

Judgment

: 1 :

Spl. C 468/2017

MHCC020111762017



Presented on : 03-10-2017

Registered on : 03-10-2017

Decided on : 22-02-2022

Duration : 04 Y. 04 M. 19 D.

Exh.29.

**IN THE COURT OF SPECIAL JUDGE UNDER THE PROTECTION OF
CHILDREN FROM SEXUAL OFFENCES ACT, 2012 AT FORT
GREATER MUMBAI**

**Special Case No. 468 of 2017
(CNR No.MHCC020111762017)**

THE STATE OF MAHARASHTRA,)
At the instance of Kurla Railway)
Police Station, Mumbai.)
vide C.R. No. 998/2017) **...Prosecution**

Versus

Mohsin Allauddin Chougule)
Aged : 33 years, Occ.:)
Residing at:Flat no. 103, M.M.Tower)
Chandnagar, Kausa Mumbra,)
Dist: Thane) **...Accused**

**Offences punishable under Section 354 of the
Indian Penal Code,1860, Section 8 of the
Protection of Children from Sexual Offences
Act-2012 and under Sec.91 of The Rights of
Persons with Disability Act,2016.**

Appearance:-

Ms. Jyoti Sawant, Spl PP for the State.

Mr. Pujari, Advocate for the Accused.

CORAM : H.H.The Special Judge

A.D.DEO (C.R. No.35).

DATE : 22nd February, 2022.

: JUDGMENT :

(Delivered on 22.02.2022)

The accused is prosecuted for the offence punishable U/Sec.354-A of Indian Penal Code, 1860 and U/sec. 8 of Protection of Children from Sexual Offences Act, 2012. (Hereinafter referred to as “IPC” and “POCSO” **respectively** for the sake of brevity) and under Sec.91 of the Rights of Person with Disability Act, 2016 for making unwelcome and explicit touch to two female co-passenger while travelling in handicap compartment of local train and thereby committing sexual assault upon them.

2. Factual Matrix:

Shorn of unnecessary details, the gravamen of indictment against the accused runs as under:-

a. As mandated under Sec.228-A of IPC and Sec.33(7) of the POCSO Act, names of victim and her relatives are not disclosed to protect their identity. It is the case of the prosecution that the informant is a minor victim no.1 who was traveling on 04.08.2017 as escort to her blind aunt i.e. victim No.2 in handicap compartment of local train and they were

going to attend programmed arranged by 'National Association for Blind' at Reay Road.

b. As per the case of prosecution on 4-8-2017, the victim was the escort of PW-2 and they were traveling by local train from Badlapur to CSTM. As they wanted to go to Reay road they intended to change train at Kurla. When the Ghatkopar Station passed the informant and her aunt went towards the right-side door. The informant was standing near the door, at that time she heard the voice of her aunt and she saw that she was slapping a person. She asked her aunt “what happened” upon that her aunt told her that, that person had made inappropriate touch to her breast. Upon that the informant told that the assailant of her aunt, while passing beside her(i.e. informant), had touched her breast and pressed it. At that time people in the compartment accosted assailant and co-passenger. In the meantime the train passed Kurla station and the informant her aunt, Paresh Punjani and the accused accosted by Paresh Punjani got down at Dadar Station, and took the accused to Kurla Railway Police station. When police enquired the informant and her aunt came to know the name of assailant as “Mohsin Chougule”. Upon enquiry by police from accused about his disability certificate, he could not produce the same.

First Information Report :-

c. Based on the information given by the informant, FIR No.998/2017, U/sec.354 of IPC, U/sec. 8 of POCSO Act, and Sec.91 of the Rights of Persons with Disability Act, 2016 came to be registered against accused on 04-08-2017.

Investigation :-

d. The investigation of C.R. No. 998/2017 swung in motion. During the course of investigation, investigating officer arrested the accused by following due process of law. He recorded statements of the witnesses as per Sec.161 of The Code of Criminal Procedure, 1973(Hereinafter referred to as "Cr.P.C." for the sake of brevity). He requested the Metropolitan Magistrate to record statement U/sec.164 of Cr.P.C. of both the victims, which accordingly came to be recorded and included in the investigation papers. He obtained photocopy of birth certificate of the victim and disability certificate of victim no.2 and Paresh Punjani was also collected. After thorough investigation, finding the complicity of the accused in commission of crime, charge-sheet came to be filed against him.

3. Charge and Defence:

On appearance of the accused, I have framed charge against him Under Section 354 of IPC Under Section 8 of the POCSO Act and Sec.91 of the Rights of Persons with Disability Act, 2016 vide Exh.6. It was explained to him in vernacular, to which he pleaded not guilty and claimed to be tried. The plea of accused was recorded vide Exh.7.

