

(2013) 10 BOM CK 0008

In the Bombay High Court

Case No : Criminal Appeal No's. 249, 206, 261 and 301 of 2013

Jayprakash Laxman Abute

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 209

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : Nitin Pradhan assisted with Mr. G.D. Inamdar, Ms. Ameeta Kuttikrishnan and Ms. Suman Prasad, in Appeal No. 206/13, Mr. V.V. Purwant, in Appeal No. 249/13 and Mr. P.G. Sarda, in Appeal No. 261/13 and Mr. Nitin Pradhan holding for . Mr. J.D. Mane, in Appeal No. 301/13, for the Appellant; P.P. Shinde, APP, for the Respondent

Final Decision : Allowed

Judgement

Sadhana S. Jadhav, J.—All the appeals are decided by a common judgment since they are arising out of the same Sessions Case bearing No. 228 of 2010. The appellants herein are original accused in Sessions Case No. 228 of 2010. The learned Additional Sessions Judge, Solapur by Judgment and Order dated 16th February, 2013 has been pleased to convict the accused (present appellants) for offences punishable u/s 366 of the Indian Penal Code and sentenced them to suffer R.I. for 2 years and to pay fine of Rs. 25,000/- each i.d. to suffer R.I. for one year. The accused/appellants are also convicted for offence punishable u/s 376 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and to pay fine of Rs. 50,000/- each i.d. to suffer R.I. for 2 years. Being aggrieved by the Judgment, the appellants have filed these appeals.

2. Such of the facts which are necessary for the decision of these appeals are as follows:

(i) One Krushangali (hereinafter referred to as prosecutrix) was residing at Milind

Nagar, Budhwar Peth, Solapur. Her father was handicapped and therefore she alongwith her mother worked as maid servant and maintained the family.

(ii) On 11/1/2010, the prosecutrix approached Fauzdar Chawadi police station, Solapur and lodged a report alleging therein that 4 months prior to the filing of the report, her parents had been to Mumbai for the medical treatment of her father. They had returned to Solapur 8 days prior to lodging of the report.

(iii) It is alleged that the grand-mother of the prosecutrix namely Kashibai was residing in Budhwar Peth. The prosecutrix used to visit her intermittently. The accused Shivismurti was also residing in Budhwar Peth. Whenever she went to meet her grand-mother, he used to ask her to accompany him. However, she did not pay any heed.

(iv) In the month of June. 2009 on one day at about 5 p.m. She had been to ration shop to purchase grocery for one Nirmala Shinde. At that time, accused Shivismurti carried her in auto-rickshaw to home maidan. According to her, she had raised alarm while she was being carried in auto-rickshaw, Shivismurti had gagged her mouth and therefore, her cries could not be heard by anybody. In a tin shed at Home Maidan the accused Shivismurti had ravished her. Thereafter, he had dropped her near Kali Masjid and had warned her not to tell about the incident to anybody.

(v) It is further alleged that 3 days thereafter at about 6 p.m. She had been to Vaibhav Krishi Kendra to purchase grocery articles. Accused Shivismurti again approached her, again forcibly took her in an auto-rickshaw to Sagar lodge. The accused Shivismurti had promised to marry her. In Sagar Lodge he again ravished her in a room. She had threatened him that she would inform her parents about the said incident and therefore, since then he did not approach her again.

(vi) She has further alleged that accused No. 2 Jayprakash Abute also resides in Budhwar Peth. She was working as maid servant in his house. Jayprakash has a daughter and two sons. His children reside at Pune for the purpose of education. His wife intermittently used to go to Pune to meet her children. That four months prior to filing of the report, at about 2 to 2.30 p.m. she had been to the house of accused No. 2 Jayprakash for carrying out the daily chores. The accused No. 2 was alone at home. He carried her in his bed room and ravished her. She alleged that he had threatened her that in the eventuality she had disclosed the incident to anybody, he would remove her from the job. She alleged that whenever his wife went out of station, he had sexual intercourse with her against her will.

(vii) The prosecutrix has further alleged that the accused No. 3 Ravi Gaikwad is also resident of Budhwar Peth. She was also working as maid servant in his house. She used to go to his house for work between 3 p.m. to 5 p.m. According to her on 7/1/2010 Ravi Gaikwad had called her for cleaning utensil and washing clothes and at that time committed forcible rape on her.

