

(2015) 06 BOM CK 0158
In the Bombay High Court
Case No : Criminal Appeal No. 59 of 2012

State of Maharashtra

APPELLANT

Vs

Arun Gopalrao Verulkar

RESPONDENT

Date of Decision : 23-06-2015

Acts Referred:

Criminal Law (Amendment) Act, 2013 — Section 9
Criminal Procedure Code, 1973 (CrPC) — Section 313, 357(3), 377, 377(1), 377(3)
Penal Code, 1860 (IPC) — Section 342, 376, 376(1), 506, 506(2)

Citation : (2016) ALLMR(Cri) 126 : (2015) 4 BomCR(Cri) 621 : (2015) 3 Crimes 462

Hon'ble Judges : B.P. Dharmadhikari, J;P.N. Deshmukh, J

Bench : Division Bench

Advocate : H.D. Dubey, A.P.P., for the Appellant; R.M. Daruvala, Advocate (Appointed), Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—This Criminal Appeal under Section 377(1) of the Code of Criminal Procedure is filed by the State Government for enhancement of punishment imposed upon the respondent under Section 376 of the Indian Penal Code. The respondent Arun Gopalrao Verulkar has been found guilty of offence punishable under Section 376 of Indian Penal Code and has been sentenced to suffer Simple Imprisonment for three years and to pay fine of Rs.25,000/-or in default to undergo S.I. for one year. He is also convicted of an offence punishable under Section 506 of Indian Penal Code and sentenced to suffer S.I. for six months and to pay fine of Rs.1,000/-or in default suffer S.I. for three months. He is also punished under Section 342 of Indian Penal Code with similar imprisonment and fine. Fine of Rs.21,000/-received from him is made payable to the victim under Section 357(3) of Code of Criminal Procedure.

2. The accused was in jail since 25.11.2009 till the date of judgment i.e. 24.08.2011 and thereafter continued in jail till he was released on completing the

sentence in May 2013. This appeal came up for hearing on 27.04.2015 and at that time this Court found that there was no progress nor implementation of action under Section 390 of Code of Criminal Procedure. Hence, it issued non-bailable warrant and made it returnable on 27.04.2015. The respondent was then produced on said day and after noticing that minimum Rigorous Imprisonment prescribed under Section 376(1) was seven years and prima facie the reasons recorded by the trial court were not adequate and special reasons to reduce its quantum, this Court due to paucity of time, adjourned appeal for final hearing. The respondent on that day had requested for legal assistance and accordingly directions were issued. He was directed to be produced before this Court on 22.06.2015 i.e. the adjourned date.

3. In obedience of this order, he was produced in the second half on 22.06.2015 and the matter was then taken up for final hearing. Hearing continued till today i.e. 23.06.2015.

4. Shri Dubey, learned APP for the appellant State pointed out that the respondent never challenged his conviction and has undergone imprisonment as directed by the trial Court thus he accepted the findings by which he has been held guilty of offences mentioned supra. Under Section 376(1) of Indian Penal Code, in exceptional cases, punishment of less than seven years can be imposed but then the trial Court has to record adequate and special reasons for it. Here, the trial Court is influenced by age of the accused, fact that it was his first offence and number of dependents upon him as also the amount of compensation which it awarded to the victim. These circumstances or grounds are totally irrelevant and cannot constitute special reasons and are not adequate to sustain punishment of Simple Imprisonment of three years. According to him, after extending an opportunity of hearing to the respondent, this punishment has been imposed and as the order is unsustainable, the punishment of not less than seven years of R.I. needs to be inflicted in present matter. He points out that the accused has committed rape on a minor girl aged about 13 years and looking to the accompanying offending acts, the approach of the trial Court is perverse and against the settled principles of law. He has relied upon various judgments to which we will make reference a little later in the body of the judgment.

