

MHCC020062102017



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Decided on : 13/03/2023  
Duration : Ys. Ms. Ds  
05 09 22

**Exh.36**

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

**POCSO SPL. CASE NO.228 OF 2017**

**State of Maharashtra**

(At the instance of Khar Police Station  
vide C.R. No.113/2017)

... Prosecution

**Versus**

**Santosh Gunaji Jadhav**

Aged : 41 years, Occ. : Service  
R/a : Jagnath Chaitya Koli Math,  
Lochar village, Malad West,  
Mumbai – 400 061.

... Accused

**APPEARANCES:**

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

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

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

**DATED : 13<sup>th</sup> March, 2023**

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

*(Dictated and pronounced in open court)*

The charge-sheet is filed against the accused for the offences punishable under section 354 of the Indian Penal Code (hereinafter referred as 'IPC') and under sections 8 and 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 : -**

1. On the day of the incident, 8 years old girl was playing in the vicinity nearby her house. At that time, the accused called her by her name. She thought that the accused knows her and then accompanied with him at nearby building. Then the accused has touched her buttocks and hugged her. She shouted loudly and ran towards the house. She has informed the incident to her mother. Her mother immediately took her at police station. Then, with the help of police, mother of the victim took search of the accused in nearby vicinity. They found the accused in nearby vicinity. The victim has identified him. Then the police have taken the accused at police station and then report was lodged against the accused by the mother of the victim.

2. Upon the said report, C.R. no.113/2017 was registered at Khar police station. The initial investigation was carried out by API Gore. He has registered the offence. He has visited the spot and has prepared the spot panchanama in presence of the panch witnesses. He has arrested the accused under arrest panchanama. The further

investigation was carried out by PI Nitin Alaknure. API Lonkar has also carried out the investigation on 31/03/2017. He has collected the CCTV footage nearby the spot, under panchanama. He has obtained the 65-B Certificate from the technician and recorded his statement as well as the statement of the owner of the house where the CCTV was installed. After completing the investigation, prosecution has filed charge sheet against the accused.

3. In view of the process issued against accused, he has appeared before the Court. Charge is framed against the accused vide Exh.3 for the offence punishable under sections 354 and 354-A of the IPC and under section 10 of POCSO Act, to which the accused has pleaded not guilty and claimed to be tried vide the plea Exh.4.

4. In order to prove the guilt of accused, prosecution has examined in all 7 witnesses i.e. PW 1 is the complainant, mother of the victim, PW 2 is the victim, PW 3 is the panch witness of spot panchanama, PW 4 Ganesh Huke is the witness who copied the CCTV footage, PW 5 Nilam Kambali is the witness, in whose house the CCTV was installed, PW 6 API Sandeep Gore and PW 7 API Pandurang Lonkar are the investigating officers.

5. 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.	Original birth certificate of victim	18
2.	FIR/Report	19 colly.
3.	Spot panchanama	22
4.	Certificate u/s.65-B	25

5.	Arrest panchanama	31
6.	Panchanama	33

6. The prosecution has filed evidence close pursis at Exh.34. After evidence of the prosecution, the statement of accused under section 313 of the Code of Criminal Procedure, came to be recorded at Exh.35. The defence of the accused is that of total denial and that he has been falsely implicated.

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

8. 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:-

<b><u>SR. NO.</u></b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1.	Whether it is proved by the prosecution that accused used criminal force to minor victim girl by touching her bum and hugging her, thereby outraging her modesty and has also sexually harassed her and thereby committed offence ?	... Proved
	<b><u>Alternatively</u></b>	
	Whether it is proved by the prosecution that accused with sexual intention touched the bum of minor victim girl aged 8 years old with his hands and legs and hugged her and has thereby committed offence of aggravated sexual assault?	... Proved

2. What order ?	As per final order
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**: REASONS :**

**As to the point no.1and 2 :-**

9. As to the incident, the evidence of PW 2 victim and her mother i.e. PW 1 is on record. PW 1 has stated that on 11/03/2017, at about 07.30 p.m., her daughter was playing outside the house along with other children. She returned to the house at about 08.00 p.m. and she was crying and was frightened. So she has inquired with her. At that time she has informed that one person took her at nearby building and he touched her buttocks and body. She shouted loudly. At that time that person showed his hand in the manner that he will slap her. So she ran towards the house.

