

MHCC020118232020



Presented on : 11-12-2020
Registered on : 11-12-2020
Decided on : 12-07-2023
Duration : 2Years, 7 Mths. 1 Day

**IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012 AT FORT, GREATER BOMBAY.
(Presided over by Nazera S. Shaikh, Special Judge, under POCSO Act,**

Mumbai

POCSO SPECIAL CASE NO. 1066 OF 2020

EXHIBIT-51

(Crime No.540 of 2020 of Shivaji Nagar Police Station)		
Complainant	:	The State of Maharashtra
Represented by	:	Mr. R.V.Tiwari, Special PP
Accused	:	Father (the details of accused are kept in separate envelope and it shall be the part of judgment to protect the identity of victim)
Represented by	:	Advocate Mr. S.R.Tiwari

Date of offence	:	12 th October 2020
Date of FIR	:	12/10/2020
Date of Chargesheet	:	09/12/2020
Date of Framing of Charges	:	11/03/2021
Date of Commencement of	:	17/05/2022

Evidence		
Date on which judgment is reserved	:	12/07/2023
Date of the Judgment	:	12/07/2023
Date of the Sentencing Order, if any	:	12/07/2023

Accused details

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 Cr.PC
1	Father	13 th October 2020	Accused is in Jail	Under Section 376(2) of IPC & U/s. 6 POCSO Act, 2012.	Convicted	Imprisonment for life which shall mean imprisonment for the remainder of his natural life	13/10/2020 to 12/07/2023

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE
PW1 Exh.29	Mother of victim	Complainant
PW2 Exh.31	Victim	Victim
PW3Exh.36	PSI Krushna Prakash Mane	Investigating Officer
PW4 Exh.41	Iqbal Mohammad Shikalgar	Investigating Officer.

B. Defence Witnesses, if any : Nil

C. Court Witnesses, if any : Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr.No.	Exhibit Number	Description
1	Exh.14	CA report (M.T No.7020/21)
2	Exh.15	CA report (M.T No.7019/21)
3	Exh.16	CA report (M.T No.6932/21)
4	Exh.17	CA report (M.T No.7590/21)
5	Exh.18	CA report (M.T No.7591-92/21)
6	Exh.19	CA report (M.T No.7884-85/21)
9	Exh.20	CA report (M.II no.476/20)
10	Exh.23	DNA report M.T.No.13848/21
11	Exh.24	CA report M.T.No.13849/21
12	Exh.25	CA report M.T.No.13851/21
13	Exh.33	Spot Panchanama.
14	Exh.P-34	Medical Report of victim.
15	Exh.P-40	Medical Report of Accused.
16	Exh.P-37/PW-3	FIR
17	Exh.P-38/PW-3	Arrest Panchanama.
18	Exh.P-42/PW-4	Seizure panchnama of clothes of victim.
19	Exh.P-43/PW-4	Seizure panchnama of clothes of accused.
20	Exh.P-44/PW-4	Letter dated 16.10.2020 sent to FSL
21	Exh.P-45/PW-4	Letter dated 22.10.2020 sent to FSL
22	Exh.P-46/PW-4	Letter dated 29.10.2020 sent to FSL
23	Exh.P-47/PW-4	Bonafide Certificate of victim

B. Defence :

Sr.No.	Exhibit Number	Description
1	Exhibit 50	Written arguments of defence.

C. Court Exhibits :

Sr.No	Court Exhibits	Description
1	Exh.4	Charge
2	Exh.5	Plea
13	Exh.48	Evidence closed pursis
14	Exh.49	Statement of accused u/s. 313 of Cr.PC.

D. Material Objects :

Sr.No.	Material Object Number	Description
1	MO-1	Black coloured knicker
2	MO-2	White coloured floral printed frock
3	MO-3 and MO-4	Two envelopes with labels.
4	MO-5	Black coloured full pant
5	MO-6	Black coloured shirt
6	MO-7 and MO-8	Two envelopes with labels.

