

(2017) 07 BOM CK 0020
In the Bombay High Court
Case No : 287 of 2000

The State of Maharashtra, through Public Prosecutor	APPELLANT
Vs	
Amin Shaikh Khwaja, & Ors.	RESPONDENT

Date of Decision : 26-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 428](#), [Section 437A](#) - Period of detention undergone by the accused to be set off against the sentence of imprisonment
[Indian Penal](#)

Citation : (2017) 07 BOM CK 0020

Hon'ble Judges : T.V. Nalawade, Sunil K. Kotwal

Bench : DIVISION BENCH

Advocate : P.G. Borade, R.R. Shaikh, B.R. Kedar, P.R. Patil

Final Decision : Allowed

Judgement

1. This Criminal Appeal is directed by State of Maharashtra against the judgment and order dated 28/7/1999, passed by learned Additional Sessions Judge, Jalgaon in Sessions Case No.155/1998, acquitting the respondents (original accused No.1 to 5) of the offences punishable under Sections 363, 366, 323, 504, 506 read with Section 34; and Section 376(2)(g) of the Indian Penal Code (hereinafter referred to as "I.P.C. for short).

2. Shorn of necessary details :- Prosecution case in brief is that, at the relevant time of the occurrence, victim (P.W.1) was 16 years old, a student of 9th Standard. She used to reside at Muktainagar along with her parents. Smt. Kalpanabai (P.W.5) is the mother of victim. In the month of May 1998, after annual examinations, victim (P.W.1) came to Chalisgaon to the house of her maternal uncle Rajendra Dattatraya Sonar, who lived in Afu Lane. On 14/5/1998, the parents of the victim went to the hospital of Dr. Nikam at evening hours. Till 8.30 p.m. they did not return and, therefore, as per instructions of maternal aunt, victim went towards bicycle shop of her maternal uncle to call her parents.

When she was proceeding through lonely lane near Ghat Road, that time, suddenly accused No.1 to 5 pressed her mouth and tied blind fold on her eyes. By autorickshaw No.MH-19/J-5178, accused took the victim towards Kannad Road (Ghat Road). Accused assaulted the victim by fists and kicks and threatened her to keep mum. When rickshaw was stopped at one place, that time the victim tried to rescue herself from the clutches of accused. However, they chased the victim and again apprehended her. By severely beating the victim, the accused persons again took her in the autorickshaw and took her outside Chalisgaon city by Kannad Road and took her in one lonely field which is on the eastern side of Kannad Road. Despite resistance by the victim, all the accused turn by turn committed rape on victim. During that scuffle, Salwar of the victim was torn at the groin portion. Even Gangawan (artificial set of hair) of the victim fell on the spot of the incident. Whenever victim tried to run away, accused assaulted her by fist blows. After satisfying their lust, again accused took the victim towards Chalisgaon city by same autorickshaw. By that time, Kalpana (P.W.5), mother of the victim approached to Police Station, Chalisgaon at about 11.00 p.m. and requested the police to search her missing daughter. P.S.I. Patil, who was incharge of the Police Station, directed A.S.I. Bhalerao (P.W.6) to help the parents of victim for taking search of their daughter. A.S.I. Bhalerao (P.W.6) was on night patrolling duty at Ghat Road Police Outpost and, therefore, initially he went to Ghat Road Police Outpost. At Police Outpost, A.S.I. Bhalerao (P.W.6) learnt from Police Constable Kureshi that one girl was taken towards field properties and she was crying for help. Police Constable Kureshi probably had that information from some unknown person. Therefore, A.S.I. Bhalerao (P.W.6) rushed towards field properties nearby Kannad Road by autorickshaw along with Police Constable Kureshi. On way, A.S.I. Bhalerao (P.W.6) noticed the approaching autorickshaw and, therefore, when he stopped it, accused No.4, who was sitting on the left side of rickshaw driver, i.e. accused No.1, bolted away from that spot. However, A.S.I. Bhalerao (P.W.6) and Police Constable Kureshi succeeded in apprehending accused No.1 to 3 and 5 in the same autorickshaw. When A.S.I. Bhalerao (P.W.6) enquired with victim (P.W.1) who was in the autorickshaw, she disclosed the occurrence to him. Therefore, A.S.I. Bhalerao (P.W.6), with the help of Police constable Kureshi, immediately took the victim and accused No.1 to 3 and 5 to Police Station, chalisgaon by the autorickshaw of the accused persons. When the apprehended accused No.1 to 3 and 5 were produced before P.S.I. Patil along with the victim, that time, on enquiry, the apprehended accused disclosed the name of absconded accused No.4 as Suresh Mahajan. At Police Station, victim cried as soon as she saw her mother Kalpana (P.W.5) and informed her regarding the rape committed by accused persons. P.S.I. Patil obtained F.I.R. of the victim (Exh.35) at about 1.25 a.m. Victim was referred for medical examination to Dr. Chavan (P.W.7) who was the Medical Officer at Municipal Dispensary, Chalisgaon. Dr. Chavan (P.W.7) examined the victim and issued Medico Legal Certificate (Exh. 60). Even accused persons were arrested under arrest panchanamas (Exhibits 62 to 66) and they were referred for medical examination to Dr. Chavan (P.W.7). Dr. Chavan (P.W.7) examined all

the accused persons and issued Medico Legal Certificates as well as obtained relevant samples.

3. P.S.I. Patil conducted investigation of this crime along with A.S.I. Bhalerao (P.W.6). Spot panchanama (Exh.38) of the scene of offence was drawn and Gangawan of the victim as well as her slippers were found on the spot. These articles were seized. Even specimen of earth from the spot was sealed. During investigation, clothes of the victim (Articles 1 to 3) and clothes of the 5 accused persons were seized and referred to Chemical Analyser for chemical analysis. After completion of the investigation, charge sheet was filed against the accused before the Judicial Magistrate, First Class, Chalisgaon.

4. Offence punishable under Sections 366, 376(2)(g) of the Indian Penal Code being exclusively triable by Court of Sessions, the case was committed to the Sessions Court, Jalgaon.