10. PW 2-victim has also specifically deposed about the incident. According to her, on 11/03/2017, at evening time, she was playing alongwith friends nearby her house. Then, one person called her by her name. She thought that she knows him and therefore went along with him. He took her at nearby building. There he has touched her buttocks and also hugged her. When she started to shout, he ran away. She ran towards the house and informed the incident to her mother.

11. The evidence of PW 1 and PW 2 specifically shows that the incident had taken place on 11/03/2017. According to the prosecution, at the relevant time, the victim girl was 8 years old. PW 1 and PW 2 have specifically stated the birth date of the victim i.e. 07/10/2008. Further, in support of the oral evidence, the prosecution has relied upon the birth certificate of the victim at Exh.18. On perusal of the said birth

certificate, it is issued by the Health Department of Municipal Corporation of Gr. Bombay. Said documentary evidence supports the oral evidence of PW 1 and PW 2 that the birth date of the victim is 07/10/2008. The date of registration is 31/10/2008. So the said documentary evidence supports the oral evidence of PW 1 and PW 2 about the age of the victim.

12. The accused has strongly disputed the evidence of prosecution that the victim was minor girl at the time of the incident. The accused has put suggestion to the PW 6-investigating officer API Gore during cross examination that the victim was above 18 years old at the time of the incident. The witness has denied the said suggestion. It is pertinent to note that, the accused is disputing the age of the victim at the time of incident, has not disputed the evidence of PW 1 and 2 in this regard during their cross-examination. The suggestions to that effect have not been given to the PW 1 who is the mother of the victim and the victim girl who has mentioned her age before the court at the time of deposition as 14 years. The oral evidence of PW 1 and PW 2 about the age is supported by the documentary evidence. So considering the same, there is absolutely no reason to disbelieve the oral as well as documentary evidence on record about the birth date of the victim. It shows, the victim was borne on 07/10/2008 and on the date of incident i.e. on 11/03/2017, she has completed 8 years. So considering the said evidence on record, the prosecution has proved that the victim girl was minor at the time of the incident and she was child as per definition in Section 2(d) of POCSO Act and therefore, provisions of POCSO Act are attracted.

13. As to the incident, the PW 1 and PW 2 have specifically

stated that the man, who was called to minor victim girl took her nearby building and hugged her and touched her buttocks. PW 1 has got knowledge about the incident through the victim girl. The victim has specifically stated that the accused has taken her at nearby building and he has touched her buttocks and also hugged her. She started to shout and then he ran away.

14. According to the prosecution, the victim girl has immediately informed the incident to her mother i.e. PW 1. But, PW1 has not found the accused on the spot of the incident. According to PW 1, she took her daughter at police station and informed the police about the incident. Then, some police person were sent alongwith her on the spot of the incident. Then the police have taken search and found the accused at about 09.30 p.m. Then her daughter has identified the accused. Then they went at police station. Then she came to know the name of the accused and then report was lodged against the accused at Exh.19 colly.

15. PW 1 and PW 2 both have identified the accused before the court. As it appears that the accused was not caught on the spot of incident immediately and he was caught after 2 hours of the incident. The accused has strongly disputed his identification by the prosecution witnesses and his involvement in the crime, during cross-examination examination of the prosecution witnesses.

16. Apart from the oral evidence of PW 1 and PW 2, the prosecution has come with the case that the police have taken the CCTV footage of the adjacent owner and in the said CCTV footage, the accused can be seen. PW 7 API Lonkar has carried out the investigation

on 31/03/2017, about collecting CCTV footage from the adjacent owner. As stated by PW 7 as per the directions of PI Alaknure to collect the CCTV footage, he went to the spot alongwith two panch witnesses and technician. Then he has taken the permission of the owner and has taken the CCTV footage dated 11/03/2017 during the period from 07.00 p.m. to 07.30 p.m. Accordingly, he has prepared the panchanama. He has also recorded the statement of the owner and the technician and has also obtained the certificate under section 65-B from the technician. This witness has deposed that in the said CCTV footage, the accused was seen at 07:32:45 p.m. The victim has identified the accused.

17. PW 4 Ganesh Huke is the technician who has accompanied the police on the spot of the incident. He has supported the evidence of API Lonkar and has stated that he went to the spot alongwith the police on 31/03/2017. He has shown the CCTV footage and thereafter, the said footage of 07.00 p.m. was copied on pendrive and he handed over it to the police.

18. PW 5 is the owner of the house where the CCTV was installed. She has also supported the prosecution case that on 31/03/2017, police came to her house and has taken the CCTV footage on pendrive. According to her, prior to that mother of the victim girl also visited to her house and requested to see the CCTV footage. She has seen the CCTV footage and the victim girl has identified the person in the CCTV footage.