4. Evidence adduced by prosecution:-

At the trial, in order to prove the guilt of the accused, the prosecution examined six witnesses, relied upon the documents in support

of the charge and closed its evidence by filing pursis at Exh.26. The details are put in tabular form as under:

Name of witness	Document if any proved its Exhibit number
PW-1, Informant i.e. victim no.1(Exh.10)	Exh.11 – Birth Certificate Exh.12– FIR Exh.13 – Statement of victim no.1 recorded U/sec.164 of Cr.P.C. Exh.14 – Statement of victim no.2 recorded U/sec.164 of Cr.P.C.
PW-2, Victim no. 2(Exh.15)	
PW-3, Prerna Dilip Dhanwade/WPC (Exh.16)	
PW-4, Paresh Mohanlal Punjani/fellow passenger (Exh.17)	
PW-5 Subhanrao Baburao Dhole SHO (Exh.18)	Exh.12-A Printed FIR form
PW-6 Shailendra Shivram Chavan(Exh.22)	Exh. 20 disability certificate of PW-2 Exh. 21 disability certificate of PW-4 Exh 25/1 & 25/2 Letter for recording sec 164 Cr.P.C statement of PW-1 & PW-2

Defence Admitted following documents

Exh. 23	Arrest form
Exh.24	Arrest panchanama

5. Statement of accused under section 313 of Cr. P.C.:-

When recording of evidence of the prosecution witnesses was over,

the circumstances appearing against the accused were brought to his notice and explained to him. Whatever replies were given by accused, were recorded statement under Sec.313 of Cr.P.C., vide Exh.26. His defence consists of *simpliciter* denial and false implication.

6. Heard Learned Spl.P.P. Ms. Jyoti Sawant for the State and Learned Advocate Mr. Pujari for the accused. Perused the record.

7. **Point for determination:-**

In the light of the charge against the accused, evidence on record and the submission made across the bar, following points arise for my determination to which I have recorded my findings against each of them for the reasons to follow.

POINTS

FINDINGS

1. Does prosecution prove that the victim was minor at the time of incident ?

Yes

2. Does the prosecution prove that on 04-08-2017 between 10:30 a.m. to 11:30 a.m., in local train from Badlapur to CSTM between, when the informant and her specially-abled aunt were traveling in handicap compartment the accused made inappropriate, explicit, unwelcome touch to their breast and thereby outraged their modesty?

Yes

3. Does the prosecution prove that on the abovesaid date, time and place, accused committed sexual assault upon minor victim girl,

Yes

with sexual intent by touching her breast, which involved physical contact ?

4. Does the prosecution prove that on the abovesaid date, time and place, accused fraudulently availed benefit of travelling in handicap compartment of the train which is specially for persons with benchmark disabilities and committed offence of sexual assault punishable under Sec.91 of the Rights of Persons with Disabilities Act ?

Yes.

As per final order

5. What order ?

:: R E A S O N S ::

Prosecution evidence:-

8. Prosecution case is unfurled by victim, the star witness as PW-1. She deposed that her date of birth is 10.01.2000 and Exh. 11 is her birth certificate. She deposed that the incident took place on 04.08.2017, when she and PW-2 wanted to go to Reay Road for attending a programme organized by National Association for Blind, while she was traveling with her handicap aunt/PW-2 in handicap compartment of local train. She further deposed that they had taken train of 9.43 am from Badlapur to CSMT, they had to get down at Kurla station. As per her testimony, after the Ghatkopar station had passed, she and PW-2 were standing on the right side door of the compartment. She has specifically deposed that she was standing on the door, behind her there were two persons and after that PW-2 was standing in the same row. With regard to the presence of

accused it is in her testimony that the assailant was also standing in the door. With regard to the assault it is in her testimony that the accused while passing beside her, made inappropriate touch to her breast and pressed it, but she ignored the act, thinking that there was too much of rush. She has further deposed that when the assailant was passing by PW-2, suddenly she heard the voice of PW-2 “कोण आहे कोण आहे” (kon ahe kon ahe) and she saw that PW-2 had caught hold of the hand of the assailant and slapped him, simultaneously because of 'hue and cry' of PW-2, also as she had caught hold of that assailant, PW-1 inquired as to “what happened?” Upon that PW-2 replied that the assailant made inappropriate touch her breast. PW-1 deposed that the people in the compartment gave beating to assailant. She further deposed that the co-passenger Paresh Punjani/PW-4, caught hold of the assailant. It is in the testimony of PW-1 that PW-4 suggested that they should report the incident.