5. Charge (Exh.16) was framed against accused No.1 to 5 for the offence punishable under Sections 323, 363, 366, 376(2) (g), 504 and 506 read with Section 34 of the Indian Penal Code by II Additional Sessions Judge, Jalgaon. Accused pleaded not guilty and claimed trial. After considering the evidence led by the prosecution, the learned trial Court was pleased to acquit the accused. Therefore, this appeal arises.

6. Learned Additional Public Prosecutor for the appellant/ State assailed the judgment and order of acquittal on the ground that, though the sole testimony of victim (P.W.1) was reliable, the learned trial Court rejected it illegally. According to learned Additional Public Prosecutor, otherwise also, testimony of victim was corroborated by medical evidence and other circumstantial evidence.

7. Learned defence counsel supported the judgment and order passed by the trial Court on the ground of improper identification of accused persons, improbable theory of the prosecution and infirmities in medical evidence.

8. After hearing learned Advocates for both sides, it reveals that, the fate of the prosecution case revolves around the point whether sole testimony of victim (P.W.1) is free from all infirmities to base the conviction of the accused. It is also to be examined whether the testimony of A.S.I. Shri Bhalerao (P.W.6) is trustworthy to ascertain whether he intercepted the accused persons and apprehended the accused in autorickshaw along with the victim and produced them at Police Station, Chalisgaon. Third important point is to be considered as to whether the medical evidence of Dr. Chavan (P.W.7) is helpful to the prosecution for corroboration.

9. Before proceeding to analyse the evidence of victim (P.W.1), we must observe that, before the occurrence of the incident, she was not connected with any accused in any manner. Even it is not defence of the accused persons that the victim had strained relations with any of the accused for some reasons or she has any reason to falsely implicate the accused for commission of such heinous

crime of rape. Even defence cannot bring on record that on the date of incident i.e. on 14/5/1998, offence of road robbery was registered at Police Station, Chalisgaon and for investigation of such offence, accused were apprehended and brought to Police Station, Chalisgaon. Therefore, the defence of the accused is not acceptable that they were brought to Police Station for investigation of road robbery and because no evidence was available against them they were falsely involved in this crime. Thus, false implication of the accused in this case is out of question. Even then, we have to examine the testimony of victim (P.W.1) to ascertain whether, even in absence of test identification parade of accused persons prosecution can establish beyond reasonable doubt the commission of offence of rape by accused persons.

10. Version of victim (P.W.1) in brief is that, on the date of occurrence i.e. on 14/5/1998 at about 8.00 p.m., when she was proceeding towards the shop of her maternal uncle to call her parents for dinner, that time, from one lonely lane, she was lifted by the accused after pressing her mouth and after tying blindfold on her eyes, and by autorickshaw, accused took her to one lonely field on the eastern side of Ghat Road and ravished her. According to victim (P.W.1), four accused persons committed rape on her in the field despite her resistance and she was severely beaten by fist blows by accused whenever she tried to run away from their clutches. After commission of the rape, again accused made the victim to sit in autorickshaw and when they were proceeding by autorickshaw by road, that time, two police officers intercepted that rickshaw and apprehended the four accused along with the victim in the same autorickshaw. A.S.I. Shri Bhalerao (P.W.6) has fully corroborated the version of victim (P.W.1). From the testimony of A.S.I. Shri Bhalerao (P.W.6), it emerges that, on 14/5/1998 at about 11.00 p.m., when he went to Police Station, Chalisgaon for reporting his night round duty, that time, mother of the victim (P.W.5) came to Police Station and informed P.S.I. Shri Patil about her missing daughter. Therefore, P.S.I. Shri Patil directed A.S.I. Shri Bhalerao (P.W.6) to help the parents of victim to trace out their missing daughter. As A.S.I. Shri Bhalerao (P.W.6) was on night patrolling duty at Ghat Road Police Outpost, he first went to Ghat Road Police Outpost and there Constable Rashid (B.No. 964) informed him that he also received information that one girl was taken towards field by autorickshaw and she was crying for the help. Therefore, A.S.I. Shri Bhalerao (P.W.6) rushed to the side of Kannad Road by other autorickshaw along with Police Constable Shri Kureshi, and at about 11.45 p.m., intercepted one autorickshaw which was coming from Rajangaon Juna Ghat cart road to the main road. In the headlight of autorickshaw used by A.S.I. Shri Bhalerao, they found that one girl and two boys were sitting inside the rickshaw and two boys were sitting on the both sides of rickshaw driver. The boy sitting on left side of rickshaw driver fled away, but A.S.I. Shri Bhalerao (P.W.6), with the help of Police Constable Kureshi, apprehended the four boys and victim girl in the autorickshaw and by the autorickshaw used by the accused, they were taken to Police Station, Chalisgaon along with the victim. From the testimony of A.S.I. Bhalerao (P.W.6), it emerges

that, on enquiry with victim, he came to know that she was the missing daughter of Kalpana (P.W.5) and she was raped by all the accused turn by turn. Therefore, A.S.I. Bhalerao (P.W.6) presented the four accused before P.S.I. Shri Patil. On enquiry with these four accused, it revealed that, the name of the boy who fled away was Suresh Shantaram Mahajan (present accused No.4). The apprehended accused No.1 to 3 and 5 were detained at Police Station, Chalisgaon for enquiry. Initially, the F.I.R. of victim (P.W.1) (Exh.35) was obtained by P.S.I. Patil and she was referred for medical examination. The absconding accused No.4 Suresh Mahajan was also arrested on 15/5/1998 at about 9.00 p.m. All accused and victim were medically examined by Dr. Chavan (P.W.7) at Municipal Dispensary, Chalisgaon. Dr. Chavan (P.W.7) opined that, hymen of the victim was found ruptured and her vulva as well as labia majora and labia minora were swollen. He also found that, there was bleeding from vagina of the victim and internal genital examination under deep sedation showed that vaginal examination was painful. He opined that the victim was raped. The testimony of Kalpana (P.W.5) shows that, when at night her daughter was brought to police station by police along with four boys, that time her daughter was in bad condition and her daughter informed this witness about rape committed by four boys.

