

(2012) 11 BOM CK 0022

In the Bombay High Court

Case No : Criminal Appeal No's. 542, 623 of 2010 and 31, 32 of 2012

Kishor Rambhau Kinkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 162, 164
Evidence Act, 1872 — Section 145
Penal Code, 1860 (IPC) — Section 176, 202, 375, 376, 376(2)(c)

Citation : (2013) ALLMR(Cri) 437 : (2013) 3 BomCR(Cri) 401

Hon'ble Judges : P.V. Hardas, J; A.P. Bhangale, J

Bench : Division Bench

Advocate : S.P. Dharmadhikari, Mr. A.M. Jaltare in Criminal Appeal Nos. 542/2010, Mr. A.S. Manohar and Mr. A.M. Jaltare in Criminal Appeal Nos. 542, 623/2010 and 31, 32/2012, for the Appellant; R.S. Nayak, Assistant Public Prosecutor in Criminal Appeal No. 542, 623/2010 and 31, 32, 2012, for the Respondent

Judgement

A.P. Bhangale, J.—The following appeals are being disposed of by this common judgment since the facts and offences are inter-related.

Criminal Appeal No. 542 of 2010:

Kishor Kinkar (original accused no. 2) has filed this appeal feeling aggrieved by the judgment of conviction and sentence by the Additional Sessions Judge, Wardha dated 26.8.2010 in Special Case No. 17 of 2009. Upon his conviction for the offence punishable u/s 176 read with Section 202 of the Indian Penal Code, accused Kishor Kinkar has been sentenced to suffer simple imprisonment for six months and to pay a fine of Rs. 5000/-, in default, to suffer further simple imprisonment for one month.

Criminal Appeal No. 623 of 2010:

Sachin Landge (original accused no. 1) has filed this appeal feeling aggrieved by

the judgment of conviction and sentence by the Additional Sessions Judge, Wardha dated 26.8.2010 in Special Case No. 17 of 2009. Upon his conviction for the offences punishable u/s 376(2)(c) and Section 506 of the Indian Penal Code, accused Sachin Landge has been sentenced to suffer imprisonment for life and to pay a fine of Rs. 10,000/-, in default, to suffer RI for two years on first count and to suffer rigorous imprisonment for two years on the second count.

2. Criminal Appeal No. 31 of 2012:

Accused Sachin Landge has filed this appeal feeling aggrieved by the judgment of conviction and sentence by the Additional Sessions Judge, Wardha dated 21.12.2011 in Sessions Case No. 151 of 2009. Upon his conviction for the offences punishable u/s 376(2)(c) and (f) and Section 506 of the Indian Penal Code, accused Sachin Landge has been sentenced to suffer imprisonment for life and to pay a fine of Rs. 5000/-, in default, to suffer RI for one year on first count and to suffer rigorous imprisonment for two years on the second count.

3. Criminal Appeal No. 32 of 2002:

Accused Sachin Landge has filed this appeal feeling aggrieved by the judgment of conviction and sentence by the Additional Sessions Judge, Wardha dated 21.12.2011 in Sessions Trial No. 152 of 2009. Upon his conviction for the offences punishable u/s 376(2)(c) and Section 506 of the Indian Penal Code, accused Sachin Landge has been sentenced to suffer imprisonment for life and to pay a fine of Rs. 5000/-, in default, to suffer RI for one year on first count and to suffer rigorous imprisonment for two years on the second count.

All the substantive sentences are directed to run concurrently.

4. Facts stated in criminal appeal no. 31 of 2012 arising out of conviction in Sessions trial no. 151 of 2009 reveals that victim girl Pragati was admitted in the Ashram School since her 1st standard. According to Pragati the girls were sleeping in the Hall on the ground floor of the Ashram School under the care of Sumitrabai Salame. Said Sumitrabai was absent on leave on 07-08-2009. After finishing the meals victim girls Mayuri, Tejaswini, Priya, Arti and Heena were sleeping in the Hall. There was no bolt for the door from inside hence a Stone used to be kept near the door keep the door shut. Sachin, the accused had entered in the Hall at about 11.00 P.M. He had switched off the tubelight and switched on the zero Bulb. Sachin had removed her knicker, applied saliva on her private part and raped her. Likewise he had raped Mayuri, Priya and Heena .The incident was narrated to Sumitrabai Salame after she resumed on duty on Sunday in Ashram School. Who informed it to Warghane Madam. She had called and assaulted Sachin by Chappal. Sachin had done same act with her prior to one year. But sachin was giving threat at the point of knife not to disclose the incident to anybody she had not disclosed the incident of rape on her. (This piece of evidence furnish a reason to believe that the accused Sachin had sexual contact with the victim girl Pragati since prior to the date of incident but under the threat the victim had not disclosed the incident of rape to anybody) Manda,

Mother of victim girl Pragati (Examined in the session's trial as PW-1) had approached the Ashram school on 15th August 2009 at about 10 a.m. after Police had already arrived at the School. She had brought her daughter Pragati back home. She came to know about the incident of rape dated 07-08-2009 from Pragati. Maruti Uike; Father Mayuri had lodged the report regarding the incident. On 16-08-2009 a lady Police Constable from Kharangana Police Station had taken Pragati to the Government Hospital, Wardha. She had also accompanied with her daughter Pragati, and gave consent for medical examination of Pragati. She gave report (Ex. 24) regarding the incident to S.P. Wardha on 19-08-2009. Dr. Sangeeta Zopate, Medical officer had examined Pragati who had narrated the history of occurrence that on 07-08-2009 in the midnight the accused under the influence of liquor pressed her mouth and forcibly attempted to do a sexual assault while they were sleeping. Dr. Manisha Nasare, gynecologist to whom the victim girl was referred for further expert medical examination had opined that hymen of Pragati was found ruptured at multiple sites with healthy edges. Head master Shri Chandrahas Sor had issued the show cause notice to the accused Sachin, to which Sachin had not submitted his explanation.

