

POCSO SPL.106/16

: 1 :

Judgment

MHCC050011832016



Received on 21/03/2016

Registered on 21/03/2016

Decided on 20/10/2022

Duration 6 Y. : 6 M. : 29 D.

Exh.45

IN THE COURT OF SPECIAL JUDGE AT BORIVALI DIVISION,
DINDOSHI, MUMBAI
POCSO SPECIAL CASE NO.106 OF 2016
CNR NO. : MH-CC0500-1183-2016
(C.R.No.381/2015)

THE STATE OF MAHARASHTRA,

At the instance of Sakinaka Police Station

vide C.R. No.381/2015

...Complainant

(Prosecution)

Versus

Abrar Noor Mohammad Khan

Age : 25 Years, Occ : Business.

R/o. : Millat Nagar, Near BMC School,

Sakinaka, Mumbai

...Accused

Mrs. S. S. Mahatekar, Spl.A.P.P. for the State.

Advocate Ms. Salma Ansari for the Accused.

CORAM : H.H.THE SPECIAL JUDGE,

Ms. S. J. ANSARI, (C.R.NO.11)

DATED : 20th October, 2022

: JUDGMENT :



Offences punishable under sections 354, 354-D, 504 and 506 of the Indian Penal Code, 1860 and under section 12 of the Protection of Children from Sexual Offences Act, 2012.

The accused in the matter in hand is being prosecuted for having outraged the modesty of a minor girl after stalking her, insulting her with the intent or knowledge that the same would provoke her to break public peace or to commit any offence, of having threatened her as also of sexually harassing the said child.

2. The brief facts of the prosecution case are as under :

(The names of the victim girl and her family members are not mentioned in the judgment to maintain the confidentiality about their identities as per rule 33(7) of the Protection of Children from Sexual Offences Act, 2012).

The victim, who shall hereinafter be referred to by the letter 'X' of the alphabet, was a 16 year old girl who had started living in the area of


 The accused was a boy who always used to tease the girls who would pass through the lanes of Millat Nagar. The said accused also used to consistently follow the victim when she used to go to and fro the lanes of Millat Nagar, used to tease her and sometimes used to call her “item”. He and the other members of his group also used to pass comments upon the victim 'X' and looked upon her with

an evil eye. The victim 'X' used to tell the accused not to do so but he did not pay any attention to her words. As the victim 'X' did not want the matter to escalate into a fight, she did not inform her family members about the harassment being suffered by her at hands of the accused.

3. On 14/07/15 at about 1.30 p.m. the victim 'X' had gone to her school for some work. After completing the same, when she was returning at about 2.10 p.m. and walking through a lane of Millat Nagar, the accused who was sitting with his friends in the lane came behind her, pulled her hair and said “kya item kidhar ja rahi ho ?” As the victim 'X' felt ashamed, she told the accused not to do so. At this, he started abusing her and told her to do whatever she could as she could not harm him in any way. Hence, the victim gave a call to the number “100” from her mobile phone and asked for help. The police reached the spot within a short period. However, by that time, the accused had run away from the spot. The victim then went home and informed her father about the incident after which she went to Sakinaka Police Station with him. A report about the incident then came to be lodged by the victim 'X' in Sakinaka Police Station which resulted in the lodging of an FIR against the accused for the offences punishable u/s.354, 354-D, 504, 506 of the Indian Penal Code (hereinafter referred to as “the Code”) and u/s.12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”). The police then obtained a copy of the birth certificate of the victim and sent her to the learned Metropolitan Magistrate at Andheri for recording her statement u/s.164 of the Cr.P.C. The statement of the accused and his father also came to be recorded. As the accused was able

to secure anticipatory bail, he appeared before the police whereupon he was arrested and immediately released. Thereafter, the police filed the charge-sheet.

4. The charge (Exh.14) then came to be framed against the accused to which he pleaded not guilty and claimed to be tried. The defence of the accused as will be apparent from the cross-examination of the witnesses is of false implication. It has further been contended that the victim 'X' and the accused were friends since before the incident in question and that a false report had been lodged against him as their friendship was not liked by the victim 'X's parents. However, the accused has neither examined himself nor any witness in support of his contentions.