JUDGMENT**(Delivered on 12/07/2023)**

The accused i.e father of victim stands prosecuted for the offence punishable under Section U/S. 376 of Indian Penal Code (*IPC for brevity*) and u/s. 6 of Protection of Children from Sexual Offences Act, 2012 (*“POCSO Act” for brevity*).

2. *Name of the accused, victim, her family members, School and address are not mentioned in the judgment to maintain confidentiality about victim's identity in view of Section 33 (7) of the Protection of Children from Sexual Offences Act, 2012. The trial is conducted in child friendly atmosphere by following the provisions of Section 36, 37 and rules framed under the POCSO Act also the mandate of the Apex Court given from time to time. The details of the names, addresses of the informant, victim and accused are kept separately in a sealed envelope enclosed with the judgment.*

The case of prosecution in nutshell is as under;

3. On 12/10/2020 the mother of victim lodged complaint alleging that, on the same day at around 4.00 p.m. she went to her mother's home with her elder son. The victim alongwith her other children was at home with the accused. When the informant returned home at 6.00 p.m., she found the door of her house ajar. On entering the house she heard the screams of victim. She saw that her husband, who is accused was half naked and sexually abusing the victim. The informant pushed the accused away and rescued the victim. The neighbours gathered and started thrashing the accused. Someone from the crowd called the police, they came and took the accused to the police station and informant then lodged complaint.

4. PSI K.P. Mane directed WAPI Audhe madam to record the complaint. As per the complaint, the FIR was registered. The statement of the victim was recorded and she was referred for medical examination. PSI Mane visited the spot of incident and performed spot panchnama. He arrested the accused. On 13/10/2020 PSI I.M. Shikalgar received the

investigation. He seized the clothes of victim and accused produced by informant under seizure panchnama. The victim was referred to the Metropolitan Magistrate for getting her statement recorded under section 164 of Cr.P.C. The forensic samples of the victim and accused were collected and sent for chemical analysis alongwith muddemal articles. PSI Shikalgar collected bonafide certificate of the victim and report of age estimation. Medical examination reports were also collected and after completion of investigation charge-sheet was filed against the accused.

5. My learned predecessor framed the charge against the accused vide Exh.4 under section 376 (2) of the IPC and under section 6 of the POCSO Act. It was read over and explained to the accused in vernacular. Accused pleaded not guilty and claimed to be tried. The statement of accused u/s.313 of Cr.P.C. is recorded at Exh.49. The defence of accused is of total denial and false implication.

6. Heard the learned Spl. P.P. Rakesh Tiwari, for the Prosecution/State and learned Counsel S.R. Tiwari for the accused. Perused the written notes of arguments submitted by accused vide Exh. 50

7. In view of the charges and the evidence on record following points arise for my determination and I have recorded my findings against each of them for the reasons stated hereunder;

POINTS

FINDINGS

1. Does the prosecution prove that, at the time of incident the victim was under 18 years of age?

Yes

Does prosecution proved that on 12/10/2020
2. between 4.00 p.m. to 6.00 p.m., at Govandi,
Mumbai, the accused being father of the victim girl,
aged 9 years committed rape on her ? Yes

3. Does prosecution further prove that, on the
aforesaid date, time and place, the accused
committed aggravated penetrative sexual assault on
the victim girl, aged 9 years ? Yes

4. What order? As per final
order.

REASONS

As to Point No. 1:

8. The prosecution is under boundant duty to prove that, the victim was a child within the meaning of clause (d) of Section 2 of the POCSO Act at the time of incident. In this case, as per the prosecution the age of the victim was 9 years at the time of incident. To support its contention the prosecution has relied upon the bonafide certificate issued by the school where the victim was studying. As per the bonafide certificate, the date of birth of victim is 02/02/2012. The incident took place on 12/10/2020, therefore, as per the bonafide certificate, the age of the victim at the time of incident was 8 years, 8 months.

9. It is pertinent to note that the accused is the real father of the victim. The age of the victim is not challenged by the defence, even bonafide certificate is not challenged therefore, in view of bonafide

certificate, the victim was 8 years old at the time of incident, hence, a child as contemplated under section 2(d) of the POCSO Act. With this, I answer Point No.1 in the affirmative.

