

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.117 OF 2012

Prakash @ Jaywant Wasudeo Wankhede,
Age: 63 Years, Occu: Goldsmith
R/o. Laxmi Alankar Gruh, Saraf Bazar
Main Road, Sakri, Tq.Sakri, Dist.Dhule

APPELLANT
[Orig. Accused]

VERSUS

The State of Maharashtra
[Copy to be served on APP in the
Hon'ble Hgh Court of Judicature
of Bombay, Bench at Aurangabad]

RESPONDENT

...

Mr. R.N.Dhorde, Senior Advocate, along with Mr. Pravin G.
Patil, Advocate i/b Mr. V.R.Dhorde, Advocate for Appellant.
Mr. S.G.Karlekar, APP for Respondent – State

...

WITH

CRIMINAL APPEAL NO. 142 OF 2012

Pooja d/o. Manoj Deore,
Age: 8 years, Occu. Nil [Student],
under natural guardianship of her
real father – Manoj s/o. Suresh Deore,
Age: 37 Years, Occu. Service as
Clerk in the Court of 21st Metropolitan
Magistrate, Bandra [East], Mumbai-51,
R/o. B-90/6, Bandra [East],
Mumbai – 400 051

APPELLANT
[Victim / Prosecutrix]

VERSUS

1] Prakash alias Jaywant s/o.
Vasudeo Wankhede, Age: 55 years,
Occu. Business as Goldsmith,
R/o. Laxmi Alankar Gruh,
Saraf Bazar, Main Road, Sakri,
Taluka Sakri, District Dhule.

2] The State of Maharashtra

RESPONDENTS
[No.1 Orig.Accused]

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Mr. R.S. Deshmukh, Advocate for Appellant
Mr. R.N.Dhorde, Senior Advocate, along with Mr. Pravin G. Patil, Advocate i/b Mr. V.R.Dhorde, Advocate for Respondent No.1.
Mr. S.G.Karlekar, APP for Respondent – State

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WITH
CRIMINAL APPEAL NO.540 OF 2012

The State of Maharashtra
Through PSO Sakri Police Station,
Dist. Dhule

APPLICANT
[Orig. Complainant]

VERSUS

Prakash @ Jayawant Wasudeo Wankhede,
Age 60 years, Occu. Goldsmith,
R/o. Laxmi Alankar Gruh, Saraf Bajar,
Main Road, Sakri, Tq. Sakri,
Dist. Dhule

RESPONDENT
[Orig. Accused]

...

Mr. S.G.Karlekar, APP for Appellant – State
Mr. R.N.Dhorde, Senior Advocate, along with Mr. Pravin G. Patil, Advocate i/b Mr. V.R.Dhorde, Advocate for Appellant.

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**CORAM : S.S. SHINDE &
A.M.BADAR, JJ.**

**RESERVED ON : 16.02.2015
PRONOUNCED ON: 08.05.2015**

JUDGMENT [Per S.S.Shinde, J.]:

1] Criminal Appeal No. 117/2012 is filed by the
Appellant - original accused, challenging the Judgment

and Order dated 18.02.2012 passed by the Additional Sessions Judge, Dhule in Sessions Case No. 160/2010, thereby convicting the appellant for the offence punishable under section 376 r.w. Section 511 and Section 506 of Indian Penal Code and sentenced to suffer R.I. for 5 Years and to pay fine of Rs.1,000/- in default to suffer R.I. for six months and further to suffer R.I. for one Year and to pay fine of Rs.500/- in default to suffer further R.I. for three months for the offence punishable under Section 376 r.w. Section 511 and Section 506 of IPC respectively. Criminal Appeal No. 142 of 2012 is filed by the original complainant, challenging the Judgment and Order dated 18.02.2012 passed by the Additional Sessions Judge, Dhule in Sessions Case No. 160/2010, thereby acquitting the accused for the offence punishable under Section 376 of Indian Penal Code and Criminal Appeal No.540 of 2012 is filed by the Appellant – State, challenging the Judgment and order dated 18.02.2012 passed by the Additional Sessions Judge, Dhule in Sessions Case No.160/2010, thereby acquitting the accused for the offence punishable under Section 376 of Indian Penal Code.

The prosecution case as emerged from the investigation, and further from the trial Court record, in brief, is as under:

2] One Manoj Suresh Deore is employed as a Clerk in the Court of Metropolitan Magistrate, Mumbai and was residing in Government Quarter at Bandra along with his wife Sonali and 6 Year old daughter, who is the victim in this case. The accused happens to be a real father in law of Manoj Deore and resides at Sakri, District Dhule.

3] The prosecution case is that, on 20.04.2009, the marriage of son of accused namely; Kamlesh was to be performed, and therefore, Sonali and her daughter [who is hereinafter referred to as the victim] had come to the house of accused on 15.04.2009 to attend the marriage ceremony of Kamlesh. They stayed at the house of accused till 03.05.2009. During that period, it is alleged that, the accused used to take the victim in his room in the night to make her sleep with him. He used to sleep with victim and in the night hours, he used to cover her face with a sheet, remove her under garment, insert his finger in her private part, apply his semen on that part

and smell of it. He used to sit on her thighs like horse riding and insert his penis in her private part. He used to threaten her not to disclose this fact to any body, else he would hang her to the fan and kill her. This episode recurred till the victim stayed at his house. Due to such conduct of the accused, and the threats given by him she was afraid of him and had suffered tremendous mental trauma. She did not disclose this fact to any one. On 03.05.2009, she returned along with her mother to Nashik where her father Manoj Deore owns a house. The mother of Manoj Deore was present in the house at Nashik. Due to the sexual acts committed by accused with her, and threats given by him, the victim was under the mental shock. As a result, she abruptly used to get up from the sleep with bounds of cry. Looking to this abnormal behaviour of the victim, her grand mother asked her about her abnormal behaviour, but initially the victim did not tell anything. Her grand mother taking her in to confidence repeatedly inquired with her, where upon she narrated the entire incident to her grand mother.

4] It is further the case of the prosecution that,

after the victim disclosed her grand mother about the incident, her grand mother immediately contacted her son Manoj Deore, who was at Mumbai and informed him on 07.06.2009 by telephonic message. He came to his house at Nashik where he was informed by his mother about the incident in detail. He returned to Mumbai along with his mother and victim on 01.06.2009. The victim was in a frightened state and therefore, he did not insist upon her to tell about incident. After some days, he took the victim in confidence and asked her about the incident where upon she disclosed the entire incident to him. Looking to the abnormal conduct of the victim and mental trauma suffered by her, he took the victim to the psychiatrists and psychologist for treatment and got her medically examined at Mumbai. He also took the victim to counseling Wing of the Crime Branch Chembur, Mumbai where PSI Seema Parihar did counseling of the victim and her parents. Ultimately, the father of victim decided to lodge complaint against the accused, and thereafter, he lodged complaint against accused at Sakri Police Station on 25.08.2009.

5] On the basis of the complaint lodged by Manoj Deore, an offence under Section 376 r.w. 511, 506 of Indian Penal Code came to be registered against the accused. PSI Suresh Malwal carried out investigation. The victim was sent to Government Hospital, Dhule for medical examination. PSI Malwal visited the spot and recorded the panchanama of scene of offence. He recorded the statements of the witnesses including the victim and the complainant. Accused was arrested and he was also got medically examined. The samples of his semen were collected and were sent to the forensic laboratory for analysis along with the samples collected by the Medical Officer during the medical examination of the victim. After completion of entire investigation, PSI Malwal submitted chargesheet against the accused in the Court of Judicial Magistrate First Class, Sakri.

6] As the offence is triable exclusively by the court of Sessions, the learned Magistrate committed the case to the Court of Sessions for trial as required by Section 209 of Criminal Procedure Code.

7] In the light of the prosecution version, a charge for the offence punishable under Section 376, 376/511 and Section 506 of Indian Penal Code, was framed against the accused below Exh.23. He pleaded not guilty to the charge and claimed trial. His defence is of total denial and false implication.

8] The defence version as per statement of accused recorded under Section 313 of Criminal Procedure Code is that, the complainant Manoj Deore used to torture his wife Sonali and he wanted divorce from her. When she refused to give divorce, he lodged false complaint against the accused to pressurize him so that Sonali should give divorce.

9] The learned Senior Counsel appearing for the appellant in Criminal Appeal No.117 of 2012 submits that, Manoj Devare (P.W.7), married in the year 2002, with Sonali – daughter of the appellant. At the relevant time, Manoj was in private service. However, in the year, 2004 he was selected as a clerk and was posted in the Court of

Metropolitan Magistrate, Mumbai. However, said Manoj and his family members were harassing Sonali for various reasons including demanding money for purchase of flat. It is submitted that P.W.10 daughter of Manoj and Sonali was born in the year, 2003. There are strained relations between the P.W.7 Manoj and his wife Sonali, who is daughter of the appellant. It is submitted that there is serious matrimonial dispute and proceedings are initiated for maintenance and domestic violence by Sonali. P.W.7 Manoj and his mother Sunanda wanted to get rid of Sonali and they were harassing her. Learned Senior Counsel appearing for the appellant invited our attention to the written notes of arguments placed on record and submitted that, false case has been filed against the appellant since there is serious matrimonial dispute existing between P.W.7 Manoj and Sonali.

