

## **MOOT PROBLEM**

### **I**

Mehsina, a girl almost 16 years of age, belonging to poor labourer family live in city named Koshila situated in Republic of Hindania. Mehshina used to get training of sewing of clothes at a silai centre registered under Pradhan Mantri Kaushal Vikas Yojna. She had to dropped out from school during her 7<sup>th</sup> class due to family financial conditions.

On 18.06.2019, a complaint no. 645 KECDI dated 18.06.2019 was received in the police station through post from the office of Superintendent of Police, Koshila moved by complainant father of Mehshina alleging that his daughter i.e., Mehshina used to go to attend training classes. On 15.12.2018, when she was going to training center, then one boy namely Sandeep Ghokhle, called her and told that her friend Shamima is calling her.

Sandeep was working in a shopping mall nearby training centre. The said boy on this pretext took her to Shervan Hotel on his motorbike. She went to the room at first floor of the hotel along with him. Then Sandeep offered her forcibly two intoxicating tablets along with cold drink. After five minutes she started feeling dizzy and was not conscious. Then he committed rape upon her. When she regained consciousness, there was no clothes on her body. He also prepared her obscene video and clicked nude photos. He gave her a pill and threatened that if she will disclose about the incident and video to anybody, he will kill her parents. After that he left her back to training centre. He also gave her a mobile phone and told her that if she will not talk to him through this phone, then he will kill her and her parents.

Later on, he started to threaten her and demanding her nude videos and if she will not send the same, he will kill her brother and other family members. He used to ask her to send her videos with smiling face. For this, Sandeep created Mehshina's ID on Instagram, through which she used to send her obscene videos & photos on the instagram ID of Sandeep. Thus, he was blackmailing her and she was badly scared and started living upset. Ultimately, she informed her parents about the whole incident.

On the basis of this complaint, First Information Report under Sections 363, 366-A, 328, 506 Hindania Penal Code, 1860; Section 4 of the Protection of Children from Sexual Offences Act, 2012; and Sections 67, 67-A of the Information Technology Act, 2000 was registered.

## II

The counselling of Mehsina was got conducted from Child Welfare Committee, Koshila. Her medical-examination was got conducted and her samples were sent to FSL Laboratory.

During investigation, the rough site plan of place of occurrence was prepared. The statement of Mehsina under Section 164 Cr.P.C. was got recorded. The copy of her birth certificate was not found with authorities as her family is a migrant labour. In absence of birth certificate of Mehsina, ossification test was conducted, wherein age was opined around 16 years and almost the same was found in her school record from where she dropped out in 7<sup>th</sup> standard.

The mobile phone which was given by Sandeep to Mehsina was taken into police possession. The accused was arrested by police and his mobile phone was also taken into police possession. His medical examination was got conducted and samples were sent to FSL Laboratory.

After completion of necessary investigation proceedings and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for trial of accused Sandeep Ghokhle alias Sanju.

It was also found that her parents were not aware of Mehsina's friend Shamima. The Father i.e., Complainant failed to give reasonable cause about delay in filing of complaint. The investigating officer when inquired about record of hotel bookings, the Receptionist has deposed that the guest register of their hotel was destroyed by termite. The mother of Mehsina denied the suggestion that accused is not known to her daughter/victim or that she never met him at any point of time.

The Medical Officer conducted medico-legal examination of Mehsina and opined that the possibility of sexual assault cannot be ruled out. She stated that nowadays, the female child derives the age of puberty at the age of 13. There is possibility of rupture of hymen due to cycling, horse riding, gymnastics and any other such like physical activity. Sexual assault may be one of the reasons for the same but it cannot be the sole cause.

The photographs which are on record have been relied upon by the prosecution to prove that the accused enticed the victim-prosecutrix in a room of the hotel and committed wrong act with her. The Prosecution contended that the photographs showing both boy and girl were obscene and thus, the accused has committed penetrative sexual assault upon the minor victim-prosecutrix.

On the other hand, the Learned Defence Counsel stated that no doubt, the photographs in CD & DVD have been proved on record but original media is not available on record and mere testimony of the victimprosecutrix does not inspire confidence to prove the case of prosecution. In her cross-examination she has admitted that she knew the accused for the last one month.

### III

The trial court held the accused guilty for the commission of offence punishable under Section 67-B of IT Act. Further concluded that the prosecution has failed to prove its case against the accused under Section 328, 363, 366-A, 506 IPC and Section 4 of the POCSO Act, 2012 and therefore, he is acquitted under these Sections, whereas the prosecution has been able to bring home the guilt against the accused and he was held guilty for commission of offences punishable under Section 67-B of IT Act and convicted therein.

The appeal was filed in High Court against the judgment of trial court. The HC affirmed the decision of trial court. Now the appeal is filed against High Court's decision in Hon'ble Apex Court of Republic of Hindania.

Argue the case from both sides.

The Constitution of Republic of Hindania and other laws are *in pari materia* with the Constitution of India and its statutes.