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Duration : Y-2, M-5, D-4.

IN THE DISTRICT AND SESSIONS COURT, THANE
AT - THANE.

**(Presided over by Ms. Mridula V. K. Bhatia,
District Judge-08 & Special Judge (POCSO Act), Thane)**

SPECIAL CASE NO. 146/2014.
Exhibit No. 27.

State of Maharashtra
(through Rabale Police Station,
Dist. Thane, State of Maharashtra)

.... Complainant.

V/s.

Azad Ramji Mishra
Age : 40 years,
R/at : 807, Mahatma Phule
Nagar, Ganpati Pada,
Navi Mumbai.

.... Accused.

Appearance :

Learned D.G.P. Mrs. S. E. Phad for the State.
Learned Advocate Mr. Pankaj Kawale along with Ld.
Advocate Mr. S. D. Kavathekar for the accused.

: J U D G M E N T :
(Delivered on 22nd day of December, 2016)

The accused has been prosecuted for the offences Under Sections 376(2)(f) and (n) of the Indian Penal Code (IPC) and Sec. 5(l) and 5(n) r/w. Sec. 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2] The case of the prosecution is as follows :

(a) The complainant/victim * has been residing with her parents, three sisters and one brother at Mahatma Phule Nagar, Ganpati Pada, Old Thane-Belapur Road, Navi Mumbai. Her father/accused is working in a company at Bhandup. Since her childhood, i.e., since she was 6 months old, the complainant has been residing with her grand father Parasnath Pathak at Johnpur, Uttar Pradesh. In June, 2013 she came to Navi Mumbai to reside with her parents. Her mother is suffering from B.P. and diabetes therefore, she used to consume the sleeping pills at night.

(b) In the month of August, 2013 when she was sleeping at night, her father, i.e., accused tried to molest her therefore, she got scared and went to sleep with her mother. After some days, at night, her father pressed her mouth and removed her clothes and raped her. She then called up her grand mother Shakuntala at U. P. and narrated the said

* *The name of the victim is not being disclosed in the Judgment with a view to protect her identity as stipulated **under Section 228A** of the I.P.C.*

the said incident to her. Therefore, her grand parents and maternal uncle (mama) questioned her parents about the incident. However, her mother was scared of her father therefore, she told them that the complainant is lying and that no such incident has occurred.

(c) Thereafter, complainant's father raped her after sending her mother, sisters and brother out of the house for some work. Once on Sunday, i.e., on Ramnavami day also, her father sent all the family members to the market, closed the door and raped her though she resisted and screamed loudly for help. After sometime when she came out of the house, her neighbours asked her the reason for screaming. As she was scared of her father, she did not tell them the truth. She only told them that she was playing. Thus, her father raped her 5 times. Finally, she lodged the FIR (Exh.15) against her father on 29/04/2014.

3] The police registered crime vide C.R.No. I-108/2014 against the accused for offences under Sections 376 of the Indian Penal Code and Sec. 4 and 8 of the Protection of Children from Sexual Offences Act. **F.I.R./complaint (Exh. 15)** was registered at the Police Station on 5/12/2012.

4] As the offence is exclusively triable by the Court of Sessions, the case came to be committed to this court u/s. 209 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

5] **Charge (Exh. 5)** was framed by my learned Predecessor against the accused for the offences punishable under sections 376(2)(f) and (n) of the Indian Penal Code and Sec. 5(l)(n) r/w. Sec. 6 of the Protection of Children from Sexual Offences Act, 2012. It was read over and explained to the accused in vernacular. The accused pleaded not guilty

and claimed to be tried.

6] At the trial, to bring home the guilt of the accused, the prosecution examined only 2 witnesses, viz., the victim/complainant (P.W.1) and A.P.I. Shrikant Sarjerao Shinde (P.W.2) (Investigating Officer) for the reason set out hereinbelow.

7] After the prosecution closed its evidence the statement of the accused under section 313 of Cr.P.C. came to be recorded. The accused chose not to lead any evidence. The defence of the accused is that he has been falsely implicated by his own daughter/the victim.

