

(2003) 12 SC CK 0041

In the Supreme Court Of India

Case No : Criminal Appeal No's. 459 and 463-469 of 2002

Mojjullah @ Puttan

APPELLANT

Vs

State of Rajasthan
State of Rajasthan Vs Harish Tolani
and Others

RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 120B, 292, 376, 507

Citation : (2004) 1 ACR 626 : (2004) 1 ALD(Cri) 434 : (2003) 10 JT 325 :
(2004) 3 PLJR 29 : (2003) 10 SCALE 86 : (2004) 2 SCC 90 : (2004) 2 UJ 888

Hon'ble Judges : N. Santosh Hedge, J;B. P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Singh, J.—These appeals arise out a common judgment and order of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur dated July 20, 2001.

2. Criminal Appeal Nos. 459, 460, 461 and 462 of 2002 have been preferred by appellants who were convicted by the trial court and whose convictions and sentences have been affirmed by the High Court in appeals preferred by them. Criminal Appeal Nos. 463-469 of 2002 have been preferred by the State against that part of the judgment and order of the High Court whereby four of the appellants before the High Court (respondents in the appeals preferred by the State) were acquitted of all the charges leveled against them.

3. There were 11 accused persons against whom charge sheet was submitted by the police. Out of them Naseem absconded after he was released on bail and therefore could not be tried alongwith the remaining accused. One Purshottam died only a few days after he was released on bail. Farukh Chisty was found to be mentally unbalanced and, therefore, the trial against him was suspended. The remaining eight accused were tried by the Sessions Judge, Ajmer in Sessions Case No. 110 of 1992. The learned Sessions Judge by his judgment and order of

May 18, 1998 found all the accused guilty of the offence u/s 120B IPC and sentenced them to rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/-, in default to suffer further 2 years rigorous imprisonment. He also found all the accused guilty of the offence u/s 376/120B and sentenced them to imprisonment for life and a fine of Rs. 1,000/-. He also convicted and sentenced all the accused u/s 292/120B IPC and sentenced them to two years rigorous imprisonment and a fine of Rs. 500/-, in default to further undergo rigorous imprisonment for three months. Two of the appellants, namely Moijullah @ Puttan and Ishrat Ali were also found guilty of the offence u/s 376 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-.

4. The High Court by its impugned judgment and order, while upholding the conviction of the appellants before us only u/s 376 IPC against Puttan and Ishrat and u/s 376/120B IPC against Anwar and Shamshuddin @ Meradona, acquitted Parvez Ansari, Mahesh Ludhani, Kailash Soni and Harish Tolani of all the charges leveled against them. The State has preferred appeals against their acquittal.

5. The case of the prosecution is that several reports appeared in the newspapers regarding a sex scandal in the city of Ajmer to the effect that young school and college girls were lured by a gang which misled them and took them to places for parties etc. whereafter they were forcibly subjected to sexual exploitation by them. The girls were photographed in obscene poses and thereafter black-mailed by threatening their exposure and adopting other means. When this fact came to the notice of the administration one Hari Prasad Sharma (PW-9) who was then Deputy Superintendent of Police (North), Ajmer was entrusted with the task of conducting a secret enquiry into the whole affair and submit a report. After making an enquiry, PW-9 submitted his report dated May 30, 1992 (Ext. P-6) to the Superintendent of Police. After considering the report the same was lodged at the Police Station Ganj, Ajmer on the basis of which a formal First Information Report No. 107/1992 was registered. After investigation the accused were put up for trial before the Sessions Judge, Ajmer variously charged u/s 120B, 292, 292/120B, 507/120B, 376 and 376/120B IPC.

6. As many as 148 prosecution witnesses were examined by the prosecution in support of its case, apart from 20 material objects and 175 documents. Amongst the accused only Sayed Anwar Chisti examined four witnesses in defence.

7. Several girls who were allegedly subjected to sexual exploitation and black mailing were examined as prosecution witnesses, and not surprisingly many of them turned hostile. Yet some of them deposed at the trial and gave a vivid account of the manner in which they were first enticed and then exploited.

8. Two of the accused namely Mahesh Ludhani and Harish Tolani were primarily concerned with developing and printing photographs with a view to aid the other conspirators in black mailing the victims with a view to continuing their sexual exploitation.

