

(1996) 12 BOM CK 0023
In the Bombay High Court
Case No : Criminal Appeal No. 243 of 1984

The State of Maharashtra

APPELLANT

Vs

Savala Sagu Kokare and another

RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 215, 378(1), 464

Evidence Act, 1872 — Section 134

Penal Code, 1860 (IPC) — Section 34, 376, 379, 392, 506

Citation : (1997) BomCR(Cri) 618 : (1997) CriLJ 786

Hon'ble Judges : Vishnu Sahai, J;A.S.V. Moorthy, J

Bench : Division Bench

Advocate : Mrs. Jyoti S. Pawar, app, for the Appellant; Rajeev Mohite and Mrs. Shirley Mazeralo, for the Respondent

Judgement

Sahai, J.—Aggrieved by a perverse judgment dated 14-12-1983, passed by the Additional Sessions Judge, Satara, in Sessions Case No. 75 of 1983, acquitting the respondents for offences punishable u/s 376, IPC and 392 r/w 34, IPC, the appellant has preferred the present appeal, under Section 378(1), Cr.P.C.

2. Briefly stated the prosecution case runs as under :-

The prosecutrix Chandrabhaga, PW-2 was the daughter of Zimaji Kokare. She was residing in village Deur, Taluka Javali, along with her parents, her brothers Anand and Shankar, her sister Lilabai and other family members. Her three brothers Shamu alias Shamrao, Vithal and Laxman, were residing at Maldev. Her elder sister Venubai and her husband Arjun were residing in village Kas. About a month prior to the incident, she along with Shankar had gone to her brother's place in Maldev. They stayed there till a day prior to the incident (3-2-83). On 3-2-83, on receiving news from father-in-law of her brother Shamrao about her brother's illness, she along with Shankar decided to return home. Her evidence is that her brother Shamrao had given her Rs. 1500/- which she was to hand over to her parents for domestic expenses. Her evidence further is that at about

3 to 4 p.m. on 3-2-83 she and Shankar boarded boat of respondent-Zimaji in village Dinda. Till that place, her brother Laxman had accompanied them. At about 6 p.m. the same day, she and Shankar reached village Deur. As her house was at some distance, both of them decided to spend the night at the house of respondent-Savala. Respondent-Zimaji also decided to spend the night there. That night, after taking their dinner, at Savala's place, she and Shankar slept there.

On 4-2-1983, at about 7 a.m. the prosecutrix and Shankar started for their house which was at a distance of 2 1/2 miles from respondent-Savala's house. At about 8 a.m. while they were in the forest area, the respondent-Savala came from behind her and caught her around the waist. When she cried, he released her. After she had gone 20 paces, respondent-Zimaji came out of the forest. At that point of time, her brother Shankar ran away in the direction of her house. Zimaji attempted to commit rape on her. She resisted. During her resistance, her underwear was torn. Thereafter, respondent-Zimaji committed rape on her for about 15 minutes. The same resulted in bleeding from her private parts. When she was trying to get up, respondent-Savala threatened that he would kill her in case she got up. Thereafter, Savala raped her for about 10 minutes. As a result of her being felled on the ground, the money which she was carrying, fell and the same was taken by the respondent-Zimaji. Thereafter, both the respondents told her that they would kill her in case she informed anyone about that had happened. She then went towards her house and on the way, met her father Zimaji Kokare. She narrated to him the whole incident and also informed him the names of the respondents. At that time, her mother and brother Shankar were also accompanying her father. Thereafter, along with her father and others, she went home and changed her clothes. She handed over her blood-stained underwear to her father. The next day, (5-2-1983) her father along with her, went to village Kas where her sister Venubai and her husband Arjun were residing. It appears from her evidence that Arjun advised them to lodge an FIR. After spending the night at Venubai's place next evening at about 9 p.m., she and her father came to Medha Police Station.

3. The FIR of the incident was lodged by the prosecutrix Chandrabhaga on 6-2-1983 at 9 p.m. at police station, Medha. The said FIR was recorded by police Jamadar Vithal Shinde, PW-7. It is Exhibit 17. On its basis, a case under Sections 376, 392 and 506/34, IPC was registered against the respondents. After the FIR had been lodged, Vithal Shinde sent her for medical examination to Civil Hospital, Satara.