11. After going through the judgment of the learned trial Court, it emerges that the testimony of victim (P.W.1) was disbelieved mainly on the ground that there is variance in between oral testimony of victim (P.W.1) and F.I.R. Exh.35. Trial Court also observed that, identification of accused persons by victim (P.W.1) is not reliable because she did not furnish description of the rapists in the F.I.R. and identification of accused No.4 Suresh Mahajan in absence of test identification parade is not believable.

12. Before proceeding to comment regarding the correctness and assessment of the evidence by trial Court, we must point out that, while testing the reliability of evidence of victim of rape, Judges are expected to be more sensitive. The reason for this is that, in Indian society, chastity of a woman and especially of young unmarried girl carries great importance. In ordinary course of the nature, no Indian will label unmarried daughter as victim of the rape, when chastity of that young girl is at the stake in public at large. Hon"ble Supreme Court had occasion to consider this aspect in *Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat*, reported in (AIR 1983 SC 753), in which it is held that :

"A girl or a woman in the tradition bound nonpermissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours. 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. 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. In view of these and similar

factors the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.

On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye-witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the Courts in the Western World. If the evidence of the victim does not suffer from any basic infirmity, and the "probabilities-factor" does not render it unworthy credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming subject to the following qualification :

Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-representation. Or when the "probabilities factor" is found to be out of tune."

In the same case, while observing the importance of minor discrepancies normally emerges in prosecution witnesses, the Apex Court observed that :

"Overmuch importance cannot be attached to minor discrepancies. the reasons are obvious :

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

13. The learned defence counsel assailed the testimony of victim (P.W.1) on the ground that her oral version before the Court is in variance with recitals of the F.I.R. Exh.35 on material particulars. The learned trial Court disbelieved the evidence of victim (P.W.1) mainly on the ground that her testimony is in variance with the contents of the F.I.R. regarding the sequence of occurrence and other minute details. However, as observed by Apex Court in the case of "Bharwada Bhoginbhai Hirjibhai" (cited supra), the witness cannot be expected to possess photographic memory and he cannot recall the details of the incidence as if video tape is replayed on the mental screen. Even witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused due to atmosphere of the Court.

14. If the oral version of victim (P.W.1) is considered along with recitals of F.I.R. Exh.35, it becomes clear that victim (P.W.1) is consistent with the recitals of the F.I.R. that on the date of incident at about 8.30 p.m. at the instance of her maternal aunt, she had gone outside to call her parents from the shop of her maternal uncle and while crossing second lane, she was intercepted, her mouth was pressed and blind fold was tied around her eyes, and despite her resistance, she was kept in rickshaw and she was taken in field. In the F.I.R. Exh.35 also, same occurrence is mentioned with slight variance that the second lane was already crossed by her and that time 4 to 5 boys who came by autorickshaw, forcibly pressed her mouth, closed her eyes and moved her away in autorickshaw. In F.I.R., she has mentioned an additional event that on a way, when the rickshaw was stopped on road in dark place, she tried to run away, but she was caught by those boys and she was beaten by those boys and again by rickshaw she was taken in the field by the side of Kannad Road. In her deposition also victim P.W.1 reproduced almost same theory, the difference is only regarding

place where the rickshaw was stopped for the first time. In the deposition before the Court, she deposed that, when her blind fold was removed, she noticed that it was field and thereafter when boys tried to commit rape, that time she escaped from their clutches and ran towards road for help, but the vehicle passing by the road did not stop. Ultimately, she was again dragged by those boys in the field and she was beaten by fist blows. According to victim (P.W.1), 4 boys committed rape on her in the field. Same occurrence is mentioned in the F.I.R. that turn by turn 4 boys had forcible sexual intercourse with her. Thus, by no stretch of imagination it can be said that the oral version of victim (P.W.1) before the Court differs with the recitals of F.I.R. on material particulars.

15. The further oral testimony of victim (P.W.1) is that after commission of the rape those boys made her to sit in the rickshaw and started proceeding towards the town and the rickshaw was intercepted by two police. Same occurrence is mentioned in the F.I.R. The slight variance in between oral testimony and recitals of the F.I.R. is nothing but normal error which might have occurred due to Court atmosphere or time passage in between date of incident and recording of evidence of victim on 5/7/1999.

16. The next objection of defence counsel is that, identification of the accused by victim (P.W.1) as well as by A.S.I. Bhalerao (P.W.6) is not trustworthy. Learned trial Court also disbelieved the evidence of victim (P.W.1), though she identified accused No.2 to 5 before the Court as the same persons who committed rape on her. According to trial Court, the testimony of victim (P.W.1) regarding identification of accused No.2 to 5 before the Court is not reliable for the reason that she deposed before the Court that accused No.1 was not present on the spot. The second reason assigned by learned trial Court is that, victim (P.W.1) did not furnish description of rapists and due to darkness in the field, she was not in position to identify the rapists.

17. No doubt, at the stage of recording evidence, victim (P.W.1) has absolved accused No.1 Amin Shaikh Khwaja. However, on that count alone the testimony of victim (P.W.1) cannot be discarded, when otherwise it is free from all infirmities.

18. It is to be noted that, in the cross-examination of victim (P.W.1), when defence counsel was trying to bring on record that there was total darkness in the field where rape was committed, that time victim has made clear that it was moonlight night. Unfortunately, this statement of the victim is not included in the English deposition of the victim. The contention of victim (P.W.1) that it was moonlight night, is not challenged in her further cross-examination by defence counsel. Therefore, by no stretch of imagination it can be said that there was total darkness in the field where rape was committed.