9. We shall first consider the evidence of the victim girls who have deposed in

favour of the prosecution and who have withstood lengthy cross-examination and whose evidence persuaded the learned Sessions Judge as well as the High Court to uphold the conviction of some of the appellants, who were directly concerned with the alleged activities of the gang.

10. Sangita (PW-1) was studying in the 12th Class in the year 1990 in Savitri School at Ajmer. It appears from her evidence that she entertained an ambition to join politics. She had talked about her ambitions with some of her family friends. She was introduced to one Deepak Chaudhary with a view to getting some assignment in the Congress Party. He had assured her that since he knew some important people he would introduce her to them. One day when she alongwith her younger sister and Deepak Chaudhary and another friend Rajesh was proceeding towards the bus stand from her house, a white Maruti car came from the opposite direction which had 2 or 3 occupants who seemed to know Deepak Chaudhary. They stopped the vehicle and offered lift to Deepak Chaudhary who accepted the offer. All of them sat in the car and she identified two of them, namely Nafees and Farukh. She was introduced to those two persons by Deepak Chaudhary and ultimately Nafees offered to get her an assignment in the Congress Party so that she could begin her political career. In fact a few days later one Anwar Chisti came in a car and introduced himself as a friend of Nafees. He gave her some forms to be filled up which were required by the Congress Party and also requested her to give her passport size photograph. She later gave her photograph to Nafees directly. Some days later Farukh and Nafees met her near the Collectorate while she was on her way to school. They had come in a Maruti van. One day when she was going to school Nafees told her that he would drop her at the school and since she was getting late she accepted the offer. Farukh was also in the car. Instead of dropping her at the school they took her to the farm house where Anwar and Ishrat were also present. She went with Nafees to another room to discuss about her joining the Congress Party while Farukh and Anwar waited outside. Nafees hugged and kissed her despite her opposition to which she protested and came out of the room. Some moments later Nafees also came out of the room. Thereafter when she went inside the room to bring her dupatta Nafees pushed her inside the room and bolted the door. He asked her to take off her clothes otherwise she would be killed. He felled her on the cot and attempted to tear off her clothes. Thereafter he raped her and told her that she should not talk about it to anyone. She was thereafter taken in the car and dropped at her house. Seven days later she again met Nafees near the Collectorate and he had warned her that if she mentioned about the earlier incident to anyone anything could happen.

11. She further deposed that she knew one Madhu Bala who was also studying in the Savitri School. One day when they were going together Nafees met them on the way. Farukh and Anwar were also with him. They stopped them and started talking to them. They enquired about Madhu and she introduced Madhu to them. Some days later Madhu came to her house and started weeping. She told her that Nafees etc. had raped her and that they had also photographed her. They

had told her that if she brought her (Sangita) then they would return the photographs. With a view to help Madhu she had accompanied her to get the photographs returned. In these circumstances she and Madhu had told one Rajendra Singh Rajawat a police constable who introduced them to one Shri Soni working in the Special Branch of the Police. They had promised that they will carry the matter to the higher level and deal with the situation. They disclosed everything to Soni but thereafter large number of phone calls were made by different persons including ladies who were unknown to her. They used to question as to why she had reported the matter to the police. Rajendra Singh Rajawat had once asked them to accompany him to recover the photographs and therefore she alongwith Madhu had gone to Dargah area. While Rajendra Singh Rajawat was at some distance from them one person came and told Madhu that the game which they were playing was a game they had played long back. Later Madhu informed her that the said person was Puttan Allahabadi. Sangita then deposed that she had visited the farm house on 2 -- 3 occasions but she was raped only once. Thereafter she did not visit the farm house. She knew Monika, Nirmala, Archana and Poonam who studied with her in the same school, though in junior classes. She had once seen Monika and Nirmala in the company of Farukh and Anwar at the Fie Sagar farm house.

12. PW-15 further deposed that she knew Bharosa Colour Lab as she had been there several times to meet Mahesh. She herself did not work in Bharosa Colour Lab but she used to help her friend Madhu Didi in her work, in an informal way and used to sit there with her. No incident took place there. She had never gone for a stroll with Mahesh (since acquitted). She never had any talk with anyone there in connection with any photograph.

