



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 363 OF 2018

- . Dinesh s/o Laxman Ghate
Age 24 years, Occu. Labour,
R/o Galli No. 6, Rahulnagar,
Aurangabad, Tq. and Dist. Aurangabad **... Appellant**
(ori. accused no.1)
- Versus
- . The State of Maharashtra,
Through Police Inspector,
Police Station Satara,
Dist. Aurangabad. **...Respondent**

.....
Ms. Pratibha H. Suryawanshi, Advocate for the Appellant (Appointed)
Mr. V. M. Jaware, APP for Respondent-State

.....
CORAM : ABHAY S. WAGHWASE, J.

DATE : 28-01-2025

JUDGMENT :

1. Appellant convict in Special (POCSO) Case No.150 of 2016 hereby takes exception to judgment and order dated 16-04-2018 passed by learned Additional Sessions Judge-14, Aurangabad, recording the guilt of the applicant for offence under Section 354(D) (1)(i) read with 34 of the Indian Penal Code (IPC).

FACTS OF THE CASE IN BRIEF

2. Appellant was chargesheeted by Satara Police Station, Dist.Aurangabad for commission of offence under Section 354(D) read with Section 34 of the IPC and Section 12 of the POCSO Act

alleging that on 21-05-2016, report was received that informant's daughter, a minor, had been to a shop for bringing grocery. Present applicant and another Accused Kishor, who were present there, they both stated to the victim girl that “तु आज खुप सुंदर दिसते. आमचे तुझ्यावर प्रेम आहे तु आज आमच्या सोबत गाडीवर पिकचरला चल”. Resultantly girl ran home and informed her mother, who further approached Police and lodged report on the strength of which Crime bearing no.154 of 2016 was registered and ultimately investigated and both accused were chargesheeted.

After explaining the charge, on its denial, learned Additional Sessions Judge-14, Aurangabad conducted trial and on the strength of oral evidence of five witnesses and documentary evidence, vide judgment and order dated 16-04-2018 accepted the prosecution case and convicted both accused for offence under Sections 354-D(1)(i) read with 34 of the IPC and sentenced them to suffer simple imprisonment for six months and to pay fine.

Aggrieved by the above conviction, instant appeal has been preferred by accused no.1 Dinesh on various grounds spelt out in the appeal memo.

SUBMISSIONS

On behalf of appellant :

3. Learned counsel for the appellant pointed out that there is

apparently false implication. That, FIR is by mother on hearsay information. That, there are general, omnibus allegations against two accused. She further pointed out that there is no evidence at the first count to show that victim was a “minor” so as to attract above provisions and its necessary ingredients are patently missing. Learned counsel pointed out that there cannot be teasing or taunting in chorus manner. That, such aspect has not been considered by the learned trial Judge. Therefore, according to learned counsel, there was no legally acceptable evidence both on the point of age of victim or trustworthy evidence on the point of alleged occurrence. That, learned trial court failed to consider the settled law and erred in arriving to the conclusion. Lastly, she submitted that applicant has already suffered the sentence, however, they are concerned about the false implication and blot of conviction.

On behalf of APP :

4. Learned APP supported the appreciation of the evidence, the findings and conclusion arrived at by the learned trial Court and prayed to dismiss the appeal for want of merits.

EVIDENCE IN TRIAL COURT

5. In support of its case, prosecution has examined in all five witnesses. Their role, status and the sum and substance of their

evidence can be summarized as under:

PW1 is the mother of victim and she had lodged the report. At exh.28, she deposed as under.

“*I am having five daughters and a son. My husband is doing labour work. Victim is my daughter. Incident took place on 21.05.2016. On said date in between 02.00 to 02.30 p.m. victim had gone to the Shop namely Pariwar Kirana Shop. At that time, both the accused were present there. When Victim was proceeding towards house, both the accused told to her that ‘you are looking good, lets come with us for watching movie’. So by frightening she came at home. In spite of it, they both had followed her till the house. At that time, victim was 14 years old. At that time, she was taking education in the Municipal School. At that time, she was in a 10th standard. Prior to one year of the incident in question, both the accused were giving harassment to the victim. At that also they used to follow her, they used to tell her you are looking very good, come with us for outing. At that time, I told to the relative of both the accused to give understanding to them. But, at that time no complaint lodge against them. But, no change happen in the behaviour of the accused.*

2. *On the said date I came at home at about 07.30 p.m. from my work. At that time, victim was crying at home. She had informed to me about the incident. So, I had gone with victim to police station. At there, I had lodged report. Now the said report shown to me. It bears my signature. Its contents are*

true. It is at Exh. 29. I know both the accused because they are residing in my lane. Witness volunteers that they are residing in another lane. They are residing in my area. Today accused No. 1 is present in the court.”

