

MHCC020145152015



Presented on : 06.10.2015
 Registered on : 07.10.2015
 Decided on : 23.11.2023
 Duration : 08 Y : 01 M : 19 D

IN THE COURT OF SPECIAL JUDGE

UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES

ACT 2012 FOR GREATER BOMBAY

(Presided over by Smt. Chhaya V. Patil, Special Judge, Greater Mumbai)

(CNR No.-MHCC02-014515-2015)

POCSO SPECIAL CASE NO. 505 OF 2015

EXHIBIT-27

PART- 'A'

(Title page of Judgment)

(Crime No. 175 of 2015 of M.I.D.C. Police Station)	
Complainant	: State of Maharashtra
Represented by	: Mrs. Chaitrali Panshikar, S.P. P for the State.
Accused	: Salim Mesbahar Shaikh Age :- 26 years Occupation :- Service Address :- Bastav Chawl, Shantinagar, M.I.D.C., Andheri (E), Mumbai-93,
Represented by	: Mr. Dhri, Advocate for the accused.

PART-'B'

Date of Offence	:	23.03.2015
Date of FIR	:	23.03.2015
Date of Chargesheet	:	06.10.2015
Date of framing of Charge.	:	21.02.2018
Date of commencement of Evidence	:	21.07.2023
Date on which Judgment is reserved	:	--
Date of the Judgment	:	23.11.2023
Date of the sentencing order, if any.	:	23.11.2023

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.PC.
01	Salim Mesbahar Shaikh	23.03.2015	Released on bail - 21.04.2015 Again accused taken in custody on 17.02.2023	Under Section 354-C of the I.P.C. and under Section 12 of the POCSO Act.	Convicted	As per final order	23.03.2015 to 21.04.2015 and from 17.02.2023 to till today.

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-14	Informant	Mother of victim
PW-2	P-17	Neighbor	Neighbor
PW-3	P-18	Victim	Victim
PW-4	P-19	Murtuj Mohd. Shaikh	Spot panch
PW-5	P-21	PSI Shrikant Gyanoba Kirvale	Investigating Officer

'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-15 Collectively/PW-1	Printed FIR and statement
2.	Exh-20/PW-4	Spot panchnama
3.	Exh-22/PW-5	Arrest panchnama
4.	Exh-23/PW-5	Letter dated 08.04.2015 addressed to the Metropolitan Magistrate.
5.	Exh-16	Birth certificate.
6.	Exh-24	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-25	Statement of accused u/s. 313 of the Cr.P.C.

'D' MATERIAL OBJECTS

Serial No.	EXHIBIT NUMBERS	DESCRIPTION
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JUDGMENT**(Delivered on 23rd November, 2023)**

1. The accused is facing trial of the offences punishable under Sections 354-C of the Indian Penal Code (**Hereinafter the Indian Penal Code is referred as the "I.P.C."**) and under Section 12 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. **Prosecution story in nutshell is as under :-**

The informant is residing in the area/address as mentioned in FIR. The victim is daughter of informant. Age of victim was around 05 years at the time of incident. On 23.03.2015 at about 09.45 of

night, the victim had gone for attending nature call. The victim was small in age. Therefore, the informant left her in the toilet and came back to home for taking water bucket. When the informant again went in the toilet, there she saw that the accused Salim residing in the area of informant, was looking stealingly from the bathroom door towards victim. Therefore, informant has asked him '*idhar kya kar raha hai.*' Therefore, accused got frightened and ran away. The informant shouted. Therefore, the neighbor had caught the accused and incident is reported to the police station.

3. The incident came to be registered at M.I,D.C. police station vide C.R.No.175/2015 for the offence punishable u/s. 354-C of the I.P.C. and u/s. 12 of the POCSO Act. The Investigating Officer has conducted investigation, prepared spot panchnama, got victim medically examined, recorded the statement of victim also got recorded the statements of victim u/s. 164 of the Cr.P.C. and after completion of investigation, filed charge-sheet before this Court.

4. My learned predecessor has framed charge against accused at Exh-3 on 21.02.2018 for the offences punishable u/s. 354-C of the I.P.C and u/s. 12 of the POCSO Act. The charges have read over and explained by my learned predecessors to the accused in vernacular to which he pleaded not guilty and claimed to be tried. The statement of accused u/s. 313 of the Cr.P.C. is recorded at Exh-25 in which, the defence of accused is of total denial and false implication.

5. To establish charges leveled against accused, in all, the prosecution has examined five witnesses.

6. Heard both side at length. From the facts on record, following point arise for consideration to which finding is given before them.