4. The prosecutrix Chandrabhaga was medically examined on 7-2-1983 at 10 a.m. by the Medical Officer of General Hospital, Satara. Police constable Sonawane of Medha police station brought her to the said hospital. Her medical certificate reads thus :-

"On my examination (both chemical and radiological) I have observed the following facts.

1. There are no signs of recent forceful intercourse except the injuries on the back which are as follows :-

There are in all four abrasions on back in lumbar region measuring (1) 1" x 1" (2) 1" x 1/2", 3rd and 4th, 1/2" x 1/2" scab formation present.

Age of the injuries :- within one week not more than 72 hours. Probable cause : Hard and rough surface.

2. There are no injuries on genital organs or breasts.

3. By chemical and radiological examination her age is between 14 (fourteen) and 15 (fifteen) years.

S/d PSI, Medha

S/d -----

Medical Officer,

General Hospital, Satara."

5. The investigation in the case was conducted by PSI Manohar Sathe, PW-8. He commenced the investigation at 11 p.m. on 6-2-1983. On 7-2-1983, apart from interrogating some witnesses, he attached the blood stained underwear of the prosecutrix under a panchanama Exhibit 12. The said underwear was handed over by her sister Venubai. A perusal of Exhibit 12 shows that it bore the following description :-

"A cotton underwear of white colour with a lace. The below portion of the underwear seems to be recently torn, stained, with blood at places. It is a used one."

He then prepared a panchanama of the scene of the incident Exhibit 7.

Same day (7-2-1983) the father of the prosecutrix produced her blouse and skirt which he seized under a Panchanama Exhibit 8. The said articles had been described in Exhibit 8 thus :-

"A used skirt of faint bluish colour, torn on the back, with a pocket, with a steel hook.

- A blouse above the skirt of greenish white colour with a design on it, torn irregularly, the sleeves of which are slightly torn, the buttons on the front are missing."

Next day, i.e. 8-2-1983, he arrested the two respondents-Savala and Zimaji and attached their clothes under panchanama Exhibits 9 and 10 respectively. A perusal of Exhibit 9 shows that a coloured underwear having white spots on the front side and a ganjifrock was recovered from respondent-Savala. A perusal of Exhibit 10 would show that a blue bushshirt and a underwear having stripes was recovered from Zimaji. Exhibit 10 further shows that the underwear was having

semen spots and reddish coloured spots like blood on its front left side portion.

It is also said that during the course of interrogation, the respondent-Zimaji said that he could get the currency notes recovered. Consequently, on 9-2-1983, at the pointing out of the said respondent, in the presence of public panch Mahadeo Pawar, from a hut in Dhangarwada, the said currency notes which were kept in a wooden box were recovered.

On 15-2-1983, PSI Manohar Sathe sent the underwear of the prosecutrix, clothes of the respondents along with samples of their blood and semen to the Chemical Analyst. The report of the Chemical Analyst is Exhibit 29 and Exhibit 30.

Finally, after completing the investigation on 3-5-1983, PSI Sathe submitted the charge-sheet.

6. The case was committed to the Court of Sessions in the usual manner. In the trial Court, the respondents were charged on the counts stated in para 1 of our judgment. They pleaded not guilty to the charges and claimed to be tried.

In the trial Court, the prosecution examined as many as 8 witnesses. In defence, one witness namely DW-1 Dhau Dhavale, father of the respondent-Zimaji and father-in-law of Shamu, brother of the prosecutrix, was examined. He was examined to substantiate that there was an inimical relationship between him and Shamu and on account of the same, respondent-Zimaji was falsely implicated.

After recording the evidence adduced by the parties and hearing the learned counsel for the parties, the trial Judge acquitted the respondents vide the impugned judgment, which has been assailed through this appeal.

