
(2018) 11 BOM CK 0087
In the Bombay High Court
Case No : Criminal Appeal No.1325 Of 2013

Nana @ Sandeep Tukaram Shinde

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 26-11-2018

Acts Referred:

Indian Penal Code, 1860 — Section 366(A), 376(2)(f), 506
Evidence Act, 1872 — Section 157

Citation : (2018) 11 BOM CK 0087

Hon'ble Judges : A.M.Badar, J

Bench : Single Bench

Advocate : A.H.H.Ponda, P.G.Sarda, M.R.Tidke

Final Decision : Partly Allowed

Judgement

1 By this appeal, the appellant/accused is challenging the Judgment and Order dated 19/12/2013 passed by the learned Additional Sessions Judge,

Satara in Sessions Case No.69 of 2012 thereby convicting him of the offences punishable under Sections 366(A), 376(2)(f) and 506 of the Indian

Penal Code. For the offence punishable under Section 366(A) of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous

imprisonment for ten years apart from imposition of fine of Rs.10,000/Â and default sentence of rigorous imprisonment for one year. For the offence

punishable under Section 376(2)(f) of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for ten years apart

from imposition of fine of Rs.10,000/Â and default sentence of rigorous imprisonment for one year. For the offence punishable under Section 506 of

the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for three years apart from imposition of fine of Rs.5,000/Â and default

sentence of rigorous imprisonment for six months. The learned trial Court had directed that the substantive sentences shall run concurrently.

2 Briefs facts leading to the prosecution of the appellant/accused can be summarized thus :

(a) Victim of the crime in question is a school going girl aged below 12 years and studying in 5th Standard at Adarsh School in village Rahimatpur in

Koregaon Taluka of Satara District. Her father used to work as a labourer on construction site of the appellant/accused, who was working as teacher

in the school. According to the prosecution case, the appellant/ accused used to take the victim female child for a ride on his motorcycle. On

15/03/2012, the appellant/accused had taken the minor female victim/P.W.No.6 to his construction site and by threatening her asked her to fondle and

handle his penis. Then, on the next day, the appellant/accused again took the minor female victim/P.W.No.6 to his construction site, denuded her and

committed rape on her.

(b) P.W.No.2 Surekha Mane apart from being neighbourer of the minor female victim/P.W.No.6 was also student of 8th Std. in Adarsh School of

Rahimatpur. She happens to be friend of the minor female victim/P.W.No.6. On 19/03/2012, they both were playing in the vicinity of house of their

neighbourer P.W.No.1 Sayara Mulla. During the course of their play, the minor female victim/P.W.No.6 witnessed the appellant/ accused coming

there on the motorcycle. She took fright and started crying. P.W.No.2 Surekha Mane then started asking her as to what happened to her. By that

time, their another friend Snehal also came on the spot. P.W.No.1 Sayara Mulla also came near the minor female victim/P.W.No.6. They all heard

utterances of the minor female victim/P.W.No.6 to the effect that the appellant/ accused had taken her to the construction site on two occasions. On

first occasion, he asked her to touch and fondle his penis, whereas on the next occasion on the following day, the appellant/accused had committed

rape on her. Narrations of the minor female victim/P.W.No.6 were then disclosed to her sister P.W.No.3 Maya Madane. Upon inquiry, the minor

female victim/P.W.No.6 also disclosed the incident to her sister P.W.No.3 Maya Madane. Then, P.W.No.5 Meerabai Madane, mother of the victim

child came to know about the incident. The minor female victim/P.W.No.6 again narrated what happened to her, to her mother P.W.No.5 Meerabai

Madane. She disclosed the incident, as happened, to the husband and Woman Organization working in the field of prevention of sexual abuse of the female victims. On the next day i.e. on 20/03/2012, P.W.No.5 Meerabai Madane accompanying by others went to the Police Station at Rahimatpur and lodged the FIR (Exhibit 34), which resulted in registration of Crime No.17 of 2012 for the offence punishable under Section 376 and 506 of the Indian Penal Code against the appellant/accused.