Learned Senior Counsel further submitted that, there is inordinate delay in lodging FIR and same is not explained by the prosecution. The complaint is result of tutoring of victim daughter of P.W.7 Manoj and Sonali. It is submitted that, P.W.7 Manoj, in a systematic manner as

a calculated move, met various Psychiatrists and created evidence, and then filed a false complaint. It is submitted that if the evidence of P.W.8 Dr. Kulkarni is considered, it is apparent that, the period from 3rd May, 2009 to 25th August, 2009 was utilized to tutor the girl and create evidence. The prosecution has not properly explained the delay. In support of the contention that, in case FIR is lodged belatedly, and if delay is not explained properly, benefit of doubt must go to the appellant, reliance is placed in the case of ***Rajesh Patel vs. State of Jharkhand***¹. It is submitted that the testimony of the victim girl is most unnatural and improbable and therefore, it does not inspire confidence. It is submitted that P.W.7 Manoj – father of the victim girl is well educated, and there was no reason to delay in lodging of FIR, if really allegations were true. It is submitted that the FIR in a criminal case is extremely vital and important piece of evidence for the purpose of corroborating the evidence adduced at the trial. The delay in lodging FIR, quite often results in embellishment which is a creature of afterthought, and therefore, benefit of doubt should be

¹ (2013) 3 SCC 791;

given to the accused – appellant. In support of aforesaid contention, the learned Senior Counsel placed reliance in the case of **State of Maharashtra vs. Ravikant Shankarappa Patil and others**². In support of the contention that, the trial Court should have appreciated evidence on record with regard to delay, and the absence of proper explanation regarding the delay in filing the FIR, the learned Senior Counsel pressed into service the exposition of the Supreme Court in the case of **Rajesh Patel** [*supra*].

10] It is further submitted that, since the relations between P.W.7 Manoj and his wife Sonali – daughter of the appellant were strained, P.W.7 Manoj and his mother Sunanda have deliberately and falsely implicated the appellant as they wanted to get rid of Sonali – wife of Manoj (P.W.7) and mother of the victim girl (P.W.10). In support of aforesaid contention, learned Senior Counsel placed reliance in the case of **Mohammed Farooq Abdul Rauf vs. State of Maharashtra**³ and also in case of **Shaikh Sheru s/o Shaikh Turab vs. The State of**

2 (2011) 6 SCC 416;

3 2009 ALL MR (Cri) 3189;

Maharashtra⁴. It is further submitted that, the prosecution deliberately did not examine the Doctor at Nashik, because there was no injury to victim (P.W.10). Even the prescription given by said Doctor has not been produced by the prosecution on record. The suppression is deliberate and an adverse inference is required to be drawn. Learned Senior Counsel invited our attention to the evidence of P.W.6 Dr. Satoskar from Wadia Hospital and submits that, he has stated in his evidence that though there is evidence of penetration but, it was not recent and would be one or two weeks earlier, possible rape cannot be confirmed, the alleged incident might have possibly occurred more than two weeks before the examination, hymen can be ruptured due to so many reasons, similarly the inflammation can appear because of many reasons. Therefore, relying upon the evidence of P.W.6, it is submitted that the injury caused to the victim i.e. P.W.10 was two weeks before examination or one or two weeks earlier. This clearly indicates that the injury has been caused to P.W.10 when she was in custody of her father P.W.7 Manoj and his mother Sunanda. It is

4 2013 ALL MR (Cri) 2555;

submitted that for the first time, story of penis in vagina is given after 3.5.2009. Thus, new story is made out after 5th August, 2009. Our attention has further been invited to the evidence of P.W.1 Dr.Chetan Pawar. According to the learned Senior Counsel for the appellant, evidence of P.W.1 Dr. Chetan Pawar would clearly show that, there was no injury to the labia minora and labia majora, there was no rape, no penetration and no fingering when the victim P.W.10 was at Sakri. It is submitted that evidence of P.W.1 Dr. Chetan Pawar clearly shows that, hymen can be ruptured because of scratching and that happens because of irritation and lack of cleanliness. Hymen can be ruptured due to fall on projective substance, sleeping on furniture, playing on sea-saw and due to fall a slip from bicycle from the height. It is submitted that, the evidence of P.W.2 Dr. Ajit Pathak is also in conformity with the evidence of P.W.1 Dr. Pawar. It is submitted that P.W.3, Dr. Suhas Sonwane examined the appellant, and he has found no injury on the private part of the appellant or any signs of injury so as to connect appellant with the offence of rape. Learned Senior Counsel further submitted that, the evidence of P.W.4 Dr.Bhatawadekar,

Psychiatrist cannot be relied upon, because father P.W.7 Manoj Deore and his mother Sunanda had constantly accompanied P.W.10 when she was taken to Dr. Bhatawadekar and Dr. Bhatawadekar has himself stated that, it is theoretically correct to say that, if anything is told to a child repeatedly the child may reproduce the same thing later on. Learned Senior Counsel further invited our attention to the evidence of P.W.5 and submitted that in her statement, P.W.5 Dr. Meenal Sule stated that, the child pursued conflicts between parents over being taken to village where mother wants to take her to village and father being against it. It is submitted that from the evidence of the doctors, it is clear that false and fabricated case has been filed against the appellant by P.W.7 Manoj. The evidence of Doctors also clearly indicates that, there was rupture of hymen and it can be caused due to various reasons and in support of this contention, reliance was placed in the case of ***Ratan Lal vs. State of Rajasthan***⁵.

11] The learned Senior Counsel further invited our

⁵ 2006 Cri.L.J. 3356;

attention to the evidence of P.W.11 Seema Parihar, P.S.I., and demonstrated that her evidence is concocted and she was brought before the Court to support the fabricated case of the complainant. Her statement was not recorded by the police till she was produced in the Court as witness and she being the Police Officer, surprisingly no complaint was lodged by her. It is submitted that evidence of P.W.10 – victim itself would demonstrate that grand-father, grand-mother, matrimonial aunts and P.W.10 herself used to sleep in the room on ground floor. It is submitted that there is a shop, one room and kitchen on the ground floor and two rooms on the first floor of the house of the accused. Therefore, if the grand-mother, maternal aunts, grand-father and the victim - P.W.10 used to sleep in the room on the ground floor, it is beyond imagination that the accused would commit the offence as alleged against him. It is submitted that grand-mother Sunanda tutored the victim – P.W.10 in a particular manner before the Court as reflected in the evidence of P.W.10. It is submitted that, P.W.10 herself in her evidence told that grand-mother told her to tell before the Court that Baba fingered in her urinary passage.

Therefore, the evidence of P.W.10 was as a result of tutoring. It is submitted that in the first place, evidence of P.W.10 is not reliable and secondly, there is no corroboration to her evidence and, therefore, her evidence deserves to be rejected. It is submitted that neither the evidence of doctor, Psychiatrist nor that of victim P.W.10 supports the case of prosecution of rape. It is submitted that the prosecution case deserves to be disbelieved on the ground of non examination of material witnesses. Since material witnesses are not examined, adverse inference should be drawn. Sonali – mother of P.W.10 is not examined. Non examination of the doctor at Nashik is also fatal to the prosecution case. Thus, the material witnesses have been deliberately suppressed and their non examination was fatal to the prosecution and adverse inference should be drawn. In support of said contention, the learned Senior Counsel pressed into service the expositions of the Supreme Court in case of **Rajesh Patel** (supra) and **Ravikant Shankarappa Patil and others** (supra).

and the arguments advanced herein before, the learned Senior Counsel appearing for the appellant, by way of alternate submission, argued that, if the evidence of the victim – P.Ws.10, 4, 5 and 11 is considered in its entirety, it appears that there was no penetration of penis or preparation for it. However, P.W.7 Manoj, who was working as a clerk in the Court, has concocted the story first time on 5th August, 2009 about putting penis in vagina. However, important aspect is that the evidence of P.W.10 victim does not show any penetration of penis and therefore, it is submitted that in the alternate, at the most, an offence of outraging modesty punishable under Section 354 of IPC can be said to have been committed. In support of this contention, learned Senior Counsel placed reliance on the judgments of the Supreme Court in cases of ***Tarkeshwar Sahu vs. State of Bihar (Now Jharkhand)***⁶, ***Tukaram Govind Yadav vs. State of Maharashtra***⁷ and ***Aman Kumar and another vs. State of Haryana***⁸. Therefore, relying upon the grounds taken in the appeal memo, annexures thereto, evidence

6 (2006) 8 SCC 560;

7 2011 CRL.L.J. 1501;

8 (2004) 4 SCC 379;

brought on record, and written notes of arguments the learned Senior Counsel appearing for the appellant – accused submitted that the appeal filed by the appellant deserves to be allowed.

13] The learned counsel appearing for the original complainant and appellant in Criminal Appeal No. 142 of 2012, relying upon the grounds taken in the appeal memo, written notes of argument and other material placed on record submits that, the incident is repeated sexual abuse of the victim at the hands of accused, who is maternal grand father of the victim. It is submitted that, it has been specifically stated by the victim that, repeated sexual abuse by her maternal grandfather during the period of 20.04.2009 to 03.05.2009, and also she specifically stated that, maternal grandfather was putting finger in her vagina, putting penis in vagina, smelling valva area, application of sticky material in vagina, sitting on her lap and she further disclosed that, her maternal grandfather did all these things under the threat that, he will hang her to fan, if she discloses it to anybody. It is submitted that, the defence has admitted during trial the

spot panchnama dated 26.08.2009 at Exh.35, birth certificate of Pooja Manoj Deore at Exh.36, map of spot of incident at Exh.37, arrest surrender form at Exh.38 and letter sent by Police Inspector – Seema Parihar, Crime Branch, Mumbai to the Police Inspector, Sakri Police Station at Exh.39. It is further submitted that, PW-1 Dr. Chetan Ashok Pawar, Lecturer in SBH Government Medical College, Dhule and also PW-2 Dr. Ajit Gajanan Pathak, Associate Professor, Forensic Science, SBH Government Medical College, Dhule, who examined the minor victim girl on 26.08.2009, heard history of sexual assault from her, examined her medically and found her hymen ruptured. PW-9 Jayendra Rajaram Kumbhar, who investigated the matter and recorded the statement of the minor victim girl and her father PW-7 Manoj. It is submitted that, PW-10 minor victim girl, her evidence came to be recorded after ascertaining her competency to depose by the learned Additional Sessions Judge. PW-11 Seema Surendrasingh Parihar, PSI, Counseling Wing of CID, Mumbai, stated that, the minor victim girl was taken to her on 20.07.2009 by her father and grandmother Sunanda. She heard narrations of minor victim girl about