(viii) The prosecutrix has further alleged that on 3/1/2010 at about 6 p.m. while

she was returning from public lavatory, accused Sardesh Bhujang Gaikwad was standing near Suraj lodge. He stopped one rickshaw and forcibly took her in the rickshaw. Then he took her to Killa garden and committed forcible rape on her. He left her at 8 p.m. at Panjarpol Chowk and threatened her that if she disclosed about the incident, he would kill her.

(ix) After the said incident, the prosecutrix had been medically examined by Dr. Anita Abute who informed her that she is carrying pregnancy of 3 months. The prosecutrix therefore, disclosed the incident to her maternal aunt Shobha Jadhav. She thereafter, lodged the complaint. She has proved the contents of the FIR, which is marked at Exh. 34. On the basis of her report, Crime No. 6 of 2010 was registered at Faujdar Chawadei Police Station. The accused were arrested and subsequently enlarged on bail.

(x) The investigation was completed and charge-sheet was filed on 30th August, 2010. The case was committed to the Court of Sessions and registered as Sessions Case No. 228 of 2010. The prosecution has examined 15 witnesses to bring home the guilt of the accused.

3. P.W. 1 Sachin Gade has worked as panch for the spot panchanama. He has admitted in the cross-examination that he had signed as a panch on 3 documents between 12/1/2010 to 15/1/2010. He is the neighbour of the prosecutrix. He also happens to be her relative. He has further admitted in the cross-examination that the house of the accused Ravi Gaikwad is situated in a thickly populated area. Similarly, the houses of Jayprakash is also situated in thickly populated area. It is further admitted that at about 5 to 5.30 p.m. there used to be rush of person near Killa garden.

4. P.W. 2 is the prosecutrix herself. She has deposed according to the first information report. However, several omissions and contradictions are elicited in the cross-examination. She was confronted with the first information report which is admitted to be true and correct.

5. It is elicited in the cross-examination that Vaibhav Krishi Kendra is at Panjarapol Chowk which is also known as Shivaji Chowk. The road from Shivaji Chowk goes towards Samrat Chowk Police Chowky. Another road goes to Bali Ves. The third road goes to Bhagwat theater. The S.T. Stand is adjacent to Panjarapol Chowk. She has admitted that share rickshaws are always standing adjacent to Shivaji Maharaj Statue in Shivaji Chowk. She has also admitted that police van and police are always posted in Shivaji Chowk and also there are 3 to 4 traffic police standing in Shivaji Chowk. She was cross-examined at length in respect of the location of Home Maidan. She has admitted that while proceeding from Shivaji Chowk to Home Maidan, one has to go through Saraswati Chowk, Park Chowk and then Ambedkar Chowk. It is admitted that in the evening there are 30 to 40 eating stalls at Park Chowk and it is a crowded place in the evening. All these was asked to her in order to substantiate that it was a crowded locality from where she had been abducted by the accused No. 1.

6. She has given evasive answers about the surrounding area of Home Maidan. She has admitted that she cannot state the location of the alleged spot of incident. She has also admitted that she cannot state the location of Sagar lodge. She has further admitted that at the relevant time, she was working as maid servant in many houses in the area adjacent to Vaibhav Krishi Kendra. Her employers used to ask her to purchase grocery items. According to her, on the day of alleged incidence, she had been to purchase goods for Nirmala Shinde. She had purchased half kilogram sugar. She had not taken the goods purchased by her and had taken the goods on ration card and went to her house. On the second occasion, she had not gone to grocery shop. She has stated that she had purchased sugar for Nirmala Shinde and gave it to her and after that she had not gone to Vaibhav Krishi Kendra or any shop after 3 days.

7. She has categorically admitted in the cross-examination that she does not know Sagar lodge as she had not gone to Sagar Lodge. This admission is sufficient to hold that she was not taken to Sagar Lodge by the accused No. 1.

8. She has also admitted that the house of Shivmurthy is at a close distance of her house. She knew the family of Shivmurthy i.e. accused No. 1.