5. Shri Daruvala, learned counsel (appointed) for the respondent, invited attention to the provisions of Section 377(3) of Code of Criminal Procedure and pleaded for acquittal of the respondent. He submitted that charge framed by the trial Court is in relation to the offence dated 20.11.2009 and report lodged by the victim does not show any offence under Section 376(1) on that date. There is no evidence on record about any other incident falling under that provision. The oral evidence adduced by the victim shows allegations that the accused is a moneylender and just before alleged incidence on 20.11.2009, there was a quarrel between her father and accused. In cross examination, she accepts quarrel and also accepted that she filed report as directed by her father. Shri Daruvala, learned counsel contends that thus this is a case of false implication as

incidence of rape has come by way of total omission. He has taken us through relevant material on record. In this situation, according to him, as the respondent -accused is not guilty of any offence, either under Section 376 or 342 or 506 of I.P.C., appeal for enhancement as filed is liable to be rejected.

6. Without prejudice and by way of abundant precaution, he adds that the enhancement sought is only in relation to alleged offence under Section 376(1) of I.P.C. and hence other provisions are not decisive in present matter. As that offence is not established and the appellant has already undergone the punishment as imposed by the trial Court, there is no merit in the appeal and appeal is liable to be dismissed. He points out absence of even corroboration in deposition of other witnesses or in material on record.

7. Lastly and without prejudice, he adds that the appellant was released from prison on completing his punishment in May 2013 and then was leading life like a normal citizen till his arrest because of warrant issued by this Court. Since date of his arrest, for last more than two months, he is again languishing in jail. This circumstance and development has created enough disturbance in the family and should be viewed as an adequate special reason warranting reduction in sentence. He, therefore, prays for dismissal of appeal.

8. The learned APP in reply submits that as the findings of the Trial Court were never assailed by filing appeal within limitation and entire punishment has been accepted and undergone without any protest, the belated challenge to conviction should not be given much importance. He points out that the learned trial Court has evaluated the entire evidence and according to him, there is no reason to disbelieve prosecutrix. He submits that hymen of the victim was found torn and this finding of a Medical Officer is sufficient to uphold the conviction. He, therefore, prays for allowing appeal by imposing suitable punishment as mandated in Section 376(1) of I.P.C.

9. Looking to the date of incidence, it is apparent that later amendment to the provisions of Section 376 of I.P.C. are not attracted here. At the relevant time offence was punishable with R.I. of not less than seven years which could have extended up to 10 years or with life imprisonment and fine.

10. Complainant -victim has lodged F.I.R. on 21/11/2009 vide F.I.R. No. 207/2009. On its basis, offences under Sections 342 and 376 of the Indian Penal Code came to be registered. The F.I.R. shows that complainant was treating accused as elder brother. In next line, she says that about 15 days back, when her father had gone to field for labour work, accused had called her to his residence and then shut the door from inside. He then started pressing her breasts and then also removed her underwear and had sex with her. He threatened her with life if it is disclosed to anybody and it would defame her in society. Thereafter, she speaks of incident dated 20/11/2009. She informed that accused called her at about 07:00 PM in the night to his residence and asked her to come to his house again after her father and brother went to sleep.

Accordingly, after they slept, at about 08:00 PM in the night, she went to his house, he then shut the door from inside and started pressing her breasts. At that time, her father and villagers Suresh, Shridhar Choure reached at the house of accused to search for her, shouting her name. Accused then asked her to sit in one corner of room. Her father again gave a call to the accused, who then opened the door. Her father inquired whether his daughter (victim) was there and accused informed that she was not there. Victim after hearing voice of her father, came out and informed her father about the incident. Then her father brought her to police station and she accordingly lodged a complaint.

11. The prosecution has stated that at the relevant time, victim was about 13 years old. This fact has not been disputed before us by the accused person. As per admission register produced on record at Exh.36, her date of birth as recorded is 22/10/1995.

12. The complaint mentioned supra and lodged by her does not allege any rape on 20/11/2009. She had alleged the rape about 15 days prior to that date, but was not in a position to give exact date in report. The charge at Exh. 3 framed by the Additional Sessions Judge is only in relation to incident dated 20/11/2009. All offences under Sections 342, 506-II and 376 of Indian Penal Code are alleged to be in relation to the incident dated 20/11/2009. As such the alleged crime, which had taken place before 15 days prior to 20/11/2009, did not form part of trial. Though Shri Daruvala, learned counsel has pointed out that in her deposition, victim mentions the date of incident to be 22/11/2009, it is apparent that there is error on her part while giving date.