the incident. On 29.07.2009, Sonali Deore, PW-7 Manoj and minor victim girl again went to PW-11. PW-12 Suresh Malwal, PSI / IO, Sakri Police Station has investigated the crime in question. It is submitted that, PW-1 Dr. Chetan Ashok Pawar, in his deposition stated that, victim gave history of repeated sexual abuse by her maternal grandfather during the above period and further gave history of putting finger by her maternal grandfather in her vagina, putting penis in vagina, and also smelling vulva area. It is further stated that, minor girl told that, grand father used to apply sticky material at vagina and used to sit on her lap and all these things done by the grand father under the threat that he will hang her to fan. PW-1 further deposed that, he found that, her hymen was ruptured; there was evidence of old injury. However, it is argued that, this witness further stated that, hymen was ruptured it was suggestive of old type of penetrative injury. This witness further opined that, there was vaginal penetration by penis or finger. This witness further deposed that, there were consistencies between his findings and the history given by victim as regard vaginal penetration. Smelling of vaginal area is not a

normal behaviour, but it is called as sexual perversion. It is submitted that, during his cross examination, nothing useful to the defence has been brought on record, and therefore, evidence of PW-1 deserves acceptance and rightly accepted by the trial Court.

14] It is further submitted by the learned counsel that, PW- Dr. Ajit Gajanan Pathak, in his examination in chief stated that, PW-1 and PW-2 examined the victim girl. he heard history given by the victim girl. He further deposed that, there was penetration of vagina of the victim by putting adult finger or penis due to which hymen was ruptured. He further deposed that, it was not possible for them to say as to how fingers would be admitted in the vagina of victim. He further deposed that, they did not find the above thing because of the examination of the victim after long gap of time after the incident which as per history given by her took place from 15.04.2009 to 02.05.2009. He further deposed that, the victim was examined on 26.08.2009. The injuries to labia majora, labia majora, inflammation, congestion etc. are held by the time they examined the victim and hence they

did not notice fresh injury. He further deposed that, even a single finger cannot be admitted in the vagina a child of six years of age without causing her trauma and pain and that is why they have mentioned so in their certificate. It is further submitted that, it is not correct to suggest that, from the condition of the edges of the ruptured hymen, the Forensic Lab can determine age of the rupture.

15] The learned counsel appearing for the complainant further invited our attention to the evidence of PW-3 Dr. Suhas Sadashiv Sonawane and submits that, PW-3 opined that, even very old man can be a potent in normal circumstances. A person aged 55 years is considered as middle aged man. Old age start after 60 to 65 years. He did not observe the hormonal status of the accused during his medical examination. The evacuation of semen depends type of surrounding, mental stimulation or sexual stimulation. In Hospital set up, a person lives under tension, pressure, anxiety, fear and in such situation, erection of penis of person and collection of his semen become difficult. He did not find any abnormality in the accused. He is able to have sex. In his cross

examination, he stated that, the contents and the findings in the above certificate are correct.

16] The learned counsel appearing for the complainant further submitted that, PW-4 Dr. Manoj Laxman Bhatwadekar, stated that, Pooja's mental status examination revealed that, she was conscious and cooperative, and she answered coherently and relevantly. She readily narrated all the incidents with her maternal grandfather, who had happened during her stay at Dhule. She said that, Baba is not a good man; he puts fingers in that her part of her body where she passed urine. He puts some sticky thing to that part and smells it. He tells her not to tell this to anyone, and also says that, if she does so he will hang her to a fan and kill her. He had held her near a fan at times. She has talked about it to her mother but her mother said that, he will not do this again. She did not want to go to Baba's places again but her mother insisted taking her there because it was only her maternal uncle's marriage ceremony. He further deposed that, he made provisional diagnosis of child sexual abuse. He expressed opinion that, he found that all things were

consisting with each other and that Pooja was telling truth. In his cross examination he stated that, he does not feel that, child Pooja might have been tutored by her father and grandmother before she was brought to him.

17] The learned counsel appearing for the complainant further submits that, PW-5 Dr. Meenal Anil Sule, in her deposition stated that, during the course of examination of victim girl, she was co-operative, communicative and went through entire sessions comfortable. When the above tests were conducted by her, no other person except victim girl was present before her. The second part of CAT consists of inquiry as to who does the child identify the figures because there are pictures of animals. That inquiry helps to correlate the history with the test finding. Grandfather abused her sexually, touches her private part, she also reported him of applying gum like substance to her private part and smells it and finger it. She also reported that, he threatens to hang her on the fan if she reports this to anyone. She told her mother about the same, and the mother assured her that, it will not happen again.

However, the child showed her discomfort in going back to the maternal grandfather, and does not want to go back to her maternal grandfather's place.

18] The learned counsel further invited our attention to the evidence of PW-6 Dr. Purnima Satoskar and submitted that, child had given detail history about visit to grand father's place at Sakri during said period. She was subjected to repeated sexual abuse by her grandfather, where he used to put his finger in her vagina, insert the penis in her vagina, smell the vagina region and apply some sticky substance on her face, and he used to threaten her that, if she did not allow him, he would hang her to fan and also threats of burning to the legs. She further told that, she was very afraid of her grandfather. At that time, the findings were that her hymen was ruptured and there was an inflammation in the area. She confirmed the history from patient and at that time, she did not find any discrepancy in the history given by her earlier. She did inform Bhoiwada Police Station, Mumbai by letter. She expressed her opinion that, as there was rupture of hymen and inflammation,

she opined that, there was a fingering or putting penis in the vagina.

19] It is further submitted that, PW-7 Manoj Deore in his evidence narrated the entire episode stated in his 12 pages complaint and stated that, his wife while going to Sakri on 31st July, 2009, and accused informed Kherwadi Police Station by application that, he was taking away his daughter Sonali with the consent of her husband and mother in law. The complainant has referred to various documents and applications in his deposition, explained various chronological events, which occurred from 15.04.2009 to 25.08.2009, and the reasons for delay in lodging complaint. The learned counsel invited our attention to his deposition at Exh.64, 67, 68 and 81.

20] The learned counsel further invited our attention to the evidence of PW-8 Dr. Anshu Kulkarni and submits that, this witness stated to Seema Parihar, who brought child for counselling that, victim girl has lot of pains and requires warmth and cajoling. She did ask

mother of child victim what has happened to the child. The learned counsel further invited our attention to the evidence of PW-9 Jayendra Rajaram Kumbhar and submits that, the prosecution has proved Exhibit 73 through this witness. The learned counsel further invited our attention to the version of the child victim [PW-10] wherein she stated that, victim does not like her grandfather residing at Sakri because he fingers in her urinary passage, applies gum on that part, sits there and smells of that part. Her grandfather does the above act in the night with her and threatens her to hang to the fan, if she disclose this fact to anybody. He used to sit on her urinary passage after removing her nicker. She told to her mother about the above conduct of her grandfather. Similarly, she had told this fact to her grandmother after she came to Nashik. She further stated that, similarly, she had told this fact to her father also after she came to Bandra. As she was experiencing pain in the urinary passage, her father and grandmother had taken her to 2-3 Doctors at Mumbai. When enquiry was made with her by Police, she had narrated the above facts to them also. It is submitted that, her evidence during examination in

chief remained unshattered. She specifically stated that, her father and grandmother told her, while coming to the Court that, she required to give evidence in the Court, and she should not be frightened and it is not correct to say that, she was tutored by grandmother to give evidence.

21] The learned counsel further invited our attention to the evidence of PW-11 Seema Parihar, PSI and submits that, upon enquiry by this witness with the child victim girl, she stated her that, her grandfather at Sakri fingers her urinal passage, applies gum and sticky substance on it and sits on the part. When she asked victim as to why victim did not tell this fact to her mother or any other relative, she told this witness that, as her grandfather threatens to hang her to the fan, she did not tell this fact to anybody. Thereafter, this witness sent victim outside and made an enquiry with her father separately, at that time, he was found to be in a confused state of mind as regard taking of legal action and he was well aware that taking of legal action may affect the mental status of victim, if the legal action is taken and the matter is taken to the Court. It is submitted that, it

revealed from the cross examination of this witness that, the accused in this case was the father in law of Manoj Deore himself, and therefore, Manoj Deore was apprehending that, his marital life would be disturbed if legal action is taken against his father in law. The learned counsel appearing for the complainant invited our attention to the evidence of PW-12 Suresh Malwal, Investigating Officer and submits that, this witness narrated entire procedure adopted by him. He specifically stated that, he received 12 pages complaint from PW-7, which is at Exh.67. He has also further deposed minute details about investigation. Therefore, relying upon the evidence of prosecution witnesses, the learned counsel appearing for the original complainant submits that, it clearly emerges from the evidence of victim girl that, she knew the sanctity of oath, she narrated the entire episode in a very clear manner before the Court. It is submitted that, nothing has been revealed from victim's cross examination as to why she should falsely implicate her own maternal grandfather, and therefore, by no stretch of imagination, it can be said to be a tutored witness. It is submitted that, the evidence of PW-10 is corroborated

with the evidence of Doctors, Psychiatrist and Police Officers, it is submitted that, victim girl herself narrated incident separately to all the Doctors. Every medical witnesses, they have stated that, the victim gave history of repeated sexual abuse by her maternal grandfather and also other details. Similarly, witnesses have also clearly emphasized that, the history given by the victim was consistent with their clinical findings. All the Doctors specifically opined that, there is clear vaginal penetration as per the history narrated by the victim. PW-4 Dr. Manoj specifically opined that, it was a case of child sexual abuse and he found that, the victim was telling truth and truth only. The evidence of Dr.Meenal Sule is consistent with Dr. Manoj in every aspect of the case. PW-6 Dr. Purnima of Wadia General Hospital, who examined victim, categorically stated that, twice she had taken history from victim, where she found that, her version is consistent and there was no discrepancy. Dr. Anshu, PW-8 has specifically told that, what the child has narrated. Therefore, the evidence medical evidence goes consistent with the deposition of minor victim girl. It corroborates the entire deposition of victim, and therefore, her

deposition is believable, credible and does not suffer from any ambiguity and so her testimony cannot be thrown away on any alleged minor inconsistency.