7. We have heard Mrs. Jyoti S. Pawar, Additional Public Prosecutor for the State of Maharashtra-Appellant and Mr. Rajeev Mohite with Mrs. Shirley Mazeralo for the respondents, at a considerable length. We have also perused the evidence of the prosecution witnesses; the material Exhibits tendered and proved by the prosecution; the evidence of the sole defence witness and the impugned judgment. After thoughtfully reflecting over the matter, we have reached the conclusion that this appeal deserves to be allowed. In our judgment, both the respondents are guilty for an offence punishable u/s 376, IPC and respondent-Zimaji is further guilty for an offence u/s 379, IPC.

In reaching the said conclusion, we have borne in mind that we are evaluating the impugned judgment in the backdrop of the fact that we are seized of the matter, in an appeal against acquittal wherein the settled law is that the Appellate Court only interferes if the assessment of the evidence of the trial Court is either perverse or grossly unreasonable or the impugned order of acquittal is vitiated by a manifest illegality which has resulted in gross miscarriage of justice. We have also kept in mind the observations of the Apex Court in the oft-quoted case of Sanwat Singh and Others Vs. State of Rajasthan, wherein, in paragraph 9 their Lordships of the Apex Court have observed that

although the Appellate Court in an appeal against acquittal, has the power to review the entire evidence and came to its own conclusion;

"but in doing so, it should not only consider every matter on record having a bearing on the question of fact and the reasons given by the Court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

8. Mrs. Pawar, with her customary tenacity stigmatised the assessment of the evidence of the prosecutrix by the trial Court as grossly unreasonable and perverse. In her contention, her evidence inspires implicit confidence and by itself is sufficient to record the conviction of both the respondents u/s 376, IPC and of respondent Zimaji u/s 379, IPC also. Mrs. Pawar, strenuously urged that the learned trial Judge lost sight of the fact that the prosecutrix who was an unmarried girl, in the absence of any enmity, would not have falsely implicated the respondents had they not actually ravished her and would not have made a false accusation to the effect that the respondent-Zimaji took away Rs. 1500/- which had fallen from the pocket of her skirt. Mrs. Pawar, urged that this had to be borne in mind in the background of the fact that the prosecutrix was a close relation of the respondents. She pointed out that the respondent-Zimaji was the brother-in-law of Shamrao, brother of the prosecutrix and that in the FIR, the prosecutrix has stated that respondent-Savala was her relation and this must have been so because, no unmarried girl aged 13 years, accompanied by her brother, aged 7 years, would spend the night at the house of someone who was not intimately known to her.

Mrs. Pawar urged that it is in the background of what has been stated above, should the trial Judge have appreciated the evidence of the prosecutrix. She further urged that the prosecutrix is a wholly reliable witness and even in the absence of corroboration, the trial Judge should have accepted her evidence. Mrs. Pawar urged that both the statement of the prosecutrix as a whole and the manner of the incident, as set out in it, is extremely natural and highly probable. In paragraph 2, of our judgment, we have set out the prosecution story on the basis of the recitals contained in the examination-in-chief of the statement of the prosecutrix. In our view, no useful purpose would be served by reiterating the same. In short, the prosecutrix stated that about a month prior to the incident, she and her brother Shankar had gone to Maldev where her brothers lived. On 3-2-1983, the father-in-law of her brother Shamrao, Dhau Dhavale, DW-1 informed her that her brother was ill and she was wanted at home. Consequently, same day, she along with her brother Shankar carrying Rs. 1500/- which her brother Shamrao had given her, to give to her parents for domestic expenses, set forth for her house. They started at about 3 to 4 p.m. In the boat of respondent-Zimaji. At about 6 p.m. by the said boat, they came to Deur. They spent the night there at the house of respondent-Savala because their house was at some distance. Respondent-Zimaji also slept there. On the morning of

4-2-1983, at about 7 a.m. they set forth towards their house which was situated at a distance of 2 1/2 miles from Savala's house. At about 8 a.m. when they reached forest area the two respondents took them by surprise. The respondent-Zimaji caught hold of her. At that time, her brother Shankar ran away. Therefore, first Zimaji committed rape on her and then Savala raped her. After raping her, Zimaji took Rs. 1500/- which had fallen from the pocket of her skirt. Thereafter, they threatened to kill her in case she disclosed the incident to anyone. After the respondents had run away, she proceeded towards her house and on the way, met her parents. Next day, along with her father, she went to the house of her sister Venubai and brother-in-law Arjun in village Kas and slept at night there. On the advice of Arjun she lodged an FIR next day at Medha police station. At that time, she was accompanied by her parents.

