

... 1 ... SPL.CASE CHILD PROT.NO. 482/2018
CNR-MHPU01-015043-2018

Received on : 12.11.2018
Registered on : 28.11.2018
Decided on : 23.03.2022
Duration : Ys.Ms.Days
03 03 28

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PUNE.
(Presided over by Sunil G. Vedpathak)

SPL.CASE CHILD PROT.NO. 482/2018
Exh.No. 64

State of Maharashtra,
Through P.S.O., Sangavi
Police Station, Pune.
(C.R.No. 376/2018)

... Prosecution

Versus

Dilip Ramdev Kashab,
Age 28 yrs., Occu. Labour,
R/at Room No. 13, Barate Chawl,
Ramnagar, Warje Malwadi, Pune.
Originally R/at Aatmaj Ramdeo Badhya,
Maddo Bazar Gounda,
Uttar Pradesh.

... Accused

Charge : Under Sections 376(2)(n), 506 of I.P.C.
and Section 5(j)(ii)(l) of the Protection of
Children From Sexual Offences Act 2012

Appearance :

Addl.P.P.Mr. H.Y.Mendki for the prosecution
Adv.Mr. M. S. Jadhav for the accused

J U D G M E N T
(Delivered on 23rd day of March 2022)

Accused is facing this trial for the commission of offence punishable under Sections 376(2)(n), 506 of I.P.C. and Section 5(j)(ii)(l) Protection of Children From Sexual Offences Act 2012. (In short 'POCSO Act')

2. Factual matrix;

Report Exh. 17 dated 14.08.2018 lodged by victim, minor girl of 17 years resident of Rakshak Society, Pimple Nilakh, Pune at Sangvi Police Station upon which Crime No. 376/2018 for the offences punishable under Sections 376, 323, 504 of I.P.C. and for the offences punishable under Section 5(j)(ii)(l) of POCSO Act has been registered.

3. Report Exh. 17 unfolds that, victim resides on above said address with her parents, three younger sisters and grandmother Shantabai. Her father works as driver at Pashan whereas her mother performs domestic work in a bungalow situated in Rakshak Society. She is taking education in Shivaji Vidya Mandir, Aundh, Pune-27 for 10th standard.

Before five to six months at about 4.45 p.m. she returned to her house from school. At that time there was lock to the door of her house. So on the backside of the house she was waiting for her

mother. The accused used to come to said society for work therefore, she was knowing him merely by seeing his face and name as Dilipkumar. At that time accused came to her and asked that, he daily used to see her, he likes her too much, he wants to meet her so she should come to meet him in open space situated at the backside of society. At that time she refused for the same. But, accused caught her hand and took her towards backside of society. He told her that he is intending to perform marriage with her and then he had sexual intercourse with her without her will. Then he gave threats to kill her, not to disclose the incident to anybody. Thereafter, frequently he used to call her in said open space and without her consent he used to have sexual intercourse with her. When she was resisting him then he used to beat her. Due to threat given by accused she did not disclose the said fact to anybody.

Subsequently, she gave examination of 10th standard and went to her uncle at Ambad M.I.D.C., Nashik. On 4th July she returned to her house at Rakshak Society, Pimple Nilakh, Pune. Her mother asked her about her menstruation cycle. Then she told her that, since last five months she missed her menstruation cycle. So her parents took her to a private hospital of Dr.Shah of Pimple Nilakh. Dr.Shah advised them to take her at Sassoon Hospital. So on 10.08.2018 she was taken to Sassoon Hospital where lady doctor examined her and told to her mother that she (victim) is pregnant by five months. Her mother taking her in confidence asked about it then

she stated her that she became pregnant due to frequent sexual relations with accused against her will, as accused used to assault her with threat to kill.

4. PW-6 the then P.S.I. attached to Police Station Sangvi Madhumati Tukaram Shinde on 14.08.2018 recorded the report/complaint lodged by victim as per Exh. 17. At that time she obtained Adhar Card and Birth Certificate of victim. Submitted report as per Exh. 44 to her Senior, Police Inspector, Sanvgi Police Station about registration of crime upon report lodged by victim. Then she registered Crime No. 376/2018 and prepared printed F.I.R. as per Exh. 18. Birth Certificate of victim is at Exh. 19 in which her date of birth is mentioned as 29.12.2001. As per the order of her Superior investigation of said crime was given to her.