8] In the light of the charge against the accused, evidence led by the prosecution, statement of accused under section 313 of Cr.P.C., the defence taken by the accused and the submissions across the bar, the following points arise for my determination. I have recorded my findings against each of them for the reasons stated below :-

POINTS	FINDINGS
[i] Whether the prosecution proves that from August, 2013 till 29/04/2014, at the residential house of the accused, i.e., room No. 807, Mahatma Phule Nagar, Ganpati Pada, Navi Mumbai, accused being the father of the victim and was in a position of trust/authority towards his daughter/victim, raped her on 5 occasions and thereby committed an offence punishable U/s. 376(2)(f) and (n) of the I.P.C. ?	No.
[ii] Whether the prosecution proves that the accused being father of the victim, during the above period and at the above mentioned place, i.e., in the accused's house, committed aggravated penetrative sexual assault on her repeatedly, i.e., 5 times and thereby committed an offence U/s. 5(1)(n)	No.

punishable U/Sec. 6 of the Protection of Children
from Sexual Offences Act, 2012 ?

[iii] What order ?

As per final
order.

: REASONS :

AS TO POINT NO. 1 AND 2 :-

9] The prosecution has examined **2 witnesses** in order to prove the guilt of the accused.

10] It would be relevant to proceed with the appreciation of evidence in respect of the charges levelled against the accused. To this end, it would be necessary to briefly summarize the salient features of evidence of the prosecution witnesses.

11] **It has come in the evidence of the victim, (P.W.1)** that she has been residing at Vitthal Wadi, Tal. Kalyan since 29/04/2014 with her Mause and Masi. Before that she used to reside with her parents, three sisters and one brother at Ganpati Pada, CBD, Navi Mumbai. Her father's name is Azad Mishra. Her date of birth is 2nd August, 1997. Since she was 6 months old, she was staying at her Nani's house at U.P. till June 2013. Her father, i.e., the accused used to work in Bhandup in a Company. Her mother is a housewife. She also used to stay at home. Her mother had B.P. and Sugar problem. She used to take sleeping pills and go to sleep.

12] One night in August 2013, when she was sleeping, her father started running his hands all over her body. She became scared and went

to sleep next to her mother. After few days, one night, her father pressed her mouth and removed her clothes and raped her. She then called up her maternal grand mother Shakuntala at U.P. and narrated the above incidents to her. Her grand parents then questioned her mother about the same. However, her mother was so scared of her father that she told them that she is not aware of anything.

13] Thereafter, on Ramnavami Day in 2014, her father sent her mother, brothers and sisters to the weekly market and asked her to stay at home. Only she and her father were at home that day. Her father locked the door from inside and committed rape on her. She was shouting. The neighbours came there and asked her why she was screaming. As she was scared of her father, she told them that she was playing. Her father committed rape on her on five occasions. When her mother questioned her father, he went for getting her tickets to U.P. Her father threatened her with dire consequences if she revealed the said incident to anybody. She however, lodged the complaint/F.I.R. (Exh.15) in the police station on 29/04/2014. The police sent her to the hospital for medical examination. She handed over her clothes to the police which she was wearing at the time of each of the above incidents. She had also shown the spot of the incident to the police. She identified all the articles before the court.

14] **It has come in the evidence of A.P.I. Shrikant Sarjerao Shinde (P.W.2) I.O.** that in April, 2014 he was posted as A.P.I. at Rabale police station. On 29/04/2014 while he was P.S.O. on duty, the victim/complainant had come to the police station and lodged an F.I.R. (Exh. 15) against her father. He noted down the F.I.R. as per her say. He recorded her statement in the presence of WPSI Seema Mundhe.