5. Facts of Special case no. 152 of 2009 revealed that victims Priya and Heena were orphan girls. They had narrated the incident to their cousin Uncle Shri Raju Kosurkar on 17-08-2009 when he had received a phone call from the Ashram school on 16-08-2009 and approached the Ashram school. According to him his nieces had informed about the rape by Sachin on them since last 3-4 months under the threat not to disclose the incident. (this evidence is another indicator to believe that the accused Sachin had sexual contact with victim girls Priya and Heena (other than Mayuri) since prior to the night of 07-08-2009). PW-1 Raju Kosurkar made the report dated 19-08-2009 (Ex. 23) accordingly to S.P. Wardha. Victim girl Priya stated that on the date of the incident Sachin had come towards her removed her knicker, applied Saliva on her private part and then slept on her. Raped Mayuri and also Heena and Pragati.

6. Common Facts and evidence in respect of all these appeals appearing from the record, in brief, can be conveniently gathered from the record of Special case no. 17 of 2009. They are as under:

Victim girl Mayuri, aged about 11 years minor girl was studying in 5th standard in Late Gulabrao Uike Adiwasi Ashram School, Mandwa. The said Ashram School was residential school. The inmates of the Ashram School were under the supervision of one Sumitrabai Salame appointed by the School authorities to look after small girls studying in 1st to 5th standard at their hostel during night time. Sumitrabai accordingly used to sleep with small girls during night time. However, according to prosecution, Sumitrabai was on leave for about three days in the month of August 2009 and there was no other lady teacher/employee to look after and attend to small girls who were inmates in the Ashram School. It is the case of prosecution that on 7th August 2009 (Friday) while prosecutrix Mayuri was sleeping along with other girls in a hall of the hostel which was situated on

the ground floor near school office, appellant Sachin Landge who was serving as Peon in the Ashram School had entered in the hall in the night time. According to prosecution, Sachin was not on night duty, but even then, he was present in the Ashram School. After he entered in the hall, he switched off tube light and switched on zero bulb and then at the point of knife, he asked the girls who were about to sleep to keep quiet. Thereafter he approached three girls one after another; removed their nicker; applied saliva on their private part and left on bed and sexually assaulted them. Subsequently, he approached prosecutrix Mayuri and in the same manner, sexually abused and assaulted her. As he had forcible assault with prosecutrix Mayuri, she had pains due to which she did not attend the classes on Saturday. On Sunday evening, Sumitrabai resumed her duties. At that time, four victim girls who were subjected to sexual assault, informed Sumitrabai about the incident. On Monday i.e. 10.8.2009, the prosecutrix did not attend the class room. Therefore, her class teacher Smt. Warghane made enquiry with other girls and at that time, Smt. Warghane came to know about the incident. Smt. Warghane called appellant Sachin and on account of heinous act. Smt. Warghane who was perturbed, gave blow of chappal to Sachin. It is the case of prosecution that all the four minor girls who informed Sumitrabai approached the school teachers. Head-master of Ashram school as also other teachers made enquiry into the incident and since the incident was serious, Head-master of the Ashram School gave show cause notice to appellant Sachin on 11.8.2009. Subsequently, Head-master, teachers and employees of the Ashram School prepared a memorandum addressed to the Secretary of Society running Ashram School on 13.8.2009, requesting him to take action against appellant Sachin. On the same day at about 08.00 pm, Head-masters of Primary School as well as Secondary School approached appellant Kishor Kinkar (appellant no. 2 in Criminal Appeal No. 542 of 2010) and memorandum was given to him. Appellant Kishor assured them to make enquiry and asked them to wait for two days. In the mean-while, on 13.8.2009 mother of the prosecutrix Mayuri came to Ashram School and took her daughter from the Ashram School. Thereafter prosecutrix Mayuri along with her mother and brother (who was also studying in the same Ashram school) went to Mhasala. Since prosecutrix had sensation of urination and also felt abdominal pain, she started crying. When her mother asked as to what had happened, prosecutrix narrated the entire incident to her. On the next day, Gajanan (father of prosecutrix) approached the Office of Superintendent of Police, Wardha and submitted report in writing. He was referred to Local Crime Branch Office, Wardha where Police Inspector Kollwatkar verified the report. He directed complainant Gajanan Uike to bring prosecutrix along with her mother and referred the prosecutrix to General Hospital, Wardha through LPC Shalini along with the victim girl. After examination of the prosecutrix, LPC Shalini brought the prosecutrix back along with medical certificate. Upon perusal of the report and the medical certificate, PI Kolwatkar took the complainant to Police Station, Kharangna within whose local limits the crime had occurred. Thus, on the basis of report from Gajanan Uike and considering medical certificate of the prosecutrix, crime was registered vide No.