9. PW-1 further deposed that in the mean time, Kurla station had already passed, as the train was “fast train” they had to get down at Dadar station. PW-1 deposed that she, PW-2 and PW-4 with the assailant who was accosted by PW-4 got down at Dadar station, from there they went to Kurla Railway station and she reported the incident at Kurla Railway Police Station and FIR(Exh12) came to be registered. It is in the testimony of PW-1 that when the police inquired with the assailant, he told his name as “Mohsin Allauddin Chougule”, resident of Mumbra.

10. As per further testimony of PW-1, police had inquired with Mohsin i.e accused, whether he has disability certificate, to which he

replied in negative. It is further in her testimony that during the course of the investigation, she had provided the disability certificate of PW-2 to the police. She has deposed that her statement and the statement of PW-2 were recorded before Magistrate i.e. Exh. 13 and 14.

11. Though PW-1 was extensively cross-examined. She has admitted in her cross-examination that prior to the incident she was not knowing the accused. She has also admitted that while traveling in the train, due to rush, it may happen that the body of the other person may touch us.

12. PW-2 is the aunt of PW-1 and she is victim No.2. She has corroborated the testimony of PW-1 in all material aspects. PW-2 deposed that since 8 years she was residing at Badalapur and that PW-1 is her niece. It is in her testimony that she became blind when she was of three years and she has disability certificate to that effect. PW-2 is a “specially-abled” person. She corroborated the testimony of PW-1 that the incident took place on 04.08.2017, when they were going to attend a function of “Raksha Bandhan” arranged by 'National Association for Blind'. As per her testimony they took a train of 9.43 a.m. and they wanted to get down at Kurla station. It is in her testimony that after the train passed Ghatkopar station, she got up and went towards the right door, to get down at Kurla. She deposed that PW-1/her niece was holding her hand, but it was left, due to rush in the train and two passenger came between them. With regard to sexual assault, it is in her testimony that somebody suddenly pressed her left breast, due which, she immediately caught the hand of the

assailant, slapped him and she shouted. She further testified that PW-1 and the fellow passengers asked her what happened? Upon that she told that “The person whom she slapped, had pressed her breast”. PW-2 corroborated the testimony of PW-1 that upon that PW-1 told her that the said person had also pressed her breast but she ignored it thinking that he touched her accidentally, due to rush.

13. PW-2 further deposed that a passenger by name Paresh Punjani/PW-4 helped them. PW-2 deposed that she said that they want to report about the said incident. It is further in her testimony that PW-4 said that he can assist them. She corroborated the version of PW-1 that by that time the train had passed Kurla station and as it was a fast train, they got down at Dadar station, with the assistance of Paresh/PW-4, they brought the assailant to Kurla Station and reported about the incident at Kurla Rly. Police station. PW-2 has also corroborated the version of PW-1 that upon inquiry by the police, assailant told his name as “Mohsin Alluddin Chougule” resident of Mumbra. She further deposed that when police inquired with him about his disability he did not show disability. Police inquired with her and narrated before them as above. It is in her testimony that on 23.10.2017 her statement was recorded in the Court.

14. PW-4/Paresh Punjani is independent witness who was co-passenger with the informant and PW-2. PW-4 has deposed that he has disability in his right leg and he has disability certificate to that effect. He has further deposed that in the year 2017, he would work at Borivali and he was resident of Dombivli. He has deposed that the incident took place

04.08.2017, in train which he took from Dombivali going to CSTM at around 10.19 a.m. while he was traveling in handicap compartment.

15. With regard to the specific incident it is in his testimony that after the Ghatkopar Rly.Station passed, the blind woman/PW-2 started shouting that somebody had touched her breast and pressed and she was beating the assailant. As per his testimony, at that time he heard that the girl near the blind lady also said to the blind lady that the same person had also touched her breast inappropriately. He deposed that he had caught hold of the collar of the assailant, who tried to flee, but he kept on holding his collar. As per his testimony in the mean time Kurla Station had passed. He further testified that he, PW-1 and PW-2 and the assailant got down at Dadar Station and from there they went to Kurla Railway Police Station. PW-4 further deposed that when police inquired with assailant, he told his name as Mohsin Chougule whereas, name of the girl told her name as 'A' and the blind lady told her name as 'S'. PW-4 has identified the accused in dock identification and added that he knew accused even prior to incident as the accused would travel in same compartment. PW-1, PW-4 have identified accused in dock identification.

16. PW-3, PW-5 and PW-6 are formal witnesses.

17. PW-3 is the lady Police Officer who has deposed, on 04.08.2017, while she was on duty at Kurla Railway Police Staton, on the request of SHO, in his presence, she inquired with the informant and the victim and statements were recorded by AP Chavan/SHO/PW-6. PW-3

deposed that a witness by name Paresh Punjani who had disability was also with informant and victim and the accused. She further deposed that SHO/PW-6 had in her presence inquired with accused who told his name as “Mohsin Allaudding Chougule” and upon inquiry accused would not produce disability certificate. PW-3 has identified the accused in dock identification.