13. When called upon to identify Farukh this witness correctly identified him but said that she could not identify him. She could not identify Puttan or Anwar. She failed to identify Ishraf and wrongly identified Harish Tolani (since acquitted) in his place. She also stated that she could not identify the driver who drove the vehicle. He was not present. She stated that several years had passed by and, therefore, she had difficulty in identifying the accused. She correctly pointed out Mahesh Ludhani, but stated she could not identify him.

14. PW-17, Madhu Bala was another victim who was sexually exploited by the accused. She was earlier a student of Savitri School and later of Savitri College. She knew Sangita (PW-15) very well as they used to study in the same school. They used to go to their respective school and college together in January 1991. Sangita had introduced her to Nafees, Anwar, Salim, Farukh and Ishrat. While introducing them she had praised them and said that they were like her five brothers. It was represented to her by Sangita that they were sons of her father's friend. On 15th January, 1991 she was told by Sangita that there was a function at Hatundi which will be attended by her family members as well as those five persons i.e. Nafees etc. She asked Sangita to persuade her mother to permit her to attend the function and Sangita obliged her. It was decided that

she would pick her up at 8.00 a.m. Sangita came to her house alongwith Anwar and Salim. Since she was not ready she was asked to get ready and they went away to bring another girl. The Maruti van was being driven by Meradona (accused). When they came to her again she found that another girl Chhavi Daka was also in the Maruti van. They all went to poultry, farm of Salim in Hatundi. She was surprised to find that other family members were not present and when she questioned Sangita about it she did not get a proper reply. Nafees, Ishrat and Farukh came there. They all sat in the lawn and Ishrat took her around and showed her the farm. Thereafter they, sat under a tree. Ishrat (accused) became emotional and started narrating couplets and his love story. Thereafter they were joined by others. They all had food at the farm and left at about 3.00 or 4.00 p.m. for their respective homes. She did not then get an impression that these persons were not proper persons. 2-4 days later Sangita again requested her to go with her and then she again went to that place. Ishrat (accused) again took her for a stroll. After they had moved about in the farm they came to the room where others were sitting but they found no one there. Thereafter Ishrat forcibly removed her clothes and she started crying. She was forcibly thrown on the bed in that room and was raped by Ishrat who warned her not to talk to anyone about the incident as that would only result in her loss of reputation. Out of fear she did not narrate the incident to anyone. They all returned in the same vehicle. Despite Ishrat's persuasion on several occasions she did not agree to accompany him thereafter. He started loitering near her house and threatened that he will disclose everything to others. Under the circumstances she was compelled to go with him. He took her to the bungalow of Farukh at Fie Sagar Road. Nafees was also present there. She was raped by Nafees in the bungalow who threatened her saying that her sister will also be kidnapped and they would do the same thing to her. Out of fear she had to go with them. In the process she was also raped by Farukh and one Babli who had come from America. Nafees had told him that Babli was his boss and that she should please him. She was compelled to do whatever they told her to do. She stated that despite her resistance on some occasions she was raped by 2-3 persons on the same day. Once she was also raped by one Zameer. They had threatened her and told her that whenever they called her through anyone she must come. One day Sohail Gani and Puttan (accused) met her in the market and told her that Ishrat had called her. She was compelled to go with them who took her to the ruins near Dargah. When she enquired about Ishrat they closed the door and Puttan as well as Sohail Gani raped her. Puttan also photographed her while she was being raped by Sohail Gani. She had tried to get back those photographs from them but they made her run from pillar to post but the photographs were never given to her. She had told Sangita about the photographs and she had assured her that she would recover the photographs and in that connection they had talked to Rajendra Singh Rajawat Sohail had told her that she could get back the photographs only if she came with Sangita because photographs of Sangita have also to be taken in that very posture. She had told Sangita about it, Sohail avoided giving the photographs on the pretext that they were with Ishrat and Nafees. On the other

hand Ishrat and Nafees denied having those photographs. After her college examination she went away to Jaipur in August 1991 and her connection with accused ended there. In this manner PW-17 alleged that she had been raped by Ishrat, Nafees, Zameer, Farukh, Babli, Sohail and Puttan. She identified Farukh, Ishrat, Anwar, Meradona and Puttan in the dock. Five photographs were shown to the victim and she identified photograph No. 1 as her photograph and that was the photograph which was taken by Puttan but she could not identify the person who was with her in that photograph. In the course of her cross-examination this witness mentioned that she knew Renu Tank, PW-16, who was also friendly with the accused and that she had introduced her to them. She also confirmed that on 15th January, 1991 she had gone to the poultry farm at Hatundi with Chhavi Daka PW-53.