5. In view of the material on the record, the following points arise for my determination and I answer the same in the manner and for the reasons as stated here-in-below :-

SR.NO.	POINTS	FINDINGS
1.	Does the prosecution prove that on 14/07/15 at about 14.10 hours at the lane in Millat Nagar, A. G. Link Road, Sakinaka, Mumbai, the accused used criminal force to the victim girl 'X' intending to outrage or knowing it to be likely that he will thereby outrage her modesty and thereby committed an offence under section 354 of the Code ?	In the affirmative.
2.	Does the prosecution further prove that since a month prior to 14/07/15 and on that day also at the lane in Millat Nagar, in front of BMC School, A. G. Link Road, Sakinaka, Mumbai, the accused followed the victim 'X'	In the negative.

	and contacted her repeatedly despite a clear indication of disinterest by her and thereby committed an offence punishable under section 354-D of the Code ?	
3.	Does the prosecution further prove that on 14/07/15 at about 14.10 hours at the lane in Millat Nagar, A. G. Link Road, Sakinaka, Mumbai, the accused intentionally insulted and thereby gave a provocation to the victim 'X' intending that such provocation will cause her to break public peace or to commit any other offence and thereby committed an offence punishable u/s.504 of the Code ?	In the negative.
4.	Does the prosecution further prove that on the above stated date, time and place, the accused criminally intimidated the victim 'X' by threatening her with injury to her person/reputation with intent to cause alarm to her and thereby committed an offence punishable u/s.506 Part-I of the Code ?	In the negative.
5.	Does the prosecution further prove that since a month prior to 14/07/15 and on that day also at the lane in Millat Nagar, in front of BMC School, A. G. Link Road, Sakinaka, Mumbai, the accused with sexual intent repeatedly or constantly followed the victim who was a child and thereby committed an offence punishable u/s.12 of the POCSO Act ?	In the affirmative.
6.	What order ?	The accused stands convicted for the offences punishable u/s.354 of the Code and u/s.12 of the POCSO Act.

		He, however, stands acquitted for the offences punishable u/s.354-D, 504 and 506 Part-I of the Code.
--	--	---

:: REASONS ::

As to Point No.1 :

6. In order to bring home the offence under section 354 of the Code, the prosecution is required to prove the fact of the accused having either assaulted or used criminal force to a woman with the intention to outrage her modesty or with the knowledge that the said act would likely outrage the said victim's modesty. The record will show that in support of its case, the prosecution has examined PW 1 the victim 'X' (Exh.28), PW 2 API Sandip Chavan (Exh.34) who had lodged the FIR in the matter and PW 3 WPC Ranjana Chavan (Exh.35) who had recorded the statement of the victim as also PW 4 Sr. P.I. Someshwar Bajirao Kamthe (Exh.36) who had undertaken a part of the investigation of the said crime.

7. The principal witness in the matter is obviously PW 1 the victim 'X' (Exh.28). A perusal of her evidence will show that she has therein stated the fact of residing in Millat Nagar under the jurisdiction of Sakinaka Police Station in the year 2015 and of so residing there since about 10 days prior to the occurrence. It has further come on record through this witness that, prior to the incident in question which had resulted in the lodging of the report, the accused used to continuously follow her and used to

address her by using word “item”. She also went on to depose that the accused always used to pass comments whenever she used to pass through the area near her house.

8. As regards the incident which occurred on 14/07/15, PW 1 the victim 'X' has stated that on that day she was going to her school from her house in Millat Nagar at about 1.30 p.m. at which time the accused was sitting in the lane from which she was proceeding. Further, this witness deposed that when she returned from her school at about 2.00 p.m. to 2.15 p.m., the accused was still sitting on his bike in the lane. Not only this, but PW 1 the victim 'X' (Exh.28) has further gone on to depose that on seeing her the accused came behind her, pulled her hair and said, “Ae item sun na”. At this, PW 1 the victim 'X' as per her testimony, pushed him and told him not to do so whereupon the accused started abusing her and said that she could do what she wanted and “tu mera kya ukhad legi ?” This, as per the victim 'X' made her dial the number 100 after which the police reached the spot, by which time, the accused had run away.

9. Subsequently, as per PW 1 the victim 'X' (Exh.28), the police had taken her to the police station where they had made inquiries with her and that she had lodged the report (Exh.30) which report and the FIR (Exh.31) bear her signatures. This witness further deposed about having been taken to another court for the recording of her statement (Exh.32), the contents of which according to her, are also correct. It is therefore, quite clear that PW 1 the victim 'X' (Exh.28) has fully supported the prosecution regarding the accused having outraged her modesty on 14/07/15.