19. According to the prosecution, the presence of the accused can be seen nearby spot of incident in the CCTV footage. PW 7 API



Lonkar has admitted during cross examination that in the CCTV footage, face is seen from one side and the person is not seen clearly. He has further stated that the incident is not seen in the CCTV footage and the victim girl is also not seen in the CCTV footage. So the said admission shows that the incident and the presence of the victim girl were not captured in the CCTV. But according to the prosecution, the presence of the accused nearby the spot of incident was captured in the CCTV. So, the said evidence brought on record by the prosecution, only shows the presence of the accused nearby the spot of incident and even there was no clear picture and only one side of the accused can be seen.

20. The accused has strongly disputed the evidence of CCTV footage on raising various grounds. The learned advocate for the accused has strongly disputed presence of the accused nearby the spot of the incident and his involvement in the crime. It is argued on behalf of the learned advocate for the accused that there is no evidence to show the presence of the accused nearby the spot of the incident. Besides this, there was no Test Identification Parade of the accused after his arrest and therefore, there is no evidence about his involvement in the crime and hence, benefit is to be given to the accused.

21. The evidence on record shows, the accused was arrested after the incident and then the mother of the victim has lodged report against the accused. It is prosecution case that before offence was registered against the accused, he was identified by the victim and then inquiry of his name was done and the report was lodged. According to the prosecution, after the incident was informed to the police, the police went to the spot in search of the accused. They have traced out the accused in the nearby vicinity at about 09.30 p.m. and then the

name of the accused was inquired and the PW 1 has filed the report specifically mentioning the name of the accused.

22. The accused has also strongly disputed the evidence of PW 1 and PW 2 that the victim has not mentioned the description/details of the accused to her mother and it is also not mentioned in the FIR at Exh.19. On perusal of the report, there were no details about description of the accused are mentioned. But, as it appears that the complaint was lodged by the PW 1 after the accused was caught hold by the police. The name of the accused with his age and his detailed address is mentioned in the FIR. It is not the case that the FIR was lodged against an unknown person and therefore, the description of the accused has to be informed to the police for his arrest. It is true that the accused was unknown to the victim and her mother but, before the FIR was lodged, the search of the accused was taken with the help of the police and when the accused was found in nearby vicinity, he was produced at police station and then FIR was lodged. At that time, PW 1 came to know the name of the accused and other details of the accused. So, considering the said circumstances and the evidence on record, the arguments on behalf of the Ld. Advocate for the accused cannot be accepted.

23. The victim has mentioned the particulars of the accused in her statement recorded by the police and even the colour of the clothes worn by the accused. But her statement was recorded on 14/03/2017 i.e. after 3 days of the incident. Prior to that, as per the identification of the accused, he was already arrested. Even the evidence of the prosecution witnesses shows, that the CCTV footage was taken subsequently during the investigation and not before the arrest of the

accused. So, the said evidence is only gathered to support the prosecution case about the presence of the accused nearby spot of incident at the relevant time. Otherwise, the entire prosecution case is based upon the direct evidence of PW 2-Victim about the identification of the accused prior to lodge report with the police and evidence of the PW-01, who has got confirmed through her daughter that the accused is same person and then lodged report with the police against him.

24. At the time of the incident, API Gore was on duty. It is stated by him that the complainant came to the police station at about 09.00 p.m. and has informed about the incident. Accordingly, complaint was recorded and offence was registered. Thereafter, he went to the spot of incident and has prepared spot panchanama and then he has arrested the accused. He has identified the accused before the court and has stated that further investigation was carried out by PI Alaknure. Arrest panchanama at Exh.31 shows that the accused was arrested on 12/03/2017 at about 01.55 a.m. So it appears that though the accused was traced out and produced at the police station at about 09.00 p.m., he is subsequently arrested in the crime and he was with the police at the relevant time. The accused was unknown to the PW 1 and 2. But, arrest of the accused, immediately after the incident shows, after got confirmed from the victim girl he was arrested. At the relevant time, the victim was definitely in a position to identify the accused, as the accused caught within short span. It was a quick reaction of the mother of the victim to approach the police and then police have also promptly took search for the accused and find out him. So, the said incidents though has taken place, prior to FIR was lodged, has to be taken into consideration. Otherwise, the PW 1 and 2 have no personal grudge against the accused to implicate him falsely.

