

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.204 OF 2017

Pramod s/o Ganpatrao Joshi
Age: 53 Yrs., occu. Business,
R/o Bhagyodayanagar,
Satara Parisar, Aurangabad
Tq. and Dist. Aurangabad.
(At present the appellant-
is in Aurangabad Central Prison,
Harsool, Aurangabad Tq and Dist
Aurangabad.

= **APPELLANT**
(orig. Accused)

VERSUS

The State of Maharashtra
Through the Police Station Officer
Satara Police Station,
Aurangabad, Tq. And Dist.
Aurangabad.

= **RESPONDENT**
(orig. Complainant)

Mr.Rajendra Deshmukh with Mr.A.M. Walujkar, Advocate
for Appellant;
Mr.SP Tiwari, APP for Respondent.

CORAM : P.R.BORA, J.

RESERVED ON: 15th September, 2017.
PRONOUNCED ON :- 25th September, 2017.

JUDGMENT:

1) Aggrieved by the order of conviction
passed by the learned Additional Sessions Judge,
Aurangabad in Special Case No. 99/2015 decided on
2nd May 2017, the convict therein has preferred

the present appeal.

2) The appellant, who is herein after referred to as accused, was prosecuted in the aforesaid special case for the offences punishable under Section 354(A)1 of IPC and under Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short, POCSO Act). The Special Court has convicted the accused for the aforesaid offences and has sentenced the appellant to suffer R.I. for one year for the offence punishable under Sections 354(A)1 of IPC and R.I. for five years for the offence punishable under Sections 8 of the POCSO Act with fine of Rs. 2,000/- in default to suffer S.I. for two months.

3) It was the case of the prosecution that on 9.8.2015 at around 3.00 p.m., the victim girl, had been to the shop of the accused known as "Shriram Daily Needs" along with her elder brother and cousin for purchasing chocolates.

After the trio entered into the shop the accused asked the boys, who were accompanying the victim, who were also the minor children, to go at the upper floor of his house and to see the house and he took the victim to the inside room, make her sleep on the bed and slept on her person. As because the victim girl raised shouts, the accused got up and went out of the said room. The accused then asked the victim girl not to cry and gave chocolates to her as well as to her brothers, who by that time had come down from the upper floor. The victim girl then returned to her home and after some time narrated the incident to her mother. Father of the victim was at his work place at that time. After he returned home at about 8.00 p.m., he, victim girl and her mother went to Satara police station and reported the said incident to the police. On such report being lodged, a crime was registered against the accused for the offences, referred to above and the investigation was set in motion. The accused was arrested. Spot panchanama was

prepared. Statements of the witnesses were recorded by the Investigating Officer and after completing the investigation in the matter, charge sheet was filed against the accused. Since the accused was prosecuted for the offences punishable under the provisions of the POCSO Act, the accused was tried by the Special Court. On 19.11.2016 charge was framed against the accused, to whom he pleaded not guilty and claimed to be tried. In order to prove the charges levelled against the accused, the prosecution examined total four witnesses. The prosecution evidence commenced with the testimony of mother of the victim. Evidence of the victim was also adduced and one panch witness was examined. The prosecution evidence was concluded with the oral testimony of Investigating Officer.

4) After the prosecution evidence was closed, the learned Special Judge recorded the statement of the accused under Section 313 of Code of Criminal Procedure. The Accused examined

his wife as a defence witness. The accused had taken a plea that he was falsely implicated in the alleged crime. The learned Special Judge, after having assessed the oral as well as documentary evidence brought on record before it, held the accused guilty for the offences punishable under Section 354(A)1 of the I.P.C. and section 7 and 8 of POCSO Act and sentenced him to suffer the sentence as noted herein above. Aggrieved by, the accused has filed the present appeal.

5) Shri Rajendra Deshmukh, learned Counsel appearing for the appellant assailed the impugned Judgment on various grounds. The learned Counsel submitted that, several circumstances have come on record which create reasonable doubts about the truthfulness in the case of the prosecution. The learned Counsel further contended that, there are material contradictions and omissions in the evidence of the prosecution witnesses. The learned Counsel submitted that, perusal of the

impugned judgment reveals that, the learned Special Judge was predetermined to hold the appellant guilty for the offences alleged against him.

