

POCSO Spl. Case No.
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MHCC020115142018

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Date : 02.09.2023



Presented on	:	14.09.2018
Registered on	:	14.09.2018
Decided on	:	04.09.2023
Duration	:	Y 04 M 11 D 20



**IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012 AT FORT, GREATER BOMBAY.**

(Presided over by Kalpana K. Patil, Special Judge, under POCSO Act,
Mumbai)

(CNR-MHCC02-011514-2018)

POCSO SPL CASE NO. 496 OF 2018

EXHIBIT- 50

(Crime No. 170/2018 of Mankhurd Police Station)	
Complainant	: The State of Maharashtra
Represented by	: Mrs. Jyoti Sawant Spl. PP
Accused	:  Aged 60 years, Occ. : Painter, 
Represented by	: Ld. Legal Aid Adv. Vasant Prabhu
Date of offence	: Prior to 21.06.2018 (continuing offence)
Date of FIR	: 02.07.2018
Date of Chargesheet	: 12.09.2018
Date of Framing of Charges	: 16.11.2019

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Date of Commencement of Evidence	:	07.01.2022
Date on which Judgment is reserved	:	23.08.2023
Date of the Judgment	:	04.09.2023
Date of the Sentencing Order, if any	:	---

Accused details

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 Cr.PC
1.		12.07.18	--	376(2)(f)(h) (k)(n) of IPC and u/sec. 5(n), 4, 8, 12 of POCSO Act.	Acquitted	-	-

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	EXH. NO.	NAME	NATURE OF EVIDENCE
P.W.1	P-10		Informant
P.W.2	P-14		Panch Witness
P.W.3	P-16		Medical Officer.
P.W.4	P-19		Medical Officer
P.W.5	P-20		Medical Officer
P.W.6	P-22		Investigating Officer
P.W.7	P-25		Prosecution Witness
P.W.8	P-29		Investigating Officer

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PW.9	P-36		Investigating Officer
PW.10	P-39		Investigating Officer
PW.11	P-46		Medical Officer

B. Defence Witnesses, if any : Nil.

C. Court Witnesses, if any : Nil.

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr.No.	Exhibit Number	Description
1	P-15/PW.2	Spot Panchnama
2	P-20/PW.4	Sonography Report of victim
3	P-21/PW.5	Medical Report of victim
4	P-23/PW.6	First Information Report
5	P-24/PW.6	Arrest Panchnama.
6	P-27(colly).PW.7	Photocopy of School Register, Admission Form and translated copy of School Register
7	P-30/PW.8	Letter sent to Dr. Smita Kale for getting Sonography Report of victim.
8	P-31/PW.8	Letter dated 23.07.2018 sent to Killa Court for recording victim's statement.
9	P-32/PW.8	Letter dated 29.08.2018 sent to the School for getting Birth date / Leaving Certificate of victim girl.
10	P-33/PW.8	Letter dated 13.07.2018 sent to KEM hospital for collecting DNA sample of accused.
11	P-34/PW.8	Letter dated 16.08.2018 sent to KEM Hospital for getting Medical reports of victim.
12	P-40/PW.10	Letter dated 26.07.2018 for sending victim for recording Statement u/sec. 164 of Cr.PC.

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13	P-41/PW.10	Letter dated 13.07.2018 sent to KEM hospital for getting medical report of accused.
14	D-42(colly)/ DEFENCE	Medical report of accused dated 14.07.2018 (page no. 45 to 55)
15	P-47/PW.11	Medical Report and Consent form

B. Defence : NIL

C. Court Exhibits :

Sr. No.	Court Exhibits	Description
1	Exh.4	Charge
2	Exh.5	Plea of the accused
3	Exh.48	Prosecution filed evidence closing pursis
4	Exh.49	Statement of accused u/s. 313 of Cr.P.C.

D. Material Objects :

Sr. No.	Material Object No.	Description
Nil.		

J U D G M E N T

(Delivered on 25/08/2023)

Accused is charged with offences punishable under sections 376(2)(f)(h)(k)(n) of Indian Penal Code (*hereinafter shall be referred as 'IPC'*) and u/sec. 5(n), 4, 8, 12 of Protection of Children from Sexual offences Act, 2012 (*hereinafter shall be referred as 'POCSO Act'*) under Crime No. 170 of 2018 registered with Mankhurd Police Station.