9. She had admitted that when the doctor informed her that she was pregnant, Shobha Jadhav was called from Mumbai. She does not remember as to whether there was meeting between Shobha and Balasaheb Waghmare. However, she has admitted that Shobha Jadhav and Balasaheb Waghmare had called her in the meeting and asked her about the pregnancy. She had disclosed the names of the accused. There were 7 to 8 persons in the meeting. It is also admitted that Balasaheb Waghmare had demanded money from the father of Shivmurthy. It is also admitted that Balasaheb Waghmare had warned father of Shivmurthy that in the eventuality, the amount is not paid, he would file a complaint against his son. It is also admitted that father of Shivmurthy had reacted by saying that no such incidence has occurred and therefore, he would not give the amount. P.W. 2 has also specifically admitted that Shobha aunt and Balasaheb Waghmare had decided whom to call.

10. The material omissions elicited in the cross-examination in respect of the accused No. 1 are that she had not stated before the police that while she was forcibly being taken in rickshaw via Kali Masjid, she had questioned as to where he was taking her. She had not gone to purchase grocery from the grocery shop located near Vaibhav Krishi Kendra after 4 days at 6 p.m. This is an omission amounting to contradiction.

11. In the cross-examination by accused Nos. 2 and 3, she has admitted that she does not know Panjarapol Chowk. She does not know Shivaji Statue, Samrat Chowk, Budhwar Peth, Milind Nagar and G.M. Chowk. She does not know the house of accused Jayprakash Abute and she also does not know that he was serving as officer in bank at Pune. It is pertinent to note that in her examination in chief, she has given evasive answers in respect of the fact that the grocery

shop of Anant Abute is adjacent to the house of the accused who was nephew of accused Jayprakash Abute. She does not know that there is PCO and STD booth in the shop of Anant Abute. Neither does she know that wife of Anant Abute is having her clinic near the house of accused Jayprakash Abute. She has stated that she does not know the house of accused Ravi Gaikwad. It is pertinent to note that according to her, she was working as a maid servant in the house of accused Jayprakash as well as Ravi Gaikwad and yet she had admitted that she does not know their house nor the periphery of their house. It is difficult to believe that she was working as maid servant in the house of accused Jayprakash Abute and Ravi Gaikwad, due to which they had got an opportunity to ravish her and yet would not know where they lived. The fact that she does not know their house does not inspire confidence of the court so as to believe that she was working as their maid servant.

12. She has admitted that her father was ill and was taking treatment at Mumbai. The strange part of her cross-examination is that she has stated before the Court that she does not know who is Balasaheb Waghmare. Initially she had stated that she does not know G.M. Chowk. However, in the cross-examination for accused No. 4 she has admitted that she herself resides at G.M. Chowk. But she does not know that it is situated between Panjarapol and Samrat Chowk. She has again reiterated that she does not know the site of the Suraj Lodge. She has gone to the extent of saying that she does not know where is Killa garden and that she had never been to Killa garden. This admission by itself would show that she was never ravished by accused No. 4 in Killa garden. She has specifically stated that she does not remember where she was on 31st January, 2010, as to whether she was at Solapur or Mumbai. At that stage, learned APP had sought permission to further record her evidence. The permission was granted. In the re-examination she has stated that she delivered a male child and that child is of 4 accused. She has not given any name to her son although the son is 2 years old. She has stated that it is difficult for her to maintain her child and due to the said incidence, she could not marry as nobody would accept her. Her father is handicapped and mother works as maid servant.

13. P.W. 3 Baba Addapur is a panch for spot panchanama. He has been declared hostile by the prosecution. Similarly P.W. 4 Nagnath Alkunte has also not supported the prosecution. P.W. 7 Sanjay Pathrutkar has also not supported the prosecution. P.W. 8 Vasant Yampure who has also acted as a panch has not supported the prosecution. P.W. 9 Lahu Sabale has been declared hostile. P.W. 10 Shantisangar Sarwade has also been declared hostile. He was a panch for seizure of clothes. P.W. 11 Nirmala Shinde with whom the prosecutrix was allegedly working as maid servant has also been declared hostile and P.W. 15 Head Constable Himmatlal Janrao is the carrier of articles to Chemical Analyser, Pune.