9. We have perused the statement of the prosecutrix and we find it to be implicitly reliable. In the first place, in our judgment, no unmarried girl would foist a false accusation of rape, more so, against her relations; particularly when there is no enmity.

At this very stage, we would like to observe that we are not impressed with the statement of DW-1 Dhau Dhavale, father of the respondent-Zimaji and father-in-law of Shamrao, brother of the prosecutrix, which is to the effect that because he was having strained relations with Shamrao, Zimaji has been falsely implicated. In our view, had this been true, he would have made a hue and cry from the moment FIR was lodged and his son Zimaji was arrested. His silence is ominous. We are not inclined to believe his statement which was recorded practically a year after the incident in the trial Court. On the fatherly instinct of blood being dearer than truth, he has sacrificed the latter and has chosen to make the said statement.

9-A. The statement of the prosecutrix is also corroborated by the circumstances enumerated below :-

(a) She stated that prior to committing rape on her, respondent-Zimaji felled her on the ground and she resisted his raping her and this is vindicated by the recovery panchanama of her skirt which shows that it was torn on the back;

(b) She stated that while Zimaji was trying to rape her, her underwear got torn and recovery panchanama in respect of her underwear shows that it was torn;

(c) Her averment in the FIR and in her statement during cross-examination (Para 12) in the trial Court that while committing rape on her, Zimaji had caught hold of her breasts is corroborated by the recovery panchanama of her blouse. The same shows that her blouse was torn and this must have happened when she resisted Savala's act of trying to take it off;

(d) Her statement that as a consequence of Zimaji raping her, blood oozed out from her private parts and stained her underwear, is corroborated by the circumstance that recovery panchanama of the underwear shows that it was

stained with blood; and

(e) Her statement that she was felled on the ground and thereafter, raped by the respondents is corroborated by the four abrasions found on her back by the doctor who medically examined her.

To appreciate (a) to (e) in paragraph 5 of this judgment, we have reproduced the relevant portions of the panchanamas of the skirt, blouse, and underwear of the prosecutrix and in paragraph 4, her injury report.

9-B. There is no requirement in law that corroboration can only be by plurality of evidence for that would be rendering naught the provisions of section 134 of the Indian Evidence Act which render conviction on the testimony of a single witness permissible. It can also be had from circumstances, as observed in paragraph 12 by the Apex Court in the oft-quoted judgment of *Vadivelu Thevar Vs. The State of Madras*, .

In our view, the said circumstances lend a seal of assurance to the statement of the prosecutrix.

9-C. For the reasons set out in paragraphs 8, 9, 9-A and 9-B the evidence of the prosecutrix Chandrabhaga is implicitly reliable.

10. From a perusal of paragraph 16 of the impugned judgment, it is borne out that the learned trial Judge primarily rejected the testimony of the prosecutrix, on the ground that her medical report does not show any injuries on the private parts. On the converse, as urged by counsel for the respondents, it showed that there were no injuries on the genital organs or the breasts of the prosecutrix.

11. We have carefully gone through the medical report and in our opinion, it does not demolish the credibility of the prosecutrix, in any manner. It should be borne in mind that the prosecutrix was medically examined on 7-2-1983 at 10 a.m. i.e. after 72 hours of the incident. It may be that she may not have sustained serious injuries on her private parts and the same may have healed by the time she was medically examined. In this connection, it would be pertinent to refer to the cross-examination of the prosecutrix (in paragraph 12) wherein she was stated that while one respondent was raping her, the other was holding her legs. Hence, she must not have been able to offer resistance and in such a situation, trivial injuries must have been caused to her. It would be pertinent to point out that Modi in his book *Medical Jurisprudence and Toxicology* has mentioned that in cases of commission of rape, on a minor girl, it is not always necessary for the hymen to be torn. If hymen of the prosecutrix was not torn, then it is apparent that the injuries of the prosecutrix were trivial.