10. Turning to the cross-examination of PW 1 the victim 'X' (Exh.28), a perusal of the same will show that therein, the fact of the victim 'X's school timings being from 7.00 a.m. to 12.00 p.m. and of she and the accused not studying in the same school were brought on the record. This witness also admitted that there were shops situated opposite to the place of the incident in the lane and that no friends were accompanying her when she was returning from her school on the day of the incident. However, PW 1 the victim 'X' (Exh.28) categorically denied the fact of the accused not having come behind her as also of he having not passed a comment like “ae item sun na”. Not only this, but the suggestions that PW 1 the victim 'X' knew the accused since before the incident as they were friends, that she had lodged a false case as their friendship was not liked by her parents as also that she had made a statement u/s.164 of the Cr.P.C. on the say of the police, were categorically denied by her. The suggestion that PW 1 the victim 'X' knew the accused well while lodging the FIR and had therefore, known his name also came to be denied by her.

11. It is therefore, apparent that PW 1 the victim 'X' (Exh.28) could not at all be shaken on any of the material particulars regarding the incident dated 14/07/15, as also from her assertions about the accused continuously following her since prior to the incident, and addressing her by using the word “item”. It is also clear that the oral testimony of PW 1 the victim 'X' (Exh.28) finds the necessary corroboration from the report (Exh.30) which had come to be lodged almost immediately i.e. within 2 and ½ hours of the occurrence of the incident.

12. No doubt that PW 1 the victim 'X' (Exh.28) is the sole witness in the matter. That, however, cannot automatically result in her testimony being doubted or disbelieved. This is because, if the said testimony is found to be cogent and reliable, there is no legal principle on the basis of which it can be ignored for want of corroboration from any other witness. In the course of her oral arguments, the learned APP Mrs. Mahatekar has also pointed out that as no material to falsify the testimony of the victim has been able to be brought forth on the record, there is no reason to disbelieve the same. In support of the said arguments, the learned APP has placed reliance upon the judgment of the Hon'ble Bombay High Court in **Shankar Maruti Bamne V. State of Maharashtra 2011 (1) LJSOFT 90**. Therein, the Hon'ble Bombay High Court held that a conviction can be based on the testimony of a sole eye witness provided that the evidence is cogent, trustworthy, reliable, etc. It has then further been argued by the learned APP that though the investigating officer in the matter in hand has not recorded the statements of any other witnesses who may have been in the vicinity at the relevant time and also not executed the spot panchnama, the said defects cannot be a ground to acquit the accused. In such cases, according to her, it is the court which has to evaluate the reliability of the prosecution evidence de hors lapses and find out whether the said lapses affect the object of finding the truth. In support of this argument, Smt. Mahatekar has placed reliance upon the judgment in the case of **Hema V. State, through Inspector of Police, Madras AIR 2013 SUPREME COURT 1000**.

13. On the other hand, Ms. Salma Ansari, the learned Advocate for the accused has in her oral and written arguments, (Exh.44) vehemently contended that the contradictions between the evidence of PW 1 the victim 'X' (Exh.28) and her statement under section 164 of the Cr.P.C. (Exh.32) as also the discrepancies between her examination in chief and her cross-examination will show that she cannot be categorized as a sterling witness so as to place implicit reliance upon her testimony. The fact of the investigating officer not having executed any spot panchnama and of he not recording the testimony of any other persons who would have been available at the spot at the relevant time has also been referred to by her to argue that the charge of outraging the modesty of the victim had not been proved against the accused.

14. As regards the alleged contradiction regarding the time of the incident in question, it will have to be noted that PW 1 the victim 'X' (Exh.28), has clearly stated that on the day of the incident she had gone to the school at about 1.30 p.m. and had returned at about 2.00 to 2.15 p.m. No doubt that in her cross-examination, this witness stated that her school timings were from 7.00 a.m. to 12.00 p.m. This has been sought to be categorized as a contradiction by Ms. Salma Ansari the learned Advocate for the accused as according to her, the school timings of the victim being from 7.00 a.m. to 12.00 p.m., there was no occasion for her to go to school at 1.30 p.m. on 14/07/15 and return from there between 2.00 to 2.15 p.m. Even otherwise, according to her, there is no record available to show that PW 1 the victim 'X' had gone to the school on 14/07/15 at the time as stated by her. The alleged contradiction, as per the Advocate of the

accused, will show that the version of the incident as related by PW 1 the victim 'X', is unreliable.