25. As to the spot of incident, the evidence of PW 1 and PW 2 is clear that the incident has taken place in a building nearby their house. PW 3 is the panch witness of the spot panchanama at Exh.22. He has stated that he was called by the police on 12/03/2017 at about 02.30 p.m. The mother of the victim along with the victim were present there. They have showed the spot of incident and accordingly spot panchanama was prepared. Another witness was also present along with him.

26. The accused has strongly disputed the evidence of PW 3 on the ground that this witness is relative of the victim girl and therefore, he has reason to believe false about the spot panchanama. PW 3 has admitted that he is relative of the victim and he knows about the report lodged by the mother of the victim against the accused. Besides this, he has denied the suggestion that he has signed on the spot panchanama at the police station and has not visited the spot of the incident and deposing falsely against the accused. PW 6 API Gore has also supported his testimony and has stated that he has prepared the spot panchanama in the presence of the panch witnesses.

27. The evidence of PW 3 shows, he is relative of the complainant. But, apart from the said fact, this witness has specifically stated about the spot panchnama and that it was prepared in his presence. The oral evidence of PW 3 and documentary evidence i.e. spot panchnama is consistent with the evidence of PW 1 and PW 2 about the spot of incident. The spot of incident was nearby the house of the complainant. There was clear evidence during cross-examination of PW 1 and 2 that the spot of incident is nearby their house. There is specific

mention of the building, where the incident has taken place. So, there is no reason to disbelieve the prosecution case on the point of spot of incident.

28. The accused has further strongly disputed the evidence of prosecution on the ground that the spot of incident is in crowded locality and people are accessing from the spot and therefore, there was no possibility of the happening of such type of incident. PW 1 and PW 2 have admitted the said situation of the spot during their cross-examination. But, even the residents of the said building were accessing from the staircase and there remains crowd at evening times, the inference that the incident has not taken place at all cannot be drawn. Only the fact that incident has taken place on the spot, where the people usually accessing is not sufficient to disbelieve the evidence of PW 1 and PW 2 about the incident. Even in crowded locality, such type of incident can occur. Even if, the people residing in the building are using the staircase for their access, it cannot be inferred that for 24 hours the people were accessing from the staircase. Naturally, there was some time span remains in between and at that exact time, the incident can be occurred. It can also be seen that the victim was playing along with her friends but, the accused called her and took her at staircase of the nearby building. The said act itself sufficient to show that after observing that the people are not frequently accessing from the staircase of the building, the victim was taken there. So the arguments in this regard on behalf of the accused, cannot be accepted.

29. Further, the accused has disputed the testimony of PW 1 and PW 2 on the ground that the prosecution has not examined the friends of the victim, who were playing alongwith her. The prosecution

has not examined children playing with victim. The victim has stated during cross examination that her friends were busy in playing and therefore they have not inquired with her where she was going. So the said evidence of the victim itself shows that small children were busy in playing and even it is the prosecution case that the victim girl has not resisted or shouted while accompanying with the accused from the place where she was playing. So naturally, the children and even nearby people were not attentive towards victim or to the accused, while victim went alongwith the accused at the spot nearby the staircase, where the incident had taken place.

30. The accused has further brought on record during cross examination of victim that while she shouted, no one came to help her and she has not knocked the door of the neighbours for help and she has also not requested to the nearby people for help. The accused has further put question to the PW 1 during cross-examination that after hearing the incident, she could dial 100 number and inform the incident to the police. But, these type of suggestions are about the specific and particular behaviour of PW 1 and PW 2. It is not necessary that during the incident, the PW 1 and PW 2 will behave in specific manner. Even it is not at all expected from PW 2 who was 8 years old at the time of the incident, that she should behave in particular manner after the incident. The witnesses have their own instinct and their own ways to deal with the incident and to react on the incident. The behaviour of 08 years old to shout and run towards her own house after incident, is not at all unnatural behaviour. Even, the behaviour of the PW 1 to approach police personally, without dialing 100 number is very natural. The evidence of prosecution witnesses no.1 and 2, cannot be doubted on the ground that they have not behaved in a particular manner as per

suggestion given during cross-examination.