54/2009 at Kharangna Police Station. Complainant Gajanan had alleged that appellant Sachin was close relative of appellant Kishor who is Secretary of the Society which runs Ashram school in question and, therefore, there was no enquiry into the matter. Furthermore, it was claimed by Gajanan that he is member of Scheduled Tribe community and although Sachin did the same heinous act with other girls as well, due to pressure from the administrative body, the matter was suppressed. He, therefore, asked police to make a detailed enquiry. Thus, the offence was registered against appellant Sachin as well as Secretary of the Society Kishor Kinkar. Since the offence was also registered under the Atrocities Act, investigation was handed over to SDPO, Pulgaon Susutkar. During the course of investigation, the accused were arrested. Spot panchanama was drawn in presence of panchas and statements of witnesses were recorded. Remaining three alleged victim girls were referred to General Hospital with Lady Police Constable along with separate requisitions while accused Sachin was also referred for medical examination. Clothes of the prosecutrix were seized; sample of semen etc. from accused Sachin were obtained. Copy of show-cause notice issued to appellant Sachin was produced by Head-master of ashram school, was also seized. Investigating Officer also seized knife from pant pocket of accused Sachin when his wearing clothes were seized under panchanama. School Leaving Certificates of victim girls were obtained. According to the prosecution, appellant Kishor had done scoring in memorandum. Crime No. 56/09 and Crime No. 57/09 were registered and investigated. Spot panchanamas were drawn and clothes of other victim girls were also seized. Statements of material witnesses were recorded u/s 164 Cr.P.C. Caste Certificates of Mayuri and accused were also obtained from the concerned authority. Muddemal which was seized was sent to Forensic Laboratory for analysis purpose and upon completion of investigation, the appellants were charge-sheeted before the Judicial Magistrate, FC, Arvi. The case was committed to the Court of Sessions at Wardha. Charge was framed against the appellants and it was read over and explained to them in vernacular to which they denied. The accused/appellants denied criminal liability and claimed to be tried.

7. The prosecution, in order to prove the charges, examined in all 14 witnesses and also relied upon documentary evidence produced on record.

8. We have heard submissions at the bar at length and perused Record and Proceedings and also judicial precedents cited before us.

9. Turning to the evidence on record, we find that the prosecution had examined first informant Gajanan Uike (P.W. 1), father of PW-2 Mayuri. They belong to Scheduled Tribe (known by name "Gond"). Gajanan deposed that Mayuri, his daughter was aged about 12 years (born on 28-04-1998 as per Ex. 91 School record) and was studying in 5th standard in the Ashram School at Mandwa where she used to reside while studying. Evidence of Gajanan reveals that Mayuri was brought back from her school by her mother from Mandwa after Mayuri had informed him that appellant Sachin Landge attempted to commit rape on two

girls, but could not succeed. Then Sachin raped her threatening at the point of knife, threatening all the girls to maintain silence. According to Mayuri, Sachin had also sexually assaulted on Priya Ghavghave and her sister by removing their knickers and by applying saliva on their private part. Mayuri had abdominal pain because of the incident on the next day. On 14.8.2009, according to P.W. 1 Gajanan, he approached Office of Superintendent of Police and submitted report in writing on 14.8.2009 signed by him (exhibit 34) with printed proforma of FIR (exhibit 35). Police had referred prosecutrix to the Government Hospital, Wardha for her medical examination. Cross-examination of P.W. 1 Gajanan reveals that prosecutrix had talked to her mother about the incident on 14.8.2009. Then he had approached Kharangna Police Station at about 09/09.30 am. When police made enquiry with him about the incident, he gave oral report at Kharangna Police Station and then lodged report in writing which was scribed by officer of Superintendent of Police, Wardha. The evidence indicates that P.W. 2 Mayuri was brought to Mhasala to Mandwa by her mother after she narrated the incident to her mother. Statement of prosecutrix was recorded at Wardha and her father accompanied with her to General Hospital, Wardha along with police personnel. Gajanan denied that he had been instructed by police to tell the Medical Officer that the girl had been raped. Gajanan also clarified that in the same Ashram School, his son Suraj was studying, but hostels of boys and girls were separate. There were residences of teachers in the premises of Ashram School, but teachers were not residing there. Exhibit 34 which is first information in respect of crime of rape also corroborates the version of Gajanan deposed by him. The first information named appellant Sachin Landge as the person who had forcibly raped prosecutrix Mayuri after he entered in a hall where girls of 1st to 5th standard were sleeping. He switched off light and switched on zero light and at the point of knife, told the girls to maintain silence; removed knickers of two girls; applied saliva on their private parts and thereafter he when he failed to rape them, he applied saliva on the private part of prosecutrix and forcibly raped her. Since there was injury to her private part, she received pains on Saturday and Sunday and when she went to her classes on Monday, she along with other girls informed about the incident to Warghane madam who called accused Sachin and gave a chappal blow, Thereafter Smt. Warghane informed Kishor Kinkar who was conducting the Ashram School, but since he was close relative of accused Sachin, he did not make enquiry, but was about to dispose of the case. According to first-informant, Sachin had attempted to commit rape during earlier year also, but because of pressure from School teachers, the incident was suppressed. Under these circumstances, the first-informant had requested for medical examination of his daughter and enquiry into the incident of forcible rape. Cross examination of PW-1 reveals that Mayuri had talked with her Mother about the incident on 14-08-2009. Oral report was lodged at kharangana Police station. Cross examiner appears to have questioned P.W. 1 as to whether he had stated before the police that Mayuri told him that Sachin committed rape on Priya and her sister and when witness answered in affirmative, getting the answer that the above fact is not mentioned in the report for no reason. According to us this is

not the manner of cross examination as permissible in view of the restriction u/s 162 Criminal Procedure Code read with Section 145 of the Indian evidence Act. Be that as it may, we do not find any substantial challenge to the credibility of P.W. 1.