15. The defence has not been able to elicit anything from this witness in her lengthy cross-examination apart from some minor inconsistencies which do not touch the core of the matter.

16. Archana Chaudhary (PW-34) deposed that in the year 1991 she had been invited by Sangita (PW-15) for her birthday party at the farm. She alongwith Monika, Farukh and Naseem went to the poultry farm of Farukh in a Maruti van at about 10.00 a.m. Anwar and Ishrat (accused) had also come there. They talked for sometime and thereafter they were served food. After taking food while they were talking, Monika went with Anwar while Farukh took her to a room. He tried to kiss her and pressed her breasts. She was made to lie and he tried to take off her clothes, whereupon she started weeping. She started insisting that she must go home immediately. In these circumstances nothing more happened and she was thereafter dropped at her house. This witness has only mentioned about this solitary incident which took place at the farm house. That was the first day when she had been to the farm house and thereafter she never went to the farm house.

17. Monika Jain (PW-43) deposed that in the year 1990 she was studying in XI class in Savitri School, Ajmer. She was known to Sangita Sharma (PW-15). In or about the year 1990-1991 Sangita had invited her to a family party where some other friends were also invited. She attended that party where Archana and Poonam were also present. The house where the party was held was the house of Farukh (accused) as told by Sangita. Three boys came to that party who were introduced by Sangita as Anwar, Farukh and Nafees. Sangita also introduced her to Archana and Poonam. There was one other boy with dark complexion and curly hair. Sangita told her that he was Shamshu @ Meradona. While Meradona was strolling outside the house the four girls alongwith Anwar, Farukh and Nafees sat in the house and were chatting with them. Another person came there whose name was Ishrat as told by Sangita. Food was called for which was brought by Meradona. Since the food was non-vegetarian she did not eat anything. They had gone to that house at about 10.00 a.m. and returned by 4.00 p.m. They were dropped by Meradona who was driving the Maruti van. 2-3 days thereafter she

was again requested by Sangita to accompany her. A white Maruti van was standing outside the school driven by Meradona. They went to the same house where they had gone earlier. The time then was about 9.30 - 10.30 a.m. After they had reached that house Farukh, Anwar, Ishrat and Nafees came there. They talked for sometime and thereafter food was brought by Meradona but she ate the food which she had carried with her to the school. After taking food Anwar asked her as to whether she would like to be his friend and to this request she answered in the affirmative. Thereafter at about 3-45 p.m. they were all taken in the Maruti van and dropped outside the school. 10-15 days thereafter Sangita again requested her to accompany her to poultry farm near Hatundi. She alongwith Sangita, Archana and Poonam went to the farm in a white Maruti van standing outside the school driven by Meradona. She was told by Sangita that the farm belonged to the boy named Salim, who was also present there. They all sat in a room and talked for a while. Thereafter Ishrat and Poonam went out of the room. Farukh requested Archana to accompany him for a stroll whereafter Archana went with Farukh. Sangita and Nafees went out and sat in the verandah and only she remained in the room with Anwar. Anwar told her that in case she wanted to contact him she could ring up on the phone number given by him and the message will be conveyed. While talking with her Anwar caught hold of her hand and tried to kiss her and also started touching her clothes. She got perplexed and insisted that she must go home. She came outside and told Archana and Poonam to leave for home. Thereafter they all sat in the Maruti van and were dropped outside the school. The Maruti van was again driven by Meradona. She confessed that she did not mention that incident to anyone for fear of getting a bad reputation. This witness correctly identified Ishrat, Meradona, Farukh and Anwar in the dock. In the course of her cross-examination she stated that she did not mention to Sangita about the behavior of Anwar. She had realised that those persons were not good persons. Therefore, when Sangita again requested her to accompany her 2-3 days later she refused to accompany Sangita and in fact stopped talking to Sangita. To a question put by the Court she clarified that by touching her clothes she meant that accused Anwar had touched her clothes as also touched the organs of her body simultaneously but only the clothes were between his hand and the organs of her body. She did not approve of Anwar touching her as it appeared to be improper.