(c) The minor female victim/P.W.No.6 was then sent for medical examination to the Rural Hospital, Koregaon where she was examined by

P.W.No.8 Dr.Nitin Jadhav. The appellant/ accused came to be arrested. His clothes as well as clothes of the minor female victim/P.W.No.6 were

seized. Seized articles were sent for chemical analysis. Statements of witnesses came to be recorded and on completion of investigation, the

appellant/accused came to be charge[^] sheeted.

(d) The learned Additional Sessions Judge, Satara framed charge for the offences punishable under Sections 366(A), 376(2)(f) and 506 of the Indian

Penal Code. The appellant/accused pleaded not guilty and claimed trial.

(e) In order to bring home the guilt to the appellant/accused, the prosecution has examined in all ten witnesses. Sayara Mulla, neighbourer of the minor

female victim/P.W.No.6, who heard her recitals is examined as P.W.No.1. P.W.No.2 Surekha Mane is friend of the minor female victim/P.W.No.6

and she has also heard the narration of the incident from the minor female victim/P.W.No.6. P.W.No.3 Maya Madane is elder sister of the minor

female victim/P.W.No.6. She is summoned by the prosecution in order to prove previsions statement in respect of the incident made by the victim.

Another neighbourer P.W.No.4 Aslam Shaikh is examined as P.W.No.4. He turned hostile to the prosecution. First Informant/P.W.No.5 Meerabai

Madane is mother of the victim child. The prosecution has examined the victim child as P.W.No.6. Panch witness Balu Nikam, who heard the

voluntary statement of the appellant/accused leading to seizure of the motorcycle is examined as P.W.No.7. Dr.Nitin Jadhav, Medical Officer of the

Rural Hospital, Koregaon, who examined the minor female victim/P.W.No.6, is examined as P.W.No.8. The documents at Exhs.40 to 42 are medical

papers relating to examination of the minor female victim/P.W.No.6. API, Sudhakar Kandekar is examined as P.W.No.9, whereas the Police

Inspector of the said Police Station, namely Digambar Jadhav who conducted investigation is examined as P.W.No.10. The defence of the appellant/accused was that of total denial. As per the defence version father of the victim child had demanded huge amount as a hand loan from the appellant/accused. As the appellant/accused has refused to oblige, he is falsely implicated in the crime in question. The appellant/accused has entered in the defence and examined Prakash Kamble as Defence Witness No.1 in order to demonstrate that version of the minor female victim/P.W.No.6 to the effect that this witness had seen both of them at the construction site is incorrect.

(f) After hearing the parties, by the impugned Judgment and Order dated 19/12/2013, the learned trial Court was pleased to convict the appellant/accused for offences punishable under Sections 366(A), 376(2)(f) and 506 of the Indian Penal Code. He was accordingly sentenced as indicated in the opening paragraph of this Judgment.

3 I heard Mr.Ponda, the learned Counsel appearing for the appellant/accused at sufficient length of time. He drew my attention to the evidence of defence witness Prakash Kamble and vehemently argued that evidence of this witness is sufficient to falsify the version of the child witness, in submission of the learned Counsel for the appellant/accused, evidence of the minor female victim/P.W.No.6 is unworthy of credit and the defence evidence demonstrates that the applicant is falsely implicated in the crime in question. It is further argued that forensic evidence is not supporting the case of prosecution and the medical evidence is lacunic. It is not in tune with the medical jurisprudence. The learned Counsel further argued that the prosecution has not made out any case of procurement of a girl and, therefore, conviction of the appellant/accused for the offence punishable under Section 366(A) of the Indian Penal Code cannot be sustained. It is further submitted that the appellant/accused has his family to maintain and his family comprises of small children and, therefore, this constitute adequate reason for scaling down the sentence of imprisonment imposed on the appellant/accused.

