



Registered on : 16.01.2019.
Presented on : 17.01.2019.
Decided on : 28.03.2022.
Duration : 3 Y/1 M/12 D.

Exh-_____.

**IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012 AT FORT, GR. BOMBAY**
POCSO SPECIAL CASE NO. 53 OF 2019
(CNR : MHCC02-000844-2019)

The State of Maharashtra
(At the instance of Shahu Nagar Police
Station in C. R. No. 379/2018).

... Prosecution.

Versus.

1. Abdulrehman Shahjadhussain Shaikh.
Age: 45 yrs., Occ.: Rickshaw driver.
R/A M. K. Lala Chawl, R. No. 26, Dharavi
Main Road, Dharavi, Mumbai.
R/A GNM/C/85/75, first floor, Kamalanagar,
Jasmin Mill Road, Dharavi, Mumbai 400 017.

2. Mohammad Hussain Shahjadhussain Shaikh.
Age: 27 yrs., Occ.: AC repairing.
R/A M. K. Lala Chawl, Opp. Santosh Bar,
60 Feet Road, Dharavi, Mumbai.

... Accused

Appearance:

Ld. SPP Mr. V. D. More for the State.

Ld. Advocate Ms. Munira Palanporewala for the accused.

**CORAM : HER HONOUR JUDGE
MS. PRITI KUMAR (GHULE)**
The Designated Court under
Protection of Children from
Sexual Offences Act,2012.
C.R. NO. 33.
DATED : 28th MARCH 2022.

JUDGMENT

(Delivered on 28th day of March 2022.)

Accused nos. 1 and 2 are in jail stand prosecuted for the offences punishable u/s. 376, 376(2), 376(3)(n), 506 r/w 34 of the Indian Penal Code (here-in-after shall be referred to as "IPC") r/w Sections 4, 6, 8, 10, 12 of Protection of Children From Sexual Offences Act, 2012 (here-in-after shall be referred to as "POCSO"). In order to hide the identity of the victim girl and her relatives, their names are not disclosed in the judgment.

2. Facts giving rise to prosecution case are as under:

Accused nos. 1 and 2 are brothers. The accused no.1 is the husband of the complainant and the father of 14 years old victim girl. The complainant has three children, one son aged 16 years old and two daughters aged 13 years 7 months and 8 years old respectively.

On 12/11/2018 the complainant and accused no. 1 the husband had quarreled on account of accused no. 1 committing indecent immoral acts with the daughter. The accused no. 1 therefore started assaulting the complainant, due to fear of beating she alone went away to the house of her brother. Three days thereafter on 15/11/2018 on inquiry by her brother and her brother's wife she disclosed to her brother and his wife that her husband accused no. 1 and his brother accused no. 2 during last three to four months in her absence at home at different days and different times have repeatedly committed forcible sexual intercourse on her 13 ½ years old daughter.

Specifically on 11/11/2018 when the complainant had gone at 06.30 am to Sion Hospital the accused no. 1 the father of the victim committed sexual intercourse on the victim and threatened her

to assault her if she disclosed to anyone. Due to which she confronted her husband who quarreled with her. She did not disclose the said incident to anyone as she had fear for her life and life of her daughter. After she disclosed to her brother, her brother immediately on 15/11/2018 took her to Shahu Nagar police station to lodge the complaint. Upon her complaint C.R. No. 379/2018 came to be registered against the father and paternal uncle i.e. accused no. 1 and 2 respectively.

3. Spot panchanama Ex-22 was prepared in the presence of panchas. The victim was sent for medical examination. The accused were arrested and sent for medical examination. The clothes of the victim girl were recovered under the panchanama. The statements of witnesses were recorded. Birth certificate and school document in respect of the date of birth was collected. The victim was sent for statement u/s. 164 of Cr.P.C. before the Ld. Magistrate. On completion of investigation, charge-sheet is filed. The accused no. 1 and 2 are in jail.

4. My predecessor has framed the charge at Ex-4 to which accused pleaded not guilty. To establish the guilt of accused the prosecution has examined following witnesses.