15. In my opinion, a contradiction has been sought to be created on behalf of the accused even though there is no such contradiction apparent on the record regarding the time of the occurrence of the incident. This is because, though the usual timings of PW 1 the victim 'X's school as stated by her were 7.00 a.m. to 12.00 p.m., a perusal of the report (Exh.30) will show that therein, the victim 'X' had clearly stated that she had gone for some work to her school on 14/07/15 at 1.30 p.m. and had returned at about 2.10 p.m. after completing the same. She had therein nowhere stated that the incident had occurred when she had gone to attend her school at her usual time of 7.00 a.m. or at the usual time of her return at 12.00 p.m. Consequently, in my opinion, PW 1 the victim 'X' having gone to her school at a particular time on 14/07/15 for some work, which assertion is duly corroborated by the report (Exh.30) the mere fact of her school timings being different, cannot at all be said to be sufficient to falsify her evidence regarding the time of the occurrence which has resulted in the prosecution of the accused. There is therefore, no merit in the argument advanced on this point by the Advocate for the accused.

16. As regards the other alleged contradictions in the matter, Ms. Salma Ansari the learned Advocate for the accused has pointed out that, though PW 1 the victim 'X' (Exh.28) in her cross-examination stated that she did not know the accused since before the incident, she had then gone on to state that she knew the name and the address of the accused at the time of

the lodging of the report. This fact has been sought to be interpreted as meaning that the victim 'X' knew the accused since before the occurrence on account of they being friends, which friendship was not liked by her parents which resulted in she having lodged the report on their say. In my opinion, there is absolutely no substance in this argument as advanced on behalf of the accused. This is because, a perusal of the cross-examination of PW 1 the victim 'X' (Exh.28) will show that she has therein denied the suggestion of she and the accused knowing each other since long before the incident. The operative words, in my opinion, are "since long". This is because, the denial of the victim is only restricted to knowing the accused "since long" and not to knowing him since prior to the incident.

17. A perusal of the report in question i.e. Exh.30 will also show that therein, PW 1 the victim 'X' has clearly stated that the accused resided in her area, that he always used to tease the girls passing in the lanes of Millat Nagar and that he had also started following and teasing her in the said area. This is the exact same fact which has been deposed to by PW 1 the victim 'X' in her testimony (Exh.28). It is therefore, obvious that even though the victim 'X' was not knowing the accused since long, she did indeed know him since prior to the incident on account of his uncalled for behaviour. It also cannot be ignored that residing in the same area as the accused and the accused behaving with the victim 'X' in an uncalled for manner, would obviously have resulted in the victim coming to know about the name of the said accused. She was therefore, able to state his particulars to the police while lodging the report (Exh.30). No fault can therefore, be found with the same.

18. So far as the contention of PW 1 the victim 'X' and the accused being friends and of their friendship not having been liked by her parents due to which the report (Exh.30) had come to be lodged is concerned, it will have to be pointed out that all the specific suggestions to that effect came to be categorically denied by PW 1 the victim 'X' (Exh.28) in the course of her cross-examination. A perusal of the answers given by the accused to the questions put to him under section 313 of the Cr.P.C. vide Exh.40 will also show that no such contention has even been put forth by the accused. As already stated, the accused has neither examined himself nor any other witness in support of his contention about a false report having been lodged against him at the instance of the victim 'X's parents who did not like his friendship with their daughter. It is therefore, quite clear that there is absolutely no evidence on the record to support the said contention as advanced on behalf of the accused. The same therefore, merits nothing but rejection.

19. As regards the alleged contradictions between the examination in chief of PW 1 the victim 'X' (Exh.28) and her statement u/s.164 of the Cr.P.C. (Exh.32), it will have to be pointed out that the statement u/s.164 of the Cr.P.C. can only be used for the purpose of corroboration or contradiction. By itself, it is not a substantive piece of evidence. Hence, if the learned Advocate for the accused was intending to place any reliance upon any alleged contradictions which had occurred between the evidence of PW 1 the victim 'X' in her examination-in-chief (Exh.28) and her statement u/s.164 of the Cr.P.C. (Exh.32), it was for her to put up those specific contradictions to the victim in the course of her cross-examination.