13. Her evidence shows that on 22/11/2009, she was returning home after purchasing grocery material. Accused met her on the way and told her to come to his house at about 08:00 PM. The accused again told her at about 06:00 PM to come to his house, but she refused. Accused threatened her with killing, if she did not come. She returned to her house and prepared meal. All her family members including father and younger brother then went to sleep. Thereafter, at about 8:00 PM, she went to the house of accused, who after her entry closed the door. Her further deposition shows that at that time the accused was watching blue film on television. He pressed her breasts and committed rape on her while showing blue film on television. Prior to that, he had removed all her clothes as also of himself. Her father then came shouting and calling out her name. Accused asked her to hide herself in one corner of the house and told her father that victim was not in there. She came out of the house and her father inquired from the accused as to why he gave false answer. Arun Kawre, Shridhar Chaure, Suresh Raut, Gajanan Chauragade and Keshao Chauragade, were accompanying her father at that time. She narrated incident to her father and to all members accompanying her father. They thereafter came to Police Station and lodged oral complaint. She identified her signature on that complaint. That complaint has been exhibited as Exh.17, while printed F.I.R. has been marked as Exh.18. She also identified the clothes, which she was wearing at the time of incident.

14. In cross-examination, she could not tell date of death of her mother, but could give the date on which she was deposing in Court. She deposed that she had informed police that on 22.11.2009 while returning from grocery shop, accused had asked her to come at 8:00 PM, that at about 6:00 PM, he had again told her to come at 8:00 PM, that she had then refused and accused threatened her with life. She also deposed that she told police that due to said threat, she went to the house of accused at about 08:00 PM on 22.11.2009. Starting of blue film by the accused, the accused having intercourse with her, after hearing voice of her father accused asking her to conceal herself, were all told by her to police. She also deposed that the fact that Shridhar, Suresh, Arun, Gajanan, Keshao were accompanying her father at that time, was also stated by her to police. She also told police that she narrated entire incident to all accompanying persons along with her father. She also deposed that she had stated before police that when blue film was ON on the television, accused removed all her clothes and clothes on his person. She could not assign any reason, why all these facts did not find mention in Exh.17 and Exh.18.

15. Her further cross-examination at paragraph 8 shows that the accused used to disburse money to villagers on interest and her father was having good relations with him prior to the incidence. On the day of incidence, in the evening, there was quarrel between accused and her father on account of money transaction. She accepted that she lodged report at Police Station as per say of her father. However, she denied that at the instance of villagers, she lodged false complaint against the accused. Next important witness in this respect is Investigating Officer (PW-9). He is Anil Mandwe, who was working as P.S.I. at the relevant time.

16. A perusal of evidence of said Anil reveals that victim lodged report at about mid-night (12.45 AM) on 21.11.2009. He has identified that report which bears his signature and signature of victim at Exh. 17. They have also pointed out that accused was arrested immediately and certain articles were also seized from the house of the accused. Articles seized are TV, DVD and one CD of blue film. His cross examination reveals that as Lady Constable was not available at that our of night, he could not refer victim for medical examination immediately. However, he did not take any such entry in case diary and he was not in a position to remember whether as per duty list, any lady Police Constable was posted that time at Police Station. He has then pointed out other investigation. The said deposition does not show any investigation into an offence which has been allegedly committed prior to 21.11.2009. He deposed that he did not undertake any investigation from mid-night (12.45 AM) till 10.00 AM next morning. He has further stated that they left Police Station in search of the accused at about 1.00 AM in the mid-night and came back at about 6.00 AM. They found lock on the house of the accused and other villagers had gone to sleep. After accused was arrested, they found keys of lock in his pocket. He further accepted that panchnama (Exh. 41) was silent about seizure of keys of lock from the pocket of the accused. He further stated that TV and DVD were in working condition. The