22] It is further submitted that, PW-11 Seema Parihar, PSI, working at the relevant time with counseling Wing at CID Branch, Chembur, Mumbai deposed before the Court about receiving complaint at Exhibit-81, she has started for counseling and investigation, she has specifically deposed about the procedure in respect of counselling and investigation. The learned counsel appearing for the complainant invited our attention to her examination in chief, and also cross examination and submits that, in her evidence she stated that, mother of the victim girl Sonali along with her went to Dr. Anshu Kulkarni. This fact is also admitted by Sonali in her deposition at Exh. 100 in D.V. Act case. The learned counsel further submitted that, if the entire evidence and especially Exh.67 if minutely perused then the chronology of events points out the entire episode from 15.04.2009 to 25.08.2009. The same is well explained at Exh.67, Exh.68 in all documents which collectively marked as

Exh.78 as well as the deposition of complainant at Exh. 64. It is submitted that, though PW-7 Manoj is working in the Court, he has stated that, he has no knowledge of Court functioning. It is submitted that, the delay is explained at very juncture. It is submitted that, the delay *per se* is not a ground to give benefit to the accused in rape case. Therefore, the learned counsel appearing for the original complainant submits that, the delay is properly explained by the prosecution. There are no more than two First Information Reports as contended by the defence. The scrutiny of evidence of prosecution thus makes it clear that, minor victim has disclosed the alleged incident of sexual assault on her to her father as well as to the several witnesses examined by the prosecution including medical witnesses and the Police Officers. Therefore, the learned counsel appearing for the respondent submits that, Criminal Appeal filed by the complainant and also State deserves to be allowed and the accused deserves to be convicted for the offence punishable under Section 376 of Indian Penal Code. The learned counsel appearing for the complainant placed

reliance in the case of ***State of U.P. Vs. Babul Nath***⁹ and in particular in para 8 wherein it is held that, to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of IPC. It is submitted that, when PW-10 was a minor girl of 6 Years at the time of incident, and therefore, minute details of the incident cannot be expected from her and the findings of the Court should be based on the totality of the circumstances available on record. In support of this contention, the learned counsel appearing for the original complainant placed reliance in the case of ***Manoj Mandrekar Vs. State [through P.P.]***¹⁰. The learned counsel further pressed into service exposition of the Bombay High Court in the case of ***Bhawalya @ Bawalal***

9. [1994] 6 SCC 29

10. 1996 Cri.L.J.3341

Totaram Vs. State of Maharashtra¹¹ and submits that, the accused is guilty of the offence punishable under Section 376 of Indian Penal code, therefore, he deserves to be sentenced for the said offence. The learned counsel further placed reliance in the case of the **State of H.P. Vs. Gian Chand**¹² and submits that, prosecution case cannot be discarded only on the ground that there was delay in lodging FIR, specifically in rape cases. He further invited our attention to the Judgment in the case of **Anokhe Lal Vs. State of Uttaranchal**¹³ and in particular para 7 thereof and submits that, there is a positive attempt to commit rape, such attempt cannot be brought within purview of mere outraging modesty.

23] The learned counsel also placed reliance in the case of **State of Punjab Vs. Ramdev Singh**¹⁴ and submits that, merely delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. It is further

11. 2004 [2] Mh.L.J.498

12. 2001 [6] SCC 71

13. 2003 Cri.L.J. 2602

14. 2004 [1] SCC 421

argued that, in the case of **State of H.P. Vs. Shree Kant Shekari**¹⁵ it is held that, delay *per se* is not a mitigating circumstance for the accused when accusations of rape are involved. The learned counsel invited our attention to the para 18 and 22 of the said Judgment. The learned counsel further pressed into service exposition of the Supreme Court in the case of **Md. Kalam Vs. State of Bihar**¹⁶ and in particular para 3 thereof and submits that, the accused deserves to be punished for the offence punishable under Section 376 of the Indian Penal Code. Therefore, the learned counsel appearing for the original complainant submits that, Appeal filed by the complainant and the State deserves to be allowed by dismissing the Appeal filed by the original accused.

24] The learned Additional Public Prosecutor invited our attention to the grounds taken in the Appeal Memo, and the notes of evidence and submits that, the accused deserves to be punished for the offence under Section 376 of Indian Penal Code. It is submitted that, the prosecution has properly explained delay in lodging

15. 2004 [8] SCC 153

16. 2008 [7] SCC 257

FIR. It is further submitted that, evidence of the prosecution witnesses including victim girl, various Doctors and PW-7 and also Police Officers unequivocally indicates the guilt of the accused, and therefore, the Appeal filed by the State deserves to be allowed. The learned Additional Public Prosecutor invited our attention to the notes of written arguments on behalf of the prosecution, which is part of the trial Court record.

25] We have given careful consideration to the rival submissions, with the able assistance of the counsel appearing for the parties, perused the entire record, relevant provisions and also Judgments cited across the bar. Since we are hearing three Appeals; one filed by the original accused challenging his conviction, one filed by the original complainant and the State with prayer to punish the accused for the offence punishable under Section 376 of IP Code, and also for the enhancement of the sentence, we propose to re-appreciate the evidence. At the outset it would be apt to reproduce herein below charge framed against the accused, which reads thus:

Firstly, that you between 15-04-2009 to 03-05-2009 at Laxmi Alankar Gruh, Saraf Bazar, Main road, Sakri, Taluka Sakri, District Dhule committed rape on the minor daughter age 6 years of complainant Manoj Deore and thereby committed an offence punishable under section 376 of I.P.C. and within my cognizance.

Secondly, that you during the above period and at the same time and place and during the course of same transaction attempted to commit rape on the victim and thereby committed an offence punishable under section 376 r/w section 511 of I.P.C. and within my cognizance.

That you during the same period and at the same place and during the course of same transaction committed criminal intimidation by threatening the victim with injury to her life and thereby committed an offence p/u/s/506 of I.P.C. and within my cognizance.

And I hereby direct that you be tried by me on the above said charges.

26] Upon perusal of the evidence brought on

record by the prosecution, it appears that, the incident as alleged by the prosecution has taken place between 15th April, 2009 and 2nd May, 2009 at Sakri. On 03.05.2009, victim and her mother returned from Sakri to Nashik. It further appears that, on 05.05.2009, mother of the victim girl returned to her father's place at Sakri complaining pains in wrist and informant [PW7] went back to Bandra. According to the prosecution case, on 5th June, 2009, victim informed her parental grand mother i.e. mother of informant PW-7 and narrated the incident as stated by the victim. On 7th June, 2009, informant PW-7 came to Nashik. On 8th June, 2009, PW-7 returned back to Bandra. On 11th June, 2009, victim and her parental grand mother reached Bandra as School was to start on 13th June, 2009. On 20th June, 2009, victim girl disclosed in detail about the incident to PW-7. According to the prosecution case, on 29.06.2009 and 07.07.2009, victim was taken to PW4 consulting Psychologist Dr. Bhatwadekar. On 29th June, 2009, she was referred to PW-5 [Consulting Psychologist]. On 20th July, 2009, she was taken to PW-11 [Police Officer] PSI, CID, Counseling Wing. On 20th July, 2009, mother of the victim i.e. wife of

the accused Sonali came to Nashik. On 22nd July, 2009, informant came to Nashik and took his wife to Mumbai Bandra. On 29th July, 2009, informant and wife went to PW-11 for counseling. On 31st July, 2009, PW-11 PSI, informant, his wife and victim went to PW-8-Dr. Kulkarni Consulting Psychologist. On the same day, inspite of counseling mother of victim / wife of informant was taken to Sakri by her relatives i.e. uncle, aunt and application to that effect was filed by father [accused], with Kherwadi Police Station, informing that, Sonali is being taken to Sakri. On 5th August, 2009 and 23rd August, 2009, victim was taken to the Wadia Hospital to PW-6, who again re-examined victim girl. On 25th August, 2009, complaint was lodged at Sakri Police Station. Thereafter, after full-fledged trial, the accused is convicted for the offences punishable under Section 376 r.w. 511 and Section 506 of Indian Penal Code. Since complaint was lodged by the PW-7, father of the victim girl, it would be appropriate at this juncture to discuss his evidence.

