per her say which was typed on computer which bears her signature & the sig-

nature of the informant. The contents are correct as per the say of the informant. She registered the offences against the accused u/s 354-D of The Indian Penal Code alongwith 12 of The POCSO, Act vide Crime No. 448/2015 & the printed FIR is at Exh.13 which bears her signature & the signature of the informant & the contents are correct. She arrested the accused on 06.09.2015 under Arrest Panchnama in presence of pan-chas vide Exh.17. The accused present today in the court is the same.

12. P.S.I.P.W.4 Shrikant Vasantraon Suryawanshi has deposed that he was posted at Malad Police Station from 01.10.2013 to 26.07.2016. His previous investigation officer at Malad Police Station had registered the Crime No.442/2015 and had arrested the accused. The investigation of this offence was handed over to him on 07.09.2015. He recorded the statement of the witnesses namely Nilesh who was the father of the victim girl. He arranged to record the statement u/s 164 of the code of Criminal Procedure of the victim girl through the Metropolitan Magistrate, Railway Court, Andheri. After completion of the investigation, he filed the charge-sheet.

13. It is pertinent to note here that the learned defence advocate has cross examined the Victim P.W.1, the Complainant P.W.2 Mrs Jasmin Nilesh Gogri, P.S.I.P.W.3 Manjushree Shankar Ghule & P.S.I. P.W.4 Shrikant Vasantraon Suryawanshi at length but no fruitful material brought on record so as to shatter their versions on the material particulars. However, the defence has failed to bring any fact on record to show that as to why these witnesses are deposing against the accused but the versions of these witnesses are cogent, convincing & consistent

& thus I do not find any reason to disbelieve the same. It is well settled principle of the law that the minor discrepancies may come but the said can not be wiped out the whole versions of the witnesses & the case of prosecution on merit but the court should ignore such discrepancies.

14. In such circumstances, as discussed above, I am of the view that the prosecution has rightly proved that the accused on or about 01.09.2015 and 03.09.2015 at 16.15 has followed the minor victim girl and made attempt repeatedly by saying that 'आजा आजा' despite a clear indication of her disinterest and sexually harassed within the pervue of the provision laid down u/s 354-D of the Indian Penal Code alongwith 12 of the Protection of Children from Sexual Offences Act, 2012 & thus I have answered the Point Nos.1 to 2 in the affirmative accordingly.

15. When I asked about the quantum of the sentences, the accused has submitted that he has a wife and three years daughter and no one is to look after them by which he has prayed for the leniency. However, the learned counsel for the accused Shri Chetan Bhosale has submitted that the accused is a poor person and the only person who look after his family whereby he submitted that the lenient view may kindly be taken. In contra, the learned A.P.P Shri R.C. Savle for the State has submitted that the accused has committed the offence against the minor victim girl when she was going to school and tuition which is the social crime whereby he has prayed for the maximum punishment.

16. No doubt, the court should have to take the aggravating as well as mitigating circumstances into consideration while awarding the

punishment but it is seen from the record that the accused has committed the offence minor victim girl wherein he was stalking by following and attempt to contact such minor victim girl repeatedly despite a clear indication of disinterest by the said minor victim girl.

17. The accused is aged about 32 years & he has a wife and three years old daughter but the same can not be the mitigating circumstances as the offences committed by the accused is neither under duress nor on the provocation on the part of the minor victim girl but the accused committed such offences with the minor victim girl by which the accused is not entitled for the lenient view as contended by the accused & his learned advocate & thus the accused is not entitled for the benefit of the provisions laid down under The Probation of Offenders Act, 1958. Therefore, taking into consideration the facts & circumstances of the case, as discussed above, including the evidence on record, I am going to impose the following sentences to the accused as provided u/s 354-D of the Indian Penal Code alongwith 12 of The Protection of Children from Sexual Offences Act, 2012 which would certainly meet out the ends of justice from both the sides.

18. With these discussions, I proceed to pass the following order.

O R D E R

The accused namely **Walmick Ramdin Pal** is hereby convicted u/s 235(2) of The Cr.P.C for the offence punishable u/s 354-D of The Indian Penal Code & sentenced to undergo rigorous imprisonment

for which he has already undergone in the jail since 06/09/2015 till 02/03/2016 & pay fine of Rs.500/- I.D to suffer S.I for 05 days.

The accused is already convicted u/s 354-D of The I.P.C Code & sentenced to undergo rigorous imprisonment for which he has already undergone in the jail since 06/09/2015 till 02/03/2016 & pay fine of Rs.500/- I.D to suffer S.I for 05 days and thus no need to pass the separate sentence u/s 12 of The POCSO Act, 2012.

The accused was in Jail since 06/09/2015 till 02/03/2016 & thus the accused shall be entitled for the Set off by virtue of the provisions laid down u/s 428 of The Cr.P.C.

The copy of the judgment to be provided to the accused free of costs.

The POCSO Special Case No.11/2016 is hereby disposed off accordingly.

(A.Z.Khan)
Additional Session Judge,
Borivali Div, Dindoshi,
Mumbai.

Date: 06.02.2023.

Declared on : 06.02.2023.

Dictated on : 06.02.2023.

Transcribed on : 06.02.2023.

Checked and Signed on : 16.02.2023.

(A.Z.Khan)
Additional Session Judge,
Borivali Div, Dindoshi,
Mumbai.

‘CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER.’

17.02.2023 AT 04.30 P.M.
UPLOAD DATE AND TIME

(A.S.SUGDARE)
NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	SHRI.A.Z.KHAN (C.R.NO.13)
Date of Pronouncement of JUDGMENT/ORDER	06.02.2023
JUDGMENT/ORDER Signed by P.O. on	16.02.2023
JUDGMENT/ORDER uploaded on	17.02.2023