19. Otherwise also, on the basis of testimony of victim (P.W.1) and A.S.I. Bhalerao (P.W.6), prosecution has established that, after commission of rape, when accused were proceeding towards the town by the same autorickshaw, it

was intercepted by A.S.I. Bhalerao (P.W.6) and Police Constable Kureshi; and accused No.2, 3 and 5 and rickshaw driver (accused No.1) were taken to Police Station, Chalisgaon along with the victim. In other words, accused No.2, 3 and 5 were caught red-handed along with the victim (P.W.1), who claimed that she was raped by the same accused persons. Therefore, identification of the accused No.2, 3 and 5 by holding test identification parade is out of question. On the other hand, as accused No.2, 3 and 5 were apprehended from the rickshaw along with the victim, their mistaken identity by victim (P.W.1) in the Court is ruled out. At the stage of evidence, the victim (P.W.1) has also identified accused No.2, 3 and 5 as the same rapists who committed rape on her in the field on 14/5/1998. So also, as accused No.2, 3 and 5 were arrested redhanded with the victim, it is not expected that victim shall again furnish their description in the F.I.R. Exh.35. Thus, the reasons assigned by learned trial Court to disbelieve the version of victim (P.W.1) regarding identification of accused No.2, 3 and 5 is absolutely incorrect.

20. However, so far as identification of accused No.4 Suresh Mahajan, the evidence of prosecution falls short to establish his identity in absence of test identification parade. No doubt, in view of Apex Court judgment in Ronny Alias Ronald James Alwaris Vs. State of Maharashtra reported in (AIR 1998 SC 1251), if the witness had opportunity to interact with the accused or to notice his distinctive features, he can be identified even in absence of corroborative evidence by way of test identification parade. However, in the case at hand, from the lane till arrival to the spot of rape the eyes of victim were blind folded. Even on the spot of rape, the victim does not say that she had any interaction with accused No.4 Suresh Mahajan to watch his features. On the other hand, as per prosecution case, when A.S.I. Bhalerao (P.W.6) intercepted the autorickshaw by which the accused were traveling with victim, that time accused No.4 Suresh Mahajan fled away and he was arrested only on next day at 9.00 p.m. Even A.S.I. Bhalerao (P.W.6) had no opportunity to watch the face and features of accused No.4 Suresh Mahajan because, as soon as the rickshaw was stopped, accused No.4 Suresh Mahajan managed to run away and vanished in darkness. Even at the stage of evidence before the Court A.S.I. Bhalerao (P.W.6) could not identify accused No.4 Suresh Mahajan as same boy who fled away when the rickshaw was intercepted. Thus, identification of accused No.4 Suresh Mahajan by the victim for the first time in the Court is not reliable in absence of prior test identification parade. Even arrest panchanama of accused No.4 Suresh Mahajan (Exh.45) shows that no abrasion was found on his knees. Even Dr. Mahajan (P.W.7) did not find any injury on the body of accused No.4 Suresh Mahajan. (Medico Legal Certificate of Suresh at Exh.66). Therefore, absolutely no circumstantial evidence is available against accused No.4 Suresh Mahajan to connect him with the alleged crime.

21. Now, again turning towards testimony of victim (P.W.1), it is noticed that, learned trial Court disbelieved the identification of accused No.2, 3 and 5 by her on the ground that she lost sense at the time of rape and she regained it only at

Police Station. However, after going through the deposition of victim (P.W.1) (Marathi version), it becomes clear that, till arrival of the police, she was in full sense and consciousness. She nowhere admitted or deposed that she became unconscious at the time of commission of rape. On the other hand, in her crossexamination, defence has brought on record that she lost sense after arrival of the police. Thus, the ground assigned by trial Court for rejecting the evidence of victim (P.W.1) regarding identification of accused No.2, 3 and 5, is absolutely incorrect and against record.

22. Learned trial Court disbelieved the evidence of victim (P.W.1) also on the ground that it did not notice the rickshaw parked in the lane. However, this observation of trial Court is absolutely incorrect because, victim (P.W.1) nowhere deposed that the rickshaw used by accused was parked in the lane. Learned trial Court disbelieved the evidence of victim (P.W.1) for the reason that in her deposition she did not say that at the time of rape she was undressed by accused persons. However, it is suffice to say that victim of the rape need not reproduce each and every step taken by the accused persons at the time of commission of rape.

23. After going through the judgment passed by the trial Court, it reveals that the trial Court discarded the evidence of prosecution because thorns were not found pierced in the legs of victim and because Kalpana (P.W.5) who is mother of the accused, did not examine the body of victim to ascertain any damage caused to her when the victim was brought to Police Station by police. The trial Court ignored circumstance that Dr. Chavan (P.W.7) noticed abrasion on the back, injuries on chest and face of the victim, which corroborates the testimony of victim that she was ravished by the accused in the field.

24. Most important observation of the trial Court to be noted by us is that, trial Court was expecting that, after arrival of victim to Police Station, Chalisgaon along with Police and accused persons, the mother Kalpana (P.W.5) would examine each part of the body of the victim to ascertain whether any injury was caused to her body. This observation of the trial Court itself shows that the learned Judge is not sensitive as expected while examining the evidence of victim of rape cases. On the other hand, in normal course also no mother is expected to check the body of her daughter in presence of police and the accused persons at police station. Thus, the reasons assigned by trial Court for rejecting the evidence of Kalpana (P.W.5), mother of the victim regarding bad condition of victim when she was brought to police station by police, are totally incorrect. On the other hand, Kalpana (P.W.5) has categorically deposed before the trial Court that, when victim was brought to police station, her hair were scattered, there was swelling on her eyes and thorns pierced the legs of victim. This description of victim is definitely corroborative piece of the evidence, which supports the version of victim that she was raped by accused persons in the field. We do not find any reason to disbelieve the version of Kalpana (P.W.5) that when the victim was brought to Police Station by police along with four persons, that time victim

cried and informed her mother that four boys made her to lie in the field and had done evil thing with her. It is surprising to note that, in cross-examination of Kalpana (P.W.5), the defence counsel has brought on record that the victim informed her mother that four boys committed rape on the victim. Thus, the immediate disclosure of occurrence to the mother of victim is definitely material corroboration to the oral testimony of victim (P.W.1).

25. Learned defence counsel assailed the prosecution evidence on the ground that there was delay in recording F.I.R. After going through the judgment passed by the trial Court, it emerges that, even the trial Court disbelieved the prosecution evidence on the ground of delay in recording complaint.