6) The objections raised by the learned Counsel in exception to the impugned Judgment and order can be summarized, in brief, as follows :

i) That, the alleged incident was not promptly reported to the police and the delay of 9 hours occurred in lodging F.I.R. is not explained.

ii) That, there are material contradictions and omissions in the statements of the prosecution witnesses.

iii) That, there was no medical examination of the victim girl, though Section 27 of the POCSO Act mandates the same.

iv) That, though her real brother was at home, mother of the victim girl did not take his assistance to approach the police immediately and did not lodge the report of the alleged incident, promptly.

v) That, two minor brothers of the victim, who according to the case of the prosecution, were accompanying the victim at the relevant time, have not been examined by the prosecution though they could have been the best witness to depose about the alleged incident and to corroborate the facts stated by the victim.

vi) That, the statements of the neighbours are not recorded by the investigating officer though the spot of occurrence is surrounded by residences and shops.

vii) That, there was previous enmity between the accused and the informant,

viii) That, the prosecution witnesses have admitted that, the shop of the accused remains closed in between 01:00 p.m. to 04:00 p.m.

7) It was the contention of the learned Counsel for the appellant that, failure on part of the learned Special Court in proper appreciation of aforesaid circumstances have resulted in recording of erroneous findings. The learned Counsel submitted that, the conviction of the appellant based on such erroneous findings cannot be sustained and he, therefore, prayed for setting aside the order of conviction and acquit the accused of the charges levelled against him.

8) The learned APP Shri S.P. Tiwari supported the impugned judgment and order. He submitted that, the prosecution has brought on record sufficient evidence to prove the guilt of the accused. The learned APP further submitted that, the oral testimony of the victim girl alone

is enough to prove the complicity of the accused in the commission of the alleged crime. The learned APP submitted that, the learned Special Judge has correctly appreciated the evidence on record and has passed a well reasoned order. The learned APP submitted that, no interference is required in the impugned judgment and order. He, therefore, prayed for dismissal of the appeal.

9) I have carefully considered the submissions made by the learned Counsel appearing for the appellant and the learned APP. I have perused the impugned judgment and the evidence on record. I would like to deal with the objections in the same sequence as are raised by the learned Counsel appearing for the accused in his arguments.

10) The first and foremost objection as was raised by the learned Counsel was that, the delay caused of 9 hours in filing the F.I.R. in respect of the alleged incident has created serious

doubts about the imputations made against the accused. The learned Counsel submitted that, according to the prosecution, the alleged incident had occurred at about 03:00 p.m. whereas the F.I.R. is lodged at 00:45 hours i.e. after period of more than 9 hours. The learned Counsel further submitted that, the prosecution has not explained the delay so caused.

11) I, however, do not find any substance in the objection so raised. The alleged incident is said to have happened during 03:00 to 04:00 p.m. As has come on record father of the victim girl returned to home from his office at about 08:00 p.m., whereupon the incident was narrated to him. Then he, his wife and the victim girl reached to Satara police station at around 10:00 p.m. for lodging the report about the alleged incident. Though the F.I.R. appears to have been registered at 00:45 hours, the Investigating Officer (PW No.4 – P.S.I. Komal Shinde) in her evidence before the Court has deposed that, the victim and

her parents had been to police station Satara at around 10:00 p.m. Considering the facts as aforesaid, it cannot be said that, there was delay much less inordinate delay in filing the report of the alleged incident.

12) It was further contended that the mother of the victim had not waited even for a minute in approaching the police had the incident really happened. This contention also cannot be accepted. It was but natural for the mother of the victim girl to wait till her husband comes to home. In the case like present, the mother alone could not have taken any such decision at her own which concerns the reputation of the victim girl and the honour of the entire family. It has to be understood that, in such cases not only mother but even a father would think twice whether to take the matter to the police or not since it is likely to affect the honour and reputation of the family. It also cannot be ignored that, many parents hesitate to come forward to file the

compliant of sexual abuse apprehending the double trauma the victim girl is likely to go through the trial. As such, if the mother of the victim girl waited till her husband comes, her conduct in any way cannot be said to be improbable or unnatural. As has come on record after the father of the victim girl reached to home and the incident was narrated to him, he took a decision to lodge a report of the alleged incident and accordingly the police station was approached by them at about 10:00 p.m. i.e. within two hours. In the circumstances, it cannot be said that, there was any delay much less inordinate delay in lodging the F.I.R. of the alleged incident.