accused was tenant in the room from where seizure at about 1.00 AM was made. His landlord did not give any statement but he did not take any entry of refusal from landlord. He seized clothes of the accused. He did not charge sheet accused for having and viewing blue film in the crime before the Court. He accepted that he did not make any entry when he went to village of accused for investigation, though there was practice to make such entry. He also accepted that log book of vehicle does not mention any visit to that place. The omissions in the statement of victim are thereafter put to him and he has accepted that victim did not disclose those facts and therefore, same did not figure in the report. The Investigating Officer was called upon to read report at Exh. 17 and to point out whether it disclosed any offence under Section 376 by the accused on 20.11.2009. This Investigating Officer has replied in affirmative. He further stated that if FIR is delayed, reasons are required to be recorded. Thus, his deposition as also deposition of the victim show that alleged rape on 20.11.2009 committed by the accused has come on record as an omission. The report to which attention was invited, does not reveal any such incidence in the night of 20.11.2009. On the contrary, the victim there mentions an intercourse by the accused 10 to 15 days prior to 20.11.2009. In the background of this express disclosure, an omission to point it out in the night of 20.11.2009 is significant.

17. We have already mentioned above briefly her report. It shows that accused had started pressing her breasts and soon her father and other villagers arrived. Thus, in report, she does not mention removal of either her clothes or of his clothes by the accused or any intercourse. In this situation, her conduct that she was asked to hide by the accused in one corner and thereafter he opened door, the inquiry made by her father with the accused and her coming out after hearing voice of her father, becomes significant. It is important to note that even before accused concealed her, she had heard voice of her father.

18. Spot panchnama mentions a room ad measuring 15" x 12". It does not show any other room. It, therefore, appears that after hearing voice of her father on first occasion, the victim could have immediately responded and gone out or her father or other villagers could have come to her rescue.

19. Her cross examination reveals that her father is an agricultural labour and accused used to lend money to villagers on interest. Her father was having good relations with him prior to the incidence. On the date of incidence, in the evening, there was quarrel between the accused and her father on account of money transaction. If in the evening there was quarrel between the accused and father of the victim, the insistence of the accused that victim should come to his house in the night on the same day, is rather difficult to digest. The victim in the next breath stated that she lodged report at Police Station at the say of her father.

20. When there is no complaint of any rape on 20.11.2009 and there is no investigation into alleged rape committed 10 to 15 days prior thereto, conviction of the accused under Section 376 of I.P.C. becomes unsustainable.

21. Here, perusal of evidence of lady Dr. Archana Phadke, who was Chief Medical Officer, also becomes important. She examined patient with consent of her father on 21.11.2009 at 2.30 PM. Her deposition is at Exh. 45. Though she found hymen ruptured, there was no injury, no bleeding and no discharge. She also attempted the finger test and found that one finger P.V. was possible with difficulty. In cross examination, question was put whether forcible intercourse would have caused injuries on victim's private parts and she has stated that in such cases injuries may or may not be caused. She further stated that she had taken sample of nails of the victim and that sample was useful to corroborate story of victim, if she resists rape. Exh. 46 is her report or answers to queries made by the Investigating Officer. Therein to question No. 1 "whether victim is in fit condition to have sex ?", she has answered that definite opinion cannot be given. To question No. 2 " whether there was any intercourse ?", Again, she has answered that definite answer cannot be given. This material on record does not conclusively establish that there was any intercourse by the accused with the victim on 20.11.2009.

22. PW-5 Vinod was at the relevant time an assistant medical officer who examined the accused and found him capable of having sex. He accepted that his certificate at Ex. 39 does not show that he obtained sample of semen, blood and pubic hair of accused. He stated that he was not aware whether accused was having any congenital disease when he examined him. He deposed that accused may or may not have capacity to have sex at the relevant time. He admitted that in case accused had forcible sex with a girl aged about 13 years, there was every chance of laceration, abrasions and inflammation on his organ. Perusal of Ex. 39 shows that it does not contain any remark of injury on accused.