26. After going through the F.I.R. Exh.35, it emerges that, it was recorded at about 1.25 a.m. on 15/5/1998. It is to be noted that, from the cross-examination of A.S.I. Bhalerao (P.W.6), it has been brought on record by defence that after apprehending the accused and victim in autorickshaw, this witness reached to the Police Station, Chalisgaon along with apprehended accused and victim at about 12.30 midnight hours. In natural course, when rape victim was rescued from the clutches of rapists and after arrival at police station, she met to her mother, definitely such a rape victim would need sufficient time to calm down and to come out of the shock of trauma due to commission of rape. Thus, the time gap of about one hour after arrival of victim to Police Station till registration of the offence at 1.25 a.m. cannot be termed as inordinate delay in lodging F.I.R. Thus, the possibility of concoction of false story by police and victim against the accused persons as imagined by learned trial Court and observed in the judgment, is absolutely not acceptable in the eyes of law. On the other hand, taking the risk of repetition, we must observe that the learned trial Court considered the evidence of rape victim in most insensitive manner.

27. A.S.I. Gangadhar Bhalerao (P.W.6) is the police officer, who was directed by P.S.I. Patil to take the search of missing victim when mother of the victim approached Police Station at about 11.00 p.m. From the testimony of A.S.I. Bhalerao (P.W.6), it emerges that, on that date, he was on night patrolling duty at Ghat Road Police Outpost and, therefore, initially he went to that Police Outpost and there, from Police Constable Kureshi he learnt that one girl was taken in autorickshaw towards side of field and she was crying for help. Therefore, he went towards Kannad Road along with Police Constable Kureshi by another autorickshaw and found that at about 11.45 p.m., one autorickshaw came from Rajangaon Juna Ghat cart road towards main road. When this witness intercepted that autorickshaw, the accused No.4 who was sitting on the left side of rickshaw driver, managed to run away. However, accused No.1 to 3 and 5 were apprehended on the spot along with victim in the said autorickshaw. After necessary enquiry, when A.S.I. Bhalerao (P.W.6) came to know that, that girl was the missing victim and she was raped by accused persons, he took all the persons to Police Station, Chalisgaon and produced them before the P.S.I. Patil.

28. This evidence of A.S.I. Bhalerao (P.W.6), who is a responsible police officer, is

disbelieved by learned trial Court on the ground that, on the date of occurrence since 11.00 p.m. till next day morning, A.S.I. Bhalerao (P.W.6) was on night patrolling duty and, therefore, he was not expected to reach on the spot where the accused were apprehended. However, from the evidence of A.S.I. Bhalerao (P.W.6), it has come on record that, he had gone in search of that missing girl as per directions of P.S.I. Patil who was one of the senior police officer from Police Station, Chalisgaon. In cases of such emergency, no written order is required. Therefore, non production of such written order by A.S.I. Bhalerao (P.W.6) cannot be a ground to doubt his testimony. On the other hand, A.S.I. Bhalerao (P.W.6) was a natural witness, who came to know about the place where the victim was probably taken by the accused persons and accordingly, with the help of Police Constable Kureshi, accused No.1 to 3 and 5 were apprehended red-handed along with victim girl.

29. Learned trial Court doubted the testimony of A.S.I. Bhalerao (P.W.6) only because he could not identify the accused No.4 before the Court as the same boy who fled away at the time of interception by police. However, from the evidence on record, it becomes clear that, the incidence of interception of autorickshaw and vanishing of accused No.4 from that spot occurred within few moments. Therefore, in the headlight of autorickshaw, A.S.I. Bhalerao (P.W.6) could get only glimpse of the accused No.4 who bolted away from the spot. In such situation, identification of accused No.4 before the Court by A.S.I. Bhalerao (P.W.6) was not possible in ordinary course of the nature. It cannot be ignored that, evidence of A.S.I. Bhalerao (P.W.6) was recorded after about one year from the date of incident. Therefore, due to lapse of such time gap in between incident and recording of evidence, it was natural that A.S.I. Bhalerao (P.W.6) could not identify the accused No.4 as the same boy who fled away. On the other hand, this conduct of A.S.I. Bhalerao (P.W.6) indicates that he was a truthful and fair witness who has admitted his inability to point out the boy who fled away at the time of interception of autorickshaw. Therefore, when accused No.1, 2, 3 and 5 were apprehended red-handed with kidnapped girl and when they were produced at Police Station by A.S.I. Bhalerao (P.W.6), he had full opportunity to watch their feature and their faces carefully. In such circumstances, in view of "Ronny Alias Ronald James Alwaris Vs. State of Maharashtra" (cited supra), identification of these accused persons by A.S.I. Bhalerao (P.W.6) before the Court is certainly trustworthy and cannot be doubted.

30. Learned trial Court disbelieved the evidence of A.S.I. Bhalerao (P.W.6) on the ground that his statement regarding the boys sitting near the rickshaw driver is inconsistent. However, after careful examination of Marathi version of evidence of A.S.I. Bhalerao (P.W.6), it becomes crystal clear that A.S.I. Bhalerao (P.W.6) has made it clear that, when the autorickshaw was intercepted, one boy was sitting on the left side and other boy was sitting on the right side of the driver of autorickshaw and two boys were sitting inside the rickshaw along with the girl. Thus, we do not find any glaring inconsistency in the testimony of A.S.I. Bhalerao (P.W.6) to create doubt regarding truthfulness of the version of this

witness.

31. For discarding evidence of A.S.I. Bhalerao (P.W.6) regarding arrest of the accused persons red-handed with victim girl, learned trial Court assigned reason that it was not possible for A.S.I. Bhalerao (P.W.6) and Police Constable Kureshi to take accused No.1 to 3 and 5 and the victim girl in one and the same autorickshaw. However, it is a matter of common sense that, in case of such emergency, if one autorickshaw is available at lonely place, then even 7 passengers including driver can easily travel in one autorickshaw. Non-examination of Police Constable Kureshi is one of the ground assigned by trial Court to reject the testimony of prosecution witnesses. However, when testimony of A.S.I. Bhalerao (P.W.6) is free from all doubts and when this witness stood consistent despite searching cross-examination by defence counsel, examination of Police Constable Kureshi would have been only additional burden on record. So also, due to nonexamination of Police Constable Kureshi, no material fact is suppressed from the Court. Therefore, non-examination of Police constable Kureshi cannot be a ground to discard the prosecution case.