It was only then that the alleged contradictions could have been relied upon on behalf of the accused. No such thing having been done, the alleged contradictions regarding the time since when the the victim 'X' was residing in the area of Sakinaka regarding not only the accused but even his friends calling the victim 'X' "item" and asking for her phone number, of whether she had first gone home and told her father about the incident after which they had come to the police station and lodged the report or whether she had dialed the number 100 at which the police had reached the spot and then taken her to the police station where the report had been lodged, cannot at all be considered. Even otherwise, it will have to be noted that none of these alleged contradictions have any bearing upon the incident dated 14/07/15 in the course of which the accused is alleged to have outraged the modesty of PW 1 the victim 'X'.

20. Here, it will also have to be pointed out that even if it is assumed for the sake of argument that the victim 'X' was residing in the area of Sakinaka since long before the incident, there is, as already stated, no evidence of she being friendly with the accused and of lodging a false report against him only on the say of her parents. The further fact of even the friends of the accused calling the victim 'X' an item and asking her for her phone number cannot also by any stretch of imagination, be said to absolve the accused from the allegations made against him.

21. Not only this, but the testimony of PW 1 the victim 'X' (Exh.28) will make it quite clear that she had dialled the number 100 from the spot,

after which the police had come there and then she had been taken to the police station where necessary inquiries had been made with her. No doubt that this witness could not state the name of the policeman who had received her call when she had called the number 100. This is to be expected, as though the incident had occurred in July 2015, the evidence of the victim came to be recorded in July 2022 i.e. after almost 7 years of the said incident. It will also have to be kept in mind that PW 3 WPC Ranjana Chavan (Exh.35) has, in her cross-examination clearly stated that the call from the victim had been received at the number 100 by the police party in the vehicle. This witness further went on to testify that the victim had come to the police station at about 4.00 p.m. with her father and the staff of the detection squad. It is therefore, quite clear that as per the evidence on the record, PW 1 the victim 'X' had first dialled the number 100 after which the detection squad had reached the spot, whereupon the victim had gone home and then come to the police station with her father. The contents of the report (Exh.30) will fully corroborate this sequence of events. This is because, the said report clearly records that PW 1 the victim 'X' had first dialled the number 100 and sought help, resulting in the police reaching the spot within some time, after which the victim had gone home, informed her father and then come with him to the police station for lodging the report (Exh.30). Hence, no contradiction, in my opinion, has been able to brought on the record to question the reliability of PW 1 the victim 'X's testimony.

22. Going further, it is an admitted position that PW 2 API Sandip Chavan (Exh.34) and PW 3 WPC Ranjana Chavan (Exh.35) had only

played a role in recording the report (Exh.30) and lodging the FIR (Exh.31). Though PW 4 Sr.P.I. Someshwar Kamthe (Exh.36) had received the crime No.381/15 for investigation, he had not gone to the spot and prepared any spot panchnama or recorded the statements of any other witnesses. In the course of his cross-examination, it was brought forth from this witness that PSI Sandip Chavan had gone to the spot. Be that as it may, it will have to be noted that PW 2 API Sandip Chavan (Exh.34) has, in his cross-examination, clearly stated that he had not gone to the spot. The fact therefore, remains that none of the policemen who dealt with the crime in question had gone to the spot and executed the spot panchanama or even the recorded the statement of any other persons who could have been at the spot at the relevant time.

23. In my opinion, however, even if this is so, the accused cannot derive any benefit from the same. This is because, a perusal of the cross-examination of PW 1 the victim 'X' (Exh.28) will show that she has therein clearly stated that no friends were accompanying her when she was returning from the school on the day of the incident. No doubt that this witness admitted that there are shops opposite to the place of the incident in the lane. Even if it is so, it cannot be ignored that there is nothing on the record to prove that any persons in the vicinity had witnessed the incident which had occurred between the the victim 'X' and the accused on the day and time in question. In such circumstances, I do not find any plausible reason to disbelieve the clear and cogent evidence of PW 1 the victim 'X' (Exh.28) regarding the incident dated 14/07/15 and the behaviour of the accused even prior to that day, merely on account of the investigating

officer not having recorded the statements of any other person. This is because, as argued by the learned Mrs. Mahatekar, learned APP, the defects if any left in the investigation by the police cannot by themselves be a ground to disbelieve the prosecution case unless and until the said defect is such that it causes prejudice to the accused. The defects in the investigation of the crime in question cannot be said to such as to prejudice the accused. Further, as already stated herein above, I have found the testimony of PW 1 the victim 'X' (Exh.28) to be absolutely clear, cogent and reliable. Hence, I have no hesitation in placing reliance upon the same.