5. During the course of investigation particularly on 15.08.2018 she visited the spot of incident. Spot of incident was shown by victim which is open space behind Bungalow No. 44 of Rakshak Society. Accordingly, she drew spot panchanama as per Exh. 29 along with rough sketch.

6. Statements of victim's mother and other witnesses were recorded. On 15.08.2018 victim was referred for medical examination to Sassoon Hospital, Pune along with Lady Police

Constable Ashiwal. On 18.08.2018 she arrested accused under arrest panchanama Exh. 46 and made its report to her Superior as per Exh. 45. On 18.08.2018 she recorded supplementary statement of victim in which she stated to have identified the accused. On 20.08.2018 she referred accused for medical examination and obtained his medical report as per Exh.41.

On 20.08.2018 by issuing letter as per Exh. 47 she asked DNA Kit from Deputy Director, Forensic Laboratory, Ganeshkhind Road, Aundh, Pune. On 21.08.2018 she wrote letter as per Exh. 48 and 49 to Sassoon Hospital, Pune for getting samples of victim and accused for DNA Test purposes. On 21.08.2018 along with covering letter Exh. 50 she referred samples of accused and victim to Deputy Director, Forensic Laboratory, Ganeshkhind Road, Aundh Pune for DNA Test. Accordingly, she received DNA report which is at Exh. 51.

7. Apart from this, she had referred blood sample, sample of hairs and nail clippings of victim and accused for analysis to Deputy Director, Forensic Laboratory, Ganeshkhind Road, Aundh Pune along with covering letter Exh. 52 through L.P.C.More. Accordingly, she received reports as per Exh. 53 to 55. On 28.08.2018 she made report as per Exh. 56 to her Superior stating that since the clothes of victim and accused which were on their person at the time of incident were not available therefore, they could not be seized. On 01.09.2018 again she recorded statements of some witnesses. On

23.08.2018 she prepared report for recording the statement of victim under Section 164(5) of Cr.P.C. but, at that time victim was admitted in hospital and subsequently she was referred directly to one Sanstha therefore, no statement of victim under Section 164(5) of Cr.P.C. could be recorded. After completion of investigation she submitted charge-sheet.

8. The subsequent Investigating Officer got recorded statement of victim under Section 164 of Cr.P.C. On 27.12.2018 victim delivered a baby. Therefore, to have DNA Test of that baby on 31.12.2018 she demanded DNA Kit by letter signed by A.P.I. Alka Sarag, office copy of the same is at Exh. 57. A.P.I. Alka Sarag by addressing letter on 31.12.2018 to Y.C.M.Hospital demanded blood samples of baby for DNA Analysis, copy of that letter is at Exh. 58. On 01.01.2019 A.P.I. Alka Sarag referred samples of baby for analysis to Deputy Director, Forensic Laboratory, Ganeshkhind Road, Pune along with covering letter, office copy of that letter is at Exh. 59. As such, DNA report is received as per Exh. 51, which discloses that victim and accused are biological parents of newly born baby.

9. My learned predecessor framed charge for the offences punishable under Sections 376(2)(n), 506 of I.P.C. along with the offence under Section 5(j)(ii)(l) punishable under Section 6 of POCSO Act 2012 below Exh. 4 particularly on 18.07.2019. Contents

of the charge were read over and explained to him in vernacular to which he denied, pleaded not guilty and claimed to be tried.

Defence of the accused is of total denial. According to him he never had forcible sexual intercourse with victim nor he gave threats to her. However, whatever the sexual relationship between both was as per consent of victim.

10. In order to prove the charge prosecution has examined in all six witnesses; whereas no evidence is adduced on behalf of accused in his defence.

Statement of accused under Section 313 of Cr.P.C. has been recorded below Exh. 61 in which all incriminating circumstances were put to him are categorically denied by him.