Accordingly, the crime came to be registered U/sec. 376 of the I.P.C. and Sec. 4 and 8 of POCSO Act. Investigation was handed over to him. During investigation, he visited the spot and conducted the spot panchanama (Exh.19). He recorded the statements of witnesses. He also sent the victim and the accused for medical examination on the same day and collected the Medical Report (Exh.20 and 21 respectively). He arrested the accused on the same day and seized the clothes of the victim and the accused. He then collected the blood samples of the victim and the accused and sent them for forensic examination. He also collected the photocopy of the progress report and hall ticket of the victim which bears her date of birth as 02/08/1997 (Article-A). He also forwarded the seized muddemal for Chemical Analysis vide letter (Exh.23) dated 13/05/2014. After completion of investigation, he submitted the charge-sheet against the accused. He has tendered a letter dated 16/12/2016 (Exh.24) which he received from District Women and Child Development Officer.

15] **It has come in the cross-examination of the victim (P.W.1)** that the name of her school is 'Rajkiya Uccha Star Madhyamik Vidhyalaya', Mai, U.P. The said school is from 9th standard to 12th standard. She was there in 9th standard. She studied up to 8th standard in another school, i.e., 'Purva Madhyamik Vidhyalaya'. It is only till 8th standard. She was good in studies and never failed any class. She left the school in 2013. She was in a girls school in 9th standard. In U.P., she used to stay with her grand parents and Mama-Mami. Mama-Mami did not have any children at that time. She had taken admission in 9th standard on 2nd August and appeared for 9th standard exams in April, 2013. Result is not declared for 9th standard.

16] It has further come in her cross-examination that her

Mama's name is Navinchandra Pathak who used to not stay at U.P. Her Mami used to stay there. Her grand father used to stay at home. She was residing only with her grand parents and Mami in U.P. She never asked her parents as to why she was kept in U.P. since her childhood. Before 2013 she had never come to Mumbai. When she was 6 to 7 years old, her father had visited her in U.P. on one or two occasions. Her mother used to come almost every year to meet her. Her entire responsibility was on her maternal grand parents and they used to bear her expenses. Her Mama used to send the money for the expenses. She used to speak to her parents and brothers and sisters on phone from U.P. She has two Mamas. The other Mama's name is Ashutosh Pathak. She does not know where he is staying. Navinchandra used to come to U.P. as time permitted him, i.e., either once a year or once in two years.

17] Her school from 1st to 8th standard was at a distance of 15 minutes walk from her house. She had friends there but no boys were her friends. She had only girl friends. She has denied that her Mama used to scold her about her friends whenever he used to visit U.P. He used to scold her whenever she used to make a mistake. She cannot tell which mistakes she used to make. She does not know a boy called Atul Upadhyay. She does not recollect if he was studying with her in school. She has denied that he was a good friend of her and her Mama did not like her friendship with him.

18] She does not know the reason why she was sent to Thane (Kalwa) from U.P. Her father's house in Kalwa is 8 ft. x 14ft and they all were residing in the said house. Priya is one year younger to her. She

does not know the age of any of the other sisters. All her sisters are grown up and mature, i.e., of good understanding. Priya used to be in the house with her and the others used to go to school along with the brother. She knew 2 to 3 neighbours at the time when the offence was registered. She does not know their names. She used to not go to anyone's house but they used to come to her house. She remembers one name, i.e., Renu Pandey. She used to come to their house. However, a dispute took place between the accused (her father) and Renu Pandey. Her father was not happy that Renu Pandey used to come to their house as he had a dispute with her. Whenever Renu used to come to their house, her father used to scold. Her parents also had disputes with her.

19] Her mother had gone to the village on two occasions after there was a fight between her parents and stayed in the village for 3 years after one fight. Because of the disputes between her parents, even her maternal uncles did not have a good relationship with her father. She is not aware that on one occasion, there was a fight between her father and her Mama due to the said disputes.

20] Her mother returned from the village after staying there for 2 to 3 years in June, 2013. Whenever her mother used to come to the village after fighting with her father, she used to come and stay with her. She does not know since when her mother has Sugar and B.P. problem. Her mother used to not visit any doctor in U.P. because her grand father himself is a doctor. She does not know the degree of her grand father and also his specialization. He is an allopathic doctor. He used to treat other patients also. Her grand father had started her mother's treatment. She is not

aware whether her mother used to become unconscious after taking the medicines. She never felt that her mother has become unconscious after taking the medicine. It is true to say that she was more attached to her mother than to her father. Her mother used to not tell her about the fights between her and her father. When her mother used to come to the village, she used to come to know that she had a fight with her father. She has admitted that because of the disputes between her parents, the emotional bonding she had with her father was minimal.

