



Presented on : 17-05-2016
Registered on : 17-05-2016
Decided on : 14-02-2023
Duration : 6Y-8M-28D

**IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012 AT FORT, GREATER BOMBAY.
(Presided over by Nazera S. Shaikh, Special Judge, under POCSO Act,
Mumbai. (CNR-MHCC02-008190-2016)**

POCSO SPECIAL CASE NO. 224 OF 2016

EXHIBIT- 67

(Crime No.49 of 2016 of Sion Police Station)		
Complainant	:	The State of Maharashtra
Represented by	:	Shri Rakesh Tiwari, Special PP
Accused	:	Charudatta Ravindra Borole, Age: 35 years, Occ: Teacher, R/o. C-304, Sangam Complex, Chickenghar, Kalyan (W), District-Thane.
Represented by	:	Advocate P. R. Joshi,

Date of offence	:	November 2015 to 4 th March, 2016
Date of FIR	:	11/03/2016
Date of Chargesheet	:	17/05/2016
Date of Framing of Charges	:	12/11/2018
Date of Commencement of Evidence	:	09/01/2019

Date on which judgment is reserved	:	13/02/2023
Date of the Judgment	:	14/02/2023
Date of the Sentencing Order, if any	:	14/02/2023

Accused details

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 Cr.PC
1	Charudatta Ravindra Borole.	24/03/2016	11/01/2017	U/S. 354-A & 509 of IPC & u/s. 8 & 10 of POCSO Act	Convicted	Rigorous imprisonment for 5 years & fine of Rs.3000/-	--

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
P.W.1	Mother of victim	Complainant
P.W.2	Victim 'A'	Victim

P.W.3	Victim 'B'	Victim
P.W.4	Victim 'C'	Victim
P.W.5	Victim 'D'	Victim
P.W.6	Ms. Jyoti Krishna	Principal of the School.
P.W.7	Ms. Minakshi Mohan Bhorde	Teacher of the School.
P.W.8	WPSI Rupali Agwane	Investigation Officer.
P.W.9	API Sagar Nanabhau Dhakane	Investigation Officer.
P.W.10	Ashok Prataprao Kadam	Investigation Officer.

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE
D.W.1	Kiran Shyam Gupta	Rtd. Vice Principal of School.

C. Court Witnesses, if any: Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exh.P-7	Statement of Victim 'D' u/s. 164 of Cr.P.C.
2	Exh.P-8	Statement of Victim 'A' u/s. 164 of Cr.P.C.
3	Exh.P-9	Statement of Victim 'B' u/s. 164 of Cr.P.C.
4	Exh.P-10	Statement of Victim 'C' u/s. 164 of Cr.P.C.
5	Exh.P-16	Report/Statement.
6	Exh.P-17	FIR.
7	Exh.P-22	Copy of birth certificate of Victim 'D'.

8	Exh.P-28/PW.6	Copy of complaint letter to School.
9	Exh.P-29/PW6	Copy of show cause notice given to accused.
10	Exh.P-42/PW10	Spot panchnama.
11	Exh.P-43/PW10	Arrest panchnama
12	Exh.P-44	Copy of birth certificate of Victim 'A'.
13	Exh.P-45	Copy of birth certificate of Victim 'B'.
14	Exh.P-46	Copy of birth certificate of Victim 'C'.
15	Exh.P-47	Spot panchnama dated 11/03/2016.

B. Defence: Nil.

C. Court Exhibits:

Sr.No.	Court Exhibits	Description
1	Exh.11	Charge
2	Exh.48	Evidence closed pursis
3	Exh.49	Statement of accused u/s. 313 of Cr.P.C.

D. Material Objects:

Sr.No.	Material Object Number	Description
		NIL

J U D G M E N T

(Delivered on 14/02/2023)

Accused Charudatta Ravindra Borole stands prosecuted for the offence punishable under Section 354-A and 509 of *Indian Penal Code*

(“IPC” for short) and under Sections 8 and 10 of *The Protection of Children from Sexual Offences Act, 2012*. (“POCSO Act” for brevity).