4 As against this, according to the learned Additional Public Prosecutor, the impugned Judgment and Order of conviction is in tune with the evidence adduced by the prosecution and, therefore, the same cannot be interfered with.

5 I have carefully considered the submissions so advanced and also perused the Record and Proceedings including oral as well as documentary evidence.

6 It has come on record through unimpeachable testimony of P.W.No.5 Meerabai Madane, P.W.No.3 Maya Madane as well as from that of the

minor female victim/P.W.No.6 that father of the minor female victim/P.W.No.6 was working as a labourer on construction site of the

appellant/accused and, therefore, they all were knowing the appellant/accused. Evidence on record and particularly that of P.W.No.1 Sayara Mulla

indicates that the appellant/accused used to visit house of the minor female victim/P.W.No.6 intermittently. Evidence on this aspect is unchallenged

and unshattered in the cross-examination of all these witnesses. This witness do indicates that the minor female victim/P.W.No.6 was knowing the

appellant/accused, who was on visiting terms at her house and who was well acquainted to all her family members and neighbours. On this

backdrop, it is in evidence of the minor female victim/P.W.No.6 that in the year 2012, on first occasion, the appellant/accused had taken her on ride to

his construction site, removed the zip of his pant and asked her to touch his penis. As he threatened her, she touched his penis. This witness further

deposed that on the next day again she was taken by the appellant/accused to the said construction site and on that occasion, the appellant/accused

removed her clothes and committed rape on her. Evidence of the minor female victim/P.W.No.6 to the effect that the appellant/accused used to take

her for ride on his motorcycle as virtually went unshattered in the cross-examination.

7 From cross-examination of this witness it is brought on record that she was studying in Adarsh Vidyamandir at Rahimatpur. This victim child was

taking education in the 5th Std. at that school at the time of the incident in question. Suggestions given by the defence regarding false implication is

denied by this witness.

8 It is well settled that evidence of the child witness must find adequate corroboration before it is relied upon as the rule of corroboration is of practical

wisdom than of law. Valuable reference can be had to this preposition from the Judgment of the Honourable Apex Court in the matter of Prakash &

Anr. v. State of Madhya Pradesh(1992) 4 SCC 225 and Ram Yadav v. State of

Bihar(1996) 9 SCC 287.. However, it is not the law that if a witness is a child, his or her evidence shall be rejected even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and greater circumspection because a child is susceptible to the tutoring and get swayed by what others tell to him or heard. Keeping in mind this position of law regarding appreciation of evidence of the child witness, let us examine whether evidence of the minor female victim/P.W.No.6 is gaining corroboration in material particular from other evidence adduced by the prosecution on record. Careful perusal of the entire testimony of this child witness is not indicating any tutoring to her for deposing against the appellant/accused.

9 P.W.No.2 Surekha Mane is the schoolmate of the minor female victim/P.W.No.6. P.W.No.2 Surekha Mane in terms has deposed that on

19/03/2012 she and her friend i.e. the minor female victim/P.W.No.6 were playing near the house of P.W.No.1 Sayara Mulla. This witness candidly

stated that at that time they saw the motorcycle of the appellant/accused and all of a sudden the minor female victim/P.W.No.6 became frightened

and started crying. Evidence of P.W.No.2 Surekha Mane coupled with that of P.W.No.1 Sayara Mulla shows that both of them made inquiry with the

minor female victim/P.W.No.6 as to what happened and by then Snehal also came on the spot. Evidence of P.W.No.2 Surekha Mane and P.W.No.1

Sayara Mulla reflects narrations of the minor female victim/P.W.No.6 made to both of them. As per congruous version of both these witnesses, the

minor female victim/P.W.No.6 disclosed both of them that the appellant/ accused had taken her to his construction site on the first day and asked her

to touch his penis. She accordingly touched his penis. The minor female victim/P.W.No.6 further narrated that on the second day, she was again taken

by the appellant/accused to his construction site where he had committed rape on the minor female victim/P.W.No.6.