11. Besides above referred oral evidence some documents are placed on record. I will refer the same at proper place and time during the course of discussion in accordance with its relevancy.

12. Heard arguments of both parties.

ARGUMENT ON BEHALF OF PROSECUTION

13. Ld.Addl.P.P.Shri Hemant Mendki has submitted that the prerequisite condition for application of provisions under POCSO Act i.e. age of victim, below 18 years has been proved by the prosecution.

So also the requisite evidence to lay foundation for raising presumption under Section 29 and 30 of POCSO Act is also brought on record by the prosecution. Then, through the evidence of victim and other prosecution witnesses coupled with medical evidence it is sufficiently proved that accused had repeatedly sexual intercourse with victim against her will and because of that she became pregnant and delivered a baby. DNA Report also makes it clear that victim and accused are the biological parents of said baby. Therefore, prosecution is succeeded in proving all the offences against the accused beyond reasonable doubt. So accused is required to be convicted and punished according to law.

ARGUMENT ON BEHALF OF ACCUSED

14. Learned Adv.Shri M.S.Jadhav has submitted that in fact accused did not commit the offences as alleged however, he has been falsely involved in present case. Prosecution failed to prove that at the relevant time of incident victim was below the age of 18 years so no provisions under POCSO Act can be applied. Evidence of prosecution witnesses is not consistent and in corroboration to each other. Therefore, same cannot be believed. Since, whatever the physical relationship established between victim and accused was with full consent of victim out of love affair. So it is the case of consensual sexual relationship. Therefore, merely on the basis of DNA Report it cannot be said that prosecution has proved alleged

offences against the accused. Lastly, he prayed to acquit the accused.

15. Following points arose for determination and I record findings thereon as under for the reasons stated below.

<u>P O I N T S</u>		<u>F I N D I N G S</u>
1	Whether the prosecution proves that since prior to five to six months from 14.08.2018 in the open space behind Rakshak Society, Pune accused repeatedly committed rape on victim aged 17 years against her will and thereby committed an offence punishable under Section 376(2)(n) of I.P.C.?	Proved.
2	Whether the prosecution proves that during the above period, time and place accused committed criminal intimidation by giving threats to the victim with injury to her person or to kill her with intent to cause alarm to her or to cause her to do an act of physical relations with him, which she was not legally bound to do and thereby committed an offence punishable under Section 506 of I.P.C.?	Proved.
3	Whether the prosecution proves that on the above period and place and during the course of same transaction accused committed repeatedly aggravated penetrative sexual assault on minor victim child aged 17 years of age and made the victim minor girl pregnant as a consequence of sexual assault and thereby committed an offence under Section 5(j)(ii)	

	(l) punishable under Section 6 of the Protection of Children From Sexual Offences Act 2012?	Proved.
4	What order?	As per final order.

R E A S O N S

AS TO POINT NO. 1 :

16. As per the story of prosecution incident took place in open space situated behind Rakshak Society, Pimple Nilakh, Pune. The spot of incident is duly proved through the evidence of victim, PW-1, PW-5 Trimbak, father of victim and PW-6 Investigating Officer P.S.I.Madhumati Tukaram Shinde. Through the evidence of PW-2 Savita Amol Hinge, one of the panch witnesses on spot panchanama coupled with evidence of PW-6 P.S.I.Madhumati Shinde spot panchanama dated 14.08.2018 as per Exh. 29 is proved. Spot panchanama discloses that spot of incident is below a Neem tree in open space, behind Rakshak Society, Pimple Nilakh. Therefore, spot of incident is duly established by the prosecution.

17. There is no dispute about the fact that during the period of alleged incidences accused was coming to Rakshak Society to do labour work, particularly in Bungalow No. 37 and victim with her family members was residing in Bungalow No. 44 which is in front of Bungalow No. 37. It is not in dispute that victim and accused became acquainted to each other. Frequent sexual relationship between

victim and accused is also not disputed on behalf of defence. As against this, defence has suggested that there was love affair between victim and accused and out of that they had sexual relations with consent of victim. The suggestion with regard to love affair and sexual relations with her consent has been flatly denied by victim.