2. *Name of the victim’s, their family members, School and address are not mentioned in the judgment to maintain confidentiality about victim’s identity in view of Section 33(7) of the Protection of Children from Sexual Offences Act, 2012. The trial is conducted in child friendly atmosphere by following the provisions of Section 36, 37 and rules framed under the POCSO Act also the mandate of the Apex Court given from time to time. The details of the names, addresses of the complainant, victims, School are kept separately in a sealed envelope enclosed with the judgment.*

The case of prosecution in succinct is as under;

3. To conceal the identity of the victims in this case and for their identification in judgment, they are referred as victim ‘A’, victim ‘B’, victim ‘C’ and victim ‘D’. The victims are students of same school. Victim ‘A’ and victim ‘B’ are sisters. Victim ‘A’ and victim ‘C’ were studying in class 6th (D), whereas victim ‘B’ and victim ‘D’ in class 5th (D). Accused is the teacher of victims. The informant is the mother of victim ‘A’ and victim ‘B’.

4. On 11/03/2016 the mother of victim’s ‘A’ and ‘B’ lodged complaint alleging that, on 04/03/2016 there was parents and Teachers meeting in the school of victims. She returned home with the victims. The complainant saw that the victims have not finished their tiffin’s. On inquiry victims were quiet. Victim ‘A’ looked scared. The complainant

took them in confidence and inquired as to what happened. Victim 'A' disclosed that accused, who teaches English and Science called victim 'A' and victim 'C' out of the class after the last period. He handed over some articles to victim 'A' and victim 'C' and asked them to keep it in his locker. Victim 'A' replied that she does not know the location of the locker. Accused asked victim 'C' to keep the articles in the locker. When victim 'C' returned after keeping articles in locker accused went near her and put his hand on her shoulder. He also touched her breast.

5. On learning about the incident complainant inquired with victim's 'A' and 'B' about the behavior of accused with them. At that time victim 'B' informed that accused has also misbehaved with victim 'A'. Victim 'A' then disclosed that before about 1 month, when the students went to attend A.V. Class accused asked victim 'A' and her friend 'M' to stay in the class. 'M' went to bring water and at that time accused called the victim 'A' near him and moved his hand over her thigh. Victim 'A' snapped the hand of accused at that time 'M' returned and saw it. Victim 'A' and 'M' informed about the incident to another Teacher Minakshi Bhorade. The Teacher asked victim to end the topic as it was a matter of school.

6. Victim 'B' also disclosed about the conduct of accused. She informed that before about 5 months when she was sitting on first bench, accused used to touch his feet to the leg of victim 'B'. When victim 'B' resisted accused made her to sit on the second bench. On learning about the incident, the complainant gave a written complaint to the school on 05/03/2016 (Exh-P-28/P.W.6) She learnt that the other parents of some 4-5 students also have given complaint against the accused and School

assured of action against the accused. On 08/03/2016, complainant inquired about the action taken by the school against the accused. She learnt that accused was ill and absent from the school. She discussed with that other parents and decided to lodge complaint.

7. On the basis of report, API Sagar Dhakane registered the complaint. WPSI Rupali Agwane recorded the statements of the victims. PI Ashok Prataprao Kadam received the investigation on 15/03/2016 after which he visited the spot and performed spot panchnama. He also got recorded the statements of victims under section 164 of Criminal Procedure Code. Birth certificates of the victims were collected by PI Kadam and after completion of investigation, he filed charge-sheet against the accused.

8. My learned predecessor framed the charge against the accused at Exh. 11 under section 354-A and 509 of the IPC and under section 8, 10 of the POCSO Act. It was read over and explained to the accused in vernacular. Accused pleaded not guilty and claimed to be tried. The statement of accused u/s.313 of Criminal Procedure Code is recorded vide Exh. 49. The defence of accused is of false implication on the instigation of Minakshi Teacher, who was his competitor and the victims are her favorite students. In his defence the accused has examined the Vice Principal of the School Kiran Shyam Gupta.

9. Heard the learned Spl. P.P. Rakesh Tiwari, for the Prosecution/State and learned Counsel Shri. P.R. Joshi for the accused. Perused the written arguments of accused filed at Exh. 59.