18. Chhavi Daka (PW-53) was also a friend of Sangita (PW-15). She had gone in a Maruti van to a farm house near Hatundi. They were both students of Class XI and had gone in a Maruti van which was standing in front of the school. Apart from the driver there was another person in the van whose name was Anwar. One other girl also joined them in the van whose name she did not know. She did not know the name of the driver and admitted that she may not be able to identify him. However, she identified accused Anwar in the dock.

19. After reaching the farm house she was taken to a room by Sangita where she sat alone. All other persons were outside the room. After sitting for a considerable period in the room she came out and met Anwar who sought her

friendship. She refused his proposal and requested Sangita to leave immediately. She stated that Sangita had taken her to the farm on the pretext of her birthday party but after going to the farm she found that there was no birthday party.

20. We may at this stage point out that several other girls who were examined by the prosecution were declared hostile which included PWs. 23 ; 25 ; 34 ; 36 ; 37 ; 40 and 44.

21. Before advertising to the other part of the prosecution case which relates to the involvement of Mahesh Ludhani Harish Tolani, we propose to deal with the cases of the four appellants, namely, Puttan, Ishrat Ali, Sayed Anwar Chisti and Shamsuddin @, Meradona who have been Convicted by the trial court as well as the High Court as also the cases of Parvez Ansari and Kailash Soni, who though convicted by the trial court have been acquitted by the High Court.

22. We may only notice at this stage that though the trial court had convicted the appellants above named of the offences under Sections 120B and 292/120B IPC also, the High Court did not find sufficient evidence to support the charges under these two sections and acquitted them of those charges but affirmed their conviction and sentence under Sections 376/120B IPC. In the case of Puttan and Ishrat they were convicted u/s 376 IPC as well.

23. We may first consider the cases of Parvez Ansari and Kailash Soni. It was alleged that they had raped one Pushpa Sindhi, PW.23 However, Pushpa Sindi, apart from denying the photographs produced by PW-9, Hari Prasad Sharma stated in clear terms that Parvez Ansari and Kailash Soni had never, raped her and nothing had been recovered at their instance. She had never been photographed with them. However, the trial court placed reliance on Articles 1, 2 and 4, which were said to be the obscene photographs of Pushpa Sindhi, Kailash Soni and Parvez Ansari and, therefore, found them guilty of the offences u/s 120B, 376/120B and 292/120B IPC. The High Court, in our view, rightly set aside the convictions and sentences of these two accused. We find that there is no mention about these two names in the deposition of some of the victim girls whose evidence we have noticed earlier. That apart, Pushpa Sindhi (PW-23) did not support the case of the prosecution that she was ever raped by either of these two persons or that she was ever photographed with them. Even if one was to assume that some of these photographs are of Pushpa Sindhi (PW-23) and the aforesaid accused, that would not in any manner connect them with the conspiracy to commit the alleged offences in concert with Puttan, Ishrat and others. There is nothing on record to show that they were ever soon at the house of Farukh or in the company of the co-conspirators at the farm house. Moreover when Pushpa Sindhi herself denied that she was ever raped by them, there is no other evidence to support the conviction of these accused, who are respondents in the State appeals.

24. We, therefore, affirm the acquittal of Parvez Ansari and Kailash Soni and dismiss the State appeals against them.

25. So far as the remaining 4 convicted accused are concerned, namely, Puttan, Ishrat Ali, Sayed Anwar Chisti and Shamsuddin @ Meradona, we find that the trial court as well as the High Court after having considered the evidence on record have rightly found them guilty.

26. Shri Sushil Kumur Jain, Advocate, appearing on behalf of Puttan and Ishrat took us to the evidence of PW-15 Sangita and PW-17 Madhu Bala and submitted that these witnesses were wholly unreliable. So far as these appellants are concerned, they have been directly implicated by Madhu Bala (PW-17). He further submitted that there is no reference to Puttan in the evidence of Archana (PW-34), Monika Jain (PW-43) and Chhavi Daka (PW-53). It was faintly submitted that even from the evidence of Madhu Bala (PW-17) it is quite clear that she was a consenting party and had accompanied these two appellants of her own. He further submitted that the secret investigation by PW-9 Hari Prasad Sharma was hardly of any consequence in the absence of reliable evidence on record to prove the involvement of these two accused persons. He further submitted that there is no evidence to show that there was any conspiracy to commit the offence alleged by the prosecution.