18. Now coming to the evidence on record; evidence of victim unfolds that, since her mother is maid servant and father is working as driver therefore, they used to go for their work. In the August 2018 she was studying for 10th standard in Shri Shivaji Vidya Mandir, Aundh, Pune. One day in the evening hours she came from school to house, she found lock to the house. She sat behind her house and waiting for her mother. At that time one boy namely Dilipkumar (accused) came to her and stated that he likes her much. He also asked her to come to open space situated behind Rakshak Society. Initially she refused however, accused caught hold her hand and took her behind society and did physical relations with her. He also asked her that he will perform marriage with her. He also assaulted her and threatened saying that, she should not disclose about the incident to anyone. So also he always used to call her behind Rakshak Society and used to establish physical relations with her.

After finishing her 10th standard examination she had been to the house of her uncle at Ambad M.I.D.C. Nashik. Thereafter, she came to her house at Rakshak Society particularly on 4th July. On

asking by her mother, she told that since last five months her menstruation is missing. Then, her parents took her at private hospital of Dr.Shah who advised them to take her at Sassoon Hospital, Pune. Accordingly, she was taken to Sassoon Hospital, Pune. On 10.08.2018 concern doctor examined her and informed that she is pregnant of five months. When her mother inquired her about her pregnancy then she told that accused established physical relations with her time-to-time and thereby she became pregnant. As such, she supported and proved the allegations made in report Exh. 17 and printed F.I.R. at Exh. 18. She stated to have mentioned full name of accused as Dilip Ramdeo Kashab in her supplementary statement. At the same time she has supported her Birth Certificate which is at Exh. 19.

19. During the course of cross-examination her version in chief-examination could not be shattered or impeached so as to disbelieve her. From the tenor of cross-examination and suggestions given to victim the defence of accused reflects that out of love affair between victim and accused there was sexual relations between them that too with consent of victim. So fact remains on record that, the repeated sexual relations between victim and accused is nowhere disputed.

20. So far as medical evidence is concern, PW-3

Dr.Abhinandan Shantilal Shah, private medical practitioner, who runs his clinic by name 'Shah Clinic' at Pimple Nilakh, unfolds that, on 10.08.2018 victim was brought by her parents to him. He was told about missing of menstruation cycle of victim. So he advised them to take victim to Government Hospital without examining victim.

21. Then evidence of PW-4 Dr.Shivangi Singh Jadon, who was attached to Sassoon General Hospital, Pune as Post Graduate Resident in Obstetrics & Gynecology Department from 2016 to 2019. Her evidence unfolds that on 15.08.2018 while she was on duty in Sassoon Hospital, victim was brought by L.P.C. Kadam of Sangvi Police Station before her for medical examination. Initially she obtained her consent for medical examination on Consent Form at Exh. 31.

Then victim had given history that, she is 16 years old student of 10th standard. Accused namely Dilipkumar is a labour who became her friend at a construction site, near her residence. There was multiple times penetrative vaginal sexual intercourse in February 2018 by accused with her. After that she went to Nashik. When she realized about missing of her periods she was referred to Sassoon Hospital for medical examination through Sangvi Police Station.

22. Evidence of Dr.Shivangi further discloses that on

examination of victim she noticed that her vitals were normal, she was oriented. On her abdominal examination uterus was 26 weeks and relaxed. External ballotement was noted. On local examination multiple healed hymenal tears were noted. Accordingly, she collected samples of pubic hairs, blood, nails, vaginal swab, vaginal smear of victim and handed over the same in sealed envelope to the concern police. There were no signs of injuries over the person of victim. As such, according to her over all findings is, 'evidence of vaginal penetration and pregnancy of 27 weeks and sonography was suggested of single live intrauterine fetus of 21 weeks 4 days.' Further she clarified that after examination she found that victim was pregnant by 21 weeks and four days. As such she proved medical report of victim which is at Exh. 39. Her evidence remained intact even after facing cross-examination.