10. In view of the charge and the evidence on record following points arise for my determination and I have recorded my findings against each of them for the reasons stated hereunder;

POINTS

FINDINGS

- | | |
|---|--|
| 1. Does the prosecution prove that, at the time of incident the victims were under 18 years of age to term them as “Child”? | Yes. |
| 2. Does prosecution prove that accused committed sexual harassment of the victims A, B, C and D in school by establishing physical contact and advances involving unwelcome and explicit sexual ? | In affirmative. |
| 3. Does prosecution prove that accused made gestures and teased the victims A, B, C and D with intend to insult their modesty ? | In negative. |
| 4 What offences are proved against the accused ? | Offences punishable u/s.354-A of IPC and u/s. 10 of POCSO Act. |
| 5 What order ? | As per final order. |

REASONS

As to point no.1:

11. In cases under the POCSO Act, heavy burden lies on the prosecution to establish that the victim was a 'child' within the meaning of Section 2(d) of the POCSO Act. Since, the enactment is stringent in nature the degree of proof is stern. It is foremost duty of the prosecution to establish beyond reasonable doubt that the victim is 'child'. In this case the victims are students of Class 5th and 6th studying in the school.

12. Prosecution has proved the age of the victims A, B, C and D by filing their birth certificates. As per the birth certificates the date of birth of victims A, B, C and D is 23/01/2005, 28/05/2006, 23/10/2004 and 02/06/2008 respectively. Hence, the victims were between 8 to 11 years at the time of incident. Defence has not challenged the age of the victims or their birth certificates. Thus, it is proved that, at the time of incident the victims A, B, C and D were “child” within the meaning of Section 2(d) of the POCSO Act. Therefore, I answer point no.1 as proved.

As to point no.2 to 5:

13. As these points are interlinked with each other, they are taken up for common discussion and decision. Before embarking into the merits of the matter, it may be desirable to make a reference of the relevant provisions of Sections 354-A, 509 of IPC and Sections 7, 9(f), 10 of the POCSO Act, which are reproduced below:

Section 354A: Sexual harassment and punishment for sexual

harassment-(1) A man committing any of the following acts-

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or*
- (ii) a demand or request for sexual favours; or*
- (iii) showing pornography against the will of a woman; or*
- (iv) making sexually coloured remarks,*

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

Section 509: Word, gesture or act intended to insult the modesty of a woman-

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

Section 7: Sexual assault- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other Act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

Section 9: Aggravated sexual assault- (a) whoever, being a Police Officer, commits sexual assault on a child-

- (i) xxxx*
- (ii) xxxx*
- (iii) xxxx*
- (iv) xxxx*

(b) xxxx

(c) xxxx

(d) xxxx

(f) *whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or*

xxx

Section 10: Punishment for aggravated sexual assault- Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine."

14. It is to be understood that, the initial burden is cast upon the prosecution to prove the guilt of the accused beyond all reasonable doubt, as it has come up with the case that, when the victims were in school, accused has sexually assaulted and harassed them by touching them inappropriately. If the prosecution discharges the initial burden, then, the Court has to raise the presumptions envisaged in Secs. 29 of POCSO Act, 2012 in favour of the victim girl and the accused has to rebut the said presumption by placing rebuttal evidence to substantiate the defence of his (accused) innocence and false implication etc. Therefore, considering these legal aspects, I proceed further to evaluate and discuss the evidence on record placed by the prosecution, to see whether it has discharged the initial burden and able to bring home the guilt of the accused.

15. Learned prosecutor submitted that, single version of victim is suffice to bring-home the guilt of accused. However, in this case the complaint is corroborated through the witnesses. The victims have narrated the acts of the accused and supported their statements. The evidence of victims is consistent throughout. The act of the accused is

stigma to the sacred relation between teacher and pupil.