10. The prosecution examined Mayuri P.W. 2 (prosecutrix), aged about 12 years, a minor girl who was studying in 5th standard in the Ashram School at Mandwa and was residing in the school along with other minor girls. According to prosecutrix Mayuri, the incident had occurred on 7th August 2009 when girls were sleeping in the hall. Sachin, Peon of the School came in the hall; switched off tube light and switched on the zero bulb. She deposed that accused thereafter removed knicker of Pragati; applied saliva on her private part. According to her, Sachin did the same thing with Priya and then with Heera. Thereafter accused Sachin removed knicker of victim girl Mayuri; applied saliva on her private part and slept on her. He then inserted his private part (penis) into her private part. She deposed that that thereafter Sachin slept on her for some time and then got up. She further deposed that she had swelling for two days and trouble on Sunday and Saturday. When she did not go to school on Monday, Warghane Madam made enquiry with girls and the girls informed about incident to her. She identified accused Sachin in the Court. According to prosecutrix, Warghane madam then called accused Sachin and assaulted him by chhapal. Then on 13.8.2009 mother of prosecutrix came to Ashram School and along with her brother Vaibhav (who was studying in the same School), she was taken to their grand-mother who was sick. Subsequently, prosecutrix was brought to Mhasala. She had sensation of passing urine and had abdominal pain due to which she was crying. She had narrated incident to her mother. Then in the night, her parents referred to the Government Hospital for her examination. According to her, at that time, she was wearing pink colour midi and top, black colour slip and blue colour knicker which were seized by police under panchanama (exhibit 37). Her cross-examination revealed that when she was taken to Police Station, nobody was present with her parents; police made enquiries with her and police prepared documents. In the night of 13th August 2009, she was referred to hospital and was hospitalized for about eight days. According to prosecutrix, Warghane madam and accused Sachin had a quarrel in the office due to which Warghane madam became angry with him. During the course of cross-examination, prosecutrix admitted that in the hall, 50 girls were sleeping on the ground floor. Cross-examiner also questioned her about her knowledge as to her private part (GUPTANG). Prosecutrix also denied that false report was lodged against Sachin in her name. Sexual acts attributed to the accused Sachin by Mayuri is that he had first removed knicker of Pragati, applied Saliva on her private part, he did same with Priyaa and Heena and thereafter he removed knicker of Mayuri (PW-2) applied saliva on her private part, slept on her and inserted penis in to her private part, slept on her for sometime and then got up. Mayuri alleges that the accused Sachin had sexual intercourse with her, while heinous acts alleged in connection with Pragati, Priya and Heena are limited to

removing their knickers and applying saliva to their private part and sleeping over them one after the other. (Penal liability of the accused as regards later girls can therefore be limited to less aggravated offense punishable u/s 376C of the Indian Penal Code as their sex exploitation was not amounting to sexual intercourse during the night of the incident.

11. P.W. 3 Jairam was serving as cook in the ashram School who acted as pancha when police prepared panchanama in respect of hall of the school as also seizure panchanama in respect of clothes of the accused drawn on 16.8.2009 and seizure panchanama in respect of blanket drawn on the said date as also seizure of memorandum from possession of appellant Kishor. And carbon copy of show-cause notice issued to appellant Sachin. P.W. 3 Jairam turned hostile to the case of prosecution and was cross-examined by the prosecution after feigning ignorance to the contents of panchanama signed by him, he admitted in the course of cross-examination that spot panchanama was prepared in his presence as also blanket was seized under panchanama (exhibits 35, 39). He also identified accused Sachin and admitted that Sachin had produced his clothes which were seized in his presence. Seizure panchanamas exhibits 40 to 43 were admitted by him. According to him, photographs filed collectively at exhibit 44 indicated that doors were having bolts from inside.

12. P.W. 4 Sharad Naitam is another cook in the same Ashram School who also identified accused Sachin, Peon in the school. Sharad deposed that his duty was to start water pump at Ashram School. On that night accused Sachin was present in the school without any duty while Sumitra had proceeded on leave for three days from 6.8.2009. Thus, there was no lady employee staying with the girls on 7.8.2009. At about 10.00 pin on that day, Sharad stated that Avinasah. Sudhir, he himself and accused Sachin took meals. He and accused Sachin then slept on Satranji in the outer room of the office. At about 12.00 a.m. When he woke up due to sensation of urine, he did not find accused Sachin and at that time, he found office door open. He deposed that Sachin was not found even after he urinated. When in the next morning he and Avinash had gone to start motor pump, Sachin was found sleeping. On Monday he came to the school at about 10/10.30 am. He deposed that Warghane madam assaulted accused Sachin by means of chappal and in order to sec as to why she had assaulted him by chappal, he went to the office and came to know that Sachin had committed rape on Mayuri Uike, Pragati Sawarkhede, Priya Ghavghave and Heena Ghavghave. He further deposed that prior to one year of the incident; accused Sachin Landge had gone to the hall of elder girls sleeping on first floor by climbing on pipe. Thereafter accused Sachin was sent for one month to Seloo School. This witness is independent and have no axe to grind against the accused Sachin, whom he has involved pointing out Sachin's presence in the Ashram School during the night of the incident.

13. P.W. 5 Dr. Manisha is Gynecologist and Medical Officer who was attached to the Government Hospital at Wardha. She had occasion on 14-08-2009 at 8.45

p.m. to examine Mayuri at the Government Hospital, Wardha. According to doctor's evidence history about the occurrence of rape, midnight incident dated 07-08-2009 at about 12.00 a.m. was narrated to her by victim girl Mayuri. The evidence corroborates the version of Mayuri in the Court that the accused had after removing her knicker applied saliva on her private part and then committed sexual assault inserting his private part in the private part of the victim. This corroboration is vital in the independent evidence of Dr. Manisha and cannot be ignored. It is in the evidence of Dr. Manisha that since victim had taken bath on the following day of the incident and changed her clothes and washed the same. (The reason why more additional evidence to corroborate the incident was not forthcoming) Dr. Manisha stated about the possibility of the sexual intercourse and found that her hymen was ruptured with healthy edges. She had expressed her opinion to query from the investigating officer, recording a finding that hymen of victim girl was ruptured at multiple sites and was consistent with history of incident. In the course of cross examination, Doctor stated that the possibility of ruptured hymen in the case of minor girl below 13 years is rarely possible due to reason other than sexual intercourse. Doctor also clarified that victim was sexually assaulted 7 or 8 days prior to her examination therefore there cannot be signs of inflammation or swelling, redness as by passage of time as vaginal tissue is vascular. Ex. 48 are medical notes in respect of physical examination P.W. 2 Mayuri who stated the history of occurrence in precise Marathi words thus:

--nicker kadhali, nantar thunka laghavichya jagewar lavalala. Nantar tyachi laghavi karayach majhya laghvichya jagewar Takale aatmadhe.