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2. The prosecution case, in brief, is as under :-

Informant / accused was residing alongwith his grand daughter i.e. daughter's daughter. (In order to avoid disclosure of identity of victim her name and her address are not mentioned in the judgment). On 21.06.2018 at about 6.30 a.m. informant's grand daughter i.e. victim get fainted therefore, the informant took her to Bhabha hospital. She is referred to KEM hospital as doctor of Bhabha hospital found her pregnant. Victim admitted in KEM Hospital. On 22.06.2018 she gave birth to girl child. Therefore, informant filed report against unknown person. During the course of further inquiry by police, victim gave name of boy named [REDACTED] to police and told that she had physical relations with him due to which she is pregnant. On 10.07.2018, victim gave another statement and informed police that her grand father has forceful sexual relations with her and also gave threat to her for preventing her from disclosing his act to anyone else. After October 2017, victim missed her menstruation cycle. She went to hospital alongwith her friend's mother [REDACTED] and came to know that she is pregnant. Victim has also told police about harassment by her grand father by burning her private part by cigarette or matchstick. On the basis of victim's statement, police arrested victim's grand father i.e. original informant as accused in this case.

3. C.R. No. 170 of 2018 is registered u/sec. 376 of the IPC and u/sec. 4, 5(J)(2), 8 and 12 of POCSO Act, on the basis of FIR. Suresh Maruti Wasekar, API, Maruti Yamaji Jadhav, PI, Meena Kisan Varhade, WPSI, Nitin M. Bobade, Sr. PI have investigated said crime. API Suresh Wasekar and WPC Patil went to KEM hospital as per message received. Victim gave statement that she had physical

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relation with Monu. He made inquiry with [REDACTED] with the victim's grandfather but he was not found. He has recorded statement of victim's grand father on 02.07.2018 and registered Crime No. 170 of 2018 (Exh.P-23). He has taken [REDACTED] into custody and made inquiry with him and [REDACTED] sent to children home. He has drawn Spot Panchnama. As per victim's statement victim's grandfather committed rape on her therefore, he has arrested grandfather of the victim and prepared Arrest Panchnama (Exh.P-24). He has issued letter to KEM hospital for getting DNA kit for collecting DNA samples of victim, accused [REDACTED] and New born baby. PI Maruti Yamaji Jadhav has made made inquiry with relevant witnesses and recorded their statement. He has sent letter to Dr. [REDACTED] for getting Sonography Report (Exh.P-30). He sent letter to Killa Court for recording victim's statement (Exh.P-31). He has collected victim's statement recorded in Killa Court. He has sent letter to the School in which victim was studying for getting her Birth Certificate/Leaving Certificate (Exh.P-32). He has received Bonafide Certificate of victim. He has sent letter to KEM hospital for collecting DNA sample of accused (Exh.P-33). He has sent letter to KEM hospital for getting medical reports of victim and her new born baby (Exh.P-34). After completion of investigation, he has filed charge sheet against accused. WPSI Meena Varhade has recorded statement of victim girl. Sr. PI Nitin Bobade has sent victim for recording statement u/sec. 164 of Cr.PC. alongwith forwarding letter (Exh.P-40). He has submitted letter to Medical Officer of KEM hospital for getting DNA sample of accused (Exh.P-33). He has submitted letter to Medical Officer of KEM Hospital for medical examination of accused (Exh.P-41).

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4. After appearance of the accused before the Court, charge is framed against the accused on 16.11.2019 vide Exh. 4 u/sec. 376(2) (f)(h)(k)(n) of IPC, offence u/sec. 5(n), 4, 8 and 12 of the POCSO Act. Accused pleaded not guilty to the said charge vide his statement (Exh.5) and claimed to be tried as per Law.