As to Point No. 2 and 3:

10. Both these points inter-linked, they are taken up for discussion together in order to avoid repetition. It is to be understood that, the initial burden is cast upon the prosecution to prove the guilt of the accused beyond all reasonable doubt, as it has come up with the case that, when the victim was at home with accused, who being her father had committed penetrative sexual assault on her.

11. If the prosecution discharges the initial burden, then, the Court has to raise the presumptions under Secs.29 and 30 of POCSO Act, 2012 in favour of the victim girl and the accused has to rebut the said presumptions, by placing rebuttal evidence to substantiate the defence of his innocence and false implication etc. Therefore, considering these legal aspects, I proceed further to evaluate and discuss the evidence on record placed by the prosecution, to see whether it has discharged the initial burden and is able to bring home the guilt of the accused.

12. In cases of sexual assault, the evidence of the victim is pivotal. The informant in this case is the mother of the victim. Unfortunately, the informant and victim both abjured from the statements and failed to support the case of prosecution.

13. In her evidence, the informant stated that on 12/10/2020 she went to her mother's house with her children and returned at 8.00 to 9.00 p.m. When informant returned, her husband i.e. the accused was taken to

Shivaji Nagar Police Station. She went to the police station, but did not lodge any complaint. The informant specifically stated that, nothing happened with the victim. The prosecution then cross-examined the informant, in which she stated that, she had a quarrel with her husband before about 15 days and made complaint to the police station, due to which they took him to the police station. The informant specifically denied her complaint and the allegations of penetrative sexual assault at the hands of accused.

14. As per the informant she is illiterate and her thumb impression was taken on the complaint. She also states that her thumb impression was taken by the Medical Officer, but she had not consented for the medical examination of the victim. In her cross-examination, taken by the defence, she admits that she used to quarrel with accused for transferring the house in her name and visited the police station on 2/3 occasions for that reason. On the day of incident, when she returned from her mother's place the accused was taken by the police for their quarrel. Police asked her to put the thumb impression to release the accused and took her thumb impression on 2/3 blank papers. Again, informant specifically denied any incident as alleged in the complaint to have occurred.

15. The evidence of the victim was recorded in the question answer form considering her tender age. She stated that her father was doing work of cleaning gutter and she has 3 brothers and one sister. When the question was put to her about the incident she denied of any such incident and stated that at the time of incident she was at her grandmother's place. Police asked her to put thumb impression to release her father. In her cross-examination, she answered to the questions that

her father was a good person and has not committed any bad act with her. She also admitted that her mother and father were quarreling over room.

16. The learned Counsel for the accused submitted that, both these witnesses turned hostile and failed to depose against the accused. The victim has completely denied the occurrence of incident as alleged in the complaint. He further submits that, the evidence of victim and informant does not support the prosecution story and therefore, accused be acquitted as there is no evidence against him.

17. The prosecution has also examined both the Investigation Officers PSI Mane and PSI Shikalgar. Both have stated in detail about the investigation conducted by them. In the cross-examination, PSI Mane admitted that, the informant was illiterate and that, in the FIR the time is wrongly mentioned as 6.00 hours instead of 18.00 hours. From the FIR, it can be seen that the time of occurrence is stated as 6.00 hours which may be due to oversight and instead of mentioning 6.00 p.m., it was written as 6.00 hours. Such minor discrepancy is not fatal to the case of prosecution.

18. It is trite that, documentary evidence will prevail over oral evidence. In this case, the defence has admitted the spot panchnama, seizure panchnama of clothes of victim and seizure panchnama of clothes of accused. Section-58 of the Indian Evidence Act, provides that;

No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Hence, no fact need to be proved in any proceedings, which the parties thereto or their agents agreed to admit at the hearing.