18. PW-5/SHO is the police officer who deposed that on 04.08.2017 while he was on duty as SHO, API Chavan i.e. PW-6 inquired with the victim girl, recorded her statement and handed over the same to him based on which he registered FIR NO.998/2017 under Sec.354-A of IPC, Sec. 7 & 8 of POCSO Act and Sec.91 of the Rights of Persons with Disability Act,2016 by preparing printed FIR form (Exh.12-A). PW-5 deposed that further investigation was handed over to API Chawan/PW-6.

19. PW-6/IO has deposed that on 04.08.2017, he was In-charge day Police Inspector and on that day ASI Dhole i.e. PW-5 was SHO. PW-5 had brought two women and one man before him. PW-6 deposed that as the information was relating to woman, he directed to WPN/Prerna/PW-3 to record the statement of those women. He further deposed that the girl was minor. PW-6 deposed that informant girls/PW-1 had told that she was travelling as escort with her Mavshi/Aunt/PW-2, who is blind and they were travelling from Badlapur to Reay Road. In the local train, they were in handicap compartment. He deposed that informant/PW-1 told him that after Ghatkopar Station, they went rear right side at that time a person standing in front of her while passing from her, touched her breast and

when he passed her aunt/PW-2, he made inappropriate touch to her, but her aunt caught hold of him and slapped him. Thereafter, with the assistance of PW-4 they brought him at Kurla Railway Police Station.

20. PW-6 further deposed that when investigation of C.R.No.998/2017 was handed over to him, he asked the travel ticket from informant, but she said that the ticket was lost in scuffle. As per his testimony he recorded statement of co-passenger Paresh Punjani/PW-4. It is in his testimony that PW-4 had produced his season ticket i.e. railway pass which was valid till 04.08.2017, after taking photographs of it he returned it to PW-4.

21. PW-6 further deposed that PW-2 and PW-4 had produced their disability certificate Exh.20 and 21 respectively. He further deposed that for verifying the age of PW-1 he had verified her Aadhar Card and College Identity Card which revealed her date of birth as 10.02.2000.

22. PW-6 deposed that he arrested the accused vide Exh.23 and he also took search of accused vide Exh.24. PW-6 further deposed that he had referred PW-1 and PW-2 for recording their statement under Sec.164 of Cr.P.C., vide covering letters Exh.25/1 and 25/2. It is in his testimony that he found the complicity of accused in the commission of offence, hence, he filed charge-sheet against him.

::Appreciation of evidence::**As to Point No.1:**

23. At the outset, it is the case of the prosecution that the victim girl was minor on the date of incident. As per the victim, her date of birth is 10.01.2000. To that effect, she has produced her birth certificate(Exh.12) on record. As per Sec.35 of the Evidence Act which reads as under:

“35. Relevancy of entry in public record made in performance of duty - An entry in any public or other official book register or record or an electronic record, stating a fact in issue or relevant fact, and made by public servant in the discharge of his official duty, or by any other person in performance of a duty, specially enjoined by the law of the country in which such book register or record or an electronic record, is kept, is itself a relevant fact.”

24. Thus, Exh.12 can be relied upon in view of the legal provision of Sec.35 of the Evidence Act. So also it is pertinent to note that on the aspect of date of the birth of the victim, there is no challenge by the defence. Perusal of Exh.12 would show that the date of birth of the victim is 10.01.2000. As per the case of prosecution, the incident took place on 04.08.2017. Thus, on the date of incident, the victim was aged 17 years 6 months i.e. “child” as contemplated within the meaning of the definition of Sec.2(1)(d) of the POCSO Act. **Hence, point No.1 is answered in affirmative.**

As to point No.2 and 3:

25. At the threshold, it may be appropriate to note that the evidence adduced by the prosecution has its genesis in one and the same alleged occurrence. Thus, it is not possible to appraise the evidence on each count of the charge in distinct compartments. It is thus, appropriate to determine point Nos. 2 and 3 by common reasoning, with distinct observations wherever necessary.

26. Indisputably, accused is facing trial for the charges for the offence punishable under Section 354 IPC and Section 8 of POCSO Act.

a. Section 354 reads as under:-

“Assault or criminal force to woman with intent to outrage her modesty: Whoever, assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years and shall also be liable to fine..”

b. Section 8 of POCSO Act prescribes the punishment of sexual assault, which is defined under Section 7 of POCSO Act, which reads as under:-

“Sec.7:Sexual Assault: Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault. (emphasis supplied)”

27. Bare perusal of Section 7 of POCSO Act makes it clear the Section 7 is in two parts; first part relates to touching or make touching of vagina, penis, anus or breast and the second parts deals with any '**other act**'.