13) Referring to the fact stated by the victim girl in her oral evidence before the Court that her mother informed about the alleged incident to her father on telephone, it was argued by the learned Counsel for the appellant that, in spite of such an information received when the father of the victim girl did not rush

to the home, it can be reasonably inferred that, nothing serious had happened as alleged by the prosecution. The objection so raised also deserves to be turned down. There is nothing on record to show at what time the mother of the victim girl telephoned to her husband and what was actually informed to him by her about the alleged incident. Without the complete information in that regard on record, no adverse inference can be drawn.

14) The next objection, as was raised by the learned Counsel for the appellant, was that there are material contradictions and omissions in the statements of the prosecution witnesses and the facts stated by PW 1 and PW 2 in their evidence before the court, do not corroborate each other. The learned Counsel submitted that the fact, which has been deposed by the victim (PW 2) that since she was not playing with the boys, her mother asked the reason for not playing with the boys and then she disclosed about the alleged

incident to her mother, is not stated by PW 1 - Durga in her testimony before the Court. On the contrary, her evidence goes to suggest that immediately after the victim reached home, she was noticed somewhat scared and when asked why she is so scared, she disclosed the alleged incident to her.

15) The learned Counsel further submitted that the very material fact, stated by the victim girl in her testimony before the court that her mother informed about the alleged incident on phone to her father, is missing in the evidence of PW 1 -Durga.

16) The learned Counsel further submitted that the fact stated by the prosecutrix that her maternal uncle had been to their home on the date of the incident and when she returned to her home after the alleged occurrence, her maternal uncle was there at her home, has not been stated by PW 1 - Durga in her evidence before the court. The

learned Counsel submitted that PW 1 intentionally suppressed the said fact. The learned Counsel further submitted that had the incident really happened, mother of the victim girl would have certainly taken her brother to the police station and would have immediately lodged the report of the alleged incident.

17) Referring to the statement of the victim girl, recorded under Section 164 of Cr.P.C., the learned Counsel submitted that it contains a totally different story that after the alleged occurrence, the victim girl, her mother, her brother and her cousin brother all had been to Umrikar Lawns.

18) The learned Counsel submitted that having regard to the serious nature of allegations made against the accused, having serious consequences, the prosecution evidence must be beyond reasonable doubts. The learned Counsel submitted that prosecution evidence is

not free from doubts, benefit of which would certainly go to the accused and on the basis of such evidence, the accused cannot be held guilty.

19) I am, however, not at all convinced with the submission so made. The contradictions and commissions, which are referred to by the learned Counsel, cannot be, in any way, said to be material having regard to the core fact stated by the prosecutrix that the accused took her to the inside room of his house, made her to sleep on bed and then he slept on her person. The fact, as stated by the victim girl in her evidence before the court that since she was not playing with the boys, her mother asked the reason of not playing, admittedly is not stated by PW 1 - Durga in her evidence before the court. However, it has come in the evidence of PW 1 - Durga that she noticed that the victim girl was somewhat scared and she, therefore, asked her why she was so scared. The aforesaid cannot be said to be a material contradiction considering that the facts, which

are stated by the victim girl thereafter are more material and as I noted herein above, the core fact, as has been stated by the victim girl in her evidence before the court and narrated by PW 1 - Durga in her evidence before the Court, are fully corroborating each other.

20) Similarly, no much capital can be made of the fact that PW 1 - Durga did not state in her evidence before the court that her real brother was present at the relevant time when the victim girl returned to her home. I have earlier noted that even if the real brother was at the house, mother of the victim girl could not have taken such decision to lodge the report about the alleged incident to the police without consulting her husband and unless he comes home and accompanies her and the victim girl to the police station for lodging such report.

21) Further, there is no substance in the contention that the victim, in her statement

before the court under Section 164 of Cr.P.C. has stated that after the alleged incident, they had been to Umrikar Lawns. It does not have any adverse effect on the case of the prosecution or the core fact stated by the prosecutrix about the mis-deed committed by the accused with her.

22) Law is well settled that if evidence of the victim of sexual assault inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. Minor contradictions and insignificant discrepancies in the statement of the victim, which are not of fatal nature shall not be used to throw out an otherwise reliable prosecution case.

23) The next objection relates to non – examination of the victim by the Medical Officer after the alleged occurrence. According to the learned Counsel, Section 27 of the POCSO Act, mandates the medical examination of a child, in

respect of any offence committed under the said Act. The learned Counsel submitted that though the police officer has directed the medical examination of the victim girl, mother of the victim girl did not consent for such medical examination and as such, no medical examination could be done. The learned Counsel, emphasizing the word 'shall' used in Section 27 submitted that non-examination of the victim girl, has raised reasonable doubt about the truthfulness in the allegations made against the accused.