19. It is therefore seen that by admitting the spot panchnama and seizure panchnama of clothes of victim and accused, the accused admitted the facts of this panchnamas. As per PSI Mane, he visited the spot and performed spot panchnama. The spot of incident is the house of accused from where one white button of shirt and six pieces of carpet were seized. There were blood stains on the carpet pieces. Further, the clothes of the victim, which is one black coloured knicker and white coloured frock having floral prints were seized. Both these clothes were having blood stains. The clothes of accused i.e. one black coloured pant and black coloured shirt with white dots were also seized under seizure panchnama. Both these clothes were also having blood stains.

20. It is pertinent to note that the informant denied to have handed over the clothes of victim to the police and failed to identify it however, PSI Shikalgar in his evidence stated that the seized clothes of the victim and accused alongwith articles seized from spot along with forensic samples were sent for forensic analysis vide his letter Exh.44 to 46.

21. The accused has admitted medical examination report of the victim Exh.34, medical examination report of accused Exh.40. As per the medical examination report of the victim, the history was stated to the Medical Officer by the informant in which the informant alleged to have found her husband sexually assaulting the victim and both were naked. The history disclosed to the Medical Officer is in corroboration to the complaint of the informant. On the medical examination of the victim physical injuries were found on her person i.e. (1) Linear abrasion of size 1 cm x 0.1 cm on the dorsal aspect, the right forearm, 6 cms from the

wrist joint, red. (2) Abrasion of size 2 cms x 0.8 cm on the medial aspect of left forearm at wrist joint, red.

22. On the local examination of the genitals of the victim hymenal injury was found present. The hymen was not intact, the edges of the hymen were Erythematous and there were tears at 6'0 clock and 12'0 clock position. The Medical Officer gave opinion that, overall findings is consistent with the recent sexual assault and the final opinion was kept pending till receipt of FSL Report.

23. In view of the provisions of Section-58 of the Evidence Act, as stated supra the medical examination report is admissible and proved as admitted by defence. In view of the medical examination report of the victim, there were physical and local injuries present on the body of victim. Physical injuries on the right forearm and left forearm are suggestive that the victim was forcibly pinned down forcibly or abused due to which she suffered physical injuries. The hymenal injuries proves penetrative sexual assault upon the victim. The victim was examined just after 7 hours of the incident and fresh tears were present to the hymen.

24. The medical examination report of accused, which is admitted by the defence discloses the history as stated by the accused, according to which accused is the father of the victim, who stated to have touched the genitals on 2/3 times. The date and time of which was not remembered by the accused. He also stated that every time he did the act with intention and by removing victim's clothes without her consent, forcibly, when she was alone at home. He also disclosed the history of fingering and denies forceful peno vaginal or peno-oral intercourse and ejaculation.

25. Admittedly, documentary evidence, which is a type of written evidence, can unquestionably be regarded as being stronger and more trustworthy than oral testimony. The victim and informant failed to support the case of prosecution. Usually when the assailant is closely related, the parties restrain themselves from deposing against him. In this case, the accused is the husband of informant and father of victim on whom they are dependent being sole bread winner of the family. It is also admitted by the informant in her cross-examination that she want accused to be released and take care of them. Since she has to beg for living and can not pay rent.

26. The informant and victim want accused to be released due to the dependency on him. It may be due to familial pressure, societal stigma trauma of the abuse or fear of accused that, victim and informant balk from testifying against accused. However, corroboration of the complaint in the form of medical evidence proves penetrative sexual assault on the victim. At the time of medical examination of the victim and accused the forensic samples were collected and sent for forensic analysis along with muddemal articles i.e. the clothes of the victim, accused, the button and carpet pieces collected from the spot.

27. The forensic evidence relied by the prosecution is described as under:

EXH	NATURE OF SAMPLE	FINDINGS
14	Button of shirt	Tallied with shirt.
15	Shirt of accused	Buttons of shirt tallied with button
16	1.Pieces of carpet, 2. Button	Stained with human blood, blood group inconclusive, no semen detected. No blood or semen detected.