23. Observations of Trial Court in paragraphs 36 to 41 show its appreciation of the evidence. It has observed that mistake about the date of incidence by the victim was not decisive in the matter. Minor lapses (lapses) and lacunae in the case of prosecution can not help the accused. It also pointed out that the law does not require any injury on private parts either of accused or of the victim. It also has observed that not finding of semen, blood stains or no supporting medical evidence is also not decisive and only testimony of the victim can be used, if it inspires the confidence. We find that there can not be any debate about these legal propositions.

24. However, thereafter it takes note of the case of prosecution, victim, her father and other villagers that they brought accused along with them to the police station in night of 20.11.2009 to lodge the complaint. We have noted supra the deposition of I.O. and the Trial Court also mentions that as per said deposition and arrest panchanama, accused was arrested at 10.00 AM on next day. Though the victim deposed that she did suffer scratches on various parts of her body during the rape and victim informed about it to the doctor, the Doctor at PW-8 did not find such injuries. The said medical officer does not support this claim in deposition before the Court. Trial Court also found that victim did not

depose a word about the incidence of rape committed 15 days prior to 20.11.2009. It also noted that in complaint dated 20.11.2009, she does not speak of rape or intercourse done by the accused on that date, but complains of an offence about 15 days prior thereto. It found that these were the contradictions in the case of the prosecution. In paragraph 39 of the judgment, the Trial Court deals with these contradictions.

25. In paragraph 39 of the impugned judgment, the Trial Court finds that the victim, on oath, deposed about the rape on 20.11.2009 and also identified the accused. It then poses a question whether in Indian Culture, a minor girl can blame anybody of such a heinous crime falsely ? It then goes to quarrel between victim's father and accused on monetary transaction admitted by the victim and raises another query whether a minor daughter would be used to take revenge ? Answer given by the accused to question No. 31 in his S. 313 Cr. P.C. examination, that he had lent money to father of victim, he did not repay, a quarrel took place between them on it and, therefore, a false case came to be filed against him also finds mention in very same paragraph. In next paragraph, Trial Court observes that the accused did not produce any documentary evidence to support his contention that victim's father had borrowed money from him. It, in alternative, again asks a question whether for such dispute, a false case in which minor could be defamed in Society would be filed ? As per the Trial Court, the probable answer to all the questions posed by it comes from a prudent man and that is, in Indian culture, there is no probability of such an attempt.

26. In paragraph 41, Trial Court acknowledges serious lapses in case of the prosecution but holds that accused can not get any benefit out of it. It finds it improper to ignore the mental trauma and condition of a victim-a minor, her rural background in which she may forget the exact date or day and time of the occurrence. Hence, the same are not found sufficient to reject her testimony. It states that an unmarried girl below 16 years would have chastity dear to her heart and would not disclose such an event which may lead to defamation or being ostracized by the Society. It also finds that such victim is not likely to implicate any person other than the real culprit. It has concluded that the evidence of minor victim inspires confidence and connects the accused with the alleged chain of offences.

27. Trial Court itself posed certain questions and raised doubt but then proceeded to resolve it by relying upon the culture and values. We are not in position to go by logic when the facts on record do not conclusively and beyond reasonable doubt support the finding of guilt of accused. In case of an adult witness, such an omission and improvement would have been sufficient to vitiate the deposition. Victim here does not report any rape on 20.11.2009 in FIR lodged immediately. She, on oath deposes about it and the medical evidence does not lend support to her assertion. She mentions about rape allegedly 15 days prior to 20.11.2009 but does not depose about it in Court. Thus, her entire story of alleged rape by accused on her on 20.11.2009 surfaces as an omission. Considering the event of

quarrel prior to alleged incidence dated 20.11.2009, her alleged hiding and then coming out of the house of accused as stated by the victim, we find it difficult to believe the testimony of the victim. A child witness who is not tutored would have otherwise narrated the entire episode immediately to the police, particularly when her father was present there with the villagers. The material on record militates with the claim of victim. In *Rajkumar Vs. State of M.P.*, (2014) AIRSCW 1795 : (2014) CriLJ 1943 : (2014) 3 JT 587 : (2014) 2 RCR(Criminal) 45 : (2014) 3 SCALE 42 : (2014) 5 SCC 353, Hon'ble Apex Court states that

"18. It is a settled legal proposition of law that every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age or extreme old age or disease or because of his mental or physical condition. Therefore, a court has to form an opinion from the circumstances as to whether the witness is able to understand the duty of speaking the truth, and further in case of a child witness, the court has to ascertain that the witness might have not been tutored. Thus, the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him. The trial court must ascertain as to whether a child is able to discern between right or wrong and it may be ascertained only by putting the questions to him.