10 As seen from the evidence, then, P.W.No.1 Sayara Mulla called P.W.No.3 Maya Madane, who happens to be sister of the minor female

victim/P.W.No.6. As per version of P.W.No.3 Maya Madane, which is duly corroborated by that of P.W.No.1 Sayara Mulla, P.W.No.3 Maya

Madane was then told about the incident by P.W.No.1 Sayara Mulla. Then, upon being asked even the minor female victim/P.W.No.6 again disclosed

the incident of sexual assault on her by the appellant/accused to her sister P.W.No.3 Maya Madane. P.W.No.3 Maya Madane has vividly described in her testimony as to what was disclosed to her by her younger sister " the minor female victim/P.W.No.6.

11 Evidence of P.W.No.5 Meerabai Madane " mother of the minor female victim/P.W.No.6 reveals that then she came to know about the incident through her daughter P.W.No.3 Maya Madane and then from her minor daughter/P.W.No.6. P.W.No.5 Meerabai Madane has also spoken about the disclosure made to her by her minor daughter/P.W.No.6 about the incident of sexual abuse on her. As per version of P.W.No.5 Meerabai Madane, her minor daughter/P.W.No.6 has told her that initially on the first day, by taking her to the construction site, the appellant/accused had asked her to fondle her penis and then on the next day the appellant/accused had committed rape on her.

12 All these witnesses are cross-examined at length by the defence, but they all denied the suggestion to the effect that the appellant/accused is falsely implicated in the crime in question because father of the minor female victim/P.W.No.6 had demanded loan from the appellant/accused and this request was rejected by the appellant/accused. The other suggestions regarding the incident in question are also denied by these witnesses.

13 Evidence of P.W.No.1 Sayara Mulla, P.W.No.2 Surekha Mane, P.W.No.3 Maya Madane and P.W.No.5 Meerabai Madane as such is proving the previous statement made by the minor female victim/P.W.No.6 to all of them soon after the incident. There is nothing on record to indicate that after the incident and prior to disclosure of the minor female victim/P.W.No.6, her mind was influenced or polluted by any other person to implicate the appellant/accused falsely in the crime in question. Similarly, cross-examination of all these witnesses is bereft of any data as to how much amount was demanded by the father of the minor female victim/P.W.No.6 from the appellant/accused, when it was demanded, what was the purpose for such demand and whether the family of the minor female victim/P.W.No.6 was in fact in need of such amount. Thus, in absence of all these relevant and material particulars it appears difficult to digest the theory of false implication of the appellant/accused in the heinous crime of rape on a child below 12 years of age. At this juncture, it is apposite to quote the relevant observations of the Honourable Apex Court in the matter of Bharwada

Bhoginbhai Hirjibhai v. State of Gujarat AIR 1983 SC 753. where, the Supreme Court had considered such defence of false implication in case of sexual exploitation of the females.

In paragraph 10 of its Judgment, it is held thus by the Honourable Apex Court :

“Without the fear of making too wide a statement or of overstating the case, it can be said that rarely will a girl or a woman in India make

false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban

as also rural society. It is also by and large true in the context of the sophisticated not so sophisticated, and unsophisticated society. Only very rarely

can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because :- (1) A girl or a woman in the

tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity

had ever occurred. (2) She would be conscious of the danger of being ostracized by the Society or being looked down by the society including by her

own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love

and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would

apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) it would almost

inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She

would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a

tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family

name and family honour is brought in to controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family

of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family

honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocent.

(12) The reluctance to face interrogation by the investigating agency, to face the

Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent.â??

14 In the case in hand, the victim of the crime in question was a minor below 12 years of age. She is also having a elder sister named Maya, who is

examined as P.W.No.3 by the prosecution. Without any material particular regarding the soÂ called financial demand and cogent evidence on this

aspect, defence of the appellant/accused that he is falsely implicated because of refusal to pay the amount demanded as a hand loan cannot be

accepted. It is difficult to accept the contention that parents of the minor female victim/P.W.No.6 would make such false allegation against the

appellant/accused, virtually placing the marriage prospectus of the minor female victim/P.W.No.6 at stake apart from fear of social ostracizing or

stigma to the honour of entire family. Generally, parents of such a minor unmarried girl are even reluctant to report such matter to avoid publicity

which mostly creates a sense of shame to them.