32. Accordingly, after careful examination of testimony of A.S.I. Bhalerao (P.W.6), we have come to the conclusion that, he is trustworthy witness and his testimony fully corroborates the version of victim (P.W.1) regarding the occurrence of entire incident, especially regarding the arrest of accused No.1 to 3 and 5 red-handed with the victim girl.

33. In support of the testimony of victim (P.W.1), prosecution has also examined Dr. Chavan (P.W.7) who was the then Medical Officer at Municipal Dispensary, Chalisgaon. From the evidence of Dr. Chavan (P.W.7), it emerges that, on 15/5/1998, victim was referred to him for medical examination and age of the victim was about 16 years. Dr. Chavan (P.W.7) found that, there was rupture of hymen and there were abrasions over back, and blunt injuries on face, mouth and chest of the victim. He also found that, vulva, labia majora and labia minora were swollen and pink in colour. Internal genital examination with deep sedation showed that, per vaginal examination was painful and rupture of hymen was "8.00 o'clock" position. There was bleeding from vagina and it contained sticky fluid. According to this witness, the injuries found on the body of victim were caused within 6 hours. Dr. Chavan (P.W.7) has proved Medico Legal Certificate (Exh.60) of the victim. This Certificate shows that, the medical examination of the victim was done at 3.30 a.m. Thus, obviously, the injuries found on the body of victim correspond with the time of commission of rape and assault by accused persons. These signs and injuries found by Dr. Chavan (P.W.7) certainly indicate that somebody had recently forcible sexual intercourse with the victim. This report fully corroborates the version of victim (P.W.1) regarding commission of rape by 4 boys at late night on 14/5/1998.

34. This important piece of medical evidence is discarded by the learned trial Court for the reason of certain irresponsible admissions given by Dr. Chavan (P.W.7) in his cross-examination. In examination-in-chief, Dr. Chavan (P.W.7)

opined that, the injuries found on the chest, face and back of the girl were all signs of struggle and resistance and the external genital examination results of swelling of vulva, labia majora and labia minora are indications of coitus. However, Dr. Chavan (P.W.7) admits in his cross-examination that few abrasions may also be caused in case of intercourse with consent on rough substance and clothes can also get torn on back side. He also admitted that if there is single intercourse, then rupture of hymen is of "8.00 o'clock" shape. In case of repeated intercourse on the same day, number of injuries are possible. He also opined that the patient was intercoursed for once only. These admissions of Dr. Chavan (P.W.7) are absolutely incorrect and hypothetical admissions. In fact, Medical Officer is not expected to opine whether it was the case of rape or not. He can only opine that there were certain signs found on the body which are noted in the medical examination report. He can also note down the injuries found on the body. Whether it was the case of rape or it was a case of sexual intercourse with consent of the girl is to be examined only by the court of law and not by the Medical Officer. In fact, Dr. Chavan (P.W.7) has transgressed his limitations by giving opinion that in case of single sexual intercourse, the rupture of the hymen will be "8.00 o'clock" in shape. This admission is baseless as well as appears to be deliberately given to help the accused persons. The subsequent admission given by Dr. Chavan (P.W.7) that number of injuries are possible in case of repeated sexual intercourse in one day and, therefore, it was a case of single intercourse, is also an irresponsible admission. Because, Medical Officer is not expected to opine as to how many persons had sexual intercourse with the victim girl. On the basis of medical examination, no expert can count the number of persons who had sexual intercourse with the girl in one day. We have also noted that, on 15/5/1998, at the time of medical examination, by issuing letter to P.I., Police Station Chalisgaon (Exh.61), Dr. Chavan (P.W.7) informed him that he cannot opine as to how many persons had committed rape on the victim. Thus, on one hand Dr. Chavan (P.W.7) gives correct opinion to the police that he cannot tell the number of persons who had intercourse with the victim, but at the stage of evidence, to help the accused persons, he admits that, in case of repeated intercourse, there will be number of injuries, and it was case of single intercourse. Thus, such false admissions knowingly given by Dr. Chavan (P.W.7) deserve to be discarded. Instead of discarding such deliberate admission, the learned trial Court has unnecessarily given importance to such admissions while rejecting the truthful testimony of victim (P.W.1).

35. However, the signs noted by Dr. Chavan (P.W.7) i.e. swelling on labia majora and labia minora of the victim, bleeding from her vagina and torn hymen together with injuries on the body of victim, indicate that, she was raped on the relevant date and time as deposed by the victim (P.W.1).

36. Before parting with discussion regarding medical evidence, we must observe that the learned trial Court has unnecessarily given importance to the admission of Dr. Chavan (P.W.7) that smegma was collected on the glans penis of two boys and it vanishes during intercourse. However, the medical examination certificates

of accused persons (Exhibits 62, 63, 64, 65 and 66) do not show any smegma was present on the glans penis of any accused. Only in the certificate Exh.62 there is reference of taking of smegma swab for chemical analysis. In other certificates, there is no reference of smegma. Otherwise also, when medical examination of accused persons was conducted, after 4.45 p.m. onwards, the presence or absence of smegma alone cannot be a ground to discard the oral testimony of victim (P.W.1). The learned trial Court has given unnecessary importance to the irrelevant and deliberate admission given by Dr. Chavan (P.W.7) while coming to the absolutely wrong conclusion.

37. In this case, circumstantial evidence placed on record by the prosecution is spot panchanama (Exh.38) of the both spots where the victim (P.W.1) was raped. Prosecution has also placed reliance on arrest panchanama of accused No.1 to 5 (Exhibits 62 to 66). Exh.46 is seizure panchanama of the clothes of the victim which were on her person at the time of incident. The Medico Legal Certificate regarding examination of the accused No.1 to 5 are at Exhibits 62 to 66.