17	Knicker, frock of victim, full pant, full shirt of accused.	Stained with blood, no semen, Stained with blood, no semen, Stained with blood, no semen,
18	Urethral swab, Vaginal swab, Anal swab, Buccal swab of the victim	Samples referred for DNA analysis,
19	Blood sample of accused	Blood group 'O' sample referred for blood alcohol examination.
20	Blood sample of accused	Blood contained 0.090% ethyl alcohol
23	Blood stained cutting of knicker, Blood stained cutting of frock. Blood stained cutting of full pant, Blood stained cutting of full shirt,	DNA profile obtained are identical to one and the same source of male origin and matched with DNA profile from blood of accused.
24	Urethral swab, Vaginal swab, Anal swab, Buccal swab of the victim	No male DNA detected.
25	Blood sample of accused	Control DNA obtained.

28. The admissibility of the C.A. Report and FSL Reports are not challenged by the accused per se. In view of section 293 of Criminal Procedure Code, C.A. Reports and FSL Reports need not be proved by summoning their author and the same has to be tendered in the evidence before the court. From the medical examination reports it is seen that there were physical injuries on the body of the victim and local injury to the hymen of victim and tears were fresh. Medical evidence is further corroborated by the forensic evidence. The defence has admitted the spot panchnama, seizure panchnama through which clothes of the victim and accused along with the carpet pieces and button were seized.

29. The learned Counsel for the accused in his written arguments submitted that since the spot of incident was house of accused finding of button on the spot is natural. However, no plausible defence is putforth by the accused about presence of blood stains on the carpet pieces collected from the spot, clothes of victim and his own clothes. It is pertinent to note that, in the medical examination report of the victim, the Medical Officer noted in column III, that victim has not attained menarche, therefore even it can not a defence that it was menstrual blood of the victim. The accused being related to the victim as natural father his DNA and DNA of the victim is obviously identical. Therefore, the DNA analysis from the blood of accused and the blood found on the knicker and frock of victim and pant of accused were matched. The medical examination report and forensic evidence fully establishes the case of prosecution beyond any pale of doubt.

30. Section-29 of the POCSO Act, provides presumption regarding guilt of the accused. Since the prosecution proved the fundamental facts regarding guilt of the accused, the burden was on the accused to rebut the presumption raised under section-29 of the POCSO Act. However, the accused failed to rebut the said presumption. Therefore, the prosecution succeeded in proving that the accused has committed the offence punishable under section 376(1)(f)(3) of the IPC and section-5(m)(n) of POCSO Act punishable under section 6 of the POCSO Act. Hence, I answer Point Nos. 2 and 3 in the affirmative.

31. Here, I defer the judgment for hearing the accused on the point of quantum of sentence.

Date: 12/07/2023

(Nazera S. Shaikh)
Designated Judge under
Protection of Children from
Sexual Offences Act, 2012,
for Gr. Bombay.

Later on at 4.30 p.m.

Same appearance:

32. The learned SPP Shri R.V. Tiwari for State on the quantum of sentence submitted that, the accused had committed the offence on a minor girl, who is none other than his own daughter. The act of the accused is heinous and need to be dealt with sternly. Therefore, no leniency be shown to him and maximum sentence be awarded to him to send strong message to the society.

33. On the other hand, the learned Advocate Mr.S.R.Tiwari for the accused submitted that the accused has no criminal antecedents. He is a financially weak and sole earning of the family. Hence, he prayed for leniency by imposing minimum sentence.

34. Section 6 of the POCSO Act provides punishment for aggravated penetrative sexual assault that; (1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death. (2) The fine imposed under subsection (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

35. It is settled principal that, awarding a suitable punishment commensurate with the act of sexual assault, a message must be conveyed to the society at large that, if anybody commits an offence under the POCSO Act of sexual assault, they shall be punished suitably and no leniency shall be shown to them.