16. From the evidence of the complainant, it transpires that she has corroborated the complaint and narrated the incidents that took place with victim 'A' and 'B'. She further stated that, the statements of victims were recorded by the Magistrate. As per the evidence of victim 'A', accused was teaching them science and English subjects. In February 2016, when she was going along with her friend 'M' from the stairs towards A.V room, accused called them and asked them to accompany him to the class for checking the books. Victim 'A' and her friend 'M' told him that they cannot miss the A.V class. Accused told them that he will speak to the A.V class teacher. Victim 'A' and her friend 'M' went back to the class. Accused went there and asked them to check the books. Accused and asked 'M' to bring water and closed the door.

17. As per victim 'A', after 'M' left, accused pulled victim 'A' towards him and moved his hand over her leg inside the uniform touching her thigh. Victim 'A' asked accused to remove his hand and at that time her friend 'M' returned. She asked victim what accused has done with her. Victim 'A' informed the act of accused to her friend 'M'. Then they decided to inform about the incident to Minakshi Teacher.

18. In her evidence victim 'B' stated that she used to sit on the first bench in the class. Accused was her class teacher. After Diwali, accused moved his feet inside her uniform to her thigh and pinched her. She shouted and asked him to remove his leg or else she will inform it to her mother. Victim 'B' further stated that once her friend 'S' was having stomach ache. Victim 'B' being monitor, took her to accused, who was

sitting in room No. 24. Victim 'B' asked accused to call parents of 'S'. Accused called at home of 'S' and asked 'S' to leave. Accused asked victim 'B' to stay, he pulled victim 'B' towards him and touched her breast. Victim 'B' pushed accused and went to her class.

19. According to Victim 'C', she was sitting on the first bench. Accused was sitting on his chair near the bench, he put his leg inside her uniform till thigh and pinched her with his feet, she shouted and he removed his leg. Another incident stated by victim 'C' is that, when she was going back after keeping notebooks on the table to attend A.V class, accused asked why she came early. He put his hand over her shoulder and pressed her chest. When victim 'C' was on stairs, accused went there and took her hand. He asked her to accompany him to the library. Victim 'C' told him that the library will be closed as the recess was on. Accused insisted her to go with him. When they were going to the library from the backside staircase accused put his hand on her shoulder and pressed her chest.

20. Further Victim 'C' stated that, she ran away and went to the class. She was crying therefore, victim 'A' enquired her. They went to the washroom where she disclosed the incident. 'M' overheard them and reported the incident to Minakshi Teacher who called her and Victim 'A'. Both victim 'A' and 'C' narrated the incident, she asked them to give it in writing. The victims then wrote it on paper and handed her.

21. In her evidence victim 'D' stated that accused was her class teacher. When she was sitting on first bench accused used to touch his leg to her leg but as accused of the teacher, she did not say anything. As per

the victim 'D' she did not like his frequently touching her leg therefore, she asked him to stop such acts. She further states that accused used to draw lines with chalk on her hand while teaching. She also states that accused used to perform such acts with victim 'B' also. All the victims corroborated their statements recorded under section 164 of Criminal Procedure Code and identified accused in Court.

22. Prosecution has also examined the principal of the school Jyoti Krishna; who stated that accused and Minakshi Bhorade were working as assistant teachers in the school. On 04/03/2016 she was busy with board exams, as the school was center. Minakshi Bhorade went to her chamber with papers. She also handed her the letters given by the students. Minakshi Bhorade also informed her that, the students wanted to handover the letters personally to her but, as she was not present, Minakshi Bhorade has collected the letters. The principal took the letters and read them. The students have complained against the accused about inappropriately touching them.

23. The principal took the letter to the administrator's office and showed the letters. Accused had already left the school hence, it was decided to issue show cause notice to the accused. On the next day the notice was handed to the accused, he received it and thereafter, remained absent. Accused failed to reply to the show cause notice. The parents of the students went to meet the principal and later on lodged complaint at police station against the accused. Police inquired her and collected the copy of complaint given by the parents and show cause notice issued to the accused.

24. Another witness examined by the prosecution is Minakshi Bhorade. Who stated that some male and female students in a group went to her and orally informed that accused was doing inappropriate acts with them. She asked them to give it in writing. The students gave the complaint in writing which she handed to the principal. The principal informed her that she will look into the matter.