38. Learned Advocate for appellants submitted that, if the arrest panchanama of accused persons is read together with their medical examination certificates, then it reveals that, accused No.1 to 3 and 5 sustained abrasion on their both knee joints. He also pointed out that, spot panchanama (Exh.38) shows that Gangawan with Bo (hair band) as well as slipper of the accused were found on the spot of the incident. This circumstantial evidence fully corroborates the version of victim of other evidence.

39. On the other hand, learned defence counsel assailed this circumstantial evidence on the ground that all the panchas on spot panchanama, arrest panchanama and seizure panchanama have turned hostile and even the investigating officer P.S.I. Patil is dead. According to defence counsel, A.S.I. Bhalerao (P.W.6) was not present at the time of preparation of these panchanamas and, therefore, he cannot prove all these panchanamas in accordance with law. However, A.S.I. Bhalerao (P.W.6) deposed on oath that, during investigation he was accompanying P.S.I. Patil and visited the spot of incident along with P.S.I. Patil and panchas. From the testimony of A.S.I. Bhalerao (P.W.6), it emerges that the spot of the incident was shown by victim and slipper and Gangawan of the victim were found lying on the spot of the incident. Marks of violence and scuffle were also noticed on that spot, which is field property situated on the eastern side of Kannad Road. He has identified the signature of P.S.I. Patil.

40. It is to be noted that, as observed above, because A.S.I. Bhalerao (P.W.6) was on night patrolling duty on 14/5/1998, it cannot be said that he did not accompany the investigating officer when his participation in the investigation in this case begins since the search of the victim. Therefore, it was natural that P.S.I. Patil obtained his assistance at the time of further investigation of this crime. Only because this witness did not sign any panchanama or any document, it does not mean that he was not present at the time of investigation. Name of

the assisting staff member is not mentioned in the panchanamas or his signature is not obtained on any document, therefore, absence of his signature on any panchanama cannot be a reason to doubt his presence at the time of investigation. On the other hand, in cross-examination of A.S.I. Bhalerao (P.W.6), the defence has brought on record that as per request of P.S.I. Patil, this witness accompanied him during the investigation. We are fully satisfied that A.S.I. Bhalerao (P.W.6) can prove the preparation of all relevant panchanamas when investigating officer is dead and when panchas have turned hostile. Thus, on the basis of spot panchanama (Exh.38), prosecution has established that there were signs of struggle, and Gangawan and slipper of the victim were lying on the spot of the incident in the field where rape was committed on victim (P.W.1). This circumstantial evidence definitely corroborates the testimony of victim (P.W.1).

41. A.S.I. Bhalerao (P.W.6) has also proved the seizure of Salwar, Kurta and Knicker of the victim as per seizure memo (Exh.46). He has also identified these clothes as Articles No.1 to 3 produced before the Court. The seizure panchanama of the clothes shows that the Salwar as well as Knicker of the victim were in torn condition. This indicates violence by accused with the victim at the time of commission of rape. Only because Dr. Chavn (P.W.7) did not examine these clothes and did not notice the torn condition of these clothes, this important circumstantial evidence cannot be discarded.

42. A.S.I. Bhalerao (P.W.6) has also proved arrest panchanama of accused No.1 to 5 at Exh.41 to Exh.45 and seizure of their clothes as Articles 4 to 18. The arrest panchanama of accused Bapu Vithal Dhumal (accused No.3) shows that, earth was found on both palms of this accused and abrasions were found on his both knee joints. Even teeth bite signs were found on his right thumb.

43. In the medical examination certificate of Bapu Vithal Dhumal (accused No.3) (Exh.63), abrasions were found by Medical Officer on both knee joints. The arrest panchanama of accused No.1 (Exh.42) also shows that earth was found at his both palm and abrasions were found on both knee joints. Same abrasions are noted by Medical Officer in his Medico Legal Certificate (Exh.64). In the arrest panchanama of accused No.2 Jagan Chavan, it is noted that, earth was found on his both palms of the hands with minor abrasions as well as on his both knee joints abrasions were found. Even in his Medico Legal Certificate (Exh.62) abrasions are noted on his both knee joints. Learned defence counsel has assailed this evidence on the ground that age of these abrasions is 6 hours before medical examination of these accused persons. It is pointed out that, medical examination of accused No.1 to 3 and 5 was conducted on 15/5/1998 at about 4.45 p.m. to 5.30 p.m. and, therefore, age of the injuries does not correspond with time of the occurrence which occurred prior to more than 6 hours from their medical examination. However, we do not find any substance in this objection for the simple reason that the opinion of the Medical Officer is not binding on the Courts and age of the abrasions cannot be calculated mathematically. Whatever age of injuries is noted by Medical Officer is only

approximate assessment. When these arrest panchanamas are prepared in between 3.10 a.m. till 4.10 a.m. on 15/5/1998, and when these all abrasions are noted on the body of accused No.1 to 3 and 5, only on the basis of age mentioned in Medico Legal Certificates, this important evidence cannot be discarded. Thus, we find that, abrasions on the both knee joints of the accused No.1 to 3 and 5 found at the time of preparation of their arrest panchanamas and at the time of medical examination, fully corroborate the testimony of victim (P.W.1).

44. Learned defence counsel raised objection that prosecution cannot establish that at the relevant time of the incident victim was below the age of 18 years. However, we do not find any substance in this objection because the oral version of victim (P.W.1) that she was 16 years old is not at all disputed in her cross-examination. So also, the age of the victim is mentioned in the Medico Legal Certificate as 16 years old. Dr. Chavan (P.W.7) has also deposed that she was about 16 years of age. Only this witness has admitted that he has taken her age as told by her. However, in his further cross-examination, the defence has not challenged the age of the victim as 16 years old at the time of occurrence of the incident. Therefore, we have no hesitation to hold that at the time of incident the victim was below the age of 18 years.