24) It is really not understood as to why the learned Counsel for the appellant has raised such an objection. The objects of medical examination are :(i) to elicit the evidence of recent sexual intercourse, (ii) to find out the marks of violence if any resulting from struggle, (iii) to find out signs of forceful penetration, (iv) to search for physical signs that will corroborate the history given by the victim, (v) to search for, collect and preserve

all trace evidence for laboratory examination,
(vi) to treat the victim for any injury.

25) In the instant matter, the allegation against the accused is that he made the victim to sleep on the bed and then slept over her person. Except the above, no other overt act was attributed on his part. As such, there was absolutely no need of medical examination of the victim girl. In the circumstances, refusal by the mother of the victim to accord consent for the medical examination of the victim may not lead to any adverse inference.

26) It was also contended by the learned Counsel for the appellant that, the two boys, who were allegedly accompanying the victim girl when she had been to the shop of the accused could have been best witnesses to tell as to what actually happened at the relevant time. The learned Counsel submitted that, the prosecution has deliberately omitted to examine the two boys

as the prosecution witnesses so that truth shall not come on record. The learned Counsel submitted that, non - examination of the said boys as witnesses has also created serious doubts about the prosecution case.

27) The objection is apparently unsustainable. Who are to be examined as a prosecution witnesses and how many witnesses are to be examined is the absolute choice of the prosecution. Sometimes evidence of the sole witness may also be sufficient to prove the prosecution case and sometimes the prosecution may be required to examine plenty of witnesses. In the instant case, when according to the prosecution the evidence of the prosecutrix and her mother was sufficient to prove the guilt of the accused, prosecution chose not to examine any more witness on the point. Non-examination of the said two boys as prosecution witnesses, per se, cannot be a ground to reject the prosecution version and more particularly when the evidence

of the victim girl is found trustworthy and dependable to prove the guilt of the accused.

28) Much vehemently it was argued that when her real brother was at home, why the mother of the victim girl did not take his assistance for immediately going to the police station and to lodge the report of the alleged incident. I have already discussed that mother of the victim girl could not have taken any such decision to lodge the report of the alleged incident without consulting her husband for the reason that it was concerning the honour and reputation of the family. The objection, so raised also thus deserves to be turned down.

29) Why the mother of the victim girl did not disclose the alleged incident immediately after its occurrence to her neighbours and more particularly to the female members in the said families, was another circumstance of doubt raised by the learned Counsel for the appellant.

According to the learned Counsel, mother of the victim girl must have immediately made grievance against the accused for the mis-deed committed by him with her minor daughter at least to the female members of the said families, had the incident really happened. The learned Counsel submitted that such conduct of the mother appears unnatural and paves way for doubting the prosecution case.

30) The contention of the learned Counsel is wholly unacceptable. No mother would like to disclose that an attempt was made by somebody to sexually abuse her daughter even to a next door neighbour.

31) It was also sought to be contended by the learned Counsel for the appellant that the victim girl as well as her mother both have admitted that the shop of the accused remains closed in between 1.00 p.m. to 4.00 p.m. The learned counsel submitted that in view of the

admission so given, the fact stated by the victim girl that she had been to the shop of the accused at 3.00 p.m., is difficult to be accepted. According to the learned Counsel, genuine doubts are created whether, in fact, the said shop was open at the relevant time when the victim girl is alleged to have entered in the said shop. In view of the evidence on record, the objection so raised does not hold any water. It was a broad admission by the witnesses that in ordinary course the shop of the accused remains closed during the period between 1.00 p.m. to 4.00 p.m. In view of the unshattered evidence of the victim girl, which has been duly corroborated by her, there remains no doubt that at the relevant time the shop of the accused was not closed.