25. Prosecution has also examined WPSI Agwane who recorded the statements of victims, API Sagar Dhakne who recorded the complaint and registered the offence and PI Ashok Kadam who conducted the investigation. The evidence of these three witnesses is formal in nature.

26. Learned counsel for the accused argued that as per the principal accused was teaching class 6th and 7th and not class 4th and 5th. He stressed that the victims stated the name of their friend 'M' but she is not examined by the prosecution. He also argued that the delay in filing the complaint is not explained. Prosecution failed to prove the sexual intent of accused. As per the learned counsel for the accused there was rivalry between him and Minakshi Teacher. Victims are the favourite student of Minakshi Teacher, who instigated them to file a false complaint against him. It is further argued that the complainant has not stated about the incident which took place with victim 'C'.

27. Another contention of the learned counsel for the accused is that, the specific dates and time of the incidents are not mentioned in the complaint. The parents of victim where present at the time of filing the complaint and also giving the statement before the Magistrate, hence they were tutored. He relied on the case of "**Janardan Panduranga Kapse**

V/s. State of Maharashtra” [LAWS (BOM) 2021 8 208] in which *victim admitted that, her parents were present at the time of recording her statement under section 164 of Cr.P.C and they told her how to give the statement, she also stated that the on questioning by the police about the incident her mother has given the answers, which were taken down in writing.* However, this ratio does not apply to the case in hand. In this case the victims did not state that, the complainant or other parents told them how to give the statement or answer the questions put by the police. Mere presence of the parents at the time of recording the statement does not mean that they tutored the victims.

28. As per the learned counsel for the accused there are several contradictions and omissions in the evidence of the victims. The discrepancies in the testimonies of the witnesses cast a shadow of doubt on the prosecution case and the involvement of accused is not proved beyond reasonable doubt. *(Ravinder V/s. State)* [LAWS (DLH) 2022 1 7]. He further argued that, it is not possible to accept the testimony of the victims, as there is no corroboration to their testimony. *(Datta Jagannath Manera V/s. State of Maharashtra)* [LAWS (BOM) 2005 3 150].

29. The learned SPP in counter submitted that, it is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the

given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case as held in the case of “*Jitender V/s. State*” [CRI.A. 564/2019 & CRI. M.A. 8945/2019 decided on 19/03/2020 by the Hon’ble Delhi High Court]

30. The learned SPP also cited the decision of Hon’ble Apex court in “*State of U.P. V/s. Anil Singh*” [AIR 1988 Supreme Court 1998] for the proposition that the prosecution version could not be rejected only on the ground that all the witnesses to the occurrence have not been examined. He submitted that the prosecution story thus cannot be discarded merely for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable.

31. It is further argued that, the discrepancies unless they are vital in nature cannot by itself affect the credibility of a witness and unless contradictions are on material dimension, they should not be used to Jettison the evidence in its entirety and trivial discrepancies ought not to obliterate otherwise acceptable testimony of a witness. The approach of the court while evaluating the testimony of a witness should be to see whether his/her evidence, when examined as a whole, appears to be true, or not. If the impression formed by the court is that the witness appears to be truthful and trustworthy, his/her evidence needs to be scrutinized taking into consideration the discrepancies and infirmities pointed out in his/her evidence and the court should then evaluate the testimony of the witness, to decide whether the evidence given by him/his in the court stands impeached or shaken, rendering him/her unworthy of reliance, in the light of the discrepancies or infirmities pointed out in his/

her testimony. *LEELA RAM (dead) Through Duli Chand V/s. State of Haryana and another* [(1999) 9 Supreme Court Cases 525]

32. I have given careful consideration to the submissions of the learned Prosecutor and the learned counsel for the accused. The victims have clearly described the over acts of accused of touching them inappropriately on various occasions in detail. Learned counsel for the accused though pointed out that the principal of the school stated that accused was teaching 6th and 7th it is not denied by the principle that accused was not teaching class 5th and 6th. None of the victims were suggested that the accused was not teaching them rather in the cross-examination it was suggested that accused used to take the victim 'A' and others girls for science exhibitions. Victim 'B' and 'D' in cross-examination admitted that accused was teaching them maths and science to them.