- PW-1 – The complainant.
- PW-2 – The victim girl.
- PW-3 – Hanumanta Aseki Nadar.
- PW-4 – PSI Ajit Kakade.
- PW-5 – Dr. Rajesh Dere.
- PW-6 – PI Mandar Lad.

The prosecution has relied upon the following documents:

- Ex-7 – Statement u/s. 164 of Cr.P.C.
- Ex-16 – FIR
- Ex-17 – Original birth certificate of victim.
- Ex-20 Colly – Two photographs.
- Ex-22 – Spot panchanama.
- Ex-23 – Recovery panchanama of clothes of A1 and A2.
- Ex-26 & Ex-27 – Arrest Forms of both accused.
- Ex-29 – Copy of NC of year 2012.
- Ex-30 – Copy of NC of year 2019.
- Ex-33 – Medical report.
- Ex-35 to Ex-39 – CA reports.

The statement u/s. 313 of Cr.P.C. of both accused is recorded, in which the accused has denied the incriminating evidence and claimed innocence. The accused no. 1 admitted that he has two daughters and one son aged 13, 9 and 16 yrs respectively. He admits date of birth of the victim and has stated that the victim was studying in standard 9th. He has stated that he was working in the garment and driving rickshaw to earn for family. He was never in the house. The quarrel was going on for other reasons. Even there was quarrel after the marriage between him and his wife. Due to enmity this complaint is lodged as the wife has always fighting with him since 2014, she did not cook and goes to her mother's house, gives false complaint from time to time by raising false allegations. His wife made the children to depose against him. In 2004 the complainant gave the complaint. She left house without telling him, in 2008 again there was police complaint

due to fear. The complainant did not cook and he would return home at night by 10.00 pm only. His daughter always normal to play the such incident would have physical to anyone.

The accused no. 2 has stated that the the victim is his brother's daughter and he was supporting his brother the accused. The complainant (bhabhi) has falsely implicated him. From several years the husband i.e. accused no. 1 and the complainant fighting. The complainant even now is phoning his mother and demanding Rs.3,00,000/-.

The accused has examined DW-1 Sujata Gaurav Shinde and DW-2 Warsunnisa Shaikh in his defence.

5. Taking into consideration the evidence on record, arguments of Ld. SPP Mr. V. D. More for the State and the Ld. Defence Advocate Ms. Munira Palanporewala for the accused. Following points arise for my determination and I gave my findings accordingly.

Sr. No.	POINTS	FINDINGS
1.	Whether the prosecution has proved that the accused nos.1 and 2 since three to four months till 11/1/2018 at about 06.30 a.m. Dharavi, Mumbai 17 in furtherance of common intention committed rape on minor victim girl aged 13 years against her will and thereby committed an offence punishable u/s. 376 r/w 34 of IPC ?	Negative
2.	Whether the prosecution has proved that the accused nos.1 and 2 on the aforesaid day, month, time and place in furtherance of common intention committed rape	Negative

Sr. No.	POINTS	FINDINGS
	repeatedly on the minor victim girl aged 13 years and thereby committed an offence punishable u/s. 376(2)N r/w 34 of IPC?	
3.	Whether the prosecution has proved that the accused nos.1 and 2 on the aforesaid day, month, time and place in furtherance of common intention committed criminal intimidation by giving threat to minor victim girl aged 13 years with intent to cause harm and thereby committed an offence punishable under section 506 r/w 34 IPC ?	Negative
4.	Whether the prosecution has proved that the accused nos.1 and 2 on the aforesaid day, date, month, time and place committed penetrative sexual assault upon the minor victim girl aged 13 years by establishing physical contact against her will with sexual intent and thereby committed an offence punishable u/s. 4 of POCSO Act?	Negative
5.	Whether the prosecution has proved that the accused nos.1 and 2 on the aforesaid day, date, month, time and place committed aggravated penetrative sexual assault upon the minor victim girl aged 13 years by establishing physical contact against her will with sexual intent and thereby committed an offence punishable u/s. 6 of POCSO Act?	Negative
6.	Whether the prosecution has proved that the accused nos.1 and 2 on the aforesaid day, date, month, time and place	Negative

