

Special Court in POCSO Special Case No.213/2019, which held him guilty of committing the above offence and imposed sentence thereupon.

3] The case of the prosecution which is brought on record through the victim girl, who at the relevant time was aged 17 years and she accused the present Applicant of committing sexual assault upon her on a particular day, which she recollect to be 5 to 6 days after her birthday, while she was returning home in the evening hours and crossed path with the Applicant on the staircase. According to her, he asked her to pose for photograph and on the next day also at the same place he once again met her, snapped her photo on the mobile and on the pretext of adjusting her clothes, squeezed her breast. This incident created a panic in her.

She reported the incident which occurred in December, 2017 to her friends somewhere in the month of January, 2019 and thereafter it was narrated to her parents and brother on 19.01.2019. This resulted in the complaint being lodged and the Applicant being arraigned as accused.

4] During the course of trial, the victim stepped into witness box as PW 1 and reiterated her version in her examination in chief. The explanation which is offered for delay in lodging FIR is, that she was scared.

Admittedly, two friends, to whom she had disclosed the incident, are neither examined, nor cited as witnesses.

Her mother stepped into the witness box and disclosed that on

20.01.2019 when her daughter was crying on phone, she enquired, and she was informed about the incident of accused touching her breast.

5] The Investigating Officer was examined as PW 3, however, he has categorically deposed that the victim had not disclosed to him that the accused told her that he wanted to give gift to her and therefore he require her photographs and asked her to give poses and that he snapped her photographs on the next day also. He has proved the omission from her statement that, "Accused squeezed her breast."

In support of defence, DW 1 – wife of the Applicant stepped into the witness box and deposed about the reason for the said complaint lodged against her husband being that she was asked by the father of the victim to accompany him in the car and this offer was turned down by her.

6] The learned counsel for the Appellant would harp upon the glaring omission which has been brought through the evidence of Investigating Officer and she would go to the extent of submitting that evidence is not adduced for establishing an offence under Section 354 of the IPC, as PW 1 has deposed in her examination in chief that her breast was squeezed, but this was not mentioned to the Police Officer, who recorded her statement.

7] In any case, the effect of delay of one year, in lodging the complaint, will also have to be dealt with while the Application is being decided. Since the Appeal would be rendered infructuous if the sentence is not suspended and if the applicant is not released on bail,

grave prejudice would be caused to him as the Appeal would deserve due consideration on appreciating the entire evidence, in the wake of the grounds raised in Appeal.

8] In the wake of above, the sentence imposed upon the Applicant stand suspended pending the Appeal. The Applicant is released on bail, on the same terms and conditions imposed upon him by the trial Court while releasing him on bail, subject to he furnishing fresh PR Bonds, within a period of six weeks from today.

Interim Application is disposed off in the abovesaid terms.

[BHARATI DANGRE, J]