14. P.W. 5 Sudhakar Bhadkumbe is the father of the prosecutrix. He has deposed before the Court that in June, 2009 he had gone to Mumbai for medical treatment. He returned to Solapur in November/December, 2009. He is physically

handicapped and cannot walk. He has further deposed that after he returned from Mumbai, he noticed that in the neighbourhood, there was some discussion and rumours about the pregnancy of his daughter. He therefore, sent his daughter alongwith his wife to Dr. Abute. The doctor had upon examining the prosecutrix informed that she is carrying pregnancy of 3 months. Thereafter he inquired with his daughter. Upon enquiry his daughter informed him that Shivmurthy Salvade had taken her when she had been to purchase grocery articles for the people with whom she was working as maid servant. He had taken her in a rickshaw to a shed near Home Maidan. He ravished her there. After 2 to 3 days he again had sexual intercourse with her. She informed him that she was forcibly taken to Sagar Lodge, Old Kumbhari Naka, Solapur where he had committed rape on her. He has reiterated the allegations made in the FIR. He had admitted in the cross-examination that after learning about the pregnancy of his daughter he had not approached the police station immediately. He is not aware of the contents of his statement recorded u/s 161 of the Code of Criminal Procedure, 1973. He has admitted in the cross-examination that after learning about the pregnancy of his daughter, his sister had come from Mumbai. He is not aware as to whether a meeting had taken place between his sister and the leader of G.M. Group. He had admitted that Jayprakash Abute was officer in the bank. He has grand-sons. The deponent was not aware that Jayprakash had sustained heart attack. In fact, he has admitted that Jayprakash had come to Solapur only after he retired. He has also admitted that the wife of the accused Jayprakash is running Prajakta Novelty Store near the house of the accused Jayprakash. He has also admitted that accused Ravi Gaikwad is married and is having children. He has also admitted that the locations which were described by his daughter as the spot of incident are thickly populated area. That the distance between his house and Tartinaka Police Chowky is 15 minutes. He has also admitted that there is a rush of people in Killa Bagicha in the evening.

15. P.W. 6 Annasaheb G. Birajdar was attached to V.M. Medical College, Solapur. On 12/1/2010 he had examined the prosecutrix after obtaining her consent and the consent of her relatives. She was carrying pregnancy of 16 to 18 weeks. She had disclosed to the doctor that accused Shivmurthy had taken her forcibly against her will in the month of June, 2009 and had sexual intercourse for 2 times. He has admitted in the cross-examination that she had disclosed to the doctor only in respect of the incident in June, 2009. He has admitted that taking into consideration her pregnancy, it would be clear that she had sexual intercourse in August, 2009.

16. P.W. 12 Shobha Jadhav is the paternal aunt of the prosecutrix. At the time of Sankrant in 2010 the mother of the prosecutrix had called upon her and asked her to come to Solapur. She had taken the prosecutrix to Dr. Abute. She had enquired with the prosecutrix about the pregnancy. Upon enquiry, the prosecutrix had disclosed to her that she was working as maid servant in the house of Jayprakash Abute and that he had ravished her and thereafter, threatened her that in the eventuality that she disclosed about it to anybody, he would remove

her from work and would kill her. The prosecutrix had also informed P.W. 12 that she is also working as maid servant in the house of Ravi Gaikwad and he had also committed rape upon her. He had assured that he would marry her. The prosecutrix had also informed P.W. 12 that Sardesh Gaikwad had taken her to Killa Garden and committed rape on her under a peepal tree. He had also assured her that he would marry her. She has further disclosed that she was ravished by Shivmurthy Salvade at Home Maidan. She has admitted in the cross-examination that her brother's house is on the road in between Panjarpole to Samrat Chowk and that the house of accused are also on the same road. That the said locality is thickly populated and the houses are closely knit and that there is a police chowky in Samrat Chowk. Her statement was recorded after 2 days of registration of the crime. Material omissions are elicited in the cross-examination. There is no reference in the previous statement that Krushangali had disclosed to her about the incident. She has also admitted that on the day of filing of the complaint, the police had enquired with her. She has admitted the omissions that it is not mentioned in her previous statement that after second alleged incident Shivmurthy had threatened Krushangali not to disclose the incident to her parents.