Sr. No.	POINTS	FINDINGS
	committed sexual assault upon the minor victim girl aged 13 years by establishing physical contact or by moving hand on her person with sexual intent and thereby committed an offence punishable u/s. 8 of POCSO Act?	
7.	Whether the prosecution has proved that the accused nos.1 and 2 on the aforesaid day, month, time and place committed aggravated sexual assault upon the minor victim girl aged 13 years by establishing physical contact against her will with sexual intent and thereby committed an offence punishable u/s. 10 of POCSO Act?	Negative
8.	Whether the prosecution has proved that the accused nos.1 and 2 on the aforesaid day, month, time and place committed sexual harassment of the minor victim girl aged 13 years by establishing physical contact with sexual intent and thereby committed an offence punishable u/s. 12 of POCSO Act?	Negative
9.	What order?	As per final order

REASONS

As to Point Nos. 1 to 8 :

6. The admitted fact that the accused no. 1 is the father of the victim girl and the accused no. 2 is the paternal uncle of the victim. The complainant is the wife of accused no. 1. The accused no. 1 and the complainant are blessed with one son and two daughters.

It is further admitted that the complainant alone had left

the house of accused due to quarrels with him on 12/11/2018 and went to her brother's house. The FIR is thereafter lodged after three days on 15/11/2018 by the complainant. According to complainant the sexual intercourse on the minor was committed specifically on 11/11/2018 in her absence when she had gone to Sion Hospital leaving the children at home. According to complainant on earlier days and dates also the accused nos. 1 and 2 have committed sexual intercourse with her victim daughter.

7. Settled position of law that sole testimony of the victim alone if found reliable is sufficient to convict the accused.

8. **On age-** The victim is minor, below 18 years of age is not disputed as the accused no.1 is the father and admits the said fact. Still in order to prove the age of minority the prosecution has produced her birth certificate at Ex-17 and the complainant has deposed that 30/03/2005 is the birth date of the victim who is born in Mumbai. The victim has also deposed that her date of birth is 13/05/2005 and now she is in 11th standard and has passed 10th standard. At the time of the incident the victim was studying in standard 8th whereas according to accused she was studying in standard 9th. The document of date of birth from her school is not proved in evidence. She was studying in the 9th standard is rightly pointed by the defence from the document of school along with charge-sheet. The prosecutrix is 13 ½ years hence, child u/s. 2(d) of POCSO Act is accepted. The POCSO Act is applicable. The presumption u/s. 29 of POCSO Act is triggered.

9. Ld. SPP has submitted that the prosecution has proved that the victim is minor. The complainant and the victim has deposed in support

of the prosecution. There is no reason to disbelieve the victim in sexual offence. The medical report Ex-33 also mentions history of victim that accused no. 2 the uncle committed forcible peno-vaginal intercourse with her from the age of 9 years and her father who was aware of this fact also started physical sexual assaulting and the since one month the father also committed multiple times forcible peno-vaginal intercourse. The offence of sexual intercourse cannot be ruled out is opined in the medical evidence.

Ld. SPP submitted that there is redness on labia minora. Hence, the prosecutrix should be believed and the background of quarrel between the complainant and her husband (accused no. 1) should not be considered fatal for prosecution.

Ld. SPP has submitted that the evidence of witnesses and statement u/s. 164 of Cr.P.C. of the victim clearly narrates the sexual act of physical intercourse committed by the accused no. 1 and 2 on victim hence, the accused be severely punished. The evidence of prosecutrix is most important is rightly submitted by the Ld. SPP.