24. Doing so, I am of the opinion that the prosecution has certainly been able to prove that on 14/07/15 at about 14.10 hours at Millat Nagar, A. G. Link road, Sakinaka, Mumbai, the accused had come behind the victim, had pulled her hair and had then said, “ae item sun na”. It has also been proved that though the victim 'X' pushed the accused and told him not to do so, he had started abusing her and told her to do what she could as she could not harm him in any way.

25. These facts having been duly proved, it will now have to be seen as to whether the same are sufficient to prove the offence punishable u/s.354 of the Code as against the accused. As already pointed out, to prove the said offence the prosecution is required to prove that the accused had used criminal force upon PW 1 the victim 'X' with the intention to outrage her modesty or knowing it to likely that her modesty would be so outraged. The fact of the accused having intentionally caught hold of the the victim

'X's hair and having pulled it, as also of he calling her an “item”, in my opinion, will certainly go to prove the fact of he having outraged her modesty. This is because, PW 1 the victim 'X' and the accused not being related in any way and not being in any kind of relationship, it was wholly inappropriate of the accused to act in the way in which he did, which act qualifies as using criminal force to her. Further, the accused having addressed her by using the term “item” which is a term used generally by boys to address girls in a derogatory fashion as it objectifies them in a sexual manner. the same will clearly indicate his intention of outraging her modesty. I am therefore, of the clear view that the prosecution has been able to prove the fact of the accused having outraged PW 1 the the victim 'X's modesty on the day, time and place as alleged. Hence, I answer Point No.1 in the affirmative and record my finding thereon accordingly.

As to Point No.2 :

26. In order to bring home an offence under section 354-D of the Code, the prosecution in the present context, is required to prove that the accused had followed the victim 'X' and contacted her repeatedly to foster personal interaction despite a clear indication of disinterest by her.

27. As previously stated, PW 1 the victim 'X' (Exh.28) has in her testimony deposed about the accused continuously following her and abusing her by using the word “item” as also of passing comments whenever she used to pass through the area near her house. At the same time, there is no specific evidence coming forth from PW 1 the victim 'X'

about the accused repeatedly contacting her to foster personal interaction despite a clear indication of disinterest by her. Thus, the only fact proved against the accused is of he continuously following PW 1 the victim 'X', passing comments upon her and addressing her by using the word "item". But, there is no evidence to prove that he had repeatedly contacted her to foster personal interaction. I am therefore, of the opinion that the offence of stalking as it is defined under 354-D(1)(i) of the Code, cannot be said to have been proved against the accused. Hence, I answer Point No.2 in the negative and record my finding thereon accordingly.

As to Point Nos.3 and 4 :

28. As these points relate to the accused allegedly intentionally insulting the victim and criminally intimidating her which are closely connected to each other, the same are being dealt with together to avoid unnecessary repetition.

29. To prove the offence under section 504 of the Code, the prosecution has to prove that the accused had intentionally insulted a person and had thereby given provocation to the said person either intending or knowing it to be likely that such provocation would cause him to break public peace or to commit any other offences. The term "insult" has not been defined under the Code. The dictionary meaning of the term "insult" is "to act in a way or say something that is offensive or rude to someone." Using the term "item" to address any girl is obviously insulting in nature.

30. At the same time, in the context of the charge levelled against the accused, it will have to be further proved that the use of the said word was intended to provoke the victim 'X' to break public peace or to commit any offence or with the knowledge that the the victim 'X' would be likely to do so. This element, in my opinion, has not been able to be proved. This is because, it is but obvious that the accused in his own twisted way was only trying to catch the attention of PW 1 the victim 'X' by acting in the manner in which he did, and nothing more. Further, if the victim 'X' would have been insulted with the intention of provoking her to break public peace or to commit any offence, some or the other such consequences would have occurred. But, the testimony of PW 1 the victim 'X' (Exh.28) will only go to prove that she had, after being insulted, only pushed the accused and told him not to pull her hair and call her an “item”. It is therefore, clear that there is no cogent evidence on the record to prove that the accused had insulted the victim 'X' with the intention or the knowledge that the same would provoke her to break public peace or to commit any offence.