The trial Judge gave unnecessary importance to the fact that on the breasts of the prosecutrix there were no injuries. The prosecutrix did not state that injuries were caused on her breast by respondent-Zimaji who is alleged to have caught hold of her breasts while raping her. The prosecutrix has only stated in the FIR and in her statement in the Court that while committing rape, respondent-Zimaji

held her breasts with his hands. In that situation, there was no possibility of injuries being caused to her breasts.

12. In this connection, reference may be made to the decision of the Apex Court, reported in Harpal Singh and Another Vs. State of Himachal Pradesh, cited by Mrs. Pawar, wherein in para 2, the Apex Court has impliedly held that absence of injuries on the private parts of the prosecutrix would not rule out her being subjected to rape.

13. Before parting with this aspect of the matter, we are constrained to observe that in a most perfunctory manner, the Medical Officer of Government Hospital, Satara, examined the prosecutrix. In our experience, this is the first instance wherein in a case of rape, the medical report is conspicuous by the absence of a detailed examination of the private parts of the prosecutrix. Nor is there any mention in it about the state of her breasts etc. The least which we can observe is that in a most perfunctory manner, the medical report has been prepared by the doctor. It causes us tremendous anguish and pain to think that on such a medical report, the trial Judge has chosen to reject the evidence of the prosecutrix.

14. Mr. Mohite, learned counsel for the respondents strenuously urged that the inordinate delay on the part of the prosecutrix in lodging an FIR is sufficient to discredit her statement. He urged that the circumstance that although the incident took place at 8 a.m. on 4-2-1983, but the FIR was lodged on 6-2-1983 at 9 p.m. shows that the recitals therein are concocted.

On the other hand, Mrs. Pawar placing strong reliance on the observations contained in Harpal Singh and Another Vs. State of Himachal Pradesh, and those contained in the decision of the Apex Court reported in State of Punjab Vs. Gurmit Singh and Others, , urged that a certain delay in the lodging of the FIR in cases of rape, is natural and understandable.

Mrs. Pawar urged that in Harpal Singh and Another Vs. State of Himachal Pradesh, the delay in lodging of FIR, was about 10 days and the same was brushed aside by the Apex Court as being inconsequential as it was plausibly explained.

Mrs. Pawar urged that the delay in lodging of FIR, in State of Punjab Vs. Gurmit Singh and Others, , was also considerable, but the same was ignored by the Supreme Court on the ground that it had been plausibly explained. In connection with the question of delay in lodging FIR in a case of rape, it observed thus in paragraph 7 of the said case :-

"The Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence

is generally lodged."

We are in respectful agreement with the said observations of their Lordships.

15. We find considerable merit in Mrs. Pawar's contention. We wish to emphasise that any unmarried girl on account of her bashfulness and the circumstance that not only her own honour but that of her family was at stake, would have been extremely reluctant and loath to disclose to the police, her traumatic experience of being raped. It is only after efflux of time, when she is able to get over a part of her trauma, will she think of lodging the FIR. In our view, no mathematical time limit in lodging an FIR can be fixed in cases of rape. Courts in such cases should adopt a realistic approach rather than one which is unimaginative and theoretical. After all our conduct in life is governed by brass realities.

Mrs. Pawar emphatically urged that cogent explanation has been forthcoming from the side of the prosecution for the delay in the lodging of FIR. She pointed out that although the victim had informed her father about the incident, the same day, the latter, as the honour of his daughter and that of the family was involved, must have thought it appropriate to consult his daughter Venubai and son-in-law Arjun. Mrs. Pawar pointed out that the evidence of the prosecutrix shows that on 5-2-83 she and her father went to their place in village Kas. It appears from her evidence that only when they gave the green signal, the father of the prosecutrix decided that the FIR should be lodged. Mrs. Pawar urged that the evidence of the prosecutrix is that on the night of 5-2-1983, she and her father slept at her sister's place. In these circumstances, if the FIR was lodged at 9 p.m. on 6-2-83, the delay in its lodging cannot be stigmatised as being inordinate. In our view, the same has been plausibly explained.

16. The trial Judge has also censured, in Para 21 of the impugned judgment, the evidence of the prosecutrix on the score that she did not promptly disclose the incident to any one. We are afraid that this observation of his is against the weight of evidence on record. The evidence of the prosecutrix is that immediately after the incident, she had informed her parents about the incident and had given out to them the names of the respondents.