28. The Hon^{ble} Supreme Court in **Bhogin Bhat Kirji v. State of Gujarat** reported in **1983 Cri.L.J. 1096 (S.C.)** observed about certain presumptions regarding an ordinary witness.

i. *By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*

ii. *Ordinary it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so after has a statement of surprise. The mental faculties therefore, cannot be expected to be attuned to absorb the details.*

iii. *The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one persons mind whereas it might go unnoticed on the part of another.*

iv. *By and large people cannot accurately recall a conversation and reproduce the very words use by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.*

v. *In regard to exact time of an incident, or the time duration of an occurrence usually, people make their estimates by guess work on spur of the moment at the time of interrogation and one cannot expect people to make very precise or reliable estimates in such matters. Again it depends on the time sense individuals which vary from person to person.*

vi. *Ordinary a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on. A witness though wholly truthful, is liable to be overawed by the court atmosphere and piercing cross -examination*

made by counsel and out of nervousness mixes up facts gets confused regarding sequence of events. Or fills up details from image on the spur of moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witness by him perhaps it is a sort of psychological defense mechanism activated on the spur of the moment. People react to situations not always in a uniform way. An educated, an illiterate a city dweller, a villager or an adivasi will react differently according to the degree of their sophistication. Moreover even in the case of the same class, the reaction would vary with the physical courage, mental equipment and social awareness of the individual.”

29. Keeping the cardinal principles of appreciation of evidence and the relevant legal position in mind, the prosecution evidence is required to be evaluated.

I. Direct Evidence:

30. From the testimony of PW-1 and PW-2, it is transpired that They are resident of Baldlapur and that PW-2 is a specially-abled person.

31. With regard to core incident, it is transpired from the testimony of PW-1/victim that she was escort of PW-2 and that on 4.8.2017, they were traveling by local train from Badlapur to CSTM as they wanted to attend a programme arranged by National Association for Blind at Reay Road and they intended to get down at Kurla Station

32. It emanates from the testimony of PW-1 and PW-2 that between Ghatkopar Railway Station and Kurla Railway Station, at first

instance accused while passing beside her made touch to the breast of the victim/PW-1 and pressed he breast, but she ignored it. Suddenly she heard the voice of PW-2 and saw that PW-2 was slapping the accused. When PW-1 enquired with PW-2, she told that the accused made inappropriate touch to her breast. PW-1 further deposed that thereafter, the accused was accosted by PW-4 and they i.e. PW-1, PW-2 and PW-4 took accused at Kurla Railway Police Station and lodged FIR (Exh.12). She also deposed that her statement was recorded in Court (Exh.13).

33. PW-2 has corroborated the version of PW-1, in toto. PW-2 is a specially-abled victim. From her testimony it is evident that she is the second victim of the accused. She has corroborated the version of PW-1 in all material aspect. It emerges from her testimony that while she was traveling in local train on 4-8-2017, between Ghatkopar to Kurla station while she was near the right-side door, she suddenly felt that somebody had touched her breast and pressed it and she immediately, caught hold of the hand of the assailant and slapped him. Upon inquiry, she has told the sexual assault was committed by assailant upon her by touching her breast and pressing

35. On behalf of prosecution it is submitted aforesaid testimony of victim/PW-1 and PW-2 with regard to the core incident is sufficient to infer that the incident of outraging modesty and sexual assault on them had taken place.

36. The learned advocate for accused has tried to create a dent in the prosecution story by pointing out inconsistencies, contradiction and omissions which are discussed as follows:

a. PW-1 could not produce the train travel ticket and she has deposed that it is lost in the scuffle. According to learned advocate for the accused, other articles of the victim like her mobile phone, bottle etc., are not lost. Only the train ticket is lost. This is unpalatable.

b. According to Ld. Advocate for accused in the testimony of PW-2 has deposed that she and her niece were traveling in middle ladies compartment to which the handicap compartment was attached. Thus, they have deposed false about the incident.

c. PW-1 and PW-2 have deposed that they were going to Reay Road for attending a programme arranged by National Association for Blind but they did not produce invitation card on record.

37. I have meticulously perused the testimony of PW-1 and PW-2. It is unequivocally transpired from the testimony of PW-1, PW-2 and PW-4 that they were travelling in handicap compartment and not in middle ladies coach. Thus, there is no substance in contention of Ld. Advocate for accused that PW-1 and PW-2 were travelling in middle ladies coach.