<i>SR.</i>	<i>POINTS</i>	<i>FINDINGS</i>
<i>NOS.</i>		
1.	Does prosecution prove that the victim was “ <i>Child</i> ” under Section 2 (1) (d) of POCSO Act at the time of incident ?	Affirmative
2.	Does prosecution prove that on 23.03.2015 at 09.45 p.m., in public toilet at the place said by informant, accused watched the girl child where she would not have the expectation of not being observed by you and thereby committed an offence punishable u/s. 354-C (Voyeurism offence) of the I.P.C. ?	Affirmative
3.	Does prosecution prove that at the above date, time and place, you accused watched the child when she was attending nature call in the	Affirmative

public toilet and thereby sexually harassed her and thereby committed an offence punishable u/s. 12 of the POCSO Act. ?

4. What Order ?

The accused is convicted.

REASONS

As to point No.1 :-

7. The prosecution has to establish that victim was “Child” at the time of incident, within the meaning of Section 2 (1) (d) of the POCSO Act and unless it has been proved by the prosecution, the accused can not be convicted for the alleged offences under POCSO Act. It is the case of prosecution that at the time of incident the victim was just five years. In support, the mother of the victim has examined as PW-1(Exh-14). The mother has said birth date of the victim is 10.02.2010. The incident did happen on 23.03.2015. The prosecution has filed Exh-16, birth certificate of the victim. The oral evidence of the mother is supporting to the birth certificate on record. The victim is also examined as PW-3 (Exh-18). When the victim is examined before the Court, her age is 13 years. However, the age of the victim is not much disputed to the accused, and therefore, from the oral and documentary evidence on the record, the prosecution proved that at the time of incident, victim was around 05 years. Accordingly, point No.1 is answered in the affirmative.

As to point Nos. 2 to 4 jointly :-

8. All the points are inter linked with each other, therefore, findings are discussed together.

9. It is the case of prosecution that the victim was attending nature call in the public toilet. Where she would usually have the expectation of not been observed by anyone. But the accused by opening the door of toilet was watching to the victim. The victim is girl child. At the time of incident, her age was just around 05 years. But, with sexual intention, when the victim was attending nature call, the accused was watching her and has committed offence punishable u/s. 354-C of the I.P.C. and Section 12 of the POCSO Act. In support of allegations, the prosecution examined mother of victim PW-1 (Exh-14). She deposed that she knows accused who is residing in her area. On the date of incident, she left the victim in the toilet for attending nature call. She came back for taking water bucket. When again she went there with water bucket, there she saw that the toilet door was closed, but accused was looking inside by opening the door. Therefore, she shouted. The neighbor came there. He caught the accused. The accused had run away, when informant asked him '*idhar kyu dekh raha hai.*' Therefore, incident is reported to the police station. FIR is at Exh-15. Victim was got medically examined. History of the incident was narrated before the doctor. The witness has identified the accused on V.C..

10. Thereafter, the prosecution examined victim PW-3 (Exh-18). It is her evidence that on that day, she had been in the toilet for attending nature call, that time one uncle was looking from outside.

After leaving her in the toilet by her mother, her mother had gone for bringing water and therefore, the uncle was coming towards her. When her mother came there, she asked him what he is doing there. Therefore, the uncle ran away. The prosecution also examined independent witness PW-2 (Exh-17). The said witness is acquainted with informant. Evidence of this witness is supporting the evidence of informant and victim. Though, he has not seen the actual incident did by accused, but when he heard shouting voice of the informant, that time, he caught the accused while running away from the main door of the public toilet. The evidence of PW-2 is relevant to the extent that he heard the voice of informant. There he saw the accused running from main door of the public toilet, he caught him and thereafter, the accused was taken to the police station. The said witness has also identified accused on V.C..

11. PW-1 to 3, are the important witnesses to prove the allegations against the accused. It is the defence of accused in the evidence of witnesses, that the informant was resisting accused to use the common toilet and therefore, there was quarrel between them and just to take revenge, the accused has been falsely implicated. The informant and independent witnesses have admitted acquaintance with the accused as the accused was residing in their area but they have refused earlier enmity of informant with accused. From the defence of accused, it appears that accused has no dispute about his acquaintance with witnesses. However, as per prosecution case, it was common public toilet and how the informant can refuse the accused to use it. It is one more defence of accused that for using common toilet, the outsider used to check whether anyone is inside the toilet. The informant has

admitted that ladies and gents toilet are separate. The prosecution has examined Murtuj Mohd. Shaikh PW-4 (Exh-19) the panch of spot panchnama. The spot panchnama is at Exh-20. From the evidence of panch, it appears that the informant has shown the spot. It was common toilet but it is not come on record whether it was gents or ladies toilet. For the sake of moment, as per admission of the informant, it can be presumed that the informant had left victim in ladies toilet for attending nature call. When it was ladies toilet, then there is no need for accused to go there and check whether anyone is inside. But particularly prosecution has not bring on record whether the said toilet was ladies or gents. For the sake of moment, if it is considered that it was gents toilet and accused had been there for using it, then it was not necessary for him to ran away from the toilet when informant asked him *'idhar kya kar raha hai'*. When it was gents toilet, then informant might not have objected him. Therefore, it can be said that victim was attending nature call in ladies toilet, therefore, the accused cannot say that he had go on there and was checking anyone is inside. Presence of accused in the main door of public toilet, is proved by prosecution from the evidence of independent witness. His evidence inspires confidence. Nothing is come on record to show that this witness has enmity with accused and therefore, deposing false. Though, this witness may have good relation with informant but there is no reason why he is deposing false against the accused.