23. Evidence of PW-5 Trimbak, father of victim unfolds that in the year 2018 he was told by his wife that menstruation cycle of victim is missing so initially he took victim to Dr.Shah where Dr.Shah advised them to take her to Sassoon Hospital. Accordingly, victim was taken to Sassoon Hospital and on her medical examination concern doctor stated that victim is pregnant of five months. He further states that, on asking victim stated that accused Dilipkumar had sexual intercourse with her forcibly and gave threats to kill her if she disclosed the same to anyone. Thereafter, victim was referred to

Chaitanya Mahila Mandal, Moshi where she delivered a baby.

24. Through the evidence of PW-6 it has come on the record that by making certain correspondence the DNA Kits were obtained. Necessary samples of victim and accused were taken along with blood sample of newly born baby and referred the same to Deputy Director, Forensic Laboratory, Ganeshkhind Road, Pune for DNA Analysis. Accordingly, C.A. Reports at Exh. 51, 53, 54 and 55 are received. C.A. Report Exh. 55 shows that, 'control DNA profiles are obtained from Ex. 1 Blood of victim and Ex. 2 blood of Dilip Ramdev Kashab.' Report Exh. 54 speaks that, 'neither blood nor any tissue matter is detected on exhibit (3) i.e. nail clippings of accused and no semen is detected on exhibit 2 i.e. pubic hairs of accused. However, exhibit 1 i.e. blood of accused found there of 'O' Group. C.A. report Exh. 53 speaks that, 'sample of nail clippings, pubic hairs, vaginal swab, vaginal smear and blood of victim was analyzed however except finding of her blood group as 'B' neither blood nor tissue matter or semen is detected on other samples.

25. DNA Report is at Exh. 51 which shows that after having analysis of blood of victim, accused and female child of victim result of it is that, 'victim and accused are concluded to be biological parents of baby of victim.' Therefore, having considered evidence referred above it has become crystal clear that there was repeated

sexual relations between victim and accused and out of that she became pregnant and subsequently she delivered female child. From DNA Report Exh. 51 it has also made clear that biological parents of female baby delivered by victim are victim and accused Dilip.

26. Evidence of victim depicts that whatever the sexual relations repeatedly took place between her and accused were without her will or consent. On the other hand, accused could not make his defence probable regarding consensual sexual relationship with victim. Under these circumstances the presumption as to absence of consent in certain prosecutions for rape as per Section 114-A of Evidence Act will come into picture, which speaks that, 'where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.'

27. Presumption envisaged in the Section is directory and the court has no option but to draw the presumption unless disproved. Here, accused did not rebut the said presumption. Therefore, under these circumstances I find that prosecution has proved the offence punishable under Section 376(2)(n) of I.P.C. beyond the doubt of certainty. So I endorse findings against point No. 1 in the affirmative.

AS TO POINT NO. 2 :

28. This point pertains to the offence punishable under Section 506 of I.P.C. As per the case of prosecution, particularly in the month of February 2018 accused without consent of victim by giving promise of marriage had repeated sexual intercourse with her. But, victim did not disclose the same either to her parents or anybody till missing of her menstruation cycle for five months. Evidence of victim unfolds that due to threat given by accused she did not disclose the fact of sexual relations between them to anyone. Except denial in cross-examination no other material admissions are brought on record by the defence during the course of cross-examination of victim. In addition to it, statement of victim recorded under Section 164(5) of Cr.P.C. before 4th Judicial Magistrate First Class, Pimpri, Pune dated 22.03.2019 also supports the fact that accused by giving promise of marriage without her consent forcibly had sexual relations with her and gave threats to her that, she will be killed if she discloses the said fact to anyone. So the fact remains on record that due to threat given by accused victim did not disclose the fact of repeated sexual relations between her and accused to her parents or to any other person. The evidence referred above is sufficient to constitute the offence punishable under Section 506(II) of I.P.C. as due to threats given by accused to victim with injury to her person or to kill her, committed criminal intimidation with intent to cause alarm to her and thereby she had omitted to do the act to tell about

her physical relations with accused without her consent to her parents which she was legally bound to do. Therefore, in my view prosecution is succeeded in proving the offence punishable under Section 506(II) of I.P.C. This answers point No. 2 in the affirmative.