38. Both have of them have given vivid details about the incident. Only because they could not give the train travel ticket or the invitation card their otherwise reliable testimony. Moreover, with regard to the invitation of the function PW-2 has clarified that she received that the invitation was given by phone call. I find the testimony of PW-1 and PW-2,

to be credit-worthy, cogent, consistent and reliable. The innocence of PW-1 is reflected from her version that when the accused made unwelcome explicit touch to her breast, she ignored it, thinking that there was rush. To sum up with regard to the discrepancies as pointed out on behalf of defence, I am not persuaded to accept the same as those, are not material, so as to discard the evidence of PW-1 and PW-2. Neither are those discrepancies, contradictions and omissions so material, as to go to the root of the prosecution case and efface the testimony of PW-1 and PW-2 with regard to incident.

39. It is well settled legal position that the minor discrepancies are not to be given, undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies.

“It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness.

It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See Rammi @ Rameshwar Vs. State of M.P., (1999) 8

SCC 649; Leela Ram (dead) through Duli Chand Vs. State of Haryana and Another, (1999) 9 SCC 525; Bihari Nath Goswami Vs. Shiv Kumar Singh & Ors., (2004) 9 SCC 186; Vijay @ Chinee Vs. State of Madhya Pradesh, (2010) 8 SCC 191; Sampath Kumar Vs. Inspector of Police, Krishnagiri, (2012) 4 SCC 124; Shyamal Ghosh Vs. State of West Bengal, (2012) 7 SCC 646 and Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr., (2013) 12 SCC 796."

40. What constitutes, an outrage to female modesty, is nowhere defined. The essence of woman's modesty is her sex. It is the virtue which is attached to a female, owing to her, sex. Modesty is defined as the quality of being modest and in relation to woman, "women propriety of behavior, scrupulous chastity of thought, speech and conduct". It was the reserved or sense of shame proceeding from instinctive aversion to impure or coarse suggestion. The culpable intention of the accused, is the crux of the matter and the reaction of the woman, is very relevant.

41. In **Raju Pandurang Mahale vs. State of Maharashtra reported in AIR 2004 SC 1677**, it is observed by Hon'ble Apex Court as under:

"What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a women, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to

be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object.”

42. With regard to the nature of allegation and the manner in which sexual offences are committed i.e. those are mostly committed secretly, it is also required to be pondered whether sole testimony of prosecutrix/victim in such, nature of allegation, is sufficient to prove the prosecution case. In **Vijay Vs. State of M.P. (2010) 8 SCC 191** decided by Hon'ble Supreme Court referred to the following decisions of Hon'ble Supreme Court in **State of Maharashtra Vs. Chandraprakash Kewalchand Jain (1990) 1 SCC 550** and **State of Punjab Vs. Gurmit Singh (1996) 2 SCC 384** and also few other decisions and observed at page 198 in para 14 as follows;

"14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

43. The aforesaid proposition of law, has been reiterated by this Court in numerous judgments, subsequently. These observations leave no manner of doubt that a conviction can be recorded on the sole, uncorroborated testimony of a victim provided it does not suffer from any basic infirmities or improbabilities which render it unworthy of credence.

44. Rule of prudence requires the Court to examine the evidence of a victim witness with caution. However, where a witness herself is a victim and gives evidence in a natural manner and where there was no

strained relationship or enmity with the family of the accused, there is no room to doubt her evidence. Testimony of PW-1/victim that when the accused touched her inappropriately is unshaken. In the present case the testimony of PW-1/victim and PW-2 appears to be cogent, reliable and worthy of credence. It is undisputed that the accused and the victims did not have any previous enmity between them or victims hatched conspiracy, to malign the reputation of the accused, to falsely implicate him.

II. CIRCUMSTANTIAL EVIDENCE:

Testimony of Independent witness:

45. Testimony of PW-1 and PW-2 that PW-2 shouted and had caught hold of the accused and slapped him after his inappropriate touch to her, is corroborated from the statement of PW-4. In this context, testimony of PW-4, who is an independent witness is appears to be of vital importance. From the testimony of PW-4, it appears that he is a vigilant, responsible, citizen, who has voluntarily intervened and assisted PW-1 and PW-2 in accosting the accused and taking him to Kurla Railway police station and lodging FIR.

Lodgment of FIR:

46. Perusal of FIR(Exh 12), it is evident that it is lodged on the same day of incidence with promptitude. The testimony of PW-1 is by and large consistent with her testimony. FIR is a relevant piece of evidence and prompt FIR inspires confidence about the truthfulness of the case.