19. This Court in *State of M.P. Vs. Ramesh and Another*, (2011) CriLJ 2297 : (2011) 2 Crimes 61 : (2011) 3 CTC 308 : (2011) 3 JCC 1550 : (2011) 62 JT 4 : (2011) 2 RCR(Criminal) 582 : (2011) 3 SCALE 619 : (2011) 4 SCC 786 : (2011) 2 SCC(Cri) 493 : (2011) 5 SCR 1 : (2011) AIRSCW 5424 : (2011) AIRSCW 1956 : (2011) 6 Supreme 485 : (2011) 2 Supreme 435 after considering a large number of its judgments came to the conclusion as under: (SCC p. 792, para 14)

"14. In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."

(See also *Suryanarayana Vs. State of Karnataka*, AIR 2001 SC 482 : (2001) CriLJ 705 : (2001) 1 JT 230 : (2001) 1 SCALE 7 : (2001) 9 SCC 129 : (2001) 1 SCR 1 : (2001) AIRSCW 81 : (2001) AIRSCW 2245 : (2001) 1 Supreme 1

28. Here, his conviction was not assailed by the accused by approaching the appellate court. He has suffered the entire punishment of three years and was moving free when he was required to be rearrested due to process issued by this Court in April, 2015. Thereafter, he has been in jail for about two more months.

Parliament did visualize even this situation and found it just to permit even such person an opportunity to plead his innocence when the State Government seeks enhancement of punishment by making a provision therefor in S. 377(3) Cr. P.C. Hence, contention of the learned APP that appellant, having undergone the punishment as imposed by the Trial Court, can not plead for acquittal is unsustainable. Here, in any case, we find that the accused is entitled to be given the benefit of doubt.

29. The question squarely raised by the State before this Court is whether young age, first offence and number of dependents on accused are valid grounds in law warranting the leniency in terms of proviso to S. 376(1) IPC. Trial Court also holds that payment of compensation to the victim out of fine imposed on the accused would also be a mitigating circumstances. Said proviso existed prior to 03.02.2013 and has been removed while substituting S. 376 vide S. 9 of Act No. 13 of 2013.

30. In *State of Rajasthan Vs. Vinod Kumar*, AIR 2012 SC 2301 : (2012) CriLJ 2999 : (2012) 2 JCC 1482 : (2012) 5 SCALE 634 : (2012) 6 SCC 770 , Hon''ble Apex Court observes that the statutory requirement for awarding the punishment less than seven years is to record adequate and special reasons in writing. The dictionary meanings of the word "adequate" are commensurate in fitness, sufficient, suitable, equal in magnitude and extent, and fully. "Special reasons" means exceptional; particular; peculiar; different from others; designed for a particular purpose, occasion, or person; limited in range; confined to a definite field of action. Hon''ble Apex Court states that in a case like the instant one, in order to impose the punishment lesser than prescribed in the statute, there must be exceptional reasons relating to the crime as well as to the criminal. In *Deepak Vs. State of Haryana*(2015) 3 AD 535 : (2015) CriLJ 2049 : (2015) 2 RCR(Criminal) 246 : (2015) 3 SCALE 414 : (2015) 4 SCC 762 : (2015) 4 SCJ 211 , Hon''ble Apex Court finds no merit in this submission that looking to the young age of the appellant and further he being the first offender and lastly, the fact that he had already undergone 3 years 1 month's imprisonment in jail, Court should take some lenient view in the matter of awarding of the sentence to him. In *Ramesh Kumar and Others Vs. State of Himachal Pradesh*, (2013) 11 AD 164 : (2013) 3 RCR(Criminal) 889 : (2013) 9 SCALE 400 : (2013) 14 SCC 110 , Hon''ble Apex Court expresses that the High Court had taken an unwarranted lenient view while imposing the punishment less than the minimum sentence provided by the statute for the offence of gang rape which is 10 years"" RI, though the appellants had been awarded 7 years"" RI. The consideration which prevailed with the High Court for imposing lesser punishment were the children of the respondent convicts are stated to be minor. Convict Ramesh had one leg short and is thus handicapped. The incident in question had taken place in the year 1998. Hon''ble Apex Court stated it was of the considered opinion that none of the said grounds were relevant for this purpose and there was no justification for the High Court to impose the punishment of less than 10 years"" RI. In *Datta Vs. State of Maharashtra*, (2011) 1 SCALE 193 , Hon''ble Apex Court refused