(--meaning thereby that he removed knicker, then he applied saliva at the place where from she urinates. Thereafter he inserted his penis in to her vagina)

14. P.W. 6 Harish Kaurati acted as panch regarding the spot Panchanama (Ex. 43) in respect of the Hall situated on the ground floor of the Ashram School.

15. P.W. 7 Smt. Wardhane is teacher who was serving in Gulabrao Uike Ashram School, Mandva as teacher to second standard students. Her evidence indicates that elder girls used to sleep on the first floor while younger girls used to sleep on the ground floor Hall in the Ashram School. One Sumirabai Salame was attending and sleeping with younger girls while teacher along with superintendent were used to be appointed turn by turn to keep watch during the night. On 10-08-2009 at about 8.45 a.m. Sumitrabai Salame had approached her with Mayuri, Priya, Heena, Pragati and other girls complaining of the rape at the point of knife during night-time by the accused Sachin Landge. Mayuri had complained of pain in her thighs and abdomen. The incident had so perturbed P.W. 7 Smt. Wardhane that she had called and slapped the accused Sachin Landge. Teachers had assembled and then inquiry was started against Sachin. The lady teacher was so perturbed because of the slapping incident that she went on leave thereafter till flag hoisting day, 15th August out of apprehension that she might be removed from employment by the management of the ashram

school. Police had visited the Ashram school and launched the prosecution against the appellants herein.

16. P.W. 8 Sumitrabai Salame, an illiterate witness, (referred as Aajigrandma by some victim girls) was serving as Attendant. Her job was to give bath to small girls; provide warm water to them for bath and sleep with the girls during night in a hall situated on the ground floor. According to her she was on leave for three days when the incident had occurred and had returned to the school on Sunday evening from her village Waifad. Priya, her sister; Mayuri and Pragati had informed her of the incident of rape by School peon Landge.

17. P.W. 9 Shri Chandrahas Sor is head-master of the Aashram School. According to him Kishor Kinkar was Secretary while Sachin Landge was peon. On 10-08-2008 at about 10.30 a.m. he made inquiry with the employees sitting in the school and came to know about the incident when Sachin Landge had entered in the hostel of little girls and slept on them. Hence Wardhane Madam had assaulted him. The seriousness of the incident led to an inquiry as on 11-08-2008 show-cause notice was issued against Sachin Landge as per Ex. 66 .Carbon copy (Ex. 67) acknowledged by Sachin Landge. Sachin did not submit any explanation to the said show cause notice. On 13-08-2008 Head-master (PW-9) had addressed a Memorandum (Ex. 68) to the Secretary to take action against the accused Sachin. One to one and half year prior to the incident also Sachin had climbed up on the first floor at about 11 to 11.30 p.m. to the hostel of elder girls. The girls had complained to the head-master. At that time after the inquiry Secretary had deputed Sachin to the D.Ed. College, Selu. For one and half month. Secretary Kishor kinkar was informed about the incident reported against Sachin. But Kishor Kinkar had not taken any action against Sachin for his sexual advances against the inmate girls since long but the action from the Secretary was that Head Master was suspended (pursuant to the communication vide Ex. 74). Later the recognition granted to the Ashram School was cancelled.

18. P.W. 10 Shri Prashant Kolwadkar had summoned (Ex. 78) P.W. 1 Gajanan with his daughter Mayuri, Victim girl was referred to the Government Hospital, Wardha along with the requisition letter (Ex. 47) for the medical examination. Pursuant to the complaint (Ex. 35) Crime was registered as Crime No. 54/2009 at Khangana Police Station. The accused Sachin was arrested under the Panchanama (Exh. 79). After the medical examination of the victim girl Mayuri blood sample and vaginal swab in sealed condition was produced by the lady police constable Shalini (Vide Panchanama Ex. 57). Superintendent of Wardha ordered that further investigation be handed over to S.D.P.O. Pulgaon Shri Susatkar (P.W. 11). Shri Susatkar deposed about the investigation done by him recorded statement of witnesses. Clothes which the victim had worn at the time of the incident were also seized. He had collected the documentary evidence from the Aashram school regarding the action taken against Sachin by the head Master and communication between the Head-master and the secretary of the School Management.

19. P.W. 12 Priya is a minor girl, aged about 12 years old. She refers to Sumitrabai Salame as grandmother who used to sleep with girls in the hall, but she was on leave 07-08-2009 when the incident occurred. Statement of this girl is recorded in the Court on 20-07-2010. Her evidence has to be appreciated with pinch of salt as she tends to exaggerate alleging that Sachin had raped Heena and Pragati as well. According to her Sachin came in the hall, removed her knicker and when she tried to raise shouts that time he took out knife. Subsequently Sachin applied saliva on her private part, opened zip of his pant and slept on her and raped her. Then Sachin approached Mayuri and raped her also. She admits omission as to the fact of rape as not mentioned in her police statement. P.W. 13 is minor girl aged about 10 years. She described rape as an act of Sachin that her knicker was removed and accused slept on her. She admits in her cross examination that she do not know the meaning of the word "Balatkar" (Rape). P.W. 14 is Pragati, aged about 13 years. She alleges rape by Sachin upon her after threatening at the point of knife and pressed her mouth.