Sec.164 Cr.P.C. Statement (Exh.13 and 14) :

47. As per the testimony of PW-1 and PW-2 were recorded before Court i.e. Sec.164 Cr.P.C., statement (Exh.13 and 14) were respectively recorded . PW-2 who is specially-abled person has categorically deposed that her statement before Court was recorded on 23.10.2017. I have perused Exh.13 and 14. Perusal of Exh.14 which is Sec.164 Cr.P.C., statement of PW-2 clearly shows that PW-2 has rightly deposed that it was recorded on 23.10.2017. Exh.13 and 14 are absolutely consistent and corroborate the version of PW-1 and PW-2 with regard to sexual assault on them and lodgment of FIR and also about the name of accused, who was stranger to them till the date of incident.

Identity of accused:

48. Ld.Advocate for accused has vehemently submitted that the prosecution failed to prove the presence of the accused in the train. On this aspect PW-4 who is the independent witness has categorically stated that the accused was traveling in the train on 4-8-2017, when PW-2 raised alarm when she was molested. Apart from this the arrest of the accused is not disputed by defence. PW-1 has admitted in her cross-examination that prior to the incident she did not know the accused. She has identified the accused in the dock identification. Moreover from the arrest form Exh. 23 it is apparent that the present accused is arrested on 4-8-2017. Thus the identity of the accused is well-established.

49. It is further submitted by the learned advocate for accused the prosecution has failed to prove the sexual intent of the accused. As per the written notes of defence (Exh. 27) there was sudden provocation.

50. It is significant to note that under Section 29 of the POCSO Act, there is a presumption as to certain offences, *inter-alia*, including Section 7 which is punishable under 8. Section 29 of POCSO Act, contemplates that when a person is prosecuted for committing or abetting or attempting to commit an offence under Sections 3,5,7 and 9 of the Act, the Special Court shall presume that such person has committed an offence unless the contrary is proved. In this case, the burden was on prosecution to establish the chain of circumstances that incriminates the accused which has been established successfully and the burden is shifted on the accused to rebut the said presumption.

51. Section 30 of the POCSO Act, contemplates presumption of culpable mental state, as under:

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation. In this Section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

52. It is also to mention that section 30 provides presumption for culpable mental state and the degree of proof is more high wherein the duty is casted on the accused to rebut the presumption beyond reasonable doubt and not merely when its existence is established by preponderance of probabilities. As per the said section, the “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. The accused failed to rebut the presumption under Section 30 of the Act. The sexual intent of the accused is evident from the conduct of the accused by first molesting minor victim PW-1 and then immediately molesting PW-2 by touching her breast.

53. Picture which emerges from the testimony of PW-1 and PW-2, is that the accused had touched their breast. Considering the aforesaid ingredients of Sec.354 of IPC and observations of the Hon'ble Apex Court in **Raju Pandurang Mahale(Supra)**, it can be made out that by doing the aforesaid discussed act, accused has committed an offence as laid in Sec 354 of IPC, of outraging the modesty of PW-2 and sexual assault on minor victim/PW-1.

CONCLUSION:-

54. Upon evaluating and appraising the testimony of the prime witnesses PW-1 and PW-2 and the attendant factors and circumstances of the case, clinchingly, unequivocally it is elicited that the prosecution has

been able to prove its case beyond reasonable doubt that the accused with sexual intent, made unwelcome touch to the victim girl aged 17 years, which is explicit sexual overtures.

55. The incident as deposed by the two female victim PW-1 and PW-2 i.e. of unwelcome, inappropriate touch by the male accused, in journey, is a very common sexual assault experienced by every common woman traveling in public transport, but ignored by each one of them, thinking that there is no likelihood of coming across, the same assailant after the journey. Hence, almost all such assaults go unreported.

56. It is evident from the testimony of prosecution witnesses that the accused upon inquiry could not produce any disability certificate to make him entitled for traveling in handicap compartment specially meant for specially-abled persons.

57. The essence of a woman's modesty is her womanhood. Further on perusal of Section 7 of POCSO Act, it is mentioned that, who ever with sexual intent *inter-alia*, does any other act, which involves physical contact without penetration, is said to commit sexual assault and the punishment is under section 8 of POCSO Act. It emerges from the from the evidence of prosecution, attending facts and legal provisions, that the accused is guilty of committing offence under Sec. 7 of POCSO Act, punishable under Section 8 of POCSO Act, Sec.354 of IPC and Sec 91 of the Rights of Persons with Disability Act, 2016, . Hence, **point Nos. 2 and 4, are answered in affirmative.**

Hearing on Quantum of sentence:-

58. Now as observed *supra*, as the accused has been found guilty of the offence under U/sec.8 of POCSO Act, so also U/Sec. 354 of IPC and Sec 91 of the Rights of Persons with Disability Act, 2016, it is necessary to hear him on the point of quantum of sentence. Here, I pause to hear the accused on the quantum of sentence.