10. Ld. SPP submitted that PW-1 the mother, PW-2 the victim, PW-4 and PW-5 doctor are important witnesses. PW-1 deposed that on 11/12/2018 she returned from hospital and learnt that the accused no. 1 had done penetrative sexual assault on her daughter and accused no. 2 has also done the same act of penetrative sexual assault on victim. The victim has deposed that her mother had gone to the hospital when her father made inappropriate touch. The accused no. 1 switched off the light, kept her sister aside and did penetrative sexual assault with her. Again when her mother went to grandmother's house, the paternal uncle accused no. 2 did the act of sexual intercourse with her. It is submitted by the Ld. SPP that date, time and incident are corroborated

by the evidence of PW-1 and PW-2. The medical evidence shows that there is redness to labia minora, age of injury is 4 days. It is submitted that nothing is in the cross-examination to show that how victim got injury on labia minor. It is nothing to show that the victim is tutored by her mother or influenced by her mother to depose against her father and uncle. It is submitted that statement u/s. 164 of Cr.P.C. is consistent with her evidence. There are major contradictions and omissions. The incident has occurred in the year 2018 and the witness has deposed in the year 2020-21 and therefore it is not possible to give evidence word to word.

Ld. SPP submitted that there was strained relations between accused no. 1 and the complainant. The quarrels were going in between the accused no. 2 brother-in-law and complainant were not sufficient to disbelieve the prosecution case. The NC is filed in respect of the quarrels to show the husband and wife had strained relations on certain occasions. It is submitted that the background of quarrels and relations between husband wife does not permit accused to commit sexual intercourse on minor. So also want of divorce between husband and wife does not permit accused to commit sexual intercourse on minor. Ld. SPP submitted that presumption u/s. 29 of POCSO Act is against the accused. The evidence is sufficient to convict the accused.

11. Ld. Adv for the accused submitted that had the incident really occurred, it will set in the memory of the child for life time and will have turning effect on the life of the child. The incident will create the mark on the life of the child as it is not a simple incident.

Ld. Adv for the defence pointed that the complainant's husband drives rickshaw entire day and the complainant is housewife with three children. The house is very small with no washroom inside.

The victim girl has elder brother. Victim girl has two siblings. In the charge-sheet there are statement of other two children are also, but none are examined. The complainant ought to give right to give correct date and time of incident.

The complainant has deposed in her examination-in-chief that when she asked her husband about inappropriate touches to her daughter, her husband beat her a lot, fought with her and **most importantly deposed that her husband removed her** out of the house and kept he three children with him. She went to her brother at Mira Road and told him everything. She has denied that she left her husband's house on her own will and not removed her from out of the house. Her police statement mentioned that her husband started to beat her that time she was scared and she alone went away to the house of her brother. When suggestion about aforesaid in her police statement was put to her that she was scared and alone went away to the brother's house is in her police statement. She voluntarily stated that as he was beating her a lot she was scared and alone went to her brother's house. She is unable to assign reason why the police in her statement did not record that husband removed her out of the house and kept her three children with him. The Ex-16 complaint of PW-1 to the police clearly mentions that on 12/11/2018 she and husband quarreled due to which husband assaulted her and at that time under fear she left the house and went to her brother. It clearly shows that during the quarrel of husband and wife on 12/11/2018 the complainant herself left the husband's house and alone proceeded to her parental house at Mira Road. In the examination-in-chief she do not depose that due to quarrel and assault by husband she left the house alone. Before the police she do not mentioned husband removed her out of the house.

It is clear that complainant has left the house on

12/11/2018 in the background of quarrel with the husband. She has deposed that she was scared of her husband who beat her a lot therefore she went away to her brother's house. She has deposed that she has four brothers. She denied that her four brothers always fought with her husband and in-laws for which NC is lodged. She has denied the suggestion that she wanted to get separate from her husband and husband was not ready to divorce her and therefore she lodged this FIR and asked her daughter to support her. In the cross-examination PW-1 voluntarily stated to the Court that on that day, the husband had pronounced three times *talak* as per Muslim Shariyat law and divorced her. She was agreed that there was no talakanama which is similar to Nikahnama. She agreed that her husband did not give amount of *meher* and *iddat*. She denied that it is necessary to give talak/ divorce in presence of Shahid Vakil. She deposed that the tenants were present when he pronounced talak on that day. She is unable to assign a reason why the fact of husband pronouncing thrice talak in presence of tenants is not in her complaint due to which she left the house alone.