15 Evidence of the witnesses examined by the prosecution, as stated in foregoing paragraphs, namely P.W.No.1 Sayara Mulla, P.W.No.2 Surekha

Mane, P.W.No.3 Maya Madane and P.W.No.5 Meerabai Madane are proving the former statement of the minor female victim/P.W.No.6 made soon

after the incident to them. The proved former statements of the minor female victim/P.W.No.6 made to the prosecution witnesses are duly

corroborating the version of the minor female victim/P.W.No.6 in respect of the incident in question and are admissible in evidence as per provisions

of Section 157 of the Evidence Act.

Now let us examine the medical evidence on record. The same is criticized by the defence by submitting that it is not in tune with the medical

jurisprudence as found in book on medical jurisprudence written by the celebrated Author 'Modi'. At this juncture, it needs to be noted that it is well

settled principle of law that if medical evidence is not in tune with the ocular evidence, then if the ocular evidence is trustworthy and reliable then the

contrary medical evidence is of no consequence. Principles of appreciation of evidence in cases relating to rape on female are elaborated by the

Honourable Apex Court in the case of State of Punjab v. Gurmeet Singh¹⁹⁹⁶ Cr.L.J. 1996 172.

16 . The relevant observations are thus :

It is an irony that while we are celebrating woman's rights in all spheres we show little or no concern for her honour. It is a sad reflection on the attitude or indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

17 The minor female victim/P.W.No.6 was examined by P.W.No.8 Dr.Nitin Jadhav, Medical Officer of Rural Hospital, Koregaon on 20/03/2012.

This medical officer has deposed about the history given by the minor female victim/P.W.No.6 to him. As per version of this witness, the minor

female victim/P.W.No.6 had told him that the appellant/accused had asked her to handle his penis and thereafter had committed rape on her.

Evidence of P.W.No.8 Dr.Nitin Jadhav shows that upon medical examination of the minor female victim/P.W.No.6 he found her hymen not intact and

margins were reddish with congestion. This evidence of P.W.No.8 Dr.Nitin Jadhav is fully in tune with contemporaneous medico legal documents at

Exhibits 40 to 42. The incident in question took place on 16/03/2012 whereas the victim was examined by this Medical Officer on 20/03/2012. In

cross-examination, this Medical Officer admitted that as per medical jurisprudence found in Modi's book, fresh abrasions are red in colour and with passage of 12 to 24 hours time, red scab is formed on those abrasions. After 1 to 4 days, abrasions become blue or brown. He admitted that his observations are not tallying with the book of medical jurisprudence by Modi. However, this admission of the Medical officer is not of much assistance to the defence because what this Medical Officer found on examination of the private part of the victim was torn hymen with reddish and congested margins. This finding is perfectly in tune with the version of the minor female victim/P.W.No.6 to the effect that appellant/accused has committed rape on her. The law on this aspect is to the effect that even if no injuries are found on the victim of the sexual assault, then also if evidence of the victim of such offence is reliable, the conviction can be safely recorded. Ultimately, it is a settled position that medical evidence is a corroborative piece of evidence in the form of opinion of the expert. In the case of *Ranjit Hazarika v. State of Assam* (1998) 8 SCC 635, the opinion of the doctor was that no rape appeared to have committed because of the absence of rupture of hymen and injuries on the private part of the prosecutrix, the Apex Court took a view in that matter that the medical opinion cannot throw overboard an otherwise cogent and trustworthy evidence of the prosecutrix. In the case in hand, even medical evidence is corroborating the version of the prosecutrix and healing time may depend on the nature of injury as well as place of injury and other relevant conditions. Therefore, this minor inconsistency cannot be used to jettison the case of the prosecution.