31. As regards the alleged offence of criminal intimidation, it will have to be pointed out that to prove the same in the present context, the prosecution is required to prove the specific threats given by the accused and to show that the same had been given with the intention to alarm the the victim 'X'. However, the testimony of PW 1 the victim 'X' (Exh.28) will only prove that after she had pushed the accused and told him not to act in the way in which he was acting, he i.e. the accused, had started abusing her and told her that she could do what she wanted and “tu mera kya ukhad legi ?” No specific abusive words have been stated either in the

report (Exh.30) or in her testimony (Exh.28) by PW 1 the victim 'X' as having been used by the accused. She has also not deposed about the actual threats given by the accused, or the fact of she having been alarmed due to the same. It is therefore, quite clear that the offence under section 506- Part I of the Code cannot be said to have been proved.

32. Hence, in view of the discussion in the foregoing paras, I answer Point Nos.3 and 4 in the negative and record my findings thereon accordingly.

As to Point No.5 :

33. In order to bring an offence within the provisions of POCSO Act, the prosecution is required to first prove the fact of the victim being a "child" within the meaning of the term as given to it under section 2(d) of the POCSO Act. Section 2 (d) of the said Act defines the term "child" as meaning any person below the age of 18 years. In her testimony, PW 1 the victim 'X' (Exh.28) has categorically deposed about the fact of her date of birth being 24/12/1999. She further stated that her birth certificate (Exh.29) had been issued by the Municipal Corporation of Greater Mumbai and that the same bears her name and that of her parents. In the course of her cross-examination, the only suggestion given to this witness on the said aspect is about she having falsely deposed about her date of birth being 24/12/1999. Neither the fact of the birth certificate (Exh.29) bearing the name of the victim and her parents, nor the fact of the same having been duly issued by the Municipal Corporation of Greater Mumbai, were

touched upon in the cross-examination of PW 1 the victim 'X'. Hence, the said document being a public document, in which the victim 'X's date of birth had been recorded within 7 days of her birth and it having been issued by the relevant authority under section 17 of the Registration of the Births and Deaths Registration Act 1969, I have no hesitation in holding that the prosecution has been able to prove the fact of PW 1 the victim 'X's date of birth being 24/12/1999. Support for this view can be taken from the judgment in **Dadarao Gotiramji Khandare V. State of Maharashtra Criminal Appeal No.572 of 2017 dated 07/06/18**. Obviously, therefore, this victim was aged only about 15 and ½ years on 14/07/15 i.e. the day of the incident. Therefore, she was a “child” within the meaning of the term as given to it u/s.2(d) of the POCSO Act.

34. It will now have to be seen as to whether the offence of sexual harassment in the way in which it is defined under section 11 of the POCSO Act has been able to be proved by the prosecution. In the present context i.e. in the background of the allegations made against the accused, the prosecution will be required to prove that he had, with sexual intent, repeatedly or constantly followed or watched or contacted PW 1 the victim 'X' either directly or through electronic, digital or any other means.

35. As stated while discussing Point No.1, the testimony of PW 1 the victim 'X' (Exh.28) has clearly proved the fact of the accused having followed the victim on 14/07/15 at about 2.00 to 2.15 p.m. at a lane near Millat Nagar and of he having continuously followed her even prior to the said incident and addressing her by using the word “item.”. These acts

were obviously done with sexual intent. This is because, as stated while discussing Point No.'1' the word "item" when used to address a girl is only used to objectify her sexually and nothing else. No doubt that PW 1 the victim 'X' has not been able to give the specific dates on which the accused had constantly followed her. However, a perusal of the report (Exh.30) will clearly show that PW 1 the victim 'X' has therein stated that the accused used to follow her and tease her whenever she used to go to and fro from the said area subsequent to which the incident dated 14/07/15 had occurred where he had gone to the extent of pulling her hair. The said report (Exh.30) therefore, fully corroborates the victim 'X's oral testimony.