17. The trial Judge has drawn an adverse inference against the prosecution for its failure to examine the father of the prosecutrix and the doctor. We regret that we cannot subscribe to the inference drawn by him. After all, the father would have only deposed about what the prosecutrix had told him.

The examination of the doctor would have hardly improved things. We have observed earlier that he had conducted the medical examination in a most perfunctory manner. This is evident from a bare perusal of the medical report prepared by him. We have extracted it in entirety in para 4. In the same, no reference is to be found regarding the condition of vagina, hymen, breasts etc. of the prosecutrix. Assuming that he would have stated from his memory that he had thoroughly examined the private parts of the prosecutrix and found no injuries on them, we would have been loath to believe him because in the

medical report, there is no mention about their condition. The trial Court also seems to have lost sight of the fact that genuineness of the medical report had been admitted by the defence.

17-A. In our view, the trial Court seems to have missed the central point namely, that if the evidence of the prosecutrix was reliable, precious little would turn on innocuous circumstances like non-examination of the doctor and father of the prosecutrix. We have already held earlier that the prosecutrix is a wholly reliable witness.

18. In our view, an offence u/s 376, IPC is squarely brought home against both the respondents.

19. We, however, feel that an offence of robbery as contained in Section 392, IPC is not made out.

We do not agree with the reasoning of the trial Judge that the factum of robbery is doubtful because Shamrao gave proceeds of the sale of bullocks to the prosecutrix and since the evidence was that he had sold them for Rs. 2400/- then that amount and not Rs. 1500/- should have been with the prosecutrix. The trial Judge has assumed that Shamrao had handed over the entire sale-proceeds to the prosecutrix. There is no evidence to this effect. In our opinion, the evidence of the prosecutrix that while being raped, Rs. 1500/- which she was carrying, fell from the pocket of her skirt and was picked up by the respondent-Zimaji, is reliable. The said evidence makes out, however, in our judgment, only an offence u/s 379, IPC against Zimaji. Since taking away of Rs. 1500/- was the individual act of respondent-Zimaji and there is no evidence to show that it was committed in furtherance of common intention of respondent Savala the latter would not be liable for it with the aid of Section 34, IPC.

It is true that respondent-Zimaji is not charged for an offence under 379, IPC but the same in our view, is not necessary because the said offence is a minor offence in relation to the offence contained in Section 392, IPC for which he has been charged. It is well-settled that when a charge on a major count is framed, it is not necessary to frame a fresh charge on a minor count before recording a conviction in respect of the latter Sections 215 and 464 of Cr.P.C. provide that only when prejudice is caused to the accused or there is a failure of justice, would an error in framing of a charge vitiate the trial. Here, neither of these two things could be shown by the learned counsel for the respondents.

20. We hasten to add that Mr. Mohite learned counsel for the respondents, strenuously urged that we are seized of the matter in an appeal against acquittal. He further urged that the acquittal has taken place nearly 14 years ago and hence, it would be very harsh for the respondents, if this Court sets aside their acquittal. He also invited our attention to the observations of the Apex Court in para 13 in the case of Rajendra Prasad Vs. State of Bihar, . The said observations read thus :-

"When a trial Court with a full view of the witnesses, acquits an accused after disbelieving direct testimony, it will be essential for the High Court in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record, for discarding the reasons of the trial Court in order to be able to reach a contrary conclusion of guilt of the accused. The High Court should be able to point out in its judgment that the trial Court's reasons are palpably and unerringly shaky and its own reasons are demonstrably cogent. As a salutary rule of appreciation of evidence, in an appeal against acquittal, it is not legally sufficient that it is just possible for the High Court to take a contrary view, about the credibility of witnesses, but it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the trial Court to reject their testimony. This is the quintessence of the jurisprudential aspect of criminal justice."