18 With this evidence, the prosecution has successfully established commission of rape on the minor female victim/P.W.No.6 by the appellant/accused. Evidence of the minor female victim/P.W.No.6 that she was below 12 years of age at the time of commission of offence is not challenged by the defence. Even the minor female victim/P.W.No.6 at the time of entering in the witness box has stated her age as 12 years. This evidence is not challenged in the cross-examination. Similarly, evidence of her mother P.W.No.5 Meerabai Madane that the minor female victim/P.W.No.6 was 11 years of age at the time of the incident is not shattered or challenged in the cross-examination.

19 Thus, it cannot be said that the learned trial Court has committed any error by concluding that the appellant/accused had committed the offence

punishable under Section 376(2)(f) of the Indian Penal Code.

20 The appellant/accused is also convicted of the offence punishable under Section 366(A) of the Indian Penal Code by the learned trial Court. This

section deals with procurement of a minor girl for forcing her to illicit intercourse with another person. Such is not the case in hand and, therefore, the

appellant/accused cannot be convicted on this count. Conviction of the appellant/accused on this count recorded by the learned trial Court as such

cannot be sustained.

21 Evidence of the minor female victim/P.W.No.6 do indicates that the appellant/accused had indulged in criminal intimidation by threatening her at

the time of commission of offence. Therefore, no infirmity can be found in his conviction for the offence punishable under Section 506 of the Indian

Penal Code.

22 The offence punishable under Section 376(2)(f) of the Indian Penal Code is punishable with a minimum sentence of rigorous imprisonment for ten

years, but it may extend to imprisonment for life apart from liability to pay fine. For adequate and special reasons to be mentioned in the Judgment, the

Court can impose lessor sentence for such offence which in the case in hand took place prior to enactment of the Criminal Law (Amendment) Act,

2013. However, it is well settled that object of the sentencing policy is to protect the society and to deter the criminal for achieving the avowed object

to law by imposing appropriate sentence. The imposition of appropriate punishment is the duty of the Court in response to the cry of the society for

justice. The punishment is required to be appropriate considering the nature of crime and the circumstance in which it is committed. The Court is not

only required to keep in mind the rights of the criminals, but also has to keep in mind the rights of the victim of the crime and the societal interest. The

initial impact of the crime cannot be lost sight of. Any liberal attitude by imposing meager sentence or taking sympathetic view for the sexual offence

relating to the minor female victim would be counterproductive in the long run and against the societal interest. The Honourable Apex Court in

plethora of judgments has enunciated principles which the Court shall consider while assessing as to what could be an appropriate sentence especially

in cases where rape is committed upon a 1 minor child. In State of Rajasthan v. Vinod Kumar AIR 2012 SC 2301, the Honourable Apex Court while

dealing with the issue held :

â??The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence.â??

23 The case in hand is one in which an accused who was working as a teacher in the school is proved to have committed penetrative sexual assault

on a school going girl who is below 12 years of age. In this view of the matter, as the case is relating to the offence of commission of rape on a girl

below

12 years of age, no adequate reason can be found out to scale down the sentence imposed on the appellant/accused for the offence punishable under

Section 376(2)(f) of the Indian Penal Code by the learned trial Court, which is in fact a minimum sentence which was prescribed at the relevant time

for such offence.

24 Resultantly, the following Order :

ORDER

(i) The Appeal is partly allowed.

(ii) Conviction and resultant sentence imposed on the appellant/accused by the impugned Judgment and Order for the offence punishable under

Section 366(A) of the Indian Penal Code is quashed and set aside. However, the conviction and resultant sentence imposed on the appellant/accused

for the offences punishable under Section 376(2)(f) Indian Penal Code as well as under Section 506 of the Indian Penal Code is maintained.

(iii) Needless to mention that substantive sentences imposed on the appellant/accused shall run concurrently. Rest of the impugned order is maintained.

(iv) The Appeal is disposed of accordingly.