31. There is clear evidence of the minor victim girl that the accused hugged her and touched her buttocks. The said act itself shows, the culpable mental state of the accused. There is absolutely no reason to disbelieve the evidence on record. The accused was unknown to the victim and therefore, there is no reason for the false implication of the accused. The evidence of prosecution witnesses is consistent with each other. There is presumption under section 29 of POCSO Act, about the committing offence, unless contrary is proved and presumption under section 30 of POCSO Act, about the culpable mental state on the part of the accused, but it is a rebuttable if the accused prove the contrary. In the present matter, there is absolutely no evidence on record to rebut the said presumption under section 29 and 30 of POCSO Act. Considering the evidence on record, it is sufficient to come to the conclusion that the accused was present on the spot and he has hugged minor victim girl and touched her buttocks, with sexual intent and had a physical contact with the victim girl and thereby committed offence of sexual assault. The prosecution has brought on record sufficient evidence to prove that the accused has committed offence punishable under section 354 and 354-A of Indian Penal Code. The prosecution has proved that at the relevant time, the victim was minor below 12 years of the age and therefore, the accused has committed the offence of aggravated sexual assault, under section 9 (m) punishable under section 10 of the POCSO Act. With this, I answer points no.1 & 2, as proved. As the punishment provided for the offence punishable under section 10 of POCSO Act, is greater in degree, as per section 42 of the POCSO Act, the accused is liable to be punished under the said act. With this, it is necessary to hear the accused, on the point of sentence.

The accused is explained with the observations recorded above and the sentence which can be awarded for the proved offences. It is submitted on behalf of Ld. Advocate Shri. Prabhu holding for Advocate Shri. Anil Jadhav for accused that the accused do not have criminal antecedent. He has responsibility of the family and having small children. There is no one to look after his family and children. He is also has poor financial condition and doing work of selling toothbrush. Hence, submitted to show leniency while awarding the sentence and to award minimum sentence.

32. On the other hand, it is submitted by the Ld. SPP for the State that the offence is of serious nature takne place with the 08 years minor victim girl and has submitted to award maximum punishment.

33. There is increase in the cases of sexual offences against the child. The child sexual abuse cases demonstrating the inhumane mind-set of the accused. The children are easy prey, due to their tender age, physical vulnerabilities and inexperience of life and society. The incident has taken place in a nearby vicinity, where normally people knows each other and feel secured. The parents of the minor victim has also allowed her to play in nearby vicinity, only with same feeling and trust. There is very adverse impact of the incident on victim girl, on her family members and society. They are under impression that nearby vicinity is not safe for children. Definitely, such type of incident causes terror in the mind of people and leave scar for longer time. Considering all these 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 :-



**: O R D E R :**

- 1) Accused **Santosh Gunaji Jadhav**, is hereby convicted vide Section 235(2) of the Code of Criminal Procedure, of offence under section 9(m) punishable under section 10 of the Protection of Children From Sexual Offences Act, 2012 and is hereby sentenced to suffer **Imprisonment for 05 years (five years)** and to pay **fine of Rs.5000/- (Rs.Five thousand only)**, in default to pay fine, to suffer **Simple Imprisonment for the period of 01 month (one month)**.
  
- 2) Accused **Santosh Gunaji Jadhav**, is hereby further convicted vide Section 235(2) of the Code of Criminal Procedure, for the offence punishable under Sections 354 and 354-A of the Indian Penal Code, but, no separate sentence is passed, as the accused is sentenced for the offence punishable under Section 10 of the Protection of Children From Sexual Offences Act, 2012.
  
- 3) The accused shall surrender to his bail bonds.
  
- 4) Set off be given to the accused, as per Section 428 of the Code of Criminal Procedure. He was in Police and Judicial Custody from 12/03/2017 till 09/05/2018 and 12/10/2019 till 05/11/2019.
  
- 5) Muddemal property i.e. Art.1 Pendrive, being worthless, be destroyed, after appeal period is over.
  
- 6) Copy of this judgment and order be provided to the accused, free of costs.

7) A copy of this judgment be also forwarded to Ld. Secretary, District Legal Services Authority, Mumbai for information and necessary action.

**(PRIYA P. BANKAR)**  
**Special Judge under POCSO Act,**  
**Gr. Mumbai.**

**Date : 13/03/2023**

Dictated on : 10.03.2023

Transcribed on : 10.03.2023

Signed on : 13.03.2023

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

Name of Stenographer : Mrs. Varsha D. Chowdhri

Name of the Judge	HHJ Smt. Priya P. Bankar (C.R.No.18)
Date of Pronouncement of Order	13 <sup>th</sup> March, 2023
Order signed by P.O. on	13 <sup>th</sup> March, 2023
Order uploaded on	14 <sup>th</sup> March, 2023