AS TO POINT NO. 3 :

29. This point pertains to offence under Section 5(j)(ii)(l) of POCSO Act punishable under Section 6 of the said Act. Section 5 speaks about aggravated penetrative sexual assault. Section 5 Sub Clause (j)(ii)(l) says that, 'whoever commits penetrative sexual assault on a child in the case of a female child makes the child pregnant as a consequence of sexual asault, then he is liable for punishment under Section 6 of POCSO Act.

30. So now first of all it is to be considered, whether prosecution has proved that at the relevant time of incident victim was below the age of 18 years i.e. minor child within the definition of Section 2(d) of POCSO Act.

31. In this regard evidence of PW-1 victim, her father PW-5 Trimbak shows that at the time of incident victim was 17 years old, she was studying in 10th standard and her date of birth is 29.12.2001. While cross-examining these witnesses except suggestion that at the time of incident victim was 19 years old, no other material on record

is put forth by the defence to substantiate its said suggestion. In addition to it, Birth Certificate of victim issued by Pune Municipal Corporation, Health Department is placed on record which is at Exh. 19; which shows the date of birth of victim as 29.12.2001. The date of registration is 02.01.2002 and date of issuance of said certificate is 29.08.2018. It means the registration of date of birth of victim was already taken place on 02.01.2002. Therefore, the stand of accused that prosecution obtained Birth Certificate afterthought, cannot be accepted.

Since this certificate has been issued under Section 12/17 of the Registration of Births & Deaths Act 1969 and Rule 8/12 of the Maharashtra Registration of Birth And Deaths Rules, 2000. Therefore, in view of Section 35 of Evidence Act it has evidenciary and probative value as well. On the contrary, accused has not disproved the fact that date of birth of victim is 29.12.2001 and she was not minor child at the time of incident. So, cumulative effect of the same is that prosecution has proved that victim was child i.e. below the age of 18 years as expected by Section 2(d) of POCSO Act.

32. So far as aggravated penetrative sexual assault is concern, already while deciding the point No. 1 I have discussed the evidence of victim, her father coupled with medical evidence in detail and observed that prosecution has proved that accused had repeated sexual intercourse with victim without her consent, thereby she

became pregnant and delivered a female child. Now, it is also established that at the time of commission of offence victim was child as per Section 2(d) of POCSO Act. So evidence on record is sufficient to prove the ingredients of Section 5(j)(ii)(l) of POCSO Act i.e. accused committed penetrative sexual assault on female child and makes the child pregnant as a consequence of sexual assault and further committed penetrative sexual assault on the child more than once or repeatedly.

Similarly, by way of above referred evidence foundation has become available to raise presumption under Section 29 that, where a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence as the case may be unless the contrary is proved. So also presumption of culpable mental state as provided under Section 30 of POCSO Act that, in any prosecution for any offence under this Act which requires a culpable mental state on the part of accused, the Special Court shall presume the existence of such mental state.

33. As stated earlier, the evidence on record could not be disproved by the defence or accused could not rebut the presumptions made available in favour of prosecution referred above. Therefore, I am of the opinion that prosecution is succeeded in

proving the offence punishable under Section 6 of POCSO Act beyond all reasonable doubts. So it goes without saying that accused is liable to be convicted for the offences punishable under Sections 376(2) (n), 506 of I.P.C. as well as for the offence punishable under Section 6 of POCSO Act and punished accordingly. Before passing the order of conviction and sentence I would like to hear the accused on point of sentence.

Date : 22.03.2022

Addl. Sessions Judge, Pune.

34. Accused is present. On asking about sentence, he submitted that whatever happened between him and victim was as per consent of victim. He was and is ready to perform marriage with her. Therefore, he has prayed to show leniency while awarding sentence.

35. Learned advocate for accused has submitted that since the case was based on love affair between victim and accused, still accused is ready to perform marriage with her. So under these circumstances it would be proper to call the victim and ask her about her decision.