5. The prosecution has relied upon oral evidence of in all 3 witness.

PW. No.	Name of the Witnesses	Exh. No.
1		P-10
2		P-14
3		P-16
4		P-19
5		P-20
6		P-22
7		P-25
8		P-29
9		P-36
10		P-39
11		P-46

6. The prosecution has mainly relied upon following documents :

Sr. No.	Description of documents	Exh.No./ Art. No.	Proved/ admitted.
1	Spot Panchnama	P-15	Proved in the evidence of PW2.
2	Sonography Report of victim	P-20	Proved in the evidence of PW.4
3	Medical Report of victim	P-21	Proved in the evidence of PW.5
4	First Information Report	P-23	Proved in the evidence of PW.6
5	Arrest Panchnama.	P-24	Proved in the evidence of PW.6

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6	Photocopy of School Register, Admission Form and translated copy of School Register	P-27(colly)	Proved in the evidence of PW.7
7	Letter sent to Dr. [REDACTED] for getting Sonography Report of victim.	P-30	Proved in the evidence of PW.8
8	Letter dated 23.07.2018 sent to Killa Court for recording victim's statement.	P-31	Proved in the evidence of PW.8
9	Letter dated 29.08.2018 sent to the School for getting Birth date / Leaving Certificate of victim girl.	P-32	Proved in the evidence of PW.8
10	Letter dated 13.07.2018 sent to KEM hospital for collecting DNA sample of accused.	P-33	Proved in the evidence of PW.8
11	Letter dated 16.08.2018 sent to KEM Hospital for getting Medical reports of victim.	P-34	Proved in the evidence of PW.8
12	Letter dated 26.07.2018 for sending victim for recording Statement u/sec. 164 of Cr.P.C.	P-40	Proved in the evidence of PW.10
13	Letter dated 13.07.2018 sent to KEM hospital for getting medical report of accused.	P-41	Proved in the evidence of PW.10
14	Medical report of accused dated 14.07.2018 (page no. 45 to 55)	D-42(colly)	Adv. Filed document.
15	Medical Report and Consent form	P-47	Proved in the evidence of PW.11

7. After recording the prosecution evidence, statement of accused u/sec. 313 of Cr.P.C. is recorded vide Exh. 49. He has denied all the incriminating circumstances against him and put forward defence of total denial.

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8. Heard Ld. SPP Mrs. Jyoti Sawant. She has submitted that victim has stated about penetrative sexual assault and cigarette burns by her grand father i.e. present accused. PW.11 Dr. [REDACTED] has also found burn marks on victim's body. In the cross examination, this witness denied the possibility of self inflicted injuries. Victim was residing alongwith accused therefore, she was not able to file report with police. Therefore, delay in disclosing the name of accused does not affect merits of the prosecution case. She has further submitted that prosecution has proved the age of the victim girl by calling school record. Prosecution has proved the charges against accused.

9. Heard Ld. Adv. Vasant Prabhu for accused. He has submitted that accused is grand father of victim. She is brought up by accused. Victim has admitted that she had physical relations with [REDACTED]. She has also told name of [REDACTED] and [REDACTED] in the hospital while narrating the dispute. Oral evidence of PW.7 [REDACTED] is not reliable. There is no explanation for delay in recording supplementary statement. There is no reference of burn injuries in previous medical reports. There is no incriminating evidence against accused in the medical reports filed on record. Charge against accused are not proved.

10. From the prosecution case and defence of accused, following points arose for my determination and I record my findings on those points for the reasons recorded hereinafter as follows :-

Sr. No.	Points	Findings
1	Whether prosecution has proved that age of victim girl at the time of commission of offence was below 18 years?	In the negative.
2	Whether prosecution has proved that after the death of the parents of victim girl, victim girl from her age of 9-10 years till her age of 17 years she resided with the accused in the house at [REDACTED] Mankhurd, Mumbai when the accused no. 1 being maternal grand father, used to remove her nicker, moved his hand on her chest and sometimes he used to give burn marks of cigaratte (chatka) on her private part and also put his penis in her toilet place and also threatened to beat her. If she disclose to anyone about it and made her pregnant due to which baby girl is born to her and thereby committed an offence punishable u/sec. 376(2)(f)(h)(k)(n) of IPC?	In the negative.
3	Whether the prosecution has proved that from above mentioned period and at above mentioned place the accused being maternal grandfather, relative of victim, living in same house at [REDACTED] Mankhurd, Mumbai committed penetrative sexual assault on the minor girl from her age of 9-10 years till 17 years and made her pregnant and thereby committed aggregative penetrative sexual offence punishable under Section 5(n) of POCSO Act?	In the negative.
4	Whether prosecution has proved that from above mentioned period and at above mentioned place you accused no. 1 being maternal grandfather, relative of victim, living in same house at [REDACTED] [REDACTED] Mankhurd, Mumbai committed penetrative sexual assault on the minor	In the negative.