PW2 is the Victim. She deposed at Exh. 40 as under :

- “1. In the year 2016 I was studying in a Municipal High School at Rahulnagar, Aurangabad. In the year 2016 I was in 10th standard. In the said year I had given my 10th examination. Prior to one and half year of the year 2016 both accused were chasing me. They told to me that today you are looking good, we love you, can you seat on our vehicle. They often used to chase me till my house and up to School. I had narrated about it to my parents My parents had given understanding to both accused even then they were chasing me.*
- 2. Incident took place 21.05.2016 at about 02.30 p.m. At that time, I had gone to fetch sugar from shop. At that time, both accused met me adjacent to the shop. When I was proceeding to house from shop, they both had told to me that today you are looking good, do you come with us for roaming ?. Thereafter, I had gone to the house and lock the door of the house from inside. Thereafter, at about 07.00 p.m. my mother came to home and I had narrated to her about the said incident. Thereafter, my mother had lodged report at police station Satara. Police had recorded my statement as per my narration. My statement has been recorded in a court also. Now the said statement is shown to me. (The said statement*

was in a sealed envelope. For showing witness the said envelope opened in court in the presence of witness, learned APP, learned counsel for both accused and accused no.2.) It bears my signature. Its contents are true. It is at Exh.41. I know both accused. Today accused no.2 is present in the court. My date of birth is 17.01.2000.”

PW3 Sandeep Harischandra Magre is a pancha to the spot panchanama. His evidence at Exh. 42 is as under :

“On 22.05.2016 at about 09.00 a.m., I was present in Pariwar Kirana Store. At that time, Ganesh Shejwal was present at there as a another panch. At that time, one lady and police came there. At there said lady told to us that at the said shop incident of outraging modesty had taken place. Thereafter, police had prepared panchanama about it at there. Thereafter, police had read-over panchanama to us. Now the said panchanama shown to me. It bears my signature. Its contents are true. It is at Exh.43.”

PW4 Bharat Haribhau Tingote is Head Master in M.C.A. High School, Banewadi, Aurangabad. At exh.48, he deposed as under :

“In the year 2016 I was Head Master of Municipal Corporation Secondary School, Banewadi, Aurangabad, police had given letter to me for providing admission and leaving extract of victim. Now the said letter shown to me. The same bears my signature as received. It is at Exh. 49. Accordingly, I had given admission and leaving extract of victim to police. Now the same is shown to me. It is the same. It bears my signature. It is

at Exh. 50. On 14.06.2006, an admission has been given to victim in our school. At that time, an admission has been given to her in the first standard. The date of birth of victim is 18.01.2001.

PW5 PSI Vikramsing Arjunsing Chavan is the Investigating Officer in the present crime. He has investigated the matter and after finding sufficient evidence, he filed charge-sheet against the accused.

ANALYSIS

6. Here at the outset, in view of objection about age of victim not to be proved, evidence adduced by prosecution in that direction is put to scrutiny.

On re-appreciation, it is emerging that FIR is by **PW1** mother of victim and she has merely given age of her daughter as 14 years. Date of birth has not been stated by her nor mother has placed birth certificate to substantiate age of victim.

Prosecution seems to have adduced evidence of **PW4** Tingote, Head Master in support of its claim regarding victim to be a “minor”. His evidence is at exh.48 and he has placed on record exh.50, which is a school leaving extract.

In **cross-examination** he has admitted that at the time of admission, parents had merely furnished affidavit of date of birth and even certificate issued by Corporator. Thus, birth certificate is not on

record. Mere certificate by a Corporator on his typed letter head has no probative or evidentiary value. When there are allegations of commission of offence under the POCSO Act, there is heavy burden on prosecution to substantiate its claim by way of legally acceptable documentary evidence about age.