36. The said evidence, in my opinion, is reliable and trustworthy, and has a ring of truth to it. Further, there is no material brought on the record to show that there was any reason for PW 1 the victim 'X' to depose falsely against the accused. I am therefore, of the opinion that the prosecution can be said to have proved the fact of the accused with sexual intent, repeatedly or constantly following the child i.e. PW 1 the victim 'X' on the day, period and place as alleged thereby sexually harassing her. Hence, I answer Point No.5 in the affirmative and record my finding thereon accordingly.

As to Point No.6 :

37. As I have held the accused guilty of having committed the offences punishable under section 354 of the Code and under section 12 of the POCSO Act, I have proceeded to hear him, his learned Advocate and the

learned APP for the State on the point of sentence. The accused has stated that he has not committed any offence and sought leniency. Ms. Salma Ansari, the learned Advocate for the accused has pointed out that no other crime has even been registered against the accused. Hence, stating that he is a young boy whose whole future lies ahead of him, she is seeking a minimum sentence for him. On the other hand, Ms. Mahatekar the learned APP has pointed out that a sentence sufficient to send out a proper message to the society at large should be imposed upon the accused as people like him make the lives of the girls miserable, by teasing them and touching them inappropriately when they walk on the road.

38. In my opinion, it is true that there is nothing to show the fact of any other crime having been registered against the accused. The fact, however, remains that the prosecution has proved the fact of he having outraged the modesty of a minor girl while she was walking in a lane and of having sexually harassed the said child. Such offences need to be dealt with a heavy hand as a lesson needs to be meted out to such road side romeos, in order to protect the women from their uncalled for behaviour. Consequently, there does not arise any question of granting the benefit of probation to the accused or showing unwarranted leniency to him. Hence, balancing all the facts, I proceed to pass the following order :

ORDER

1. The accused **Abrar Noor Mohammad Khan, Age-25 Years, residing at Millat Nagar, Near BMC School, Sakinaka, Mumbai stands convicted for the offences punishable under section 354**

of the Indian Penal Code, 1860 and under section 12 of the Protection of Children from Sexual Offences Act, 2012 vide Section 235(2) of Code of Criminal Procedure.

2. For the offence punishable under section 354 of the Indian Penal Code, the accused is sentenced to suffer Simple Imprisonment for one and half years and to pay a fine of Rs.500/- in default of which, he shall undergo further Simple Imprisonment for 3 months.
3. For the offence punishable under section 12 of Protection of Children from Sexual Offences Act, 2012, the accused is sentenced to suffer Simple Imprisonment for a term of one year and six months and to pay a fine of Rs.500/- in default of which, he shall suffer further Simple Imprisonment for 3 months.
4. The accused **Abrar Noor Mohammad Khan** is acquitted of the offences punishable under section 354-D, 504 and 506 Part-I of the Indian Penal Code, 1860 vide Section 235(1) of Code of Criminal Procedure.
5. Both the substantive sentences to run concurrently.
6. The accused to surrender to his Bail Bonds.

7. The accused was in custody in this crime from 31/01/20 to 02/04/20. Set off, as per section 428 of Criminal Procedure Code be given to him for the said period.
8. A copy of this Judgment be sent to the District Magistrate (Collector), Mumbai vide section 365 of Cr.P.C. The District Magistrate (Collector), Mumbai shall submit the compliance report to this Court in view of the directions issued by the Hon'ble High Court in **Criminal Application No.380/19 in Criminal Appeal (S.T.) No.390/19 (Ranjana Suryawanshi V. Jayprakash Gupta and others)**.
9. Copy of Judgment be given to the accused free of cost.

Date : 20.10.2022

(S. J. Ansari)
Special Judge,
Sessions Court, Borivali Division,
Dindoshi, Goregaon, Mumbai

Dictated on : 19/10/2022 and 20/10/2022
Transcribed on : 19/10/2022 and 20/10/2022
Corrected on : 20/10/2022
Signed on : 20/10/2022
Sent to Dept. on :

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE
AND TIME : 21/10/22 at 12.54 p.m.

Mrs. Vidya Pendharkar
NAME OF STENOGRAPHER

POCSO SPL.106/16

: 27 :

Judgment

Name of the Judge (with Court Room No.)	HHJ Ms. S. J. Ansari (Court Room No.11)
Date of Pronouncement of Judgment/Order	20/10/2022
Judgment/Order signed by P.O. on	21/10/2022
Judgment/Order uploaded on	21/10/2022

POCSO SPL.106/16

: 28 :

Judgment