	girl from her age of 9-10 years till 17 years and made her pregnant and thereby committed penetrative sexual offence punishable u/sec. 4 of POCSO Act?	
5	Whether prosecution has proved that from above mentioned period and at above mentioned place you accused no. 1 being maternal grandfather committed sexual assault minor victim girl and thereby committed an offence punishable u/sec. 8 of POCSO Act?	In the negative.
6	Whether prosecution has proved that from above mentioned period and at above mentioned place you accused no. 1 being maternal grandfather committed sexual harassment on minor victim girl and thereby committed an offence punishable u/sec. 12 of POCSO Act?	In the negative.
7	Whether any other offences are proved?	NO
8	What Order?	As per final order

REASONS

AS TO POINT NO.1 :-

11. *Hon'ble Supreme Court in the case of Jarnal Singh V/s. State of Hariyana reported in (2013) 7 SCC 263* held that on the issue of determination of age of a minor victim, one only needs to make reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. The procedure to be followed in determining age of Juvenile has been set out in Rule 12. It is stated in Rule 12(3) that age determination inquiry shall be conducted by the Court or the Board or as the case may be, by the Committee by seeking evidence by obtaining

(a)(i) The matriculation or equivalent certificate if, available

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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.*

In absence of documents described above, medical opinion can be sought for.

12. Victim has stated in her oral evidence that her birth date is 03.01.2002. Witness Dr. [REDACTED] (PW.3) has stated in his oral evidence that victim came to his clinic with complaint of stomach ache and vomiting and gave her age as 18 years. Prosecution has examined witness [REDACTED] who is serving as Head Master in [REDACTED] School [REDACTED]. This witness has brought original school register which is maintained in Urdu Language. He has filed Marathi translated copy of entry no. 7063 before this Court. This witness has further stated that as per entry no. 7063, victim admitted in the school in the first standard and her birth date is 03.01.2002. He has filed relevant extract of entry no. 7063 of the school register and also Marathi Translated copy of said entry which is marked as Exh.P-27. During the course of cross examination, this witness has admitted that birth Certificate of victim is not available in the school record and he has no personal knowledge about the record. From the perusal of Marathi Translated copy of entry no. 7063 (Exh.P-27), it appears that first name in the School register is similar to that of victim girl but father's name and surname is mentioned as [REDACTED] [REDACTED] which is totally different from the victim's father's name and her surname as mentioned in the police papers and also told

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by the victim while recording her oral evidence. Oral evidence of victim is silent about the name of the school in which victim was studying. From the cross examination of PW.7 it is clear that he has no personal knowledge about the record. Prosecution has not brought on record any other evidence showing that documents Exh.P- 27 are related to the school record of the victim girl. Oral evidence of all the Investigating Officers is also silent about the source of information they have received regarding the school of victim girl. Furthermore, it is clear from the cross examination of PW. 7 that victim's birth certificate is not available in the school therefore, oral evidence of this witness and the documents produced by the prosecution for proving birth date of victim girl can not be relied upon for deciding the age of the victim girl. There is no other evidence brought before this Court by the prosecution for proving age of the victim girl. As the age of the victim girl is the important factor for attracting provisions for POCSO Act, prosecution should prove age of the victim girl by producing reliable documentary evidence as required under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Hence, I come to the conclusion that prosecution has been failed to prove that age of the victim girl was below 18 years at the time of filing complaint or at the time of incident. Hence, I answer point no. 1 in the negative.

AS TO POINT NOS. 2 to 6 :

13. As prosecution has been failed to prove that age of the victim girl was below 18 years at the time of alleged incident, provisions of POCSO Act are not attracted in this Case. All the points for determination are based on same set of facts and are interconnected.