21] Her father used to go for work regularly from 8.00 a.m. to 8.00 p.m. Her mother and her sister Priya also used to stay at home. After she came to Kalwa from U.P., her family members had started searching for a groom for her. They had selected a groom from Vasai/Nalasopara. The said groom was selected within 3 to 4 months after she came from U.P. She did not meet him. She has denied that she did not want to marry this boy selected by her father. Her parents had gone to Vasai to meet this boy. She was not aware that her Mama was not told about this groom since the relationship between him and her father was not good. She did not tell her Mama that her parents have selected a groom for her.

22] She does not know a boy called Hariraj Singh. She has denied that Hariraj was a good friend of her and they used to chat regularly on the phone. She does not know that the caste of Hariraj Singh is Rajput Kshatriya. Her caste is Brahmin. She does not know that he resides in Digha. She has denied that she wanted to marry him. She has denied that her father was unhappy that she wanted to marry Hariraj. She knows a boy called Satru. She knew him because he used to come to their chawl.

He was a young boy. She knows a boy called Golu. He too is a young boy. She also knows Dilip Upadhyay. He is a distant relative. She does not know a boy called Amrish Yadav. She does not know a boy called Vishal. She used to talk to him. She has denied that her father used to not like her talking to these boys and he used to scold her and dissuade her from talking with these boys.

23] **She does not remember the date, month and time when her father raped her.** She understands the difference between right and wrong. She knows from the beginning that it is wrong for a father to rape his daughter and that the police is there to protect people. Her father used to work and not be at home for 24 hours. When her father raped her for the first time, her mother was at home that day. She had felt that she should inform her mother. Her mother was informed not through her but through her Nana-nani to whom she had informed on the phone. She cannot tell the reason for not informing her mother first. She informed her Nana-nani through her mother's phone. She used to use her mother's phone but she does not recollect her mother's phone number. She used to speak to her Nana-nani and Mama through her mother's phone. She had good relations with Priya but she never shared with her about the said incident. She did not feel that since Priya has been staying with her dad since childhood, he may be doing this act with her too. She did not come to know that her father had misbehaved with Priya or any other sisters. Initially her mother did not believe her. She had shouted when her father raped her when her other family members were also at home. No one woke up when she shouted. Even after the act was committed, she did not wake up any of her family members to inform them.

24] Even after stepping out of the house, she never informed anybody that some such incident had occurred with her. She is not aware that her mama had filed an online complaint against her father alleging that he beats up the children and shouts at them. On 29/04/2014 she sought help from 2 to 4 people, i.e., Renu Pandey, one Maharashtra person and another person. She does not know any Jenifer James D'souza and Mallika Kane. She has never met them. Around 29/04/2014 no wrong incident had occurred with her. She had a fight with her dad that day because she wanted to leave Kalwa. She approached Renu Pande first. Renu Pandey called up her Nana-nani and Mama. After speaking to them only, she went to the police station. Even though she had informed her Nana-nani and Mama earlier about the incident, they never told her that they will come with her to the police station. Her mama Kuldeep Shukla had come to the police station when she was lodging the complaint. Kuldeep Shukla is not her real mama. Now she stays with her Masi in Kalyan. She does not stay with her mother because she refuses to keep her. She never went to reside with her. **However, towards the end of cross-examination, she has admitted that she has filed a false case of rape against her father.**