27. Shri J.S. Sodhi, Advocate for Shamsuddin @ Meradona and Anwar submitted that the charge u/s 376/120B IPC was not made out. No overt act of rape was alleged against either of them and only some allegations of a minor nature were leveled by Archana Chaudhary (PW-34) against Anwar. So far as Shamsuddin @ Meradona is concerned he was only the driver of the vehicle and carried out the orders of his master. There was nothing to suggest that he ever misbehaved with any girl or did anything of that sort. He further submitted that the investigation was biased and a lot of prejudice was created on account of the publicity given to the episode by the press. The photographs, Articles 1-5 produced by the prosecution were not produced from the custody of any of the accused and it was not even known from where those photographs were recovered. In any event those photographs have not been proved in accordance with law. There is no legal evidence in that regard. He also submitted that this is not a usual case of rape. Even if the prosecution case is accepted, the evidence disclosed that the girls went with them voluntarily and were consenting parties. They used to carry clothes which they changed after reaching the farm and sat with the appellants for hours together. In the circumstances it was quite possible that a friendship had developed and some advances may have been made by the appellants. In any event these facts, he submitted, are relevant while considering the question of sentence even if they are found guilty.

28. Shri P.S. Mishra, Sr. Advocate, appearing for the State in these appeals supported the conviction of the aforesaid appellants and submitted that this Court has to be very careful in weighing the evidence of the witnesses in a case of this nature. The appellants had prepared a well thought out plan of enticing young girls from schools and colleges. Initially their behavior was courteous, cordial and friendly but thereafter when the girls were in their clutches they put

them under threat and used force to sexually exploit them and continued the exploitation under threat and pressure. The girls were photographed in compromising positions and those photographs were used as a tool to keep them quiet. Under these circumstances there is no question of their being free consenting parties. Moreover he submitted, there is no justification in the argument that on account of friendship such liberty may have been taken by the appellants. He submitted that one cannot make a general assumption that every friend who happens to be a girl must also be presumed to be a consenting party for sexual activities. He referred to the evidence on record and submitted that the evidence discloses that the appellants first tried to impress the girls that they were decent and affluent people and that is why on some occasions, apart from taking a meal together, nothing more happened. This was a clever design to earn their confidence and friendship. But after a certain stage they forcibly raped those girls and continued their sexual exploitation under threats and black mailing tactics. It appears from the evidence of Sangita that not only she was being sexually exploited, she was also compelled to bring other girls for the same purpose. Once the girls were in their clutches, they were left with no option but to abide by their dictates and submit to sexual exploitation for the pleasure of the appellants as well as others. He further submitted that in a case of this nature a victim girl would be very hesitant to depose before the Court. Very often they would attempt to save their own honour by denying the entire prosecution case, as if nothing had happened, or admit only a part of the prosecution case which may not seriously affect their reputation and honour. Despite the reluctance expected of such victims in such circumstances, some of the witnesses have very candidly admitted that they were subjected to sexual exploitation and have given vivid details in the course of their deposition. He submitted that the courts below were justified in convicting the aforesaid appellants in view of the clear evidence on record implicating them.

29. The trial court as well as the High Court have carefully considered the evidence on record and have concurrently found aforesaid appellants guilty of the offence u/s 376 read with Section 120B IPC. Puttan and Ishrat have been found guilty of the offence u/s 376 IPC, We have found no good reason which may persuade us to set aside the findings recorded by the courts below. The evidence on record discloses that the aforesaid appellants acted according to a very well organized plan to lure innocent and unsuspecting girls by show of their affluence and pretensions of friendship. The victims were not mature enough to see through their game, and some of them fell victim to their evil designs. Some of them fortunately realized immediately that their intentions were dubious and after some experience they were quick to dis-associate themselves from them. So far as Ishrat and Puttan accused are concerned there is clear evidence of PW-17 Madhu Bala that she had been raped by these two accused apart from others. Unfortunately many of the victim girls who appeared as witnesses turned hostile and one can easily appreciate the reason why they did not want to depose against the appellants as that would have exposed them as well, and would have