20. Learned Advocate Shri Manohar argued with reference to the ruling in Ramdas and Others Vs. State of Maharashtra, that there was delay in filing FIR (ex. 35). According to him, in the facts and circumstances of the case the incident occurred on 07-08-2009 but the FIR No. 54 of 2009 was lodged by father of the girl Mayuri on 14/15-08-2009 at Kharangana Police Station. He submitted that delay in FIR ought to have been considered fatal to the case of the prosecution.

21. We find that the first informant was not questioned about the delay in lodging FIR. It appears that Mayuri was brought to the house by her mother on 13th August 2009 from Mandva (place of Aashram School). She narrated the incident to her father Gajanan (P.W. 1) who approached the office of Superintendent of Police at Wardha with report (Ex. 34). Under the circumstances, delay was explained. Hence in our opinion benefit of doubt cannot be claimed by the appellant Sachin because mere delay in lodging FIR cannot be used as a ritualistic formula to doubt the genuineness of the prosecution case. At the most the trial court is put on the guard to find out as to whether there is any satisfactory explanation in the evidence. Delay by itself cannot be a ground to discard and disbelieve evidence and reject the entire prosecution case. In our opinion, in this case the victim Mayuri was brought by her mother from Mandva on 13th August and when her father was informed by her he had soon thereafter approached the Superintendent of Police at Wardha. Thus delay stood explained satisfactorily and was not fatal to the case of the prosecution in the facts and circumstances of the case.

22. Shri Manohar then placed reliance upon Sadashiv Ramrao Hadbe Vs. State of Maharashtra and Another, in order to contend that there was no injury on the body of any girl complaining of sexual assault which renders the prosecution version unreliable and improbable. We cannot agree with this submission as the Dr. Manisha (PW-5) has explained that injury could have healed due to gap

between the date of the incident and physical examination of the victim. Moreover the medical finding indicated that victim's hymen was found ruptured with healthy edges. We have considered the medical evidence (supra). We do not find force in the submission that the accused shall get benefit of doubt for absence of injury on the body of the prosecutrix. Minor and superficial injuries, if any, are bound to heal faster in case of minor girls of grooming age in this case aged below 12 years of age. The incident was dated 07-08-2009 and she was examined physically on 15-08-2009. The doctor who is gynecologist has explained that injury can heal considering the gap between the date of the incident and the date of medical examination of the prosecutrix. Genuineness of the present case cannot be doubted for this reason.

23. Shri Manohar then relied upon ailing in *Vijaybhai Bhanabhai Patel Vs. Navnitbhai Nathubhai Patel and Others*, to argue that benefit of embellishments and improvements in the prosecution evidence ought to have been given to the appellant. We find that in the ruling cited, the Apex court was considering the appeal against the acquittal and opined that the court would be slow to disturb the finding of acquittal unless there is perverse and erroneous appreciation of evidence and when delay in recording statement of eye witnesses was not explained properly. In our opinion none of the rulings cited by Shri Manohar is attracted in the facts and circumstances of the present case so as to award benefit of doubt to the appellant Sachin Landge.

24. Mr. S.P. Dharmadhikari, learned Senior Advocate contends that the appellant Kishor Kinkar was innocent. He had no intention to suppress the offence and help accused Sachin Landge in any manner. He submits that when head-master of the Ashram School had issued show cause notice to accused Sachin, the head-master was at liberty and within his right to initiate disciplinary action against accused Sachin or even to lodge police report against him. He contends that accused Kishor was Secretary of the Society which was running Ashram school in question and it is the head-master who has immediate and direct administrative control over the teaching and non teaching staff in Ashram School. He submits that since no suppression of the incident of rape or offence of abetment of sexual assault or rape is established against appellant Kishor, he ought to have been acquitted.

25. The evidence led reveals that Appellant Sachin was in the premises of the Ashram school on the night of 07-08-2009 and he took advantage of his authority and official position as School peon of the residential Ashram School and also took disadvantage of the absence of lady care taker or attendant Sumitrabai Salame (PW-8) as she was on leave. Instead of behaving as protector and guardian of minor inmate girls in the care and custody of the residential Ashram School, he exploited some of them as in evidence to satisfy his lust.

26. We have carefully considered the rival submissions and gone through the relevant materials as well as the reasoning of the trial Court. The question is as to whether the contradiction/omissions affect the credibility of the victim girl.

Discrepancy that she did not raise shouts at the time of the incident is explainable as she was under fear as she was threatened at the point of knife. The statutory provisions provide strict penal action against sexual offenders, it is for the Courts to ultimately judge upon the evidence as to whether such incident of rape or sexual assault has really occurred or not. The Courts have to be more cautious in appreciating the evidence and the real culprit-a rapist-should not be left scot-free merely on flimsy grounds. In the instant case, the accused had committed rape, which repels against moral conscience as he chose tender minor girls below 16 years who were under the care and custody of Ashram school to satisfy his lust, their consent being immaterial or of no consequence whatsoever.

27. Section 375 of the Penal Code reads thus:

375. Rape. -- A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-First. - Against her will. Secondly. - Without her consent. Thirdly. - With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt. Fourthly. - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly. - With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Sixthly. - With or without her consent, when she is under sixteen years of age. Explanation. - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception.- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

It has been specified in Section 375 of the Indian Penal Code that sexual intercourse with a woman under the age of sixteen years, with or without her consent, shall be considered as rape.