32) In order to substantiate the defence that the shop remains closed during 1.00 p.m. to 4.00 p.m. and as such, there was no possibility of the prosecutrix coming to the shop of the accused during the said period, accused examined

his wife Shamal as a defence witness. In her evidence before the court, DW 1 – Shamal has deposed that their shop remains closed during 1.00 p.m. to 4.00 p.m. and on 9.8.2015 also the same was closed during 1.00 p.m. to 4.00 p.m. However, the evidence of DW 1 – Shamal cannot be of any use to brush aside the testimony of the prosecutrix. I reiterate that the version of the prosecutrix before the court is found fully trustworthy by the Sessions Court. After having considered the entire evidence on record, I agree with the observations made and the conclusion recorded by the learned Sessions Judge that the evidence of victim girl is fully dependable and nothing has been brought on record so as to reject or disbelieve her evidence. It has to be further stated that DW 1 – Shamal has stated one more fact in her evidence before the court that on 9.8.2015, her husband i.e. the accused was not at home for the whole day. The fact so stated by DW 1 – Shamal in a way amount to raising a plea of alibi by the accused. In the circumstance,

the burden was on the accused to bring on record some probable evidence to show where was he at the relevant time, if not on the spot of occurrence. Moreover, in the cross examination of PW 1 and PW 2, no such suggestion is given that on 9.8.2015, the accused was not at home or at the shop for whole day. The accused has thus failed in substantiating his plea that his shop was closed at the relevant time.

33) It was the further contention of the learned Counsel for the appellant that the learned Sessions Judge has failed in not considering that having regard to the existing enmity in between family of the victim and the accused, there was every possibility of false implication of the accused in the alleged crime. The learned Counsel submitted that the real brother of the accused, namely Vinod, who resides at Parli Vaijnath, had published some material in the newspaper against the father of PW 1 – Durga, According to learned Counsel, PW 1 – Durga was

thus having grudge against the accused. The learned Counsel submitted that one more incident had occurred in the immediate past, wherein the brother of the victim girl had knocked down the shutter of the shop of the accused and thereafter some altercations had taken place between son of the accused and son of PW 1 – Durga. The learned Counsel submitted that, that was also one of the reasons that the family of the victim girl was nurturing a grudge against the accused. The learned Counsel submitted that there also had a wordy quarrel between wife of the accused and PW 1- Durga on account of sale of a stale bread. The learned Counsel submitted that due to the aforesaid three instances, mother of the victim girl had nurtured grudge against the accused, which has resulted in false implication of the accused.

34) The objection so raised and the submission so made in support of the said objection must be rejected for many reasons.

Though it is not the requirement of law that the accused shall prove the plea taken by him in his defense beyond reasonable doubt and the principle of preponderance of probabilities would apply in such case, it also cannot be accepted that burden on the accused will be discharged only by raising certain plea in his defense. When it was the defense of the accused that PW 1 – Durga was having grudge against him, because his brother Vinod had published some defamatory material against her father, it was incumbent on the part of the accused to place on record the copy of the said publication, more so, when the said suggestion was denied by PW 1. The accused admittedly did not produce on record any such published material.

35) Similar is the case as regards to the another incident, which has been cited by the accused to bring on record that there was some enmity between him and the family of the victim girl because son of PW 1 – Durga, few days prior

to the alleged incident, had knocked the shutter of the shop of the accused. This suggestion was also denied by PW 1. the accused has not brought on record any probable evidence in this regard.

36) The third instance was a quarrel between wife of the accused and PW 1 – Durga. It is a matter of record that accused has examined his wife as a defense witness. However, in her testimony before the court, DW 1 – Shamal Pramod Joshi has not even whispered about any quarrel between her and mother of the victim girl i.e. PW 1 – Durga.

37) Having considered the facts, as aforesaid, there appears no substance in the objections raised by the appellant that filing of a false case against him was an an outcome of previous enmity between him and the family of the victim girl. Further, even if it is assumed that there was some dispute between the accused and the parents of the victim girl, it appears

unconscionable, unbelievable and unacceptable that parents of the victim girl would use the victim girl as an instrument to settle the score with the accused by making such heinous allegation that the victim girl was sexually assaulted by the accused.

38) Thus, all the objections, as are raised by the accused in exception to the impugned judgment, are found to be without any merit.

39) In the instant matter, the testimony of the prosecutrix is of vital importance. I have carefully gone through the oral evidence of the prosecutrix recorded before the learned Sessions Court. The victim girl had narrated the incident in a most natural way and in no sense it can be said that there was any possibility of she being tutored by her parents. A tutored witness and if it is a child, always gets exposed in the cross-examination. The accused has not brought on record any material in the cross-examination

of the victim so as to disbelieve the facts deposed by her in her cross-examination in chief. The learned Sessions Judge has also observed that the evidence of the victim girl was quite natural and dependable. The core facts stated by the victim girl that the accused held her hand, took her in the inside room, made her lie on the bed and then slept over her person, have remained unshattered in the cross-examination also.