adversely affected their future life. Much was sought to be made of the fact that the photographs, material objects 1 to 5, were collected by Shri Hari Prasad Sharma (PW-9) in the course of his secret investigation and it is not known as to the source from which he procured those photographs. In any event those photographs were not procured from the appellants. We do not wish to place much reliance upon those photographs in view of the clear oral evidence of the victim girls. The appellants had devised an ingenious plan to attract the victim girls on pretensions of friendship, and their affluence made the proposal even more attractive. Once they were in their clutches they even used force to rape them and to sexually exploit them. It is also obvious from the evidence of PW-17 that she was made to please two other persons, one Babli from USA and another Zameer.

30. These four accused have been named by several witnesses examined on behalf of the prosecution. They were always found present at the farm house or at the house of Farukh. It would be too much of a co-incidence that they were accidentally present at the relevant time at those places.

31. It was sought to be argued that so far as Anwar and Meradona are concerned it is not alleged that they had committed the offence of rape. It was therefore, contended that they cannot be held to be members of the conspiracy. This submission must be rejected. So far as Anwar is concerned he is not as innocent as he pretends to be. In fact he also made overtures to Monika Jain (PW-43) but she was able to extricate herself from the situation. This only shows that Anwar accused was not a silent spectator or a casual visitor to the farm or to the house of Farukh where these nefarious activities were carried on.

32. So far as Meradona is concerned it is no doubt true that there is no allegation of his having raped any girl or having misbehaved with any one of them. What, however, is apparent from the evidence on record is that he used to transport the girls to the farm house and the house of Farukh from their respective residences or the school. The evidence also discloses that he was responsible for arranging food etc. for them. It is not necessary that in order to be a co-conspirator each one of the conspirators should act in an identical manner. What is essential is that they must agree to do or cause to be done an illegal act. Different members of the conspiracy may be assigned different roles with the object of committing the agreed illegal act. Meradona was certainly aiding the others to commit the illegal act which was the object of their conspiracy. Having regard to his conduct and the evidence on record it is quite obvious to us that he was aware of what was happening and the role played by him establishes the fact that he was also a member of the conspiracy in which he was assigned the role of transporting victims. He was, therefore, clearly guilty of the offence of conspiracy.

33. We are, therefore, satisfied that the evidence on record clearly establishes the offence u/s 376 IPC as against Puttan and Ishrat and the offence u/s 376/120B IPC against Anwar and Meradona. As noticed earlier they have been acquitted of the other charges leveled against them and therefore it is not

necessary for us to go into those aspects of the prosecution case.

34. We shall now consider the cases against Mahesh Ludhani and Harish Tolani. Both of them have been acquitted by the High Court of all the charges leveled against them. On facts as well, we find that their cases stand on a different footing. They were more concerned with the developing of films and printing of photographs taken while the victims were in a compromising position. It was the case of the prosecution that that with the help of such photographs the victim girls were sought to be blackmailed. The High Court has acquitted the other accused also of the charge u/s 292/120B IPC. Shri P.S. Mishra, appearing on behalf of the State submitted that the photographs, Articles 1 to 5 clearly establish that the victim girls were photographed in a compromising position. It is true that the evidence does not disclose from where those photographs were procured but according to him that did not affect the admissibility of the photographs as a piece of evidence. It is not necessary for us to go into the question as to whether the photographs, Articles 1 to 5, are admissible as a piece of evidence. What is significant is the fact that the prosecution had led no evidence to show that these photographs were recovered from either Mahesh Ludhani or Harish Tolani. Mahesh Ludhani was concerned with the Bharosa Colour Lab while Harish Tolani was concerned with Ajmer Colour Lab. The prosecution sought to implicate Harish Tolani on the basis of the evidence of Janardhan Sharma PW-143 who had searched the premises of Ajmer Colour Lab. Admittedly no obscene photograph was recovered from the aforesaid premises. Yet the prosecution sought to rely upon the so-called disclosure statement made by Harish Tolani to the effect that he had shown to them the place where the photographs were allegedly burnt. Shri Mishra submitted that the principle enshrined in Section 27 of the Evidence Act will apply if a fact is discovered pursuant to a disclosure statement which gives some material which may be an incriminating fact. After some argument he did not press the point further.