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Therefore, in order to avoid repetition of facts, all the points are discussed together.

14. Victim (PW.1) has stated in her oral evidence that in the year 2018 she was residing in the house of her maternal grand parents at [REDACTED] Mankhurd. Her maternal grand mother is dead and she was residing alongwith her maternal grand father. Her grandfather used to touch her which she was feeling bad. He also used to burn her by cigarette while she was sleeping. He also used to touch her chest and her private part. He used to put his penis into her private part, due to which it was paining. Many times, she has tried to prevent him from doing such acts. He was her and also giving threat to her so that she could not disclose his acts to anybody. Once he has torn her clothes. Due to fear of her grandfather, she had not disclosed all these facts to anybody. As she had no periods for 5 months, she told this fact to her friend and her friend told it to her mother. They took her to the doctor. Doctor examined her and told that she is pregnant. Due to fear she has not disclosed this fact to her grand father. On 21.06.2018 whe she was at home, she has vomited and fainted. Her grand father took her to Bhabha Hospital. Doctor told to take her to KEM Hosptial. She has delivered baby girl at KEM hospital. Police and NGO persons had to KEM Hospital. Initially, in KEM hospital she told name of [REDACTED] and [REDACTED] due to fear of her grand father. When police and NGO persons came and they assured me that, she should not fear of anybody, she told police and NGO persons, what her grand father has done with her. Police have recorded her statement.

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15. During the course of cross examination, victim has admitted that she was residing alongwith her grand parents. After the death of her grand mother, her grand father i.e. accused was taking care of her. She has also admitted that whenever her grand parents used to beat her she used to cry loudly due to which neighbours used to come their house. Victim has further admitted that initially she told name of [REDACTED] and [REDACTED] to the police and they are her good friends. She had physical relations with [REDACTED]. In the year 2015, her grand father filed report with police vide C.R. No. 90 of 2015 about her missing and after two months she was found near Ray Road Railway Station. She has further admitted that she used to leave home and return back after two- three days. Whenever she left home and return back, her grand father used to make inquiry with her.

16. [REDACTED] (PW.2) has stated in his oral evidence that on 14.07.2018, ASI Mujawar Mulla called him to act as Pancha for Spot Panchnama. Himself, Pravin Suryavanshi - police staff and accused went to building [REDACTED] Mankhurd. Accused has pointed out [REDACTED] of said building. They went inside the room and saw the situation inside the room and thereafter, police has prepared Spot Panchnama (Exh.P-15). From the perusal of evidence of this witness and the spot panchnama (Exh.P-15) it is clear that there is no incriminating evidence against accused brought before this Court by way of Spot Panchnama (Exh.P-15).

17. [REDACTED] (PW.3) has stated in his oral evidence that he is having his clinic by name [REDACTED] On 14.07.2018, Mother of victim's friend brought victim to his clinic.

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Victim has complaint of stomach ache and vomiting. Victim gave her age as 18 years. He had doubt that victim might be pregnant, therefore, he advised her to do sonography. Thereafter, patient did not turn up to him. Police have made inquiry with him and recorded his statement. Oral evidence of this witness is also formal in nature.

18. [REDACTED] (PW.4) has stated in her oral evidence that she was attached to [REDACTED] Diagnostic Centre, Mankhurd West as Radiologist. On 28.03.2018, patient i.e. victim girl came to Diagnostic Centre. She has personally done ultra sound sonography examination of victim and found that she is carrying pregnancy of 25 weeks and 5 days. She has obtained consent of the victim for examination. After examination, she has prepared Sonography report (Exh.P-20). Police made inquiry with her and recorded her statement. From the oral evidence of this witness, it is clear that victim was pregnant. There is nothing to discard oral evidence of this witness regarding the pregnancy of the victim girl.