17. P.W. 13 Nagnath Patil is the PSI who was attached to Faujdar Chawadi Police Station, Solapur as PSI on 11/1/2010. On the basis of the report of the Krushangali, PSO Solankar had registered Crime No. 6 of 2010 and entrusted the investigation to P.W. 13. He had conducted the spot panchanama as instructed by the complainant and on 15/1/2010 he had handed over the investigation to API Rokade. He has also admitted in the cross-examination that the house of Accused Nos. 2 and 3 is situated in thickly populated area. He has not recorded the statement of the family members of the accused Nos. 2 and 3. There is a fix point of police in Panjarapol Chowk. The walking distance from Budhwar Peth to Navi Peth police chowky is of 5 minutes and it hardly takes 2 to 3 minutes to reach Samrat Chowk Police Station from Budhwar Peth. It is also elicited in the cross-examination that a police van and police bandobast is stationed for 24 hours at Shivaji Chowk and there is heavy traffic on the said road. It is also elicited in the cross-examination that when he conducted the spot panchanama on Home maidan, there was no tin shed and there was heap of soil and some marks of wood. Since there was no tin shed, he has not collected 7/12 extract about the ownership of the tin shed. He had not recorded statement of the owner of the sugarcane juice center and other adjacent shop owners about existence of tin shed at Home Maidan. He has neither enquired with the owner of Sagar Lodge and has not collected the register of June 2009 of the said lodge. He had enquired with the Manager of the lodge but has not recorded his statement and neither taken the register. He has admitted that in the meeting called by Balasaheb Waghmare and Shobha Jadhav he was informed that 7 to 8 persons committed rape on Vrushangali and in that 7 to 8 accused persons, name of the accused was not there. He has also deposed before the Court that Killa Garden is 150 to 200 meter from the main road. It is open garden. There is a heavy rush

between 5.00 to 9.00 p.m.. According to him, the complainant was pregnant of 3 months at the time of filing of complaint. He has further deposed that the prosecutrix had informed him that 8 days prior to filing of the complaint she was raped by accused No. 4.

18. P.W. 14 Maruti Rokade is the Dy. S.P. who was attached to Foujdar Chawadi Police Station. He has also conducted the investigation partly. He has proved the omissions and contradictions of the witnesses.

19. Upon perusal of the evidence, it is clear that in respect of the allegation against accused No. 1, the Investigating Officer had not noticed any tin shed at Home Maidan. The allegation of the Prosecutrix is not supported by any documentary evidence. Initially the prosecutrix had specifically alleged that she was forcibly taken to Sagar Lodge by the accused No. 1. However, the Investigating Officer has not obtained the record from Sagar Lodge. There is nothing on record to indicate that at any point of time, there was a tin shed at Home Maidan. The evidence further indicates that the father of accused No. 1 was called upon by Balasaheb Waghmare and Shobha. He had refused to part with any amount as according to him no such incident had occurred. It is difficult to believe that the prosecutrix was forcibly made to sit in an auto-rickshaw and was taken to Home Maidan and subsequently to Sagar Lodge. The prosecution has not recorded the statement of any rickshaw driver although it is specifically alleged that the rickshaw was taken from rickshaw stand.

20. It is admitted by the prosecution especially P.W. 5 that the accused No. 4 was retired person and he had sustained heart attack. The prosecution has not examined the accused persons especially accused No. 4 to establish his ability to perform sex at such ripe age.

21. The learned Counsel appearing for the appellants has contended that in fact all the four accused were not known to each other. The incident of rape upon prosecutrix has not taken place in the same transaction and therefore, the appellants ought not to have been tried jointly. According to the learned Counsel, the trial of the present appellants would be void ab initio since there was no nexus between the offences committed by all the four accused, except the fact that all the four accused had committed rape upon the prosecutrix at different places and at different times. It is true that (here is no continuity between the acts committed by the accused/appellants. Each act is a complete act in itself. The question therefore arises as to whether four persons i.e. present appellants could have been tried jointly.

22. Section 223 of the Code of Criminal Procedure contemplates as follows:

223. What persons may be charged jointly. The following persons may be charged and tried together, namely:--

(a) persons accused of the same offence committed in the course same transaction;

- (b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;
- (c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last-named offence;
- (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). or either of those sections in respect of stolen property the possession of which has been transferred by one offence;
- (g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

The proviso to Section 223 also specifies that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in Section 223, the Court may, if such persons by an application in writing, so desire, and if he or it is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

23. In the present case, the accused persons have not filed any such application. In fact, there was no continuity and therefore, no reason for the appellants to have been tried together. The learned Counsel has placed reliance upon the Judgment delivered by Allahabad High Court in the case of T.B. Mukerji Vs. The State, . It is held that--

a prudent Judge would, therefore, always hold separate trials whenever he has the slightest doubt about the validity of a joint trial. A joint trial for which no principle can be found would prima facie be invalid and would not be covered by

any of the exceptions. On the other hand, the mere fact that a joinder of charges is based on one of the principles on which the exceptions are founded would not make it valid if it is not covered by the provisions of the exceptions.