33. The second contention raised by the learned counsel for the accused is that, there is a delay in filing the complaint which is unexplained. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. In this case, the victims stated that, they were scared to report the incidents as accused was their teacher. Still the victims mustered courage and reported the incident to Minakshi Teacher and when the mother of victim 'A' and 'B' learnt about the incidents, she lodged the complaint with the school along with other parents. When the school failed to take prompt action against accused complainant lodged the complaint. Thus, the delay in FIR is explained properly by the victims and complainant. The sequence of events soon following the incident as described by the

victims and complainant sounds quite natural and provides a satisfactory explanation for the delay. It does not cause any dent to the case of prosecution.

34. The third contention of the learned counsel for the accused is that the prosecution has failed to examine 'M' i.e friend of the victim girls. 'M' was not a victim. It takes courage and support from the family to depose against a person who is also a teacher, where the witness was also a student. The evidence of the victims cannot be disbelieved for non-examination of 'M'. If the evidence of the victim girls is considered then, a case beyond reasonable doubt has been made out from the unequivocal evidence of the victim girls which is corroborating with the evidence of principal and Minakshi Teacher that, other students along with victims made complaint against accused on which school issued a show cause notice also.

35. The learned counsel for the accused pointed out that, as per spot panchnama, the position of class, its benches and chair, blackboard it is not possible for the accused to commit such act. I have perused the spot panchnama of the class room. The distance between benches for student and chair of teacher is shown as 2 feet. However, the chair is not a fixed article. A person sitting on chair can move it closer or far from the bench. Hence, it cannot be said that, it is not possible to commit such act due to the positioning of the bench and chair in the class room. It is also contended by the learned counsel for the accused that, complainant has not disclosed incidents which are alleged to have taken place with victim 'C'. Complainant filed complaint on learning about the incidents that took place with her daughters victim 'A' and 'B'. Hence, she mentioned those

acts in detail. In investigation the other victims also disclosed the over acts committed by accused. FIR is not supposed to be an encyclopaedia of all events. It is necessary only to set the law in motion. Hence, non-mentioning of all incidents is not fatal to the case of prosecution.

36. While appreciating the evidence in the cases under POCSO Act, presumption contained in Section 29 thereof, needs to be kept in mind. The terms of the said sections are very wide and a plain reading thereof indicates the said provisions are contrary to the basic and normal principles of criminal jurisprudence. The ambit and scope of the presumption enacted by Section 29 and its true meaning would certainly need a detailed discussion. Section 29 reads as under:

"29. Presumption as to certain offences- Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

This clause provides for presumption as to certain offences. It provides that where a person is prosecuted for violating any of the provision under clauses 3, 5, 7 and 9 of the POCSO Act, and where the victim is a child below the age of sixteen years, the Special Court shall presume that such person has committed the offence, unless the contrary is proved. (Notes on clauses).

37. Bare glance of the aforesaid provisions of section 29 of the POCSO Act, manifestly made it clear that, if the accused is prosecuted for committing or abetting or attempting to commit the offence under Sections 3, 5, 7 and Section 9 of the Act, it is mandatory for the Special

Court to presume that such person has committed or abetted or attempted to commit the offence unless contrary is proved. In this case the defence of accused to rebut the presumption is of false implication on instigation by Minakshi Teacher. As per the accused, witness Minakshi Teacher is having rivalry with the accused over difference of pay scale.

38. To prove his defence, accused had examined retired Vice principal Kiran Shyam Gupta. According to this witness, she was assistant Headmistress of the school at the time of incident. She stated that, there was a dispute between accused and Minakshi Teacher over pay scale. The management was promoting accused in senior scale to which Minakshi Teacher had objection. This witness also stated that, there are CCTV cameras installed in the school on each floor. Also, there is peon on every floor and staffroom, librarian in Library. In cross-examination she admitted of having knowledge of the complaint's given by the girls against accused. As per this witness the principal asked her to enquire into the matter which she did.