35. Admittedly in the instant case nothing was recovered from the place pointed out by Harish Tolani as the place where photographs were burnt. More over none of the victims has deposed that either Mahesh Ludhani or Harish Tolani had ever photographed them. In fact their names have not been mentioned at all by the victims. Shri N.C. Kochhar, Senior Advocate, appealing on behalf of these two respondents submitted that PW-9 in his secret enquiry had found that Purshottam (since deceased) had made extra copies of the photographs. But a case was sought to be made at the trial that Mahesh Ludhani and Harish Tolani had made copies of such photographs. He submitted that there was really no basis on which Janardan Sharma (PW-143) went about searching so many photo labs in the city of Ajmer. At the trial some evidence was led to show that it was Puttan who had photographed PW-17 Madhu Bala when she was in a compromising position with Sohail. In any event no incriminating article was found pursuant to the so called disclosure statements made by these respondents.

36. Shri P.S. Misra then referred to the evidence of Shail Bala Tayal (PW-41) and her husband Manoj Tayal (PW-42). According to the evidence of PW-41 she had given a film for developing and printing to the Bharosa Colour Lab which contained her nude photographs taken by her husband. According to her the photographs after developing and printing were handed over to her by Mahesh Ludhani. She stated that she is a resident of Beawar - 50 Kms. away and that she had come to collect the photographs not with her husband but with her sister. Shri Kochar appearing for him submitted that the evidence of PW-41 and PW-42 deserves outright rejection. In any event their evidence does not connect Mahesh Ludhani with the conspiracy of which Puttan, Ishrat etc. were members. It appears highly unnatural for PW-41 to come from Beawar - 50 Kms. away to give the film for developing and printing at Ajmer. It is also not known how the police was able to contact her in the course of investigation. In any event, there was nothing incriminating about the conduct of Mahesh Ludhani. A customer such as PW-41 gave a film for developing and printing which he did. The fact that the film contained nude photographs of PW-41 cannot implicate him because the film was handed over for developing and printing by the same person whose photographs it contained. All that he did was to develop the film and print the photographs and thereafter hand them over to the customer.

37. We are satisfied that the evidence of Shail Bala Tayal (PW-41) does not establish the case of the prosecution against Mahesh Ludhani that he was also a member of the conspiracy and that the films were developed and photographs printed by him with a view to aid the co-conspirators to sexually exploit the victim girls.

38. The High Court has given weighty reasons while recording the acquittal of these two respondents. It found that there was no evidence on record to suggest that respondents Mahesh Ludhani and Harish Tolani ever participated in the parties at the farm house or at the house of Farukh where PW-15 and PW-17 were allegedly raped. There was also no evidence to establish that the photographs, Articles 1 to 5 were printed and developed either at the Ajmer Colour Lab or the Bharosa Colour Lab. Moreover no obscene photograph was recovered by the Investigating Officer at the instance of these two respondents. The solitary incident of Shail Bala Tayal (PW-41), who was not one of the victims, did not prove anything against them because she did not even remotely suggest that with the help of those photographs Mahesh Ludhani attempted to blackmail her. The searches carried on by Hari Prasad Sharma and Janardhan Sharma did not reveal anything and there was nothing to suggest that they had conspired with the co-accused to sexually exploit the girls after photographing them in a compromising position and to facilitate their continued exploitation.

39. We find the reasons recorded by the High Court to be supported by the evidence on record. The findings are reasonable and possible on the basis of the evidence on record. No evidence has been brought to our notice which may persuade us to set aside the findings recorded by the High Court. We, therefore,

find no justification for interference in these appeals against acquittal. We, therefore, uphold the acquittal of these respondents, namely Mahesh Ludhani and Harish Tolani by the High Court.

40. It was lastly submitted before us that in any event the sentence of life imprisonment u/s 376 or u/s 376/120B IPC is too harsh. Having regard to the facts and circumstances of the case we are of the view that the ends of justice will be met if the sentence is reduced to ten years rigorous imprisonment from life imprisonment. Accordingly we reduce the sentence imposed by the courts below against the appellants to ten years rigorous imprisonment.

41. Subject to the modification of sentence the appeals preferred by the accused/appellants as well as by the State are dismissed.