In his examination in chief, PW-7 stated that, he is serving as Clerk / Typist in the Court of Chief

Metropolitan Court, Mumbai. He reside in the Government Quarter along with his wife and daughter i.e. victim since 2007. On 20.04.2009, marriage of the brother of his wife namely Kamlesh was going to be performed at Sakri, and therefore, his wife Sonali and daughter had come to Sakri on 15.04.2009. After staying for 17 to 18 days at Sakri, his wife and daughter returned to their house at Nashik on 03.05.2009. After staying for 2 days at Nashik, his wife again went to her parents home at Sakri, as she had pain in her wrist. However, his daughter stayed at Nashik itself. On 03.05.2009, when victim girl returned from Sakri to Nashik, she was in a frightened state. She used to suddenly get up from the sleep and used to cry. She used to get frightened after looking at the fan. She used to get feared by covering her face with the blanket. When mother of the PW-7 asked victim girl about her behaviour, she did not tell anything initially. When again mother of PW-7 asked victim, she disclosed that, her Baba at Sakri put his finger in her urinal passage. Victim girl started weeping after narrating said incident. Mother of PW-5 informed about the incident on phone, and therefore, PW-7 went to Nashik on 07.06.2009. After he went to

Nashik, mother narrated the incident to PW7. He was shocked and was in a confused state of mind. Looking to the state of mind of victim girl and her childhood, he avoided to ask her about the incident. As the school of victim girl was to start from 13.06.2009, she along with her mother came to the house at Bandra on 11.06.2009. She was in a frightened state of mind and was not ready to go to School. Considering the mental situation of victim girl, PW-7 took her in confidence and asked her about the incident on 20.06.2009. At that time she disclosed that her grand father at Sakri put fingers in her urinal passage, apply gum like sticky substance on that region and smell it. She started crying loudly and hence PW-7 stopped asking her. When again he asked girl after taking her in confidence, she disclosed that, her Baba at Sakri make her sleep with him under the inducement of candy, removes her nicker, and puts finger in her urinal passage, applies gum like sticky substance on that region, smells it and sits on that part. She also disclosed that, her Baba at Sakri threatened her to hang to the fan if she disclosed this fact to anybody and holds her close to the fan. When PW-7 made inquiry, he came to know that, his

father in law used to commit such acts sometimes in upper room and sometimes in lower room of the house. Victim also told him that, her grand father at Sakri threatens to burn her. His father in law is always addicted to consume liquor and smokes cigarette. Looking to the mental state of victim girl in different behaviour, PW-7 decided to take her to Psychiatrist. Accordingly, he took victim girl to the Psychiatrist Dr. Manoj Bhatodekar on 29.06.2009. He narrated the incident to Dr. Bahatodekar, who then had counseling to victim and referred her to Dr.Minal Sule Psychologist, Mumbai for IQ and CAT test. They had received the reports of both test on 06.07.2009 and after perusal of the reports Dr.Bhatodekar, informed them that, whatever incident narrated by victim was true. Dr. Bhatodekar advised them to take proper care of victim saying that, the above acts may adversely affect the mental condition of victim in future. Dr. Bhatodekar asked mother of victim to meet her. He was mentally disturbed due to said incident. He, thereafter, came to Mahila Sahayya Shakha counseling Section Samaj social work Branch. CID Chembur, PSI Seema Parihar above Branch, took entire information of the incident and wanted

to meet victim. Accordingly, he took PSI Seema Parihar, Seema Parihar had counseling with victim and thereafter PSI Parihar wanted to meet his wife. His wife was residing at parents home during that period, and therefore he asked her to come, by contacting her on phone.

He further deposed that, his wife came to their house at Nashik on 20.07.2009 and on 22.07.2009, he went to Nashik and took her with him to Mumbai. After arrived at Mumbai, he disclosed to his wife about the incident which their daughter had narrated to him. His wife was not ready to believe in such incident. He showed her the reports of the Psychiatrist, and wanted her to meet the Doctor but wife refused. As his wife was not ready to believe in him, he asked her to personally make inquiry with victim about the incident. Thereafter, his wife made inquiry with victim separately about the incident and at that time victim girl narrated the entire incident to her mother. On 29.07.2009, he took his wife to PSI Seema Parihar, PSI informed to his wife during counseling that, incident narrated by victim girl is true and advised that the parents of victim should take her care. PSI

Parihar showed the reports to Psychiatrist to the wife of PW-7, still she did not believe that, such incident had taken place, therefore PSI Parihar advised victim to be taken to some other Psychiatrist and as per her advise, PW7 and his wife, PSI Parihar took victim girl to Dr. Ayushu Kulkarni, at Sion on 31.07.2009. Dr. Ayushi Kulkarni had counseling with PW-7, his wife and victim girl separately, and thereafter, Doctor had joint counseling with all of them. On the same day i.e. at about 12.30 pm. the uncle, aunt, the sister of her father and her husband and sister of the father of his wife and her husband and her maternal uncle had come to their house at Bandra. However, on inquiry PW-7 came to know that, they had come to take his wife at Sakri. It further appears that, looking to the traumatic condition of victim, he advised his wife not to leave victim girl and go to Sakri but she was not convinced and after raising quarrel with PW-7, she went away with the above persons at Sakri. On the same day, the accused had come to Bandra but had not come to his house. While going away to Sakri, the accused informed Kherwadi Police Station by application that, he was taking away his daughter Sonali with the consent of

her husband and mother in law. Thereafter, on 05.08.2009 and 12.08.2009, PW-7 took victim to Wadia Hospital for treatment. The Doctors in Wadia Hospital examined victim and issued certificate and also informed Bhoiwada Police Station by letter.

27] He further deposed that, on 05.08.2009, PSI Kumbhar of Bhoiwada Police Station recorded his statement and statement of victim girl. Similarly, on the same day, medical treatment was provided to victim girl in Wadia Hospital and he was advised to bring his daughter to Wadia Hospital on 12.08.2009. On 12.08.2009, he took victim girl in Wadia Hospital again where Dr. Poornima Satotkar examined her and she was admitted in the Hospital on 12.08.2009 and 13.08.2009. She was discharged from the Hospital on 13.08.2009. Thereafter, on 25.08.2009, he lodged 12 pages detailed First Information Report against the accused in Sakri Police Station in his own handwriting. On the basis of his complaint, application at Exh.67, the Police prepared FIR in short and obtained his signature on it. His supplementary statement was recorded by the Sakri

Police. On 29.07.2009, he had filed application before Mahila Sahayyak Kaksha, CID Chembur for counselling. As the Sakri Police were not taking proper action on his statement forwarded by Bhoiwada Police Station to them, on 07.08.2009, he had again filed application to Mahila Sahayyak Kaksha, CID Chembur, at that time he was advised to go to Sakri Police Station and file complaint. Such direction was given to him in writing. In the said complaint, he requested for taking stern action against his father in law. He did mention in his complaint – application that, he may face physical and mental torture at the hands of his wife and his father in law.

28] PW-7 was cross examined by the Advocate for the accused. He stated that, he did not face any physical harassment at the hands of the accused after 2009 till date of recording of evidence. According to him, the age of the accused is in the range of 55. His daughter is studying in Primary School run by Mahila Mandal at Shahpur. She is not attending the School since 23.11.2011 due to ill health. He denied suggestion that, victim girl remains in the company of her mother for a

whole day since 23rd November, 2011. Victim girl resides with the sister of PW-7. Since 23rd November, 2011, victim girl is suffering from cold and viral infection.

He is serving in the Court since the year 2009 and hence he has prima facie knowledge of the court working. He did not go to Sakri on 20.04.2009 for the marriage of his brother in law. His marriage with Sonali was performed on 30th May, 2002. After his marriage, till 30th April, 2009, he had visited his matrimonial house 8 to 10 times. The shop admeasuring 7' x 9' is located in the house premises of the accused itself. Room measuring 7' x 10' is lying adjacent to the shop at the backside. Stair case is there adjacent to the said room and by the side of stair case is the kitchen. There are three rooms on the upper storey of the house of the accused. Northern side room is admeasuring 7' x 12', southern side room is also having same size and 3rd room is admeasuring 6' x 5'. There is no second floor to the house of accused. The house of accused is located in the market place. The houses lying adjacent to the of accused are just abetting to each other. A road about 10 to 12 feet in width is lying

in front of the house of accused and beyond the road the houses are standing. The accused has 3 brothers and 3 sisters. They are all married and have got children. All the brothers and sister of accused reside out of Sakri. Wife of accused is alive.

29] He was further cross examined wherein he admitted that, on 07.06.2009 he received telephonic message from his mother asking him to come to Nashik. Accordingly, he went to Nashik and after staying for one day, he returned to Mumbai on 08.06.2009, but thereafter, he did not come to Nashik. He did not take victim girl with him to Mumbai on 08.06.2009 and she was left at Nashik with his mother. Victim girl told first time about the incident to him on 20.06.2009 at his house at Bandra. She came to him on 11.06.2009 at Mumbai along with his mother. There used to be conversation between him and victim girl during 11.06.2009 to 20.06.2009. He had taken victim girl to Gynecologist at Mumbai for the first time on 05.08.2009. He lodged complaint in Police Station for the first time on 25.08.2009. He realized that, short complaint Exh.68

prepared by the Police was not as per his complaint application. He did not submit any application to Sakri Police Station, S.P., I.G., DIG informing that, short complaint extract by Police as per Exh.68 was not as per his complaint application. He signed complaint at Exh.68. He further stated that, his wife had filed maintenance proceeding in Sakri Court against him wherein he has directed by the Court to pay monthly maintenance of Rs.3,000/- to his wife, but he preferred appeal against the said order, which is pending. He further stated that, his wife had also filed proceeding against him under D.V. Act in which he was directed by the Court to pay compensation of Rs.25,000/-, and monthly maintenance of Rs.2000/- to her. But he has preferred appeal against that order and said order is stayed by the Appellate Court. His wife has filed private complaint against him in Sakri Court for fabrication of documents but said case is filed in August, September, 2011. He does not want divorce from his wife. He denied suggestion that, he want divorce from his wife and as she is not ready to divorce him, as per his wish, he lodged false complaint to pressurize wife and to defame her father. He denied suggestion that,

there was conversation between him and his mother, and PW-7 lodged false case against the accused after deliberation.