36. In the case of “*State of Himachal Pradesh Vs. Asha Ram*’ reported in 2006 Cri LJ 139, the Hon’ble Apex Court held that, *where father committing crime against his daughter was graver and rarest of rare*. In that case also, the father committed rape on his daughter and the Hon’ble Apex Court held that, *the crime committed by the respondent not only delicts the law but it has a deleterious effect on the civilized society. Gravity of the crime has to be necessarily assessed from the nature of the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence of rape is grave by its nature. More so, when the perpetrator of the crime is the father against his own daughter is graver and the rarest of rare, which warrants a strong deterrent judicial hand. Even in ordinary criminal terminology rape is a crime more heinous than murder and it destroys the very soul of helpless woman. This is more so when the perpetrator of the grave crime is the father of the victim girl. Father is fortress, refuge and the trustee of his daughter. By betraying the trust and taking undue advantage of trust reposed in him by the daughter he ravished the chastity of his daughter, jeopardized her future prospect of getting married, enjoying marital and conjugal life, has been totally devastated. Not only that, she carries an indelible social stigma on her head and deathless shame as long as she lives.*

37. In almost every culture, father primarily has role of a protector, provider, disciplinarian. The father-daughter relationship plays a vital role in a girl’s journey to adulthood. A father is the first man in a girl’s life that she will intimately know. Her father sets the standard for all other men in her life. The act of the accused is betrayal of the faith in

humanity. The victim is a young girl of barely 8 years and the accused is her father, it is a clear case of 'Protector turning predator'. Hence, the degree of the act committed by accused is graver and rare, therefore it attracts deterrent punishment of imprisonment for life provided in section 6 of the POCSO Act.

38. Considering the facts and circumstances and gravity of offence, I proceed to pass following order, which would meet the ends of justice;

ORDER

1. Accused the 'Father' is hereby convicted vide Sec.235(2) of the Code of Criminal Procedure, in Crime No.540 of 2020, registered by Shivaji Nagar Police Station, Mumbai, for the offence U/s. **376(1)(f), (3) of Indian Penal Code and U/sec.5 (m)(n) of Protection of Children from Sexual Offences Act**, punishable under **Section 6 of Protection of Children from Sexual Offences Act**.
2. Accused the 'Father', stands convicted as per the Sec.235(2) of Cr.P.C. for the **offence punishable U/sec. 6 of Protection of Children from Sexual Offences Act** and is sentenced to suffer **imprisonment for life** which shall mean imprisonment for the remainder of his natural life and he shall also be liable to pay **fine of Rs.10,000/** (Rupees Ten Thousand Only) and in default of payment of fine to suffer **simple imprisonment for 60 days**.
3. As the accused is convicted for offence punishable under sec. 6 of POCSO Act, in view of sec.42 of POCSO Act, no separate sentence for offence under Sec.376 (1)(f),(3) of Indian Penal Code is imposed.
4. The period of inquiry, investigation and trial undergone by the

accused since 13/10/2020 till today i.e. 12/07/2023 be set off as per Sec.428 of the Code of Criminal Procedure.

5. Marked and unmarked Muddemal articles, if any, be destroyed after appeal period is over as per law.
6. Accused is apprised of his right to prefer an appeal.
7. The case is recommended to District Legal Service Authority (DLSA), Mumbai, for awarding compensation to the victim as per Section 357(A)(5) of the Code of Criminal Procedure.
8. A copy of the Judgment be given to the accused in gratis
9. Record and proceeding be consigned to record room.
10. Spl. POCSO Case No. 1066 of 2020 stands disposed of accordingly.

(Judgment dictated & pronounced in open Court)



Mumbai:
Date: 12/07/2023

(Nazera S. Shaikh)
Designated Judge under
Protection of Children from
Sexual Offences Act, 2012,
for Gr. Bombay.

Dictated on : 12/07/2023
Transcribed on : 12/07/2023
Signed by HHJ on : 12/07/2023

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

13/07/2023

at about p.m.

(Dastagir Babalal Mulla)

Stenographer Grade-I (Gazetted)

Court Room No.03, Gr. Mumbai

Name of the Hon'ble Judge : SMT NAZERA S. SHAIKH,
Judge, City Civil Court &
Addl. Sessions Judge
Court Room No.03, Gr. Mumbai

Date of pronouncement of Order : 12/07/2023.

Order signed by Hon'ble Judge on : 12/07/2023.

Order uploaded on : 13/07/2023.