19. [REDACTED] (PW.5) has stated in her oral evidence that she is M.S. in Obst. And Gynecology. On 21.06.2018 at about 1.00 p.m. victim was brought to the hospital by grandfather. Victim was drowsy when brought to the hospital. She had complaint of seizure at morning. Therefore, history was not taken from the patient. Victim was brought from Bhabha Hospital. Doctor from that hospital and grand father of the victim came with the victim. Victim's grand father narrated the history. She has examined the victim in emergency. BP of the patient was raised. She had edema all over the body. Her uterus was showing full term pregnancy. Baby's heart sound was recorded.

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As victim's life was in dangerous, she has to deliver a baby in emergency. Female child born on 22.06.2018. Victim was given treatment and stabilized. She was discharged from the hospital on 10.08.2018. Herself and doctor [REDACTED] prepared medical report (Exh.P-21 Colly). Defence has been failed to cross examined this witness. Oral evidence of this witness proved that on 22.06.2018 victim girl gave birth to a female child. Hence, from the oral evidence of PW.4 and PW.5 prosecution has proved that victim was pregnant and gave birth to female child on 22.06.2018.

20. Dr. [REDACTED] (PW.11) has stated in his oral evidence that he is M.B.B.S., M.D. in Forensic Medicine and attached to the professor, Dept. Forensic Medicine of K.E.M. Hospital, Mumbai. On 27.07.2018 victim was brought to the hospital for examination. He has noted down two identification Marks i.e. black mole over left side of neck and hypo-pigmented patch over right cheek. History of burn injuries by Cigarette and matchstick is provided by the victim. On local examination eight old healed scar marks were found.

1. Old healed scars marks present over antero-medial aspect of middle 1/3rd of right thigh, brown in color of size 11 cm x maximum width 6 cm., irregular in shape.
2. Old healed scars marks present over antero-medial aspect of middle 1/3rd of right thigh just below scar mark No. 1, brown in color of size 10 cm. X 4cm., irregular in space.
3. Old healed scars marks present over antero-medial aspect of lower 1/3rd of left thigh, 6cm. Above the knee joint of size 4 cm. X 2 cm. Brown in colour, irregular in space.

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4. Old healed scars marks present just lateral to scar mark No. 3 of diameter 2 cm., circular in shape.
5. Old healed scars marks present just below scar mark no. 4 of size 4 cm. X 2 cm., brown in color, irregular in shape.
6. Old healed scars marks present just lateral to scar mark no. 5 of size 4 cm. X 1.5 cm. Brown in color, irregular in shape.
7. Old healed scar mark over left leg, 3 cm. Below knee joint laterally of diameter 2 cm., circular in shape.
8. Old healed scar mark present over lateral aspect of right leg 9 cm., below the knee joint of diameter 1 cm. Brown in colour.

21. Dr. [REDACTED] (PW.11) has prepared the report (Exh.P-47). He has also stated that findings of medical examination are consistent with the history of scar marks of burn injuries and injury no. 1 to 8 mentioned in medical report (Exh.P-47) are possible by cigarette burns. However, oral evidence of this witness is silent on which basis or particularly on the basis of which characteristics of injury no. 1 to 8 he opined that these injuries are possible by cigarette burns. In chapter no. 20 of Book of Modi's Medical Jurisprudence and Toxicology, injuries from burns are discussed. As per said chapter, burn injuries can be caused by actual contact of flame with the body or due to physical contact of the body with hot object. Here in the present case, according to victim accused gave burn to her by cigarette. In the same chapter it is discussed that nature of burn injuries may depend upon its depth. Superficial burns are limited to the outer layer of the skin. If, edges of the burn marks are irregular, it may occur due to charring and destruction of full thickness of the skin or due to destruction of tissue beneath the skin. Hence, it is clear that for

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identifying the object causing burn injuries, details as to how much deep the injury is, whether multiple injuries are inflicted simultaneously or not are very much important. It is further discussed in the said book that burns and scalds vary in the effect according to intensity of the heat applied, duration of application of the heat and parts of the body where burns caused. Opinion of Dr. [REDACTED] is silent on these aspects.