The Hon'ble Apex Court in the case of ***Jarnail Singh v. State of Haryana***, (2013) 7 SCC 263 has held that age of the prosecutrix should be determined on the following grounds :

“a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of juvenile or child. In case exact assessment of the age cannot be done, the Court or the board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, given benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.”

Very recently, in the case of ***P. Yuvaprakash v. State Rep. By Inspector of Police***, AIR 2023 Supreme Court 3525 the Hon'ble Apex Court has spelt out categories of documents which are necessary to determine the age. In this case, as regards to computation of age,

Section 34 of the POCSO Act is discussed and following nature of evidence is considered relevant for determination of age;

“13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

“(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.

In the case in hand, Exhibits 50 and 51 placed on record by prosecution are not amongst any of such categories. Therefore, as submitted by learned counsel for the appellant, here prosecution has not proved the age of victim by adducing cogent and reliable evidence.

7. Again on the point of accusations of commission of offence under Sections 356-D of the IPC, primarily evidence of victim is of significance followed by that of her mother, who has received

information from her daughter.

Evidence of **PW2** victim is at exh.40. Scrutiny of the same shows that she testified that in 2016 she was in 10th Standard and one and half year prior to it, she claims that both accused chased her. She testified that they said to her that “she had good looks and they loved her and also offered seat on their vehicle” and so she went home and narrated to her mother. She deposed that said incident took place at 21-05-2016 at 2.30 p.m. She reported her mother, who approached Police.

In **cross-examination** she has admitted that her statement was recorded by Police the day after lodgment of report by mother. Apparently thus, her statement is not recorded on the same day when her mother reported Police. Two accused persons are booked for above offence and are chargesheeted. However, as submitted, who amongst them actually uttered is not clearly segregated and specified. Allegations are that both made utterance in chorus at one and the same time. Allegations *prima facie* seems to be commenting on looks.

8. Learned trial Court has recorded guilt for offence under Section 354-D(1)(i) of the IPC by invoking Section 34. Essential requirement for above offence is as under :

“354-D. Stalking.--(1) Any man who--

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman.

9. Here, in light of above essential ingredients, if evidence of PW2 victim at exh.40 is revisited, she has deposed that both accused were chasing her one and half year back from her house to school. She has not stated that they approached her for personal interaction and she further gave indication that she was disinterested and inspite of it, they continued in their pursuit. She has merely quoted incident of afternoon of 21-05-2016. Thus, requirements of essential ingredients i.e. repeated or continuous attempts to contact are not finding place in her evidence. Even PW1 mother of victim merely quotes occurrence of 21-05-2016 and at her instance crime is registered on receiving information from her daughter. Therefore, with such material, in the considered opinion of this Court, the alleged incident would merely amount to taunting or commenting on look. There is nothing to suggest repeated attempts to foster or develop interaction. Therefore, as essential requirements are not met, offence cannot be said to be made out.

10. Perused the judgment under challenge. In the considered opinion of this court, the above requirements of law are not taken

into account and moreover, aspect of utterance in chorus by both the appellants at one and the same time, has not been pondered upon by the learned trial Judge. Therefore, findings being erroneous, appellant succeeds. Accordingly, I proceed to pass following order:

ORDER

- I) Criminal Appeal No.363 of 2018 is allowed.
- II) The conviction awarded to appellant in Special (POCSO) Case No.150 of 2016 by the learned Additional Sessions Judge-14, Aurangabad on 16-04-2018 for the offence punishable under Sections 354-D(1)(i) read with Section 34 of the Indian Penal Code, stands quashed and set aside.
- III) The appellant stand acquitted of the offence punishable under Section 354-D(1)(i) read with Section 34 of the Indian Penal Code.
- IV) **The bail bonds of appellant stand cancelled.**
- V) The fine amount deposited, if any, be refunded to appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.
- VII) Fees of learned counsel appointed to represent appellant is to be paid through the High Court Legal Services Sub-Committee, Aurangabad as per Rules.

[ABHAY S. WAGHWASE, J.]