30] Upon careful perusal of the evidence of PW-7, it appears that, he did file 12 page detailed complaint. It is true that, he admits that, he lodged complaint in Police for the first time on 25th August, 2009, however, it appears that, he took victim girl to various Doctors. He tried to take into confidence his wife so as to avoid any further disharmony in the family. He has categorically narrated what is told by the victim girl about the incident at Sakri. If his evidence is read in its entirety, it appears that, since the incident was very sensitive issue and his father in law committed such heinous act, it appears that, he took every care that, false complaint is not lodged. It is difficult to accept argument of the counsel appearing for the accused that, the complainant wanted divorce from Sonali, and therefore, he filed a false complaint. No prudent man would believe such allegation that, in order to get divorce from his wife i.e. Sonali, he filed the false complaint. No prudent person would go to destroy and

expose future life of his daughter by filing baseless complaint. If the evidence of the PW-7 is considered in its entirety, said deserves acceptance. The complainant has stated in his evidence that, he was mentally disturbed due to the incident. Therefore, merely because there is delay in filing the complaint, would not nullify gravity of the heinous offence committed by the accused. If the evidence of PW-7 is read in its entirety, he has explained steps taken by him so as to first address serious mental trauma faced by the victim girl. He took victim girl to various Doctors, Psychiatrist and as a matter of fact victim girl was admitted in the Wadia Hospital on 12th August, 2009 and 13th August, 2009. He has also stated that, he took victim girl to the Mahila Sahayak Shakha counseling Section Samaj Social Work Branch, CID Chembur wherein PSI Seema Parihar working in the said Branch took entire information of the incident and wanted to meet wife of the complainant and accordingly on 29th July, 2009, he took his wife to PSI Seema Parihar.

31] Prosecution has examined victim girl as PW-10. She stated in her evidence that, full name of her

father is Manoj Suresh Deore. Name of her mother is Sonali. She studied in first Standard in Mahatma Gandhi Vidya Mandir, Bandra, Mumbai. Presently, she is studying in Primary School, Shahapur, run by Mahila Mandal. Her mother resides at Sakri. She had went to Sakri, when she was studying in First Standard. She further stated that, at that time, there was function at Sakri. At that time, she stayed at Sakri for about twenty days. One of her grandfathers reside at Nashik and another at Sakri. Her grandfather residing at Sakri is the father of her mother. Accused present before the Court is the father of her mother. She does not like her grandfather residing at Sakri, because he fingers in her urinary passage, applies gum on that part, sits there and smells of that part. Her grandfather does the above acts in the night with victim girl and threatens her to hang to the fan if she disclose this fact to anybody. He used to sit on her urinary passage after removing her nicker.

32] She further deposed that, she told to her mother about the above conduct of her grandfather. Similarly, she had told this fact to her grandmother after

she came to Nashik. Similarly, she had told this fact to her father also after she came to Bandra. As she was experiencing pain in the urinary passage, her father and grandmother had taken victim girl to 2-3 Doctors at Mumbai. When inquiry was made with her by Police, she had narrated the above fact to them also.

33] She was cross examined by the Advocate for the accused. She stated in her cross examination that, about 5 to 7 minutes are required to reach her School. She did not go to School since last 2 to 3 days only, before that she was regularly going to School. Her grandfather at Nashik does not reside along with her grandmother residing at Nashik. Her uncle Kiran and his wife still reside together at Nashik. Her uncle also works in the Court at Nashik. Name of her aunt is Jayu.

34] She further stated in her cross examination that, her mother resides at Sakri while her father resides at Mumbai. But her mother occasionally comes to Mumbai to meet her father. She cannot tell as to how many years

prior to this date, she had gone to Sakri. Her mother has got 2-3 sisters. She has got two maternal uncles, named Anna and Mahesh. She has got one more maternal uncle named Kamlesh. As there was marriage ceremony of her maternal uncle Kamlesh, she had went to Sakri with her mother. As her father was not feeling well, father has not come to attend that marriage. Number of guests had come to attend that marriage. At the time of that marriage, she sometimes used to sleep with her mother and sometimes with her grandmother. She denied the suggestion that, even after the marriage, the relatives had stayed for 10 to 12 days at the house of accused. After the marriage, the relatives had immediately went away.

35] She further stated that, there is a Shop, one room and kitchen on the ground floor and two rooms on the first floor of the house of the accused. Her maternal uncle Kamlesh and his wife used to sleep in one of the rooms on the first floor, while in the another room her another maternal uncle and his wife used to sleep. She herself, her grandfather, grandmother, maternal aunts

used to sleep in the room on ground floor. She further stated that, when she returned to Nashik from Sakri, her father was present at Nashik itself. She told to her father and grandmother about the incident on next day after she returned to Nashik. Her father and grandmother took her to the Hospital on next day. On the same day, the Doctor had given prescription to her father. Thereafter, she never went to the Hospital. After she returned from Sakri, she did not go to School for one or two days thereafter she went to School regularly. Similarly, she regularly used to go to tuition classes also. Her father and grandmother told her while coming to the Court that, she is required to give evidence in the Court and she should not get frightened. She denied suggestion that, she is tutored by her grandmother to give evidence, but she told her that, she should tell before the Court that, Baba fingered in her urinary passage.

36] Upon careful perusal of the evidence of the victim girl, so far actual alleged commission of offence is concerned, victim girl in her deposition before the Court stated that, "my grandfather residing at Sakri is the father

of my mother. Accused present before court is the father of my mother. I do not like my grandfather residing at Sakri, because he fingers in my urinary passage, applies gum on that part, sits there and smells of that part. My grandfather does the above acts in the night with me and threatens me to hang to the fan if I disclose this fact to anybody. He used to sit on my urinary passage after removing my nicker.

There is enough corroboration to the aforementioned version of the victim so far actual incident is concerned, from the evidence of PW-1 to PW-8 and PW-11. PW-7 i.e. complainant stated that, on 03.05.2009, when victim girl returned from Sakri to Nashik, she was in a frightened state. She used to suddenly get up from the sleep and used to cry. She used to get frightened after looking at the fan. She used to get feared by covering her face with the blanket. When mother of the PW-7 asked victim girl about her behaviour, she did not tell anything initially. When again mother of PW-7 asked victim, she disclosed that, her Baba at Sakri put his finger in her urinal passage. Victim girl started weeping after narrating

said incident. Mother of PW-5 informed about the incident on phone, and therefore, PW-7 went to Nashik on 07.06.2009. It is further stated by the PW-7 that, at that time she disclosed that her grand father at Sakri put fingers in her urinal passage, apply gum like sticky substance and on that region and smell it. She started crying loudly and hence PW-7 stopped asking her. When again he asked girl after taking her in confidence, she disclosed that, her Baba at Sakri make her sleep with him under the inducement of candy, removes her nicker, and puts finger in her urinal passage, applies gum like sticky substance on that region, smells it and sits on that part. She also disclosed that, her Baba at Sakri threatened her to hang to the fan if she disclosed this fact to anybody and holds her close to the fan. When PW-7 made inquiry, he came to know that, his father in law used to commit such acts sometimes in upper room and sometimes in lower room of the house. Victim also told him that, her grand father at Sakri threatens to burn her.

37] PW-1 Dr. Chetan Ashok Pawar in his deposition stated that, he found that, the victim girl was

conscious and oriented. On local examination, he found that her hymen was ruptured, there was evidence of old injury, no evidence of actual bleeding or no inflammation around the area. He further stated that, from the history and clinical examination, in his opinion, as the hymen was ruptured, it was suggestive of old type of penetrative injury. He further stated that, when he found that, the hymen of the victim was ruptured, he was of the opinion that, there was vaginal penetration by penis or finger.

It is true that, this witness in his cross examination stated that, if any act is committed forcefully with the finger or penis, there must be injury to labia minora and labia majora. However, he did not find any injury to labia minora and labia majora.

38] PW-2 Dr. Ajit Gajanan Pathak, in his deposition before the Court stated that, there was penetration of vagina of the victim by putting adult finger or penis, due to which hymen was ruptured. Therefore, the prosecution case that, there was an attempt to

commit a rape gets corroboration to the version of PW-10 and PW-7 from the evidence of PW-1 and PW-2.

39] Dr. Suhas Sadashiv Sonawane, who was examined as PW-3 by the prosecution, stated in his deposition that, he did not find any abnormality in the physical structure and shape of penis and testicles of accused. He collected sample of semen of the accused and sent the same for chemical analysis. There was erection of penis of the accused. He further stated that, even, very old man can be a potent in normal circumstances. A person, who is aged fifty five years, is considered as middle aged man. Old age starts after sixty to sixty five years. Therefore, the evidence of PW-3, so far whether the accused was capable of commission of an alleged offence against him is concerned, PW-3 clearly opined that, there was no any abnormality in the physical structure and shape of penis and testicles of the accused. The accused at the relevant time was aged 55 years, and as opined by PW-3, even very old man can be a potent in normal circumstances, the reasonable inference can be drawn that, the accused was capable of commission of an

offence as alleged against him.

40] Dr. Manoj Laxman Bhatawadekar was examined as PW-4. He stated in his deposition that, on interacting with the victim girl, he found that, she was conscious and cooperative. She answered coherently and relevantly. It was easy to establish communication with her, and she readily narrated all the incidents with her maternal grand father, which had happened during her stay at Dhule. She addressed her maternal grand father as 'Baba'. She said, Baba is not a good man, he puts fingers in that part of her body where victim passed urine. Grand father puts some sticky thing on that part and smells it. He tells her not to tell this to anyone, and also says that, if victim does so, accused will hang her to a fan and kill her. Accused had held her, near a fan at times, victim told about it to her mother, but she said that, accused will not do this again.

