

MHCC050004962019



Presented on	:	28/01/2019		
Registered on	:	28/01/2019		
Decided on	:	18/06/2021		
Duration	:	2 Y.	4 M.	10 D.

Exhibit : 11

**IN THE COURT OF SPECIAL JUDGE UNDER THE PROTECTION
OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 AT
BORIVALI DIVISION, DINDOSHI, MUMBAI**

**POCSO SPECIAL CASE NO.46 OF 2019
(CNR MHCC05-000496-2019)
(C.R.No.832/2018)**

The State

(Sakinaka Police Station
C.R. No.832/2018)

... Complainant

V/s

**Premranjan Kumar @ Raghuvir Prasad
Keshavprasad Gupta**

Age : 42 Years, Occ. : Labour.

R/o. Badawala Garden, Chandivali,
MHADA, Sakinaka, Mumbai-400 072.

... Accused

Spl.P.P. Smt. Geeta Malankar for the State.
Accused in person as he is in Jail Custody.
Advocate for accused absent.

**CORAM : H.H.THE SPECIAL JUDGE
SMT. H.C.SHENDE (C.R.NO.11)**

DATE : 18th June, 2021

J U D G M E N T

The said accused **Premranjan Kumar @ Raghuvir Prasad Keshavprasad Gupta**, aged 42 years arrested in C.R. No.832/18 registered u/s.354 of Indian Penal Code, 1860 (hereinafter referred to as “IPC” for the sake of brevity) and u/s.8 and 12 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “POCSO Act” for the sake of brevity). The accused is lying in judicial custody since arrest. He is kept in Mumbai Central Jail, Arthur Road, Mumbai. The matter was for framing Charge of the accused. May be because of lock down, the accused was not produced before the Court from the jail. Meantime the accused moved application Exh.9 and consecutive application Exh.10 with request that he be produced before the Court as he wants to plea guilty or he be released on personal bond so the production warrant was issued to bring him in the Court or to produce the present accused before the Court through Video Conferencing. Today he was produced before the Court. He again made request that he wants to plead guilty. He accepted that he has committed said crime. He was requested to think twice and take some time to rethink but even again after about 15 minutes while he was produced before the Court, he made request to accept his plea of guilt so the Charge was framed against him u/s.354 of IPC and u/s.8 of POCSO Act considering the allegations made against him by the victim girl. The Charge u/s.12 of POCSO Act is not framed as it comes u/s.8 of POCSO Act.

2. It is alleged by the victim that on 25/11/18 at about 8.30 while she went to 'Savitribai Phule Garden' situated beside Sinhgad College, MHADA, Chandiwali, Sakinaka, Mumbai and after playing

some time when she went near the water tap to drink water. The said person who is having short height came near to her and assaulted to her by touching to her person and her private part on/from the clothes of the victim. She informed it to her mother i.e. the informant and immediately thereafter the FIR came to be lodged in Sakinaka Police Station. In result of it, the Crime No.832/18 u/s.354 of IPC was registered against the accused.

3. The accused got arrested. The statements of the witnesses were recorded and the statement u/s.164 of Cr.P.C. of the victim was recorded by the Learned Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai which is consistent with her statement given by her before the police authorities. Investigation was concluded in filing the Charge-sheet u/s.354 of IPC and u/s.8 and 12 of POCSO Act against him by the police of Sakinaka Police Station in time.

4. As mentioned above, today the accused was brought before the Court. He accepted his guilt voluntarily. The Court though gave him time to reconsider, still he accepted his guilt by saying that, 'he is ready to abide all the orders of the Court and that is why he has moved the said application from jail with the submission that he wants to plead his guilt'. As the accused himself wants to plead his guilt and accepted his guilt and said act of molestation committed by him with the victim, this Court is not having any option but to accept his guilt. Hence, an opportunity is given to the Learned APP and accused whether they want to make any submission in respect of facts and punishment. They both made short submission accordingly. The Learned APP asked to give maximum punishment to the accused as he has accepted guilt. On the

other hand, the accused requested to show leniency on him as he is from poor family and lying in jail since last about 2 & ½ years.

5. Considering the total circumstances, acceptance of guilt by the accused, submission made by both sides and the record, following points arise for my determination to which I have recorded my findings to which reasons stated as below :-

SR. NO.	POINTS	FINDINGS
1.	Does the prosecution prove that the victim girl is a 'child' as contemplated under the provision of POCSO Act at the relevant time ?	In the affirmative.
2.	Does the prosecution proves that on 25/11/18 at about 18.30 hours near Water tap in Savitribai Phule Garden, Beside Sinhgarh College, MHADA, Chandivali, Sakinaka, Mumbai, the accused with sexual intent, sexually assaulted the minor victim girl aged 10 years (Daughter of informant) by moving/rotating his hand on her person and her vagina from/on her clothes, outraged her modesty and committed the offence punishable u/s.354 of IPC ?	In the affirmative.
3.	Does the prosecution proves that on the same day, time and place the accused with sexual intent, sexually assaulted the minor victim girl aged 10 years (Daughter of informant) by moving/rotating his hand on her person and her vagina from/on her clothes and thereby committed the offence punishable u/s.8 of POCSO Act ?	In the affirmative.
4.	What order ?	As per final order accused is convicted.