28. We have heard learned counsel for the appellant, Learned APP for the State and have also looked into the provisions of Section 376 of the Indian Penal Code, 1860. The said provision reads as under:

376. Punishment for rape.--(1) Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than

seven years.

(2)Whoever:-

(a) Being a police officer commits rape-

(i) Within the limits of the police station to which he is appointed; or

(ii) In the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) On a woman is his custody or in the custody of a police officer subordinate to him; or

(b) Being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) Being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) Being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) Commits rape on a woman knowing her to be pregnant; or

(f) Commits rape when she is under twelve years of age; or

(g) Commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1

Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2

"Women's or children's institution"; means an institution, whether called an orphanage or home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3

"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

A reading of the above penal provisions would clearly indicate that if a person is convicted u/s 376 of the I.P.C., the Court can award imprisonment for not less than 7 years which may also extend for life.

Section 376C:

376C. Sexual intercourse by superintendent of jail, remand home, etc. - Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his/her official position and induces or seduces any inmate of such jail, remand home, place or institution to have sexual intercourse with him/her, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years and shall also be liable to fine. Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than five years.

Explanation 1. - "Superintendent" in relation to a jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he/she can exercise any authority or control over its inmates

Explanation 2. - The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

29. The Supreme Court in *Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty*, has held "rape" as an offence which is violative of the Fundamental Right of a person guaranteed under Article 21 of the Constitution, The Court observed as under: "Rape is a crime not only against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights and is violative of the victims most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21."

30. The law takes special statutory care especially when girls are during the age of their minority-below age of sixteen-even if assuming for the sake of argument that they were consenting parties to the carnal aggression or persuasion from the offender. Crimes of rape or an attempt to rape are destructive of the social stability and against the basic equilibrium of the social atmosphere. Prior to the Crime of Rape, a minor virgin girl is bound to treat her body as a pious temple. No one has right to encroach upon the body of minor virgin girl and to create incurable dent in her character as she loses her dignity, virginity and social status

and her character and reputation gets damaged. Plea of the accused in such cases is usually of denial and of false implication. It is duty of the Court to sift grain from chaff and find out the truth from the testimony of witnesses. Minor discrepancies may occur on trivial matters in the evidence of rustic witnesses from the village. Rejection of whole evidence is not permissible due to technical errors omitted by the investigating agency, when they do not go to the root of the matter. There was no evidence any kind of enmity between the Appellant-convict and the victim girls. There was no reason for the witnesses to falsely implicate the appellant-convict Landge who was known insider of the Ashram School working as peon and the victims had no reason to spare the real culprit. The incident that Smt. Warghane, the teacher in the School slapped him on the following day of the incident hearing cry from the victim girls and show cause proceedings began against him tell a tale circumstances for which there was no any rational explanation from the accused. The incident occurred on 10-08-2009 while the medical examination of the victims was on 25-08-2009; thus there was considerable delay in the medical examination of the victims. But we must bear in mind that victim minor girl in a traditional Indian society is most reluctant to even admit that she is sexually ravished. In the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is therefore may amount adding insult to her injury. A girl or a woman in the tradition bound nonpermissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case.

31. The observations of Vivian Bose, J. in Rameshwar Vs. The State of Rajasthan, were:

The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge....

Sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It leaves a lifelong traumatic and humiliating impression on her conscience offending her self esteem and dignity. Hon''ble Supreme Court in State of Himachal Pradesh Vs. Shree Kant Shekari, has viewed rape as not only a crime against the person of a woman, but a crime against the entire society. It indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and

not the least her chastity.

32. It is a matter of common knowledge that a shy minor school girl groomed in an residential Aashram School would not make such serious allegations of sexual assault and rape against the peon of her own residential school as she is aware of the serious repercussions of such accusations as against her affecting her chastity and danger of her being ostracized by her society. Evidence of victim of Rape ought to be treated as credible like that of an injured witness in the crime of physical assault. Therefore it must be accepted as having greater value of inspiring confidence as credible evidence even without corroboration. In the present case, however, we have ample corroboration as against the accused Sachin Landge. The prosecutrix Mayuri had narrated the incident of rape to her Mother, her Mother brought her back to the home from Mandva and then she narrated incident to her Father who had approached the superintendent of Police at Wardha, victim had also narrated the incident to her lady attendant in Aashram School Smt. Sumitrabai Salame when the attendant resumed her duty after expiry of her leave, the incident was also narrated to Medical officer before she underwent medical examination, to her teachers when she could meet them after the incident of rape upon her. Medical evidence corroborated that the Minor girl Mayuri was subjected to sexual intercourse. The version of the prosecutrix right from her narration to her father, Medical officer, and her evidence as deposed in the trial Court is absolutely consistent and reliable to find guilt of Sachin Landge.

33. Considering the facts established, the principles of law in the light of acceptable and reliable material placed by the prosecution before the trial Court, we do not find that the prosecutrix Mayuri had any prior enmity whatsoever with the accused Sachin or any evil motive to make false accusations against Sachin Landge. The finding recorded by the trial Court against the Appellant-accused Sachin is sustainable to nail him for the offence of raping Mayuri. It is proved beyond shadow of doubts. It is proved by the prosecution beyond reasonable doubt that the Appellant Sachin Landge had while serving as peon in the Aashram School at Mandava, Taluka Arvi, District Wardha took disadvantage of the absence of support staff Sumitrabai Salame (PW-8), committed the offence of sexual assault not amounting to sexual intercourse on three minor girls on 07-08-2009 at night-time in the hall of the Aashram School and then raped Minor girl Mayuri who at that time was aged about 11 years, the fact that she is belonging to scheduled tribe is well supported and corroborated in the evidence on record. The trial Court had arrived at logical and correct conclusion upon evidence of Mayuri and it do not warrant any interference by us in appeal. Looking to the prosecution case in this regard against the accused Sachin Landge, we do not find any merit in his appeal. It is accordingly dismissed.