41] This witness further stated that, after the incident was narrated by the victim girl, he advised the

complainant and his mother to call victim's mother for interview. He specifically stated that, he does not feel that, the victim girl might have been tutored by her father and grand mother before she was brought to him. He saw the father of the victim girl for the first time, when he came to his Hospital with victim on 29th June, 2009, and do not know anything about his family history. He specifically stated that, victim girl during the interview, was disturbed due to fear of separation of her parents.

42] Meenal Anil Sule was examined as PW-5. She stated in her deposition before the Court that, she is a M.A. in Psychology with Specialization in Clinical Psychology. She is working since last 24 Years. Her role is basically psychological testing and counselling. She stated that, victim girl has ability of reasoning, judgment, good picture memory, her concept clarity of above is average. She further stated that, victim girl as per her findings and examination had repeatedly used the themes of physical harm by senior patriarchal figure and the fear associated with him. During an inquiry, as the victim girl was referring to the patriarchal figure, PW-5 asked her to

get it clarified to whom she was referring, what she was thinking about, what kind of physical harm she was referring. On such inquiry it was revealed that, victim girl was talking about grand mother, and as regards the physical harm, it was revealed that, her maternal grand father abused her sexually, touched her private part, inserted finger in it, applied gum like substance on private part and smelled it. Victim girl also reported that, he threatens to hang her on the fan, if victim girl reports this to anyone. PW-5 asked victim girl whether she has shared this information with anyone, she stated that, she told her mother, and mother assured her that, it will not happen again. However, the child showed her discomfort in going back to the house of the maternal grand father. However, this witness stated in the cross examination that, it was revealed from the stories made by her that, there were conflicts between her parents, and the fear in her mind that, the parents might be separated because of such conflict.

43] Dr. Purnima Kakotkar was examined as PW-6. Her evidence is at Exhibit-60. She stated in her evidence

that, she is serving as Professor at GS College Mumbai to which Wadia Hospital is attached. She is serving there since the year 1998. In the month of August, 2009, she has examined patient i.e. victim in the Wadia Maternity Hospital. The patient was six years old and was brought by her paternal grand mother and the information was given by both the patient and her grand mother. She had also spoken to the patient separately. The history given by the patient was that she had visited her maternal grand father's place at Sakri, during the period 15.04.2009 to 02.05.2009. During this period, she was subjected to repeated sexual abuse by her grand father, he used to put his finger in her vagina, insert the penis in the vagina, smell the vagina region and apply some sticky substance on her face, and he used to threaten her that if she did not allow him he would hang her to the fan, and also threats of burning to the legs. She told that, she was very afraid of her grand father. She had told them that, after committing the above acts, her maternal grand father used to apply the sticky substance like blue like gum of micuration on her face. The findings were that her hymen was ruptured and there was inflammation in the

area. They had advised admission of the patient but the relatives of the child requested that, she should not be admitted, because she was very frightened at that time. They, therefore, gave her pain killer and antibiotic and asked her to come for follow up after one week. She further stated in her evidence that, there was no evidence of hymen cubic hair available but there was definitely evidence of penetration, and therefore, she has mentioned in the certificate that, possible rape cannot be confirmed at this point because of old penetrative injury. The above incident may have possibly occurred more than two weeks before the examination. She found consistency between the history given by the patient and her findings. The hymen in the case of the child about 6 years old is deeply seated in the vagina compared to the adults.

44] Dr. Anshu Kulkarni was examined by the prosecution as PW-8. Her evidence is at Exhibit 70. She deposed that, she is working as a Consulting Psychiatric since 2001. She had got her own clinic and attached to 2-3 Hospitals. On 31.07.2009, victim girl aged about 6

years was brought to her by PSI Seema Parihar for counselling. The victim was accompanied by her parents and paternal grand mother. Father of the victim told her as to what had happened to the victim and thereafter she spoke with the victim separately. She asked the victim girl as to what was wrong with her and as to why she cries, and when probed, victim girl told that, her mother just might leave victim, and therefore, victim was scared. Victim was scared that, her mother might leave her, and when PW-8 asked the victim about the reason, she had no specific answer to it. The mother of the victim was also present at the time when inquiry was made with the father of the victim. This witness gathered from all these that, the victim was going through emotional turmoil and that is the reason by which victim had those cries and pains. PW-8, accordingly, took down the notes of the examination of the victim. She further deposed that, she gathered that, the victim was building up lot of tension due to repeated questioning and gynecological examination, and hence, PW-8 did not go into the probe as to what happened to the child. PW-8 told to the mother of the victim that, victim has lot of pains and

requires warm and cajoling.

The defence has not brought anything on record through cross examination, so as to disbelieve the aforesaid version of the PW-8.

45] The prosecution examined Mrs. Seema Surendrapalsingh Parihar as PW-11. She stated in her evidence that, she was attached to counseling wing of CID Chembur, Mumbai from the year 2007 to 2010. She was working as PSI. She further stated that, on 20th July, 2009, Manoj Deore and his mother Sunanda had come to her with a victim girl. Manoj Deore disclosed PW-11 that, his daughter – victim girl was subjected to sexual harassment by her grandfather and Manoj Deore was in a confused state of mind in respect of further course of action. Manoj Deore had told PW-11 that, the father of the mother of victim girl namely; Prakash Wankhede had committed such acts. Manoj Deore also told PW-11 that, victim girl had gone to attend the marriage ceremony of her maternal uncle around 14th April and she returned on

3rd of May and during that period, she was subjected to such sexual harassment. After PW-11 heard such incident from Manoj Deore, she asked Manoj Deore and his mother to wait outside, and she inquired with victim girl separately. During inquiry, victim told PW-11 that, her grandfather at Sakri fingers her urinal passage, applies gum and sticky substance on it and sits on that part. When PW-11 asked victim as to why she did not tell this fact to her mother or any other relative, victim told PW-11 that, as her grandfather threatens to hang her to the fan, she did not tell this fact to anybody. PW-11 further stated that, when PW-11 asked victim as to why she disclosed this incident to her grandmother residing at Nashik only, she replied that, her grandmother residing at Nashik is liked by her, and hence, she told this fact to her, but she did not tell this fact to anybody because of presence of her grandfather at Sakri. Victim also told PW-11 that, as her grandfather residing at Sakri was not present at Nashik, she was not under fear, and therefore, disclosed this incident to her grandmother at Nashik. PW-11 further stated that, thereafter, she sent victim outside and made enquiry with her father separately, at that time he was

found to be in a confused state of mind as regards taking of legal action, and he was well aware that the taking of legal action may affect the mental status of victim girl, and if the legal action is taken and the matter is taken to the Court, she would be reminded of all these facts, which may disturb her future life.

46] PW-11 further stated that, the accused in this case was the father in law of Manoj Deore, and therefore, Manoj Deore was apprehending that his marital life would be disturbed if legal action is taken against his father in law. The wife of Manoj Deore was more attached to her father, and therefore, he was doubtful that, his wife would not believe if the incident is disclosed to her, and therefore, he wanted PW-11 to have counseling of his wife. On 29.07.2009, the wife of Manoj Deore and his daughter – victim girl again had come to PW-11. When PW-11 asked victim girl to disclose the incident to PW-11 in presence of her mother, victim girl was apprehending that, her mother would beat up her if the incident is narrated in her presence. PW-11 further stated that, when PW-11 asked victim girl taking her in confidence

that, her mother would not beat or get angry with her if the fact is disclosed, victim girl narrated the incident which was narrated earlier by her to PW-11. Mother of victim girl asked cross questions to victim girl, which were properly replied by her. PW-11 tried to convince the mother of victim girl that, if victim girl was really tutored by anyone she would not be able to answer the cross questions properly. The father of victim girl had taken victim girl earlier to a Psychiatrist but her mother had no faith in the report of the said Psychiatrist, and hence, PW-11 suggested mother of victim girl that, they will take victim girl to another Psychiatrist. PW-11 made the list of the Psychiatrists available to the mother of victim girl of whom Dr. Anshu Kulkarni was selected by the mother of victim girl, and accordingly, they took victim to Dr. Anshu Kulkarni. Dr. Anshu Kulkarni had talk with victim girl and her parents separately, and opined that, victim girl was in need of love of her parents in that situation, and therefore, her parents should stay with her. On the same day, they returned from the Hospital of Dr. Anshu Kulkarni, and later on PW-11 came to know that, the mother of victim girl went away to Sakri on the same day.

Dr.Anshu Kulkarni told PW-11 as well as mother of victim girl that, whatever victim girl was telling was true. Father of victim girl then decided to register an offence in this case, and requested them to forward his application to the Police Station. The father of victim girl, subsequently, informed them by telephone that, victim girl was admitted in Wadia Hospital due to ill health, and therefore, it was not possible for him to register the offence promptly and he would register the complaint by going to Sakri. He informed them by telephonic message later on about the registration of offence on 26.08.2009.

47] PW-11 further stated that, she had written letter to Sakri Police Station in connection with said case. The letter Exh.39 shown to her is the same and bears her signature and is in her own handwriting. Some documents at serial Nos. 1 to 23 were also forwarded by her with the said letter to Sakri Police Station. The said documents included the original statement of Manoj Deore and the file of the case maintained by them and final report. Similarly, the documents included the copy of the application dated 29.07.2009 submitted to them by Manoj

Deore. The file of the case is at Exh.78. PW-11 brought the original application dated 29.07.2009 submitted by Manoj Deore to them and the originals of serial Nos. 1 to 23 documents in the Court and PW-11 was ready to file the same.

48] PW-11 was crossed examined by the advocate for the accused. PW-11 stated in her cross examination that, she made counseling only in this case and did not carry out any investigation. She denied the suggestion that, the findings recorded by them and conclusions reached, are based merely on the information furnished by Manoj Deore to them. She further stated that, none of the documents filed by her in this case bears signature of the wife of Manoj Deore. She further stated that, there is no documentary proof except her words to support her testimony that, wife of Manoj had also come to them. Sakri Police Station did not record her statement till today in this case.