REASONS

AS TO POINT NOS.1 TO 3 :

6. As the facts are interlinked to each other, it would be appropriate to determine the Point Nos.1 to 3 with common reasoning with distinct observation wherever necessary.

7. According to the victim, she was assaulted by the accused on 25/11/18 near water tap situated in Savitribai Phule Garden. The accused voluntarily accepted his said guilt. As the accused is accepting his guilt voluntarily, it means that he knows that he did it with his sexual intent and there is no other reason to discard the prosecution case and the allegations made by the minor victim girl against the accused. The accused has not raised any objection about the age of the victim and her minority. The prosecution has also filed on record birth certificate of the said victim which shows that she is a minor girl as her date of birth is 28/04/09. It makes clear that the victim is minor.

8. The victim is below 18 years of age so the provision of POCSO Act is also attracted in this matter.

9. Now let us see the provisions of law about the allegations made by the victim and provision of law.

As per the section 354 of IPC :

354. 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 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.]”

As per section 7 r/w. section 8 of POCSO Act :

Section 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.

Section 8 Punishment for sexual assault. - Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

10. As the accused by his voluntary act, knowing well the allegations made against him, nature of offence and the punishment provided for it in law accepted his guilt, this Court do not have any other way but to accept his guilt and to conclude that the prosecution because of pleading guilty by the accused proved beyond doubt that the accused has committed the offences punishable u/s.354 of IPC and u/s.8 of POCSO Act so he is liable to be punished. Hence, I answer the Point Nos.1 to 3 in the affirmative and I stop here to hear the accused on the point of quantum of punishment.

Place : Mumbai
Date : 18.06.2021

(H. C. SHENDE)
Special Judge under P.O.C.S.O. Act,
Sessions Court, Borivali Division,
Dindoshi, Goregaon, Mumbai

11. Heard the Learned APP for the State. She made submission that considering the nature of offence, acceptance of the guilt of the accused and provisions of law, he be punished with considerable punishment to give lesson to him and to give message to the society.

12. However, the accused made submission that he is in custody since the day of his arrest i.e. since 25/11/18. His financial condition is very poor. Nobody is there to help him to take him out by taking bail. He is in habitant of Uttar Pradesh, came here to earn something for his livelihood and now he realized his mistake so the liberty be given to him to reform and to live respectable life with his family members who are depending upon his earnings and at present are in a very miserable condition.

13. Considering all the record, nature of allegations, other circumstances put up before the Court, voluntary acceptance of guilt by the accused and his financial condition, this Court by answering the Point Nos. 1 to 3 in affirmative, proceed to pass the following order :-

O R D E R

1. The accused **Premranjan Kumar @ Raghuvir Prasad Keshavprasad Gupta** at present aged 42 years, residing at Badawala Garden, Chandivali, MHADA, Sakinaka, Mumbai-400 072 is convicted for the offence punishable under section 354 of the Indian Penal Code, 1860 vide Section 229 of Code of Criminal Procedure. He is sentenced to suffer Rigorous Imprisonment for 3 years and to pay fine of Rs.3,000/- (Rupees Three Thousand Only), in default of payment of fine, he shall suffer Simple Imprisonment for 3 months.

2. The accused **Premranjan Kumar @ Raghuvir Prasad Keshavprasad Gupta** is convicted for the offence punishable under section 8 of the Protection of Children from Sexual Offences Act, 2012 vide Section 229 of Code of Criminal Procedure. He is sentenced to suffer Rigorous Imprisonment for 3 years and to pay fine of Rs.3,000/- (Rupees Three Thousand Only), in default of payment of fine, he shall suffer Simple Imprisonment for 3 months.
3. Both the substantive sentences shall run concurrently.
4. Set off be given to the accused for the period for which he has already undergone in custody as per Section 428 of Cr.P.C.
5. Out of amount of fine, (if paid by the accused), the amount of Rs.3,000/- (Rupees Three Thousand Only) as a compensation as per section 357 of Code of Criminal Procedure, be given to the victim girl after appeal period is over.
6. As no muddemal filed in this case as yet, no order to that effect.
7. Copy of Judgment be given to accused free of cost.
8. The concerned Police Station is directed to hand over the copy of Judgment to the Hon'ble District Magistrate (Collector) to be given to the victim/prosecutrix and her legal heirs and report the compliance of the same to the Court.

9. The Judgment is pronounced in the open Court in presence of the Learned Special APP Mrs. Malankar and the accused.

Place : Mumbai
Date : 18.06.2021

(H. C. SHENDE)
Special Judge under P.O.C.S.O. Act,
Sessions Court, Borivali Division,
Dindoshi, Goregaon, Mumbai

Dictated on : 18/06/2021
Transcribed on : 21/06/2021
Checked and corrected on : 22/06/2021
Signed on : 22/06/2021

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

Bar & Bench (www.barandbench.com)
UPLOAD DATE
AND TIME : 22/06/21 at 2.45 p.m.

Mrs.Vidya Pendharkar
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ H.C.SHENDE (Court Room No.11)
Date of Pronouncement of Judgment/Order	18/06/2021
Judgment/Order signed by P.O. on	22/06/2021
Judgment/Order uploaded on	22/06/2021