39. Defence witness Gupta further stated that, she enquired with the librarian and lab assistant. She also inquired to victim girls but they have not informed her details about the misbehaviour of accused and stated that, they had already made complaint. Though the witness stated about the presence of CCTV cameras in the premises of school she admitted that she has not examined the footage herself in her enquiry. The principal of the school has stated that the CCTV cameras were installed in some parts of the building and earlier there only few cameras. Defence witness Gupta admitted that, when there is a case of promotion, granting pay scale, it is decided by management and principle. She

denied to have knowledge of any complaint filed by Minakshi Teacher with the principal or management about the pay scale. It is admitted by the defence witness Gupta that she has not mentioned in enquiry report or to the police that the complaint of the children and issue of pay scale are related.

40. Now the question arises, whether accused discharged the burden to rebut the presumption raised in view of section 29 of the POCSO Act? The answer would be in negative. In case there was any dispute between accused and Minakshi Teacher, accused would have easily brought on record documentary evidence about the grievance of Minakshi Teacher put before the school authorities. It is pertinent to note that, not a single suggestion was put to the principal about any grievance between accused and Minakshi Teacher about pay scale. The story of accused about the rivalry with Minakshi Teacher is too flimsy to believe. Not only one, two but four victims came forward to report the sexual harassment at the hands of accused. In case it would have been false accusations on instigation of Minakshi Teacher, then the parents would not have supported such act. Hence accused failed to rebut the presumption.

41. The prosecution has thus proved beyond reasonable doubt that, accused committed sexual assault on the victim by touching leg of victims under their uniform, moving his feet over the legs of victims, pulling them, pinching with feet, putting his hand on shoulder of victims and touching the chest. As such, I find that, accused as guilty for the offence punishable under Section 354-A of Indian Penal Code. The offence under section 509 though alleged is not proved as there is no

evidence that, accused uttered words or made gestures intended to insult the modesty of the victims.

42. Accused is a found guilty of committing sexual assault on the victim girls. As the accused is teacher of an educational institution where victim girls were students, the sexual assault will be of aggravated form as provided in section 9(f) of the POCSO Act which is punishable under section 10 of the POCSO Act. Though, the acts of accused constitutes offences under two Statutes, he need not be punished separately for both the offences. Section 42 of POCSO Act, 2012, provides for alternative punishment. It reads as under;

“Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.”

The punishment provided for aggravated sexual assault under section 10 POCSO Act, 2012, is greater than punishment provided for sexual harassment under sec. 354-A of Indian Penal Code. Considering the above position, punishment under POCSO Act, 2012, will suffice the purpose. Hence, I answer points No.2 to 5 accordingly. Now it is apposite to hear the accused on the point of sentence.

Date: 14/02/2023

(Nazera S. Shaikh)
Designated Judge under
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Sexual Offences Act, 2012,
for Gr. Bombay.

43. The learned SPP for the State submitted that, the offence is serious in nature as the accused being teacher, has sexually assaulted not only one but four victims/students. With the increase of such type of offences, strong message needs to be conveyed to the society so that fear is instilled in the perpetrator of such offences. On the other hand, the learned Counsel for the accused submitted that, accused is sole earner of the family. His aged parents are dependent on him. He is married, having two children aged 7 and 3 years. He has no criminal antecedents and therefore, leniency be shown to him by awarding minimum punishment.

44. While awarding the punishment, Court has to consider gravity of the offence, impact of the same on victims and society at large. In this case, victims are young girls aged between 10-11 years. They were sexually assaulted by their own teacher in their classroom and school premises. In our society girl child education is still not completely supported by the family and when such type of incidents is committed, the parents gets apprehensive in sending daughters to school. It impacts the opportunity of other girls from taking education. The victims have mustered courage to report the offence and they were firm on their statements. This shows that, the victims have placed their faith on the judicial system which needs to be upheld.