Ld. Adv for the defence has argued that PW-1 wants divorce. Accused no.1 has not signed any talaknama. He is not ready to give her divorce therefore, she has with the help of brother as afterthought lodged this FIR, three days after she left the house.

PW-1 deposed that Warsunnisa is the mother of the husband. The defence has examined DW-2 the mother of the husband, accused no. 1. DW-2 is 70 years old who deposed that she has four sons, accused no.1 and 2 are her two sons. In the year 2002 the accused no.1 got married with the complainant. Her relation with her daughter-in-law PW-1 were not good. Her son accused no.1 and his wife i.e. complainant always had quarrels and fights. Her daughter-in-law always wanted to go to her parental house and her son accused no.

1 would not sent her. Their relations with the parental side of the complainant were not good at all. The complainant's parental side would always threatened them. The complainant's four brother would always give abuses to them. DW-2 herself had gone to the police when complainant's came and gave abuses. She has lodged **Ex-29 and Ex-30**, complaints of Shahu nagar police station against the brother of the complainant.

PW-4 PSI Ajit Kakade had deposed that he arrested the accused. He agreed that NC Ex-29 and Ex-30 of the year 2012 and 2019 are lodged in the same police station. But he is not aware that they are lodged by the mother of accused. He has not investigated in respect of these complaints.

DW-1 further deposed that complainant always insisted divorce from accused no. 1. The relationship of her son i.e. accused no. 1 with his children were good. In her cross-examination she agreed that relationship of her son and her daughter-in-law was strained due to quarrel. There was no divorce petition filed. They would fight a lot for small issues. She has also deposed that after filing this case the complainant's brother demanding Rs. 3 Lakh for withdrawal of the case. She agreed that she did not go to the police to complain about demand of Rs. 3 Lakhs made by the brother of the complainant.

The oral evidence of DW-2 and the documentary evidence Ex-29 and Ex-30 NCs show that brothers of complainant are giving abuses to mother-in-law of complainant. The relation between the accused no. 1 husband and PW-1 wife are too much strained. It is accepted that either of them wants divorce. According to complainant accused no. 1 had already pronounced talak thrice on the date of quarrel when she left the house and went away i.e. on 12/11/2018.

PW-4 PSI Ajit Kakade has deposed in cross-examination

that complainant never disclosed to the police that hr divorce/ talak had occurred on the same day. He do not know whether the complainant wanted divorce from her husband. He disagreed that due to family quarrel between husband and wife the daughter is used to lodge false case. The possibility of husband and wife using their children to fight, to separate from each other is brought on record by the defence.

12. Ld. Defence has also examined DW-1 Sujata Shinde who is teacher resides at Dharavi opposite of zopadpatti. She has deposed that she can see the house of accused no.1 and accused no. 2 from the window her house. She knows mother-in-law of complainant and the complainant. She also knows that complainant's mother-in-law met with an accident two years ago, when complainant would come to do household work for the mother-in-law who was unable to walk. She deposed that she knows the victim girl because her two daughters would play with the victim girl in the compound of her building. The girls would ride bicycle with her daughter in the society compound as there was no place in the slum for them to play. The victim girl along with her daughter played together and victim girl also visited her house. The father of the victim girl would do tailoring and riding of auto-rickshaw till night. The witness deposed that brothers and family members from the complainant side would give threats to *Amma* (DW-2) and accused Rehaman. The brother of complainant had also brought his friends for giving abuses to DW-2 (mother-in-law of complainant) and at that time the accused no. 2 intervened. The friend of complainant's brother assaulted accused no. 2 by the means of knife on his hand. The present witness has seen from her house window the fights and quarrels taking place between the complainant's brothers and DW-2 the mother-in-law of complainant as well as accused no. 2. The

said witness further deposed that complainant's relation with her husband was not good as complainant was not doing proper cooking, had habit of leaving the house and going to her maternal house along with the children. The complainant wanted divorce but the accused no.1 was not giving her talak. DW-1 agreed that she had good relation with the family of the accused as they visit each other. She deposed that many time she helped them by giving money. It is rightly pointed by prosecution that DW-1 herself did not give any complaint to the police in respect of fights which occurred between complainant's brother and assault of knife with accused no. 2. Present witness deposed that she is outsider so she did not give any complaint to the police. It is pertinent to note that the DW-1 is an independent witness who can see from her window the incidents of occurring in the slum. She also knows the accused, the complainant and the victim as well as the mother-in-law of the complainant. Her daughter plays with victim in her society compound. There is no reason for the said independent witness to falsely protect the accused had there been sexual assault to minor who plays with her daughter.