40) As per the case of the prosecution, the incident was narrated by the victim girl first to her mother, i.e. PW 1- Durga. In her testimony before the court, PW 1 - Durga reproduced the facts as were narrated to her by the prosecutrix. The FIR also contains the same facts as were deposed by the victim girl and PW 1 - Durga. As has been observed by the learned Sessions Judge the evidence of the prosecutrix was enough to prove the complicity of the accused in commission of the alleged crime. It does not appear to me that the learned Sessions Court has committed any

error in holding the appellant-accused guilty for the offences alleged against him.

41) As was rightly submitted by the learned APP, on allegations of the victim girl made against the accused, a presumption was raised against the accused that he has committed the alleged offence. The accused has failed in rebutting the presumption raised against him.

42) The accused was charged and accordingly held guilty for an offence under Section 7 of the POCSO Act and is punished under Section 8 of the said Act. Maximum punishment provided under Section 8 of the POCSO Act is of five years with fine. In the present case, the learned Trial Court has awarded the maximum punishment i.e. Rigorous Imprisonment for five years. As has been alternatively submitted by the learned Counsel for the appellant, the sentence awarded by the Trial Court is too harsh and disproportionate; whereas according to the

Learned APP, the punishment awarded by the Trial Court is justifiable for the reasons recorded by it in the impugned judgment.

43) The question for my consideration, therefore, is 'whether any case is made out by the accused to cause interference in the quantum of punishment as awarded by the trial Court ? Section 7 of the Act reads thus :

"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."

44) The culpable act alleged against the accused is that, he slept over the person of the victim girl. It thus falls in the category of 'any other act with sexual intent which involves physical contact without penetration.' The

reasoning given by the Trial Court for awarding maximum punishment is that had there not been any resistance from the victim girl, the accused would have committed rape upon her.

45) I find it difficult to agree with the reasoning so given by the Learned Trial Court. Punishment in any criminal case is to be based on the criminal acts proved to have been committed by the accused and not by imagining the acts which could have been committed by the accused. In the instant matter the proved criminal act of the accused is that, he slept over the person of the victim girl with sexual intent. Prosecution evidence revealed that, after the victim girl started crying, the accused got up and went out of the room. It has also come on record that, then he tried to console the victim girl by saying that, she is a sensible and clever girl and she shall not cry. The evidence on record also suggests that, the accused gave chocolates to all the three children.

46) What is relevant for imposition of punishment is the conduct of the accused at the time of commission of the alleged crime and subsequent thereto, proved by the evidence on record. Punishment cannot be awarded by surmising what the accused would have done. The learned Additional Sessions Judge has erred in awarding the maximum sentence to the accused as provided under Section 8 of the Act on a speculation that had there been no resistance from the child, the accused would have committed rape on her. The reasoning given by the Trial Court is legally unsustainable.

47) It further appears to me that, the learned Trial Court has failed in properly appreciating the conduct of the accused at the time of commission of the alleged crime and his immediate subsequent conduct. While surmising what the accused would have done in the anticipated contingency, the Trial Court has not taken into account that, the accused did not

cause any physical harm to the victim girl. He did not even threaten the victim. From the act of the accused that he comforted the victim by saying that she is a clever and wise girl and she shall not cry, a reasonable inference can be drawn that within few minutes of his indulging in the foul act he had come in the repenting state of mind. It has to be noted that even while consoling the victim the accused did not threaten her not to disclose the alleged incident to anybody. Accused is not a habitual offender. There are no criminal antecedents to him. As was submitted by the learned Counsel for the appellant, that may be a moment of sudden impulse that he indulged in the alleged loathsome act. Considering the facts as aforesaid, maximum punishment awarded by the Sessions Court cannot be justified.

48) In the forgoing circumstances, though the conviction of the accused under Section 7 of the POCSO Act is liable to be maintained, the

sentence as awarded by the Trial Court needs to be modified. For the reasons stated above, it appears to me that, Rigorous Imprisonment for three years would be adequate punishment for the accused. Order accordingly. Save and except the modification in the quantum of sentence for the offence punishable under Section 8 of the POCSO Act, the other part of the impugned order is maintained as it is. The appeal stands partly allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

bdv/
fldr 15.9.17