It is further held that--

One of the principles is that as "joinder of charges in certain circumstances would save multiplicity of proceedings; but a court would not be justified, in order to prevent a multiplicity of proceedings, in joining two or more charges if the joinder is not covered by the language of any of the sections.

24. According to the learned Counsel for the appellants, the trial of all the accused would stand vitiated since they were tried jointly and the same has caused serious prejudice to their defence. It is true that it was not a fit case for joint trial.

25. In the case of Faujdar Mahto and Another Vs. King-Emperor, , it was held that--

although Section 234 of the Criminal P.C. (as it was then) would allow the trial of two cases of kidnapping together and similarly Section 235 would allow the trial of the offence of kidnapping with respect to one girl and cheating with respect to the same girl together, yet the operation of the sections could not be combined and it was impossible to combine all the four charges, two of kidnapping and two of cheating in one trial.

26. It is true that the joint trial of the appellants has caused serious prejudice to the accused. The same was not challenged either at the stage of framing of charge or thereafter. It cannot be said that the trial is vitiated. However, the fact that it has caused serious prejudice to the accused cannot be overlooked. Instead it would reflect upon the conduct of the prosecutrix wherein she allowed herself to be carried away and raped by four different persons over a stretch of period on different times in different places and maintained silence till she was carrying pregnancy of about 3 months.

27. In the case of Kaini Rajan v. State of Kerala, wherein the Hon"ble Apex Court has specifically held that a promise to marry without anything more will not give rise to "misconception of fact" within the meaning of Section 90 IPC.

28. In Ramdas and Others Vs. State of Maharashtra, , the Hon"ble Apex Court has held that--

the conviction in case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the Court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity.

29. In the present case the prosecutrix in her examination in chief has deposed before the Court about different places where she had been ravished. However, in the cross-examination she has denied that she knows any of the said

locations. She has categorically stated that she had never visited Sagar Lodge. She does not know Killa Garden as she never visited there. The allegations that she was ravished in the tin shed of Home maidan is not corroborated as there was no evidence that there ever existed any tin shed at Home maidan. All this coupled with the fact that her aunt P.W. 12 Shobha and her father P.W. 5 had held a meeting to decide as to who should be arraigned as accused. They had demanded money from the father of accused No. 1. The investigating officer has also admitted in the cross-examination that in the meeting called by aunt Shobha and the father of the prosecutrix, he was informed that there are 7 to 8 persons. The incident according to the prosecutrix had ranged from June 2009 to January, 2010 and it was reported only after she became pregnant. The investigating agency has not taken DNA test to ascertain the paternity of her child. Hence, the narration of incident by the prosecutrix cannot be accepted as a gospel truth. The accused and the prosecutrix are resident of the same area.

30. The prosecutrix has alleged that on the first occasion the accused No. 1 had abducted her and ravished her against her will but then she would not have submitted to his wish subsequent to the alleged first incident of rape. The prosecutrix was major at the time of incident and therefore, it cannot be said that it is a case of statutory rape. There is no plausible explanation offered by the prosecution as to why the prosecutrix had maintained silence although she was subjected to sexual abuse by four different persons, not known to each other. The conduct of the prosecutrix does not inspire confidence and therefore, the appellants would be entitled to benefit of doubt.

31. The prosecution has miserably failed to establish the guilt of the accused beyond reasonable doubt. To inspire confidence of the Court, the substantive evidence of the prosecutrix has to necessarily be a sterling testimony which should not cause any doubt about the offending act of the accused. The appeals deserve to be allowed. Hence, following order is passed: ORDER

(i) The appeals are allowed.

(ii) The Judgment by which the appellants have been convicted for offence punishable under Sections 366 and 376 of the Indian Penal Code is quashed and set aside.

(iii) The appellants are acquitted of all the charges levelled against them.

(iv) The appellants be released forthwith, if not required in any other case.

(v) Fine amount if deposited to be refunded.

(vi) Writ of this order be expedited.

(vii) The office to communicate the order to the Superintendent of Jail, in which the appellant is lodged.

The appeals disposed of accordingly.