mitigation in the sentence on the ground that the incident had happened way back in 1984 when the accused was a young man and at that juncture, he was a married family person. In *State of M.P. Vs. Bane Singh*, (2005) 12 SCC 367, Hon''ble Apex Court, the grounds of the accused being either an illiterate labourer or from the rural area or being of an age of 20 years at the time of the incident were wholly irrelevant for reducing the sentence to the period already undergone particularly having regard to the nature of the offence and the manner of its commission. The victim was a minor aged 14 years, she was helpless being alone at her house. The accused, taking advantage of the situation, committed the crime and the learned Sessions Judge on appreciation of the facts and circumstances of the case rightly came to the conclusion that he deserved no leniency. Hon''ble Apex Court finds that approach of the High Court lacked sensitivity towards the minor victim. In *State of U.P Vs. Chhoteylal*, AIR 2011 SC 697 : (2011) 1 JCC 449 : (2011) 1 JT 228 : (2011) 1 RCR(Civil) 117 : (2011) 1 RCR(Criminal) 443 : (2011) 1 SCALE 454 : (2011) 2 SCC 550 : (2011) 2 SCC(Cri) 674 : (2011) 1 SCR 406 : (2011) AIRSCW 662 : (2011) 1 Supreme 418, Hon''ble Apex Court mentions that it was not oblivious of the fact that the incident was of 1989; the prosecutrix married after the incident and accused 1 had a family of his own and sending him to jail then might disturb his family life. But none of these factors individually or collectively persuaded it to take a soft option. Rape, a heinous crime being established against a person charged of the offence, justice needed to be done to the victim of crime by awarding suitable punishment to the crime-doer.

31. While making choice of right punishment to be imposed on the accused, the Trial Court in paragraphs 44 onwards of its judgment, finds the young age of accused, number of dependents on him and fact that it was his first crime as grounds warranting the leniency. It also holds that payment of compensation to the victim out of fine amount would meet the ends of justice. We have gone through all the judgments cited by the respective Counsel to adumbrate what constitutes "adequate and special reasons" to enable the Court to choose to impose the punishment of lesser duration than one prescribed under S. 376 IPC. In backdrop of the precedents looked into supra, it is not necessary to refer to those judgments again here. The grounds found relevant for leniency by Trial Court are not approved by the Hon''ble Apex Court and do not tantamount in law as adequate and special grounds to enable the Court to invoke the power under proviso to S. 376(1). However, we need not delve more into the niceties of this controversy here as the basic finding of guilt recorded by the Trial Court is being set aside by us. We find that the accused could not have been punished at all in the present matter.

32. We therefore proceed to pass the following order :--

A. Judgment of conviction dated 24.08.2011, delivered by the learned Assistant Sessions Judge, Akot, in Sessions Trial No. 10 of 2010 is quashed and set aside. Respondent / accused is acquitted of the charge under Sections 342, 506(2) and

376 of the Indian Penal Code, in relation to incident dated 20.11.2009. Respondent be set at liberty, if he is not required by State in any other crime. His bail bonds shall stand cancelled. Seized property be destroyed after appeal period is over.

B. Consequently, Criminal Appeal No. 59 of 2012 filed by the State under Section 377 of the Code of Criminal Procedure, seeking enhancement of sentence, is dismissed.

C. Fees of the learned counsel (appointed) for the respondent/ accused are quantified at Rs.5,000/-.