13. It is clear that in the background of the depositions of defence witness which give a picture of too many quarrels between both sides, the evidence of victim and complainant is to be assailed. It is also settled position that the child can be easily tutored. There is grudge on behalf of the complainant against accused no. 1 and 2. It has to be seen that the accused are not falsely implicated.

14. PW-2 the prosecutrix is the material witness and child. The prosecutrix has denied that her father and mother always had quarrels

and they would not get along with each other. On the contrary the PW-1 complainant the mother at the outset agreed to the suggestion of defence that her relation with her husband were quarrelsome. The victim has falsely denied that her parents did not always quarrel. This shows that the prosecutrix is concealing true facts and is not reliable at the outset. She is not speaking truth can be easily gathered as her deposition contradicts the deposition of her mother on material aspect of strained relations. There is background of strained quarrelsome relation between accused no.1 husband and complainant. It is also deposed by complainant that she is married since 16 years and is a housewife who spend time in household work and children. Her husband accused no. 1 was driving rickshaw during the entire day. She would be at home with her three children.

15. The complainant in her cross-examination denied that she left her husband's house on her own will. She denied that she was not removed by the husband from the house, but she voluntarily stated that her husband was beating her a lot. She agreed to the suggestion that she has mentioned in her police statement about the fact that as she was scared about the husband beating her she alone went away to the house of her brother. She also deposed that she stated to police that her husband removed her out of the house and kept her three children. She made voluntarily discloser that, "on that day the accused no.1 pronounced talak thrice as per Muslim Shariyat Law and divorced her." The complainant has made clear in her evidence that, the day she left the house of accused was because of pronouncement of talak thrice by accused no. 1. Her complaint Ex-16 clearly mentions that on 12/11/2018 there was quarrel between complainant and accused no.1, the accused started to beat her therefore, she got scared of his beating

hence due to fear she went alone to her brother's house. In the complaint she has suppressed about the fact that, on that day accused had pronounced talak orally thrice because of which she left home and went to her brother's house. The evidence makes clear that there was always quarrels between the husband and wife and to the knowledge of the children. The victim is denying about quarrels between her father and mother shows that the victim is not truthful. Her evidence is therefore to be scrutinized keeping in mind that, she has falsely denied about strained relation, quarrelsome relation between her father and mother. This child is not fully reliable, she deviates from truth, is observed.

16. The child is keeping herself away from truth is again observed from her cross-examination, in which she deposed that, she knows about Tik-tok. She deposed that she was not making any videos on Tik-tok. When the photographs Ex-20 Colly when shown to her in which she is present, then she agreed that these photographs are of Tik-tok duet video in which she is present. She was making Tik-tok videos of herself is proved but she has falsely denied that she was not making any videos on Tik-tok. The said child is not a truthful, is again clear. In these circumstances, her sole testimony cannot be accepted without corroboration.

17. The prosecutrix deposed that the father would insert his toilet place in her toilet place. This was happening several times. PW-2 the victim has deposed that sometimes her father would send her mother to the maternal grandmother's house at Mira Road. That time victim, her brother and younger sister would be in the house with father. The victim deposed that father would make her brother and sister sleep

separate at a side and he would make her to sleep besides him on the floor. "He would put his hand in her pant and make her pressed his washroom place. He would pressed her breast with force and kiss her." These material facts are omitted in her police statement and she cannot assign reason for the same. The evidence is not supported by her previous statement is clear.

18. It is seen that according to the victim the said act of penetrative sexual intercourse was occurring with her when her brother and sister were also in the same room sleeping. According to victim the act of insertion of his toilet place in her toilet place was happening several times.