34. As against other sexually exploited girls in Ashram School namely Pragati, Priya and Heena, the acts attributed to Sachin by the prosecutrix Mayuri and other girls in evidence, in our opinion, were not amounting to sexual intercourse

with Pragati, Priya and Heena during the night concerned of the incident. The accused Sachin, it is in evidence that he had sexual contact with some minor girls in Ashram school even prior to the night of 07-08-2009. Considering the evidence about the night of the incident as deposed and described by victim girl Mayuri as to the acts of accused Sachin qua other victim girls, he would have therefore less aggravated penal liability to the extent of Section 376C of the Indian Penal Code as against Pragati, Heena and Priya, all minor vulnerable girls in the care and custody of the Ashram School, who were sexually exploited on the night of the incident. We are not called upon to decide as to whether Sachin had raped the above minor girls even prior to the incident occurred on 07-08-2009 at Ashram School, Mandva, although it is so alleged by some minor victim girls because no evidence was led in this regard.

35. However we find as against appellant Kishor Rambhau Kinkar the evidence led by the Prosecution is not sufficient beyond all reasonable doubts to believe that he had intentionally or deliberately indulged in illegal omission to inform the incident of rape in Ashram school to the Police. Father of the victim girl Mayuri had informed the incident to Police to set the machinery of law in motion. It is in evidence that Appellant Kishor Kinkar, who was Secretary of the Society, had also moved against Sachin Landge departmentally for the inquiry into reported incident against him. Headmaster of the Ashram School had issued show cause notice against accused Sachin Landge. Appellant Kishor Kinkar was erroneously convicted for the offences punishable u/s 176 read with Section 202 of the Indian Penal Code. Hence, we give benefit of doubt to appellant Kishor Kinkar for want of sufficient evidence to nail him for the alleged serious offences inclusive of deliberate illegal omission to inform Police with a view to screen offender Sachin Landge. Appellant Kishor Kinkar is, therefore, required to be acquitted of the offences punishable u/s 176, 202 of the Indian Penal Code by allowing Criminal Appeal No. 542 of 2010 arising out of Special Case No. 17 of 2009 filed by appellant Kishor Kinkar and setting aside the impugned Judgment and Order in Special Case No. 17 of 2009 as against him.

36. In Criminal Appeal No. 623 of 2010 filed by appellant Sachin Landge, we hold that appellant Sachin was rightly convicted by the trial Court in Special Case No. 17 of 2009 for the offence of rape upon Mayuri, a girl belonging to the Scheduled Tribe "Gond". His conviction for the offence punishable u/s 376(2)(c) and (f) read with Section 506 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act is, thus, required to be confirmed and his appeal in this regard is required to be dismissed.

37. In view of the above discussion, Criminal Appeal Nos. 31 of 2012 and 32 of 2012 preferred by appellant Sachin Landge, which are arising out of Session Case No. 151 of 2009 and 152 of 2009 respectively are required to be partly allowed by setting aside the Judgments of conviction and sentence u/s 376(2)(c) and (f) of the Indian Penal Code in Sessions Trial Nos. 151 of 2009 and 152 of 2009. Instead he is required to be convicted for the offence punishable u/s 376C

read with Section 506 of the Indian Penal Code as against the minor inmates of Ashram School, namely Priya, Pragati and Heena concerning the evidence of sexual assault not amounting to sexual intercourse with the said victim girls under threat to use knife if victim raise shouts on 07-08-2009 at about 11 p.m. He is, thus, held guilty for the less aggravated offence of sexually exploiting the minor girls above named punishable u/s 376C read with criminal intimidation punishable Section 506 of the Indian Penal Code.

38. Consequently, the following order is passed:

//ORDER//

1) Criminal Appeal No. 542 of 2010 arising out of Special Case No. 17 of 2009 filed by appellant Kishor Kinkar is allowed. The impugned Judgment and Order in Special Case No. 17 of 2009 is set aside. He is acquitted of all the offences with which he was charged. His bail bonds shall stand discharged. The amount of fine, if deposited, be refunded to him.

2) Criminal Appeal No. 623 of 2010 arising out of Special Case No. 17 of 2009 filed by appellant Sachin Landge is dismissed. His conviction for the offence punishable u/s 376(2)(c) and (f) read with Section 506 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act is confirmed.

3) Criminal Appeal Nos. 31 of 2012 and 32 of 2012 preferred by appellant Sachin Landge, which are arising out of Session Case No. 151 of 2009 and 152 of 2009 respectively are partly allowed. The Judgments of conviction and sentence u/s 376(2)(c) and (f) of the Indian Penal Code in Sessions Trial Nos. 151 of 2009 and 152 of 2009 are set aside. Instead he is convicted for the offence punishable u/s 376C read with Section 506 of the Indian Penal Code and shall undergo rigorous imprisonment for three years on each count and shall pay fine in the sum of Rs. 5000/- for both counts in default to suffer further imprisonment for three months on each count.

No separate sentence of imprisonment is imposed for the offence punishable u/s 506 of the Indian Penal Code.

Substantive sentence of imprisonment imposed against appellant/accused Sachin, except the sentence of imprisonment in default of payment of fine shall run concurrently with benefit of set off for the period of imprisonment already undergone.

Appellant Sachin, if on bail, shall surrender to the custody forthwith to undergo the remaining sentences imposed herein His bail bonds, if any, shall stand cancelled.

The Impugned judgments and orders passed by the trial Court shall stand modified accordingly in the above terms.