12. The evidence of independent witness that he saw the accused running from main door of the toilet by frighten is supporting the story of prosecution to show that the victim being girl child, was alone attending nature call. Taking disadvantage of this fact, the accused with sexual intention was looking her by opening toilet door,

when she was expecting her privacy.

13. Lastly, the prosecution has examined Shrikant Gyanoba Kirvale PW-5 at Exh-21. He has admitted arrest panchnama Exh-22 and letter addressed to Metropolitan Magistrate Exh-23 for recording statement u/s. 164 of the Cr.P.C. of witnesses. The evidence of Investigating Officer is as per investigation conducted by him. It can be used for corroboration and contradiction. In this case, the prosecution could not prove the statement of witnesses recorded by the Magistrate u/s. 164 of the Cr.P.C. but it is also clear that the said statement can be used only for corroboration or contradiction. Here, the evidence of informant shows that she left the minor girl child alone in the toilet for attending nature call. Thereafter, she came back to home for taking water bucket. In between, the minor was alone in the toilet. The accused came there, opened the door and was looking towards child when she was halfly naked for attending nature call. The victim was attending natural call. Her anus and genital part was exposed. This victim was expecting privacy. But accused stealingly opened the door of toilet and was watching her. This shows that the accused was having sexual intention to watch the child when she was halfly naked. From the evidence on record, the prosecution proved charges u/s. 354-C of the I.P.C. and u/s. 12 of the POCSO Act. In the result, I answer point Nos. 2 and 3 in affirmative. So, I find it proper to hear the accused on the point of sentence.

Sd/-
(Smt. C.V. Patil)
Special Judge
Under POCSO ACT, 2012
Gr. Bombay.

Date :- 23.11.2023

14. Heard both sides. Accused connected through V.C.. He submitted that he is earning member of family. Advocate of accused submitted that he is innocent and poor person. His family members are dependent on him. He has no criminal antecedents. Therefore, requested to take lenient view. Learned SPP requested maximum punishment as the offence is against the society and minor girl. In the light of aforesaid discussion, for the answer of point No.4, I proceed to pass following order.

ORDER

1. Accused **Salim Mesbahar Shaikh** is hereby **convicted** vide Section 235 (2) of the Code of Criminal Procedure of the offence punishable under Section **354-C** of the Indian Penal Code and under Section **12** of the Protection of Children From Sexual Offences Act, 2012.
2. The accused to undergo Simple Imprisonment of **01 (One) year** and shall pay a fine of **Rs.1,000/- (Rupees One Thousand only)** for the offence punishable u/s. 354-C of the Indian Penal Code. On default of payment of fine, the accused to suffer Simple Imprisonment of **two months**. On realization of fine amount, the same be **paid to victim**.
3. The accused to undergo Rigorous Imprisonment of **01 (One) year** and shall pay a fine of **Rs.1,000/- (Rupees One Thousand only)** for the offence punishable u/s. 12 of the Protection of Children from Sexual Offences Act, 2012. On default of payment of fine, the accused to suffer Rigorous Imprisonment of **two months**. On

realization of fine amount, the same be **paid to victim**.

4. Set off be given to accused as per rules.
5. Substantive sentence shall run separately.
6. Marked and unmarked articles, if any, be disposed of/destroyed as per rules.
7. Copy of this Judgment be provided free of cost to accused as per Section 363(1) of the Code of Criminal Procedure.
8. Pronounced in open Court.
9. As the matter is disposed off by this Judgment, the record and proceedings be sent to Record Department.

Sd/-
(Smt. C.V. Patil)
Special Judge
Under POCSO ACT, 2012
Gr. Bombay.

Date :- 23.11.2023

Directly dictated on computer on : 23.11.2023
correction made on : 23.11.2023
Signed on : 23.11.2023

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”

UPLOAD DATE	TIME	STENOGRAPHER NAME
24.11.2023	11.15 a.m.	Ms. Ujwala J. Bhagat

Name of the Judge	H.H.J. Smt. C.V. Patil (Court Room No.34)
Date of pronouncement of Order	23.11.2023
Order signed by P. O. on	23.11.2023
Order uploaded on	24.11.2023