45. In the circumstances, we are fully satisfied that the oral evidence of victim (P.W.1) and A.S.I. Bhalerao (P.W.6) is fully corroborated by other circumstantial evidence such as finding of articles of the victim on the spot of incident, abrasions on both knee joints of accused No.2, 3 and 5 as well as seizure of torn Salwar and Knicker from the person of the victim. In other words, the direct evidence of victim is fully corroborated by circumstantial evidence as well as medical evidence.

46. In the case of State of Punjab Vs. Ramdev Singh, reported in (AIR 2004 SC 1290), the Apex Court ruled that :-

"It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former, it is both physical as well as psychological and emotional. However, if the Court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice would do."

Similar view is also taken by Apex Court recently in State of Himachal Pradesh Vs. Sanjay Kumar reported in 2017 Cri.L.J.1443 (Supreme Court).

Thus, assuming that above discussed circumstantial evidence is not free from doubt, even then, the truthful testimony of victim (P.W.1) corroborated by

evidence of A.S.I. Bhalerao (P.W.6) and Kalpana (P.W.5) - mother of victim about condition of the victim when she was released from the clutches of the accused, is sufficient to establish beyond reasonable doubt that on 14/5/1998, accused No.2, 3 and 5 abducted the victim from the lonely lane at Chalisgaon at about 8.30 p.m. and took her to lonely field property on the eastern side of Kannad Road and in that field accused No.2, 3 and 5 had forcible sexual intercourse against the wishes of victim and thereby committed offence punishable under Sections 323, 363, 366 read with Section 34; and Section 376(2)(g) of the Indian Penal Code. However, no substance is available against any accused to prove offence punishable under Sections 504 and 506 read with Section 34 of the Indian Penal Code. That acquittal under those Sections is proper.

47. Accordingly, after careful analysis of evidence of victim (P.W.1) together with testimony of her mother Kalpana (P.W.5), A.S.I. Bhalerao (P.W.6) and Dr. Chavan (P.W.7), we find that, their testimony is trustworthy and sufficient to establish that on 14/5/1998 at night hours, victim was forcibly taken to one lonely field and she was raped by accused No.2, 3 and 5. As victim has not uttered a word against accused No.1 and as identification of accused No.4 is doubtful, benefit of doubt was rightly given to them while acquitting them. However, learned trial Court committed glaring error while acquitting the accused No.2, 3 and 5 of the offence punishable under Section 376(2)(g) of the Indian Penal Code. The view taken by learned trial Court is totally impossible view. On the other hand, the learned trial Court ought to have convicted the accused No.2, 3 and 5 for the offences punishable under Sections 323, 363, 366 read with Section 34; and Section 376(2)(g) of the Indian Penal Code. Therefore, this appeal deserves to be partly allowed.

48. While sentencing the accused, their age as well as the heinous crime committed by them is to be considered. No doubt, all accused persons are young boys. However, considering the heinous act of the accused i.e. commission of the rape on teenage girl, they do not deserve leniency. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman, i.e., her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, the entire psychology of a woman and pushes her into deep emotional crisis. The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. Hence the following order : O R D E R

(i) The Criminal Appeal is partly allowed.

(ii) The judgment and order of acquittal of respondents original accused No.2

Jagan Chintaman Chavan, accused No.3 Bapu Vithal Dhumal and accused No.5 Bandu Ramesh Deshmukh, passed by learned Additional Sessions Judge, Jalgaon in Sessions Case No.155/1998, dated 28/7/1999 is quashed and set aside.

(iii) The accused No.2 Jagan Chintaman Chavan, accused No.3 Bapu Vithal Dhumal and accused No.5 Bandu Ramesh Deshmukh are held guilty for commission of offences punishable under Sections 323, 363, 366 read with Section 34; and Section 376(2)(g) of the Indian Penal Code.

(iv) Accused No.2 Jagan Chintaman Chavan, accused No.3 Bapu Vithal Dhumal and accused No.5 Bandu Ramesh Deshmukh are sentenced to suffer rigorous imprisonment for three months each for offence under Section 323 read with Section 34 of the Indian Penal Code.

(v) Accused No.2 Jagan Chintaman Chavan, accused No.3 Bapu Vithal Dhumal and accused No.5 Bandu Ramesh Deshmukh are sentenced to suffer rigorous imprisonment for two years each and to pay fine of Rs.1000/- (Rupees one thousand) each, in default to suffer rigorous imprisonment for one month each for the offence under Section 363 read with Section 34 of the Indian Penal Code.

(vi) Accused No.2 Jagan Chintaman Chavan, accused No.3 Bapu Vithal Dhumal and accused No.5 Bandu Ramesh Deshmukh are sentenced to suffer rigorous imprisonment for five years each and to pay fine of Rs.2000/- (Rupees two thousand) each, in default to suffer rigorous imprisonment for three months each for the offence under Section 366 read with Section 34 of the Indian Penal Code.

(vii) Accused No.2 Jagan Chintaman Chavan, accused No.3 Bapu Vithal Dhumal and accused No.5 Bandu Ramesh Deshmukh are sentenced to suffer rigorous imprisonment for ten years each and to pay fine of Rs.2000/- (Rupees two thousand) each, in default to suffer rigorous imprisonment for one year each for offence under Section 376(2)(g) of the Indian Penal Code.

(viii) All the substantive sentences of imprisonment shall run concurrently.

(ix) Accused No.2 Jagan Chintaman Chavan, accused No.3 Bapu Vithal Dhumal and accused No.5 Bandu Ramesh Deshmukh shall surrender to their bail bonds before the trial Court immediately to undergo the sentence of imprisonment.

(x) Set off be given to them under the provisions of Section 428 of the Code of Criminal Procedure.

(xi) Appeal against acquittal of accused No.1 Amin Shaikh Khwaja and accused No.4 Suresh Shantaram Mahajan is dismissed.

(xii) Accused No.1 and 4 shall execute before the trial Court bail bonds with sureties for the amount of Rs.5000/- (Rupees five thousand) each to appear before the Supreme Court as and when notices are issued to them in respect of any proceedings filed against this judgment vide Section 437-A of the Code of Criminal Procedure and the said bail bonds shall remain in force for a period of six months from today.