She also deposed that in the month of November when her mother had gone at night to the hospital her father removed his pant and put his toilet place in her toilet place. This happened at 06.30 and and her mother had returned at 07.00 am from the hospital. At that time also her sister was in the same room, sleeping. It is omitted in her police statement that on 11/11/2018 at 06.30 am her father inserted his private part into her private part and she cannot assign reason when it was not in her police statement.

According to the victim several times she was subjected to penetrative sexual intercourse by her father and the latest was 11th November at 06.30 am. The statement before police has omission about penetrative sexual intercourse by her father on 11/11/2018 at 06.30. Hence, the same needs to be discarded from the evidence.

19. It is rightly pointed that the house consists of ground + upper room. There are tenants on the ground floor. The independent witness tenants were available but prosecution has not examined any of them to

bring on record the clear incident which occurred on the day complainant left the house. It is seen that complainant after leaving the house did not approach to the police station to give complaint about sexual assault to her daughter. She always had support of her brothers. She did not disclose the incident of sexual assault to her brothers for three days shows that FIR is an afterthought, is accepted.

20. Most important aspect argued by defence is that according to the prosecution penetrative sexual intercourse was repeated, was committed by two adults at different time and different placed still the Medical Officer PW-5 who examined the victim found 'hymen intact'. The penetrative sexual intercourse by two men, at different times will not give report 'hymen intact'. This is sufficient to discard the allegation of penetrative sexual assault by accused no. 1 and 2 at different time and different place on victim, is rightly argued by defence.

According to Medical Officer PW-5 on local examination, her hymen was intact, there was redness of labia minor which was about 4 days old. He agreed that generally self mastication can cause redness to labia minora. In few cases using vaginal spray can cause redness to labia minora. There are different reasons and causes for labia minor to become red, is deposed by the Medical Officer. It is clear that there is no penetrative sexual assault repeatedly. The redness to labia minora of a young girl can be caused by other reasons. In present case the oral evidence of the prosecutrix victim is itself not reliable. She is under the influence of her mother who has separated from the husband and mother-in-law. The complainant is treating herself as divorced by triple talak due to which she left the house and according to her there is no marriage in existence. It is seen that the overall evidence and the background in which the complaint is lodged is sufficient to infer that

the accused are not guilty. In these circumstances, I recorded my findings to **Point Nos. 1 to 8** in the **Negative**. Hence, the accused nos. 1 and 2 are entitled for acquittal. I proceed to pass the following order :-

ORDER

1. Accused no. 1 – Abdulrehman Shahjadhussain Shaikh and accused no. 2 – Mohammad Hussain Shahjadhussain Shaikh are hereby acquitted for the offences punishable under Sections 376, 376(2)(n), 506 r/w 34 of the Indian Penal Code and Sections 4, 6, 8, 10 and 12 of Protection of Children From Sexual Offences Act, 2012.

2. Accused nos. 1 and 2 are in jail. They be released forthwith, if not required in any other offence/ crime.

3. Accused nos. 1 and 2 are directed to furnish P.B. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand Only) each, under Section 437(A) of the Code of Criminal Procedure.

4. Muddemal articles clothes (marked and unmarked), be destroyed after appeal period is over.

5. POCSO Case No. 53 of 2019 stands disposed off accordingly.

(The judgment is dictated and pronounced in open Court.)



(Priti Kumar (Ghule))
Special Judge under POCSO Act,
Gr. Mumbai.

Date : 28.03.2022.

Typed on : 28.03.2022.
Signed on : 28.03.2022.

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
29.03.2022, 05.00 p.m. UPLOAD DATE AND TIME	(Mrs. S. S. Girkar) NAME OF STENOGRAPHER
Name of the Judge (with Court room no.)	HHJ Smt. Priti Kumar (Ghule), C.R. No.33.
Date of Pronouncement of JUDGMENT/ORDER	28.03.2022.
JUDGMENT/ORDER signed by P.O. on	28.03.2022.
JUDGMENT/ORDER uploaded on	29.03.2022.