36. On the other hand Ld.Addl.P.P. has submitted that offences are of serious nature that too against minor child i.e. victim.

Similarly, those offences are against the society therefore, maximum sentence be awarded to the accused so that, he or other persons like him would take lesson and abstain themselves from committing the offences of sexual assault against minor child.

37. Having heard rival submissions of both parties and considering the serious nature of offences which are duly proved against the accused, there are no grounds to show leniency while awarding sentence to accused. So far as request made by learned advocate for accused to call victim and ask her about decision, cannot be entertained because at the time of incident she was minor and therefore, even it is assumed that she had given consent, still her consent is immaterial. Now by calling victim and asking her consent or decision will not rectify the position which was at the time of incident in question.

38. Having heard arguments of both parties and considering the nature of alleged and proved offences, which are certainly serious and heinous nature. Accused by doing sexual assault upon minor child i.e. victim, repeatedly had sexual intercourse with her by putting her under threat and thereby she became pregnant and delivered female child. So under such circumstances in my view no leniency can be shown to the accused. If while sentencing accused if this court has not dealt the accused with hard hands then definitely

the bad message will be spread amongst the society and there may not be justice to the helpless victim.

39. While passing the sentence, Section 42 of POCSO Act is required to be considered which is about alternate punishment; which says that, 'Where an act or omission constitutes an offence punishable under this Act and also under Sections 166-A, 354-A, 354-B, 354-C, 354-D, 370, 370-A, 375, 376, 376-A, 376-C, 376-D, 376-E or Section 509 of the Indian Penal Code, the, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.' So it is to be seen for which offence punishment of greater decree is provided.

40. Punishment to offence under Section 376(2)(n) of I.P.C. is, 'he shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.'

41. Punishment for the offence punishable under Section 6 of POCSO Act is, 'whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term

which shall not be less than ten years, but which may extend to imprisonment for life and shall also be liable to fine.'

42. After comparison of punishment provided to above referred two offences then I find that the punishment greater in degree is provided for the offence punishable under Section 376(2)(n) of I.P.C. So I am of the view that it would be just and proper to pass sentence against the accused for the offence punishable under Section 376(2)(n) of I.P.C. without passing separate sentence for the offence punishable under Section 6 of POCSO Act.

43. Thus, in view of above discussed factual and legal aspects of the matter, in my opinion following order would meet the ends of justice.

O R D E R

1. Accused Dilip Ramdev Kashab is convicted under Section 235(2) of Cr.P.C. for the offences punishable under Section 376(2)(n) and 506 of I.P.C. as well as for the offence punishable under Section 6 of the Protection of Children From Sexual Offences Act 2012.
2. Accused is sentenced to suffer rigorous imprisonment of fifteen years and he shall pay fine of Rs. 15,000/- (Rs. Fifteen Thousand only) and in default of the payment of fine he shall undergo

rigorous imprisonment of three and half years for the offence punishable under Section 376(2)(n) of I.P.C.

3. He is sentenced to suffer imprisonment of three years and he shall pay fine of Rs. 3,000/- (Rs. Three Thousand only) and in default of the payment of fine he shall undergo imprisonment of eight months for the offence punishable under Section 506(II) of I.P.C.
4. No separate sentence is passed for the offence punishable under Section 6 of POCSO Act.
5. Both the sentences shall run concurrently.
6. Accused shall surrender his bail bonds.
7. Accused is taken in judicial custody.
8. Accused is entitled to have set off under Section 428 of Cr.P.C. for the period in which he was under detention.
9. After deposit of fine amount by accused it be paid to victim under Section 357(3) of Cr.P.C. after expiry of appeal period.
10. Copy of judgment be supplied to the accused free of cost.

Date : 23.03.2022

(Sunil G. Vedpathak)
Addl. Sessions Judge, Pune.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file judgment are same word for word as per original Judgment.

Name of steno : Smt. N. A. Surve
Name of the Court : Shri. Sunil G. Vedpathak
Additional Sessions Judge, Pune
Date of Order : 23.03.2022
Order signed by P.O. on : 24.03.2022
Order uploaded on : 24.03.2022