22. According to victim, accused caused burn injuries to her by cigarette. However, most of the injuries from its size and shape does not match with the opinion of Dr. [REDACTED]. Cigarette is the paper cylinder filled with tobacco having diameter of not more than 1 cm. Considering this fact, it is not possible to cause deep injuries especially the injuries which are of size more than 1 cm. and not circular in shape. Injury no. 2, 3, 5, 6 are irregular in shape which suggest that they were so deep that entire layer of the skin has been damaged. Therefore, on the basis of above discussed points, I come to the conclusion that oral evidence of Dr. [REDACTED] (PW.11) and Injury Certificate (Exh.P-47) is not helpful to the prosecution to support victim's evidence that injuries mentioned in the medical report (Exh.P-47) are caused by accused by cigarette.

23. Victim has admitted that when she missed her menstrual cycle, she disclosed this fact to her friend and went to the hospital alongwith her friend's mother. Then question arises as to why victim has not disclosed the mis-deeds of accused to her friend or friend's mother. Victim further admitted that he used to leave home and stay out for some days. Accused who is her grand father also filed

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missing report in the year 2015 when she left home. Definitely, victim was out of control of the accused for some days. Her evidence is silent as to why during that period victim has not approached police against the alleged sexual harassment or burn injuries by the grand father. Victim has stated that her grand father used to give cigarette burns while she was sleeping. She has admitted that whenever, she was beaten by her grand parents, she used to shout loudly and neighbors used to come home to inquire about it. Considering the Injury Certificate (Exh,P-47), there are 8 old burn scars found on the victim's body. Considering the description of those scars it is clear that they have definitely cause pain to the victim when she sustained burns. Then, question arises as to how she remained silent especially when she used to shout loudly after beating by her grand parents. Behavior of victim girl appears strange that she discloses the fact of missing of menstrual cycle to her friend but remained silent regarding the burns caused by her grand father and failed to disclose it to her friend or any doctor to whom she has visited before 22.07.2018.

24. According to victim her grand father had committed rape on her. She had also physical relations with boy name [REDACTED] DNA report dated 26.02.2019 excludes the possibility of accused [REDACTED] [REDACTED] being the biological father of female child of the victim. Hence, it is clear that victim has physical relations with some third person to whom she want to protect. Considering the different names given by the victim girl at different stages of the investigation and her act of hiding the name of person who is having physical relations with her, oral evidence of victim girl does not appears trustworthy. Her evidence is also not supported by

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any other evidence. Considering all the facts and the circumstances discussed above, I come to the conclusion that prosecution has been failed to prove the charge against accused. In the result, I answer point no. 2 to 6 in the negative and proceed to pass following order :

ORDER

1. Accused [REDACTED] Aged 60 years, Occ. : Painter, Residing at [REDACTED] [REDACTED] Mankhurd (West), Mumbai – 43, is hereby acquitted off offences punishable u/sec. 376(2)(f)(h) (k)(n) of Indian Penal Code *and* u/sec. 5(n), 4, 8, 12 of Protection of Children from Sexual offences Act, 2012 under Crime No. 170 of 2018 registered with Mankhurd Police Station.
2. Accused is in jail since his arrest. He be released and set at liberty forthwith, if not required in any other case/crime.
3. Accused shall furnish P. R. Bond of Rs.15,000/- (Rs. Fifteen Thousand Only) each with one surety in the like amount vide Sec.437-A of Cr.P.C.
4. Marked and unmarked Muddemal Articles if any, be destroyed as per rule after appeal period is over.
5. Accordingly, POCSO Special Case no. 496 of 2018 is disposed off.

Mumbai:
Date: 04.09.2023

(KALPANA K. PATIL)
Special Judge under POCSO Act,
Court Room No.36,
Gr. Bombay.

Dictated on : 04.09.2023
Transcribed on : 04.09.2023
Signed on : 05.09.2023

POCSO Spl. Case No.
496 of 2018

..22..

Date : 02.09.2023

“Certified to be true and correct copy of the original signed order”.

05/09/2023
at about 3.25 p.m.

(Ms. Varsha V. Sawant)
Stenographer (H.G.)
Court Room No.36

Name of the Hon'ble Judge	: Smt. Kalpana K. Patil (Court Room No.36)
Date of pronouncement of Judgment/Order	: 04/09/2023
Judgment/Order signed by Hon'ble Judge on	: 05/09/2023
Judgment/Order uploaded on	: 05/09/2023