

State of Karnataka, when during one night he approached her and established physical relationship with her, despite her strong protest. She further alleged that in March, 2016 when she returned to her house, he sedated her mother by giving sleeping pills and while her two own sisters were sleeping next to her, he forced himself upon her and threatened her. She reported about the incident to her mother who called her uncle and when he was questioned he left the house.

The victim specifically narrated that prior to this incident also, he had established physical relationship with her on two to three occasions.

2 The above narration of the victim resulted in an offence being registered against the accused in form of C.R. No. 117 of 2016 in which, on completion of investigation the charge-sheet was filed on 5/07/2016. He came to be arrested on 9/4/2016 and since then continue to be in incarceration.

He was charged in Special Case No. 171 of 2016, of repeatedly committing rape on a minor girl aged 16, and thus committing an offence under Section 376 of IPC as well as of committing an offence of criminal intimidation by threatening the victim of the injury being caused to her mother and sisters, with an intent to cause alarm to her and to cause her to do an act, which she was not legally bound to do. He came to be charged for repeatedly committing penetrative sexual assault on the minor/the victim girl and committing an offence under Section

5(l) & (n) which is punishable under Section 6 of the POCSO Act,2012.

3 The accused pleaded not to be guilty and hence was subjected to trial.

 In order to establish its case, the prosecution examined five witnesses which included the victim girl (PW1) and her mother (PW2).

 PW-1 reiterated her version which she had given to the police, pursuant to which the subject CR was registered, but this time with more details. She is consistent in her version of the sexual abuse, which she was made to undergo at the hands of her own father, and she depose that her father raped her four times at her house. Being unable to vent out her ordeal, she addressed a letter to her mother, where she has expressed the miseries and when her grandmother came home, the chit was seen by her and she snatched it and gave it to her mother. The chit was written in Urdu language and on reading the same, she confronted the accused about its contents, but he denied its truthfulness and ran away.

 The complaint was exhibited through PW-1, as Exhibit 15 and she also produced her birth certificate at Exhibit-16, which recorded her date of birth as 9/1/2001. She was also confronted with the chit, which was seized by police and she admitted that it was written by her in her handwriting and it bear her signature. The same was marked as Exhibit 18.

In the cross-examination, she specifically denied the suggestion that the chit was not written by her, it was scribed by her grandmother and also denied the suggestion that her grandmother got the chit written by her and pressurized her to scribe the same.

4 In support of the prosecution case, the mother of the victim entered in the witness box and she admitted that she was mentally ill for some time and was taking pills regularly. She deposed that her mother got the chit written by her daughter where she had narrated that her husband has forcibly committed rape upon his daughter. She warned her husband that her daughter will not stay with him and when inquired with the victim she narrated the incident. With the help of the police, her husband was traced on 9/4/2016 and was arrested is her version.

PW-2 deposed that the chit found by her mother was in Urdu language and since she knew Hindi and Urdu language, she translated the same in Hindi. She identified the handwriting of her daughter on the said chit. The translation of the said chit in her handwriting was exhibited at Exhibit 18-A.

5 PW-3, the panch witness on seizure of the chit in Urdu language and its translation in Hindi language proved the panchnama at Exhibit 29. He is also the panch on seizure of the original notebook containing natural handwriting of the writer of the chit.

Admittedly the prosecution could not match the handwriting and conclusively prove that the chit was written by PW-1 but PW-1 herself admitted that the chit was written by her.

Another important witness examined by the prosecution is PW-5 Dr. Sneha Patel, who examined the victim girl on 12/4/2016 after obtaining her consent and found her hymen to be torn. She deposed that the victim has given history of the offence by stating that her father had committed rape on her repeatedly. Upon examination, she issued a certificate, which was exhibited at Exhibit- 45.

In the cross-examination, she denied the suggestion that in the present case, there was possibility of tear of hymen of the victim by cycling or by inserting of some foreign substance.

Lastly, the Investigating Officer was also examined as PW-4, who narrated the details of the investigation and also proved the spot panchnama.

6 The aforesaid evidence being placed before the Special Judge under the POCSO Act, at Thane appreciated the same and recorded that there is no reason why the victim, the real daughter of the accused would falsely implicate him, with such heinous accusations.

The delay in instituting the complaint, which was sought to be projected to weaken the case of the prosecution did not persuade the learned Judge in recording the finding of guilt

against the accused of forcibly raping his minor daughter on multiple occasions.

The version of the victim, aged 16 years, admittedly a minor, inspire confidence, as she remain consistent in her narration in the complaint as well as in her statement recorded under Section 164 of Cr.P.C. She spoke in sync with her earlier version before the Court, and despite being subjected to rigorous cross-examination did not wither-away from her narration about the sexual assault, being committed upon her.

As far as the chit at Exhibit-18 is concerned, it is duly recovered under the panchnama and the victim girl herself had identified the chit to be written by her, when she has stated that she had narrated her miseries to her mother and she wanted to convey her about the unexpected act of her own father, but was unable to speak to her mother and therefore, found herself in state of despair. PW-2, the mother also corroborated the version of the victim girl.

The narration of the victim girl is corroborated by the medical evidence, where PW-5 have clearly opined that on examination of the victim she found her hymen to be torn.

7 With the presumption operating under Section 29 of the POCSO Act, contemplating that when a person is prosecuted for committing an offence under Section 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, the burden is not

discharged by the accused. In his statement under Section 313, he adopted a stand of denial, but made no attempt to rebut the presumption by bringing any cogent evidence on record.

Finding the prosecution case to be reliable and trustworthy and the guilt of the accused having sufficiently established through reliable evidence, he has been sentenced to undergo RI for 25 years, on being convicted under Section 6 of the POCSO Act for committing an offence under Section 5(l)(n), which provide for commission of penetrative sexual assault, upon a child below 12 years on more than one occasion or repeatedly.

8 The impugned judgment do not call for any interference, as the Special Court has taken into account, the evidence, which has established the case of the prosecution beyond reasonable doubt.

Resultantly, by upholding impugned judgment dated 20/08/2019, the Appeal is dismissed.

The appellant shall undergo the remaining sentence imposed upon him for committing the offence under Section 6 of the POCSO Act.

(SMT. BHARATI DANGRE, J.)