We are alive to these observations which if we may add with respect, lay down the norms for the Appellate Court in interfering in an appeal against acquittal. We are not setting aside the acquittal simply because as we feel that a contrary view is possible. We are setting aside the impugned judgment of acquittal because, in our Judgment the reasons assigned by the trial Court for rejecting the evidence of the prosecutrix "are palpably and unerringly shaky". We have no hesitation in stigmatising and castigating the rejection of the evidence of the prosecutrix by the trial Court, as being manifestly perverse. Her evidence as observed earlier is implicitly reliable and sufficient to convict the respondents for an offence punishable u/s 376 IPC and in addition, respondent-Zimaji for the offence punishable u/s 379 IPC.

21. This leaves us, with the question as to what should be the quantum of punishment which should be awarded to the respondents. Mrs. Pawar, learned Additional Public Prosecutor, almost with missionary zeal urged that a helpless, hapless, unmarried girl, aged 13 years was raped, by her own relations, warrants that a deterrent sentence should be imposed. She urged that if any leniency is shown to the likes of the respondents, people would lose faith in relations and that would indeed be distressing. On the converse, Mr. Mohite learned counsel for the respondents urged that bearing in mind that both the respondents were aged about 19 years at the time of the incident and nearly 14 years have elapsed, since the incident taking place, a more indulgent a view should be taken by us in the matter of sentence. With his persuasive advocacy, he urged that when the offence was committed the amended provisions of Section 376 IPC which provide for a minimum sentence of 10 years in cases of gang rape, had not seen the light of the day. He went to the extent of contending that the sentence of the respondents be reduced to the period already undergone by them as under trials and a substantial amount of fine which should be directed to be paid as compensation to the prosecutrix, be imposed on them. We have reflected over the rival contentions. In our view, it would be an insult to female species if in cases of the present type, wherein rape was committed in a most heartless and callous manner on the prosecutrix by her own relations who were elder in age

than her and were her guardians, if we were to accede to Mr. Mohite's submission.

But, be that as it may, the fact remains that the respondents were aged about 19 years at the time of the incident and that nearly 14 years have elapsed since then. The fact also remains that at the time of the incident, the amended provisions of section 376 IPC had not seen the light of the day.

After most carefully and thoughtfully reflecting about the quantum of sentence, we feel that ends of justice would be squarely satisfied if both the respondents are ordered to undergo a sentence of 5 years RI coupled with a fine of Rs. 5000/- each, in default one year RI, for an offence u/s 376 IPC.

So far as the offence u/s 379 IPC, committed by Zimaji is concerned, the ends of justice would be satisfied if he is ordered to undergo one year RI. We feel that sentences of the respondent Zimaji on both the counts should run concurrently.

We hope that this sentence would have a chastening effect on the respondents.

22. In the result, this appeal is partly dismissed and partly allowed. We maintain the acquittal of the respondents for an offence punishable u/s 392 r/w 34 IPC. We however, convict the respondent Zimaji Dhau Dhavale for an offence u/s 379 IPC and sentence him to undergo one year's RI. We set aside acquittal of both the respondents namely Savala Kokare and Zimaji Dhavale u/s 376 IPC. We find each of the said respondents guilty of an offence under the said Section. We direct him to undergo a sentence of 5 years RI coupled with a fine of Rs. 5000/- each and one year RI in default u/s 376 IPC. The fine shall be deposited by the respondents within a period of 6 months from today in the trial Court. In case it is deposited, the whole of it shall be paid as compensation to the victim Chandrabhaga Kokare, PW-2 by the trial Court and in case she is not alive to her legal heirs. Immediately, on its being deposited, the trial Court shall inform Chandrabhaga Zimaji Kokare, PW-2 or her legal heirs, as the case may be, about this compensation.

The substantive sentences of respondent Zimaji Dhavale on both the counts namely sections 376 IPC and 379 IPC shall run concurrently.

Both respondents namely Savala Sagu Kokare and Zimaji Dhau Dhavale are on bail. They shall be taken into custody forthwith to serve out their sentences.

We would be failing in our fairness, if we do not put on record our appreciation for the tenacious-assistance rendered to us by Mrs. Jyoti S. Pawar in the disposal of this appeal. Our fairness would also be wanting if we do not record the equally tenacious manner with which, Mr. Mohite learned counsel for the respondents, has tried to defend the impugned Judgment.

In case an application for a certified copy of this Judgment is made, the same shall be issued on an expedited basis.

23. Order accordingly.