Dt.22.2.2022

(A.D.DEO)
Special Judge under P.O.C.S.O. Act,
Sessions Court, Borivali Division,
Dindoshi.

Resumed on 22.02.2022

59. Heard the accused and Learned advocate for the accused on the quantum of sentence. On behalf of accused it is submitted that has widowed mother who is financially dependent upon him, he is first time-offender and hence leniency be shown. *Per contra*, Ld. Spl.PP submitted that, the offence is against minor girl and specially-abled person, guilt against him is proved, hence maximum sentence be imposed.

60. The Hon'ble Apex Court has on number of occasions indicated that the punishment must fit the crime and that it is the duty of the Court to impose a proper punishment depending on the degree of criminality and desirability for imposing such punishment. In **Sarabhadra V/s State of**

Karnataka(1983) 2 SCC 330, the Hon'ble Apex Court observed in para 14 that:

“A sentence or pattern of sentence which fails to take due account of the gravity of the offence can seriously undermine respect for law. It is the duty of the court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity as a means of deterring other potential offenders.”

Victim Compensation:

61. Both the victims are vulnerable. One was minor and the other is specially-abled person. They deserve victim compensation which may bring some solace to them.

Disposal of Muddemal Articles:

62. Marked and unmarked muddemal articles, if any should be disposed off as per rules.

Set-off:

63. Accused is entitled for set-off as per section 428 of Cr.P.C. for term of imprisonment already undergone.

As to point No. 5:

64. Nobel Prize Laureate Mr. Nelson Mandela has rightly stated, *“There can be no keener revelation of a society's soul than the way in which it treats its children”*. Children are soft targets of sexual violence and therefore are extremely vulnerable. Mr. Mandela has also aptly stated that, *“Safety and security don't just happen, they are the result of collective*

consensus and public investment. We owe our children the most vulnerable citizens in our society, a life free of violence and fear.” Keeping these principles in mind and the impact of child sexual abuse and on balancing the mitigating and aggravating circumstances, I am of the considered view that following sentence would meet the ends of justice. In conclusion, I proceed to pass the following order:

:: O R D E R ::

1	Accused Mohsin Allauddin Chougule stands convicted as per the Sec.235(2) of Cr.P.C. for the offence U/sec.7 punishable under Section 8 of the POCSO Act, and to undergo rigorous imprisonment for a term of Three(3) years and pay fine of Rs.25,000/- (Rupees Twenty Five Thousand only) and in default to undergone a term of six(6) months
2	Accused Mohsin Allauddin Chougule stands convicted as per the Sec.235(2) of Cr.P.C. for the offence U/sec.354 and to undergo rigorous imprisonment for a term of Three (3) years and pay fine of Rs.5,000/- (Rupees Five Thousand only) and in default to undergone a term of one (1) months.
3	Accused Mohsin Allauddin Chougule stands convicted as per the Sec.235(2) of Cr.P.C. for the offence U/sec.91 The Rights of Persons with Disability Act and to undergo rigorous imprisonment for a term of one (1) year and pay fine of Rs.5,000/- (Rupees Five Thousand only) and in default to undergone a term of fifteen (15) days.
4	Accused is on bail. Accused to surrender his bail bonds. Accused be taken into custody.

5	All the terms of substantive sentences, shall run, concurrently.
6	Accused is entitled for set-off as per section 428 of Cr.P.C.
7	Rupees Ten Thousand only (Rs. 10,000/- each) be given to each PW-1/informant and PW-2/victim no.2 as victim compensation, from the fine amount, recovered from the accused after the appeal period is over.
8	Accused is informed about his right to appeal.
9	The true copy of this judgment be given to the Accused free of cost.
10	Marked and unmarked muddemal articles, if any, be disposed off as per rules after appeal period is over.
11	Record and proceeding of POCSO Special Case No.468/2017 be consigned to record room.
12	POCSO Special Case No.468/2017 stands disposed of accordingly.



Dt.22.02.2022

**(A.D.DEO)
Special Judge under P.O.C.S.O. Act,
Sessions Court, Fort,
Greater Mumbai**

Dictated on : 21st & 22.02.2022
Transcribed on : 21st & 22.02.2022
Signed on : 22.02.2022
Copy supplied on : 22.02.2022
Sent to Dept. on : 22.02.2022

Judgment

: 32 :

Spl. C 468/2017

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

23/02/2022 10.55 a.m.

S.S. Bathe

UPLOADED DATE AND TIME

NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	H.H.J. Smt. A. D. Deo (Court Room No. 35)
Date of Pronouncement of Judgment/Order	22/02/2022
Judgment/Order signed by P.O. on	22/02/2022
Judgment/Order uploaded on	23/02/2022