45. The requirement of education for girls and the functions of a teacher have been dealt with and explained at some length by Hon'ble Apex Court in *Avinash Nagra v. Navodaya Vidyalaya Samiti*, (1997) 2 SCC 534. It has referred to the words of the great leaders, as follows:

“Mahatma Gandhiji, the Father of the Nation has stated that “a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them”. Shri Aurobindo has stated that “it is the teacher's province to hold aloft the torch, to insist at all times and at all places that this nation of ours was founded on idealism and that whatever may be the prevailing tendencies of the times, our children shall learn to live among the sunlit peaks”. Dr S. Radhakrishnan has stated that “we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. The ideal of a true teacher is andhakaraniridhata gurur itya bhidhiyate. Andhakar is not merely intellectual ignorance but is also spiritual blindness. He who is able to remove that kind of spiritual blindness is called a guru. Are we deserving the noble appellation of an acharya or a guru?” Swami Vivekananda had stated that “the student should live from his very boyhood with one whose character is a blazing fire and should have before him a living example of the highest teaching. In our country, the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of “Tyagis”.

46. It is in this backdrop, therefore, that the Indian society has elevated the teacher as '*Gurur Brahma, Gurur Vishnu, Gurur Devo Maheswaraha*'. As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children. In this case, there was an incident in the school premises where the victim girls were taking education. As accused was their teacher, he was custodian of the victims when they were in school.

Taking undue advantage of his position being teacher he committed sexual assault on the victims.

47. Object of punishment is to prevent the accused from committing similar offence and in such type of offence wherein the child is involved, accused deserves no leniency. Moreover, so as to send the message in the society that such culprits who commit offences against children are taken to task and to prevent such type of offences in the society appropriate sentence is to be imposed. In view of aforesaid discussion and findings, I am inclined to pass the following order to meet the ends of justice;

ORDER

1. The accused Charudatta Ravindra Borole, Age: 35 years, Occ: Teacher, R/o. C-304, Sangam Complex, Chickenghar, Kalyan (W), District-Thane, is hereby convicted vide Sec.235(2) of the Code of Criminal Procedure, in Crime No.49/2016, registered by Sion Police Station, Mumbai, for the offence punishable u/s.10 of the Protection of Children from Sexual Offences Act, 2012.
2. Accused Charudatta Ravindra Borole, is sentenced to suffer rigorous imprisonment for a period of 5 (five) years and to pay fine of Rs.3,000/- (Rupees Three Thousand Only). In default of fine amount, he shall undergo further simple imprisonment of 2 (two) months in respect of the offence punishable u/s.10 of the Protection of Children from Sexual Offences Act, 2012.
3. Accused Charudatta Ravindra Borole, is acquitted for the offence punishable u/s.509 of the Indian Penal Code 1860 vide section 235(1) of Code of Criminal Procedure.

4. The period of inquiry, investigation and trial undergone by the accused Charudatta Ravindra Borole since 24/03/2016 to 11/01/2017 be set off as per Sec.428 of the Code of Criminal Procedure.
5. The accused Charudatta Ravindra Borole is on bail. His bail bond stands cancelled.
6. Marked & unmarked articles if any, being worthless, be destroyed according to law after appeal period is over.
7. Accused is apprised of provisions of appeal.
8. The Certified Copy of this judgment be given to the accused in gratis and forwarded to District Magistrate, Mumbai, vide Sec.353(4) and Sec.365 of the Code of Criminal Procedure respectively.
9. Copy of the judgment be given to the victims.
10. As the matter is disposed of by this judgment, the record and proceedings be sent to Record Department.

(Judgment dictated & pronounced in open Court)

Date: 14/02/2023

(Nazera S. Shaikh)
Designated Judge under
Protection of Children from
Sexual Offences Act, 2012,
for Gr. Bombay.

Dictated on : 14/02/2023
Transcribed on : 14/02/2023
Signed by HHJ on : 15/02/2023

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

15/02/2023
at about 1.45 p.m.

(Dastagir Babalal Mulla)
Stenographer Grade-I(Gazetted).
Court Room No.28, Gr. Mumbai

Name of the Hon'ble Judge	:	SMT NAZERA S. SHAIKH, Judge, City Civil Court & Addl. Sessions Judge Court Room No.28, Gr. Mumbai
Date of pronouncement of Order	:	14/02/2023
Order signed by Hon'ble Judge on	:	15/02/2023
Order uploaded on	:	15/02/2023