25] **It has come in the cross-examination of A.P.I. Shrikant Shinde (P.W.2), I.O.,** that he did not ask any specific question to the Doctor whether the victim was compelled for sexual intercourse and the Doctor did not give him any such information vide a letter. He did not go to the victim's school and did not record statements of the school authorities to enquire about her correct date of birth. He did not make any correspondence with the school authorities to ascertain the victim's date of

birth. He did not send the victim for ossification test. At the time of lodging the F.I.R., Renu Pandey, victim's mother and few other women had accompanied the complainant. Before lodging the F.I.R., he did not make preliminary inquiries with the ladies accompanying the victim. After the F.I.R. was lodged, he made inquiries with them. He did not record their statements on 29/04/2014. The signature of the mother of the victim was not taken on the F.I.R. He cannot assign any reason as to why the signatures of the other women accompanying the victim were taken on the F.I.R., while the signature of her mother was not taken.

26] The spot of the incident is a small room (Kholi) of 10 ft. x 12 ft. and in the said house, the entire family of the accused was residing, i.e., his wife, his 4 daughters including the complainant and one son. He has not recorded the statements of the siblings of the victims because he has recorded the statement of the mother who is an adult. He does not know that there were disputes between the accused and Renu Pandey. Renu Pandey did not tell him about any dispute between her and the accused. He is not aware that there was a dispute between the accused and his wife and also between the accused and his brother-in-law. So also he is not aware that the wife of the accused had resided separately from him for 3 years in the village few months prior to the incident. He did not get any such information from the victim's mama or her mother. The victim used to reside earlier with her grand parents in U.P. The victim had come to Mumbai for the first time. He has not recorded the statements of the victim's grand parents. He did not make any inquiries about the character of the victim. He personally did not go to U.P. and inquire in the school of the victim to ascertain whether she was actually studying there. He did

not make any investigation whether any Madhyamik Siksha Parishad, U.P., Allahabad is actually in existence or not. He is not aware that the victim's father had arranged a marriage for her and it was not acceptable to her, her mother and maternal uncles and therefore, she lodged a false F.I.R. against him.

27] **Ld. D.G.P. Mrs. Phad has filed an application (Exh.26) U/s. 193 of the I.P.C. and has submitted that the complainant/P.W.1 has admitted that she has deposed falsely before the court and therefore, perjury proceedings should be initiated against the complainant.** She has submitted that necessary orders be passed in the matter.

28] **Ld. Advocate for the accused has submitted** that the deposition of P.W.1 clearly indicates that she has filed a false complaint against her own biological father and he is behind bars since April, 2014, i.e., since more than 2½ years and has suffered great mental agony and hardships due to the said allegations. He has submitted that strict action should be taken against the complainant so that a strong message goes to the society against misusing POCSO Act. The other children of the accused have suffered because of him languishing in jail for no fault of his.

29] **I have heard arguments advanced by both the Ld. Advocates and have also perused the entire material on record.**

30] **To start with, it would apt to mention that the evidence in this matter was recorded by me and the demeanor of the witness was**

noteworthy, i.e., she was smiling and giggling during the deposition. No ring of truth was found surrounding any of her statements made in the examination-in-chief. Her testimony did not inspire any confidence. Her demeanor, mannerisms and body language totally belied her deposition of examination-in-chief. She has admitted that she was staying since her childhood at her maternal grand parents' house. She has also admitted that her maternal uncles and mother did not have a good relations with her father. She has also admitted that her father had a dispute with Renu Pandey who had accompanied her to lodge the F.I.R. She has also admitted that they were staying in a small room of 8 ft. X 14 ft. when she came to stay with her parents. She has also admitted that she hardly had any emotional bonding with her father. **She has also admitted that she does not recollect the date on which her father raped her. This is very striking since any such incident would definitely leave an indelible memory in the mind of any daughter. It is also very surprising that she did not inform her sister Priya about the said incident although she had good rapport with her. She has admitted that it never came to her knowledge that her father had misbehaved with her other sisters. It is also surprising that she did not feel that since Priya has been staying with her father since childhood, he may be doing the said act with her also ! It is also surprising as to how when the family members were very much at home (which is admittedly so small !) and when she raised an alarm (shouted) with regard to the rape, no one woke up. It is striking as to how she did not inform her mother about the incident first. It is also very striking as to how she did not inform any of her family members even after her father raped her.**

31] Although she did deny several of the suggestions put forward by the Ld. Advocate for the accused, however, towards the end she admitted that she has filed a false complaint of rape against her father. Therefore, the Ld. D.G.P. made an application for summoning the I.O. after her evidence was recorded since it would have been an exercise in vain. Before allowing the application for summoning the I.O., this court has carefully perused the deposition of the victim, as discussed above to ascertain whether she has been pressurised in any way to admit that she has deposed falsely. The I.O. during his deposition has admitted that he has not made any efforts to obtain any original document or proof in respect of the date of birth of the victim. The date of birth of the victim has not been proved in this matter. Neither the victim has bothered to give any original date of birth proof to the I.O. nor the I.O. has taken efforts for the same. Only a photocopy of the alleged mark-sheet (progress report card) and photocopy of a school identity card of the victim is brought on record which shows her date of birth as 02/08/1997. Nothing incriminating has come in medical certificate (Exh.20) against the accused or in the spot panchanama (Exh.19). She has admitted that on the date of lodging the F.I.R., no wrong had occurred with her, i.e., no rape had occurred with her. She has admitted that she had a fight with her father that day.

32] Therefore, as per the case of the victim (complainant) and the I.O., the victim was more than 16 years old at the time of registration of the offence. **As per Sec. 22 of the POCSO Act, 2012 if a child being less than 16 years makes a false complaint or provides false information, then no punishment shall be imposed on such child. However, where a false complaint has been made or false information has been**

provided by any child being more than 16 years, and it is proved that the complaint was made or information was provided with her own informed decision, in such case, the child shall be sent to the Juvenile Justice Board constituted under Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000, for suitable remedial action. In this case, though the age of the victim is not proved by the prosecution, however, it is also not proved that she was an adult at the time of lodging the F.I.R.

33] The complainant in this case has undoubtedly misused the Provisions of POCSO Act and lodged a false complaint against her own father thereby causing him grave hardship and mental agony and trauma. He has spent close to 3 years in jail owing to the serious allegations levelled against him. Since the victim herself was the complainant in this matter and since she was more than 16 years old as per record and the complaint was made and the information provided was as per her own informed decision, no fine or jail term can be imposed upon her as per Provisions of Sec. 22 of the POCSO Act, 2012. However, she can be sent to Juvenile Justice Board U/s. 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000 for remedial action. The provisions of law should not be misused. The complainant was admittedly a major at the time of deposition. Therefore, perjury proceedings be initiated against her.

34] The burden of proving the guilt of the accused rests on the prosecution. The constitutional mandate of innocence prevails unless the prosecution succeeds in proving by satisfactory evidence the guilt beyond reasonable doubt of the accused which it has failed to do in this case. I therefore, answer point No.1 and 2 in the negative. In view of the

foregoing discussion and in view of the facts and circumstances of the present case, the following order would meet the ends of justice.

ORDER

1] The accused Azad Ramji Mishra is hereby acquitted vide section 235 of the Code of Criminal Procedure for the offences punishable under sections 376(2)(f) and (n) of the Indian Penal Code and Sec. 5(l)(n) r/w. Sec. 6 of the Protection of Children from Sexual Offences Act, 2012.

2] The accused is in jail. He be set at liberty forthwith if not required in any other case.

3] Muddemal if any be destroyed after the appeal period is over.

4] The accused shall execute a fresh P.R. bond of ₹15,000/- to appear before the Appellate Court as and when such court issues notice in respect of any appeal or petition filed against this judgment, in terms of section 437-A of the Code of Criminal Procedure.

5] Perjury notice U/s 193 of the I.P.C. be issued against the complainant/victim.

6] The complainant/victim be sent to Juvenile Justice Board U/s. 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000 for remedial action

7] The complainant should refund the compensation amount (if any, received by her) to the State.

Thane.
Date : 22/12/2016.

(Mridula V. K. Bhatia)
District Judge-08 & Special
Judge (POCSO Act), Thane.