49] She further stated that, the inquiry

commenced by her on 20.07.2009 continued till 31.07.2009. After the conclusion of inquiry, it struck to her that, it is a medico-legal case. She further stated that, if the Police Officer is satisfied that particular case is medico-legal case, he should promptly register a crime. She further stated that, she did not register a crime in this case in any Police Station. She is aware of the procedure that, a crime is to be registered in the nearest Police Station and if the said Police Station had no jurisdiction, the crime is registered thereunder '0' number and the matter is forwarded to the Police Station having jurisdiction to investigate. She further stated that, as Manoj Deore had told PW-11 that, he did not want to register any crime in this case, considering the future life of victim girl. She also did not personally register any crime in this case. She did not visit the place of incident at Sakri along with Manoj Deore and made any inquiry there. She denied the suggestion that, the wife of Manoj Deore never came before her and that most of the part of her report is written out on the say of Manoj Deore.

50] The prosecution examined Jayendra Rajaram

Kumbhar as PW-9. He stated in his evidence that, he was attached to Bhoiwada Police Station during the year 2006 to 2010. He had received a letter at Exh.63, shown to him from Wadia Hospital. On receipt of the said letter, he rushed to the Vadiya Hospital on the same day and recorded statement of victim girl. Similarly, he recorded the statement of the father of the victim girl on the same day. The said statements were placed by him before superiors and on their directions, the same were forwarded by him to the Sakri Police Station along with forwarding letter. The forwarding letter shown to him is the same, by which the original statements were sent to Sakri Police Station.

51] PW-9 was cross examined by the advocate for the accused. He stated in his cross examination that, initially, the father of the victim girl came to the Police Station with a letter from Vadiya Hospital. He accompanied the father of the victim to Wadiya Hospital and contacted with Doctor on duty. He further stated that, the letter at Exh.73 does not specifically mention that, he visited Vadiya Hospital and recorded the

statements there. There is no other record except his statement that, he recorded the above statements in Wadiya Hospital. He is aware that, the place where the statement is recorded has to be mentioned on the top of the statement recorded by the Police Officer as per Police Manual. He further state that, no crime was registered before recording of the above statements. He did not make inquiry with the father of the victim girl when PW-9 recorded his statements to what service he was going. But his statement revealed that he was working as a Clerk in Vikroli Court. When PW-9 asked the father of the victim girl as to whether mother of victim girl is there, it was told by him that, the mother of child was not present. PW-9 denied the suggestion that, he recorded false statements at the instance of the father of the victim girl.

52] The prosecution examined Mr. Suresh Namdeo Malwal as PW-12. He stated in his evidence that, he is attached to Sakri Police Station since the Year 2009. On 25.08.2009, PSO, Ahirrao registered Crime No. 108/2009 on the basis of complaint of one Manoj Deore and further investigation was handed over to PW-12. The complaint

at Exh.67 shown to him is the same. It was a complaint running into 12 pages, and therefore, in order to facilitate taking of entries in the Station Diary, substance of complaint was prepared by PSO and signature of complaint was obtained on it. It is signed by the complainant and counter signed by the PSO. He further stated that, after he took up investigation, he recorded spot panchanama on 26.08.2009 in presence of panch Kashinath Gite and Bharat Hire. The place of incident was pointed out to PW-12 by the victim girl. Spot panchanama [Exh.35] shown to him is the same. On that day, he sent the victim girl to the Civil Hospital, Dhule for medical examination, and recorded statements of the witnesses and supplementary statement of victim girl. Victim girl was already medically examined at Mumbai. Father of victim had produced before him the papers of her medical treatment at the time of her supplementary statement. He issued letter [Exh.85] to TILR requesting him to draw sketch of spot of incident. He stated that, letter shown to him is the same and bears his signature on it. He issued letter [Exh.86] to Gram Sevak, Sakri, requesting him to provide birth certificate of victim girl.

53] PW-12 further stated that, the accused had obtained anticipatory bail and appeared in the Police Station. At that time he was arrested as a formality and obtained his blood sample, and sample of sperm was also obtained. He had issued letter to the Medical Officer, Rural Hospital, Sakri, requesting him to examine the accused medically. He further stated that, at the time of medical examination of victim girl, some samples were collected by the Medical Officer, which were received by PW-12 later on through the Lady Police Constable. He sent all the samples in a sealed condition to Forensic Laboratory, Nashik for Chemical Analysis. He further stated that, they had received two reports from C.A. at Exh.88 and 89, which are filed along with charge sheet.

54] PW-12 further stated that, when the investigation was with him, he had received letter from PSI Kumbhar of Bhoi wada Police Station, Mumbai together with statements of victim girls and her father. The letter [Exh.73] and the statements received by him

with it, shown to him are the same. Similarly, he had received statement of father of victim, an application submitted by him and other papers from PSI Seema Parihar, Mumbai. The letter and documents at serial Nos. 1 to 23 [Exh.78] shown to him are the same. He had also received birth certificate of the victim girl and sketch of place of incident from TILR. Birth Certificate [Exh.36] and map of the spot [Exh.37] shown to him are the same. The document [Exh.38] shown to him is the surrender form of the accused. When the accused was arrested by him, arrest panchanama was prepared. As the investigation revealed that, the accused committed alleged crime, PW-12 submitted charge sheet against him. He identified the accused present before the Court. The Police Station had received a letter dated 22.09.2009 from the complainant Manoj Deore on 29.09.2009.

55] PW-12 further stated that, he has produced the original letter dated 22.09.2009, which was received by the Police Station from the complainant. The letter shown to him is the same and bears the endorsement of Police Inspector as regards the receipt of the letter, which

is at Exh.103.

56] PW-12 was cross examined by the advocate for the accused. He stated in his cross examination that, he cannot tell whether before 25.08.2009, Police Station had received any complaint or application from the complainant. But prior to 25.08.2009, he did not personally receive any complaint or application from the complainant. He did not make any enquiry before filing charge sheet as to whether any complaint or application was received or not from the complainant by the Police Station. He further stated that, as per law there cannot be two complaints in respect of same crime. After the receipt of complaint by the Police Station in respect of commission of any crime, the crime number is given, and thereafter, the complaint is treated as FIR. On the basis of said FIR, the investigation starts. The explanation for filing complaint at belated stage is not given in the complaint at Exh.68.

57] He further stated that, the place of incident

visited by him and the place of which sketch was drawn by TILR was accurately tallying with each other. He recorded the statements of the persons, residing in the vicinity of the place of incident. PW-12 came to know from the complaint of the complainant that, he is in service in the Court. The investigation revealed that, the marriage of brother in law of the complainant was scheduled on 20.04.2009. PW-12 did not investigate as to whether the complainant was present or not in the said marriage. Because he did not feel it necessary. From the statement of the victim and the reports of the Medical Officers, the investigation revealed that, the offence is committed by the accused. He has recorded the statements of the relatives of the accused, who had come to attend the marriage on 20.04.2009. He denied the suggestion that, he has submitted charge sheet against the accused only under the pressure of the complainant without there being any evidence against the accused.

58] If the evidence of all the prosecution witnesses discussed in foregoing paragraphs is considered in its entirety, and read conjointly, it leads to definite

conclusion that, the prosecution has proved beyond reasonable doubt that, the accused repeated sexual abuse of the victim girl during the period 20th April, 2009 to 3rd May, 2009. The said history of the repeated sexual abuse has been stated by the victim girl and gets corroboration from the evidence of PW-1 to PW-8, and also PW-11. The version about the actual incident has been stated by the victim girl in her evidence before the Court, and said version gets full corroboration from the evidence of PW-1 to PW-8, and also from the evidence of PW-11. The prosecution has proved the prosecution case by examining the Police Officers, who have deposed before the Court in detailed. It is not necessary for us to burden this Judgment by reiterating the findings recorded by the trial Court, suffice it to say that, those findings are in consonance with the evidence brought on record, and therefore, we fully endorse said findings.

Upon considering the evidence in its entirety, we are of the considered view that, if the entire evidence is considered in the light of the relevant provisions of Section 375 and 376 of I.P. Code, which were in force at

the relevant time of commission of offence, the prayer of the complainant and the State to convict, the appellant for the offences punishable under Section 376 of I.P.Code cannot be accepted.

59] The case in hand is the case of the sexual abuse of girl aged 6 years, and therefore, required to be viewed seriously. It needs to be kept in mind that the law regarding appreciation of evidence in cases of sexual and particularly in respect of minor girl is set out in various judgments of the Supreme Court. It is well settled that the court should examine broader probabilities of the case and not get swayed by minor contractions or insignificant discrepancies in evidence of witnesses. It is well settled that if the evidence of prosecutrix inspires confidence, then it can be relied upon without seeking further corroboration to victim's statement, and if for some reason the Court finds it difficult to place implicit reliance on such testimony of the prosecutrix, it may look at other evidence. The very nature of offence in such cases, makes it difficult to get direct corroborative evidence. The victim of sexual offence is at a higher pedestal than the

injured witnesses because she is subjected to physical, psychological as well as emotional injury. Such offence is a crime against the entire society and it violates the victim's most cherished fundamental right i.e. right to life contained in Article 21 of the Constitution of India, 1950.

60] Scrutiny of evidence of prosecution thus makes it clear that minor victim has disclosed the alleged incident of sexual assault on her, to her father as well as to the several witnesses examined by the prosecution including medical witnesses and the Police Officer. Narrating of the incident by the minor girl PW-10 to PW-4 Dr. Manoj Bhatwadekar and PW-5 Meenal Sule was on 29.06.2009 i.e. much before returning of her mother Sonali to her matrimonial home at Bandra on 22.07.2009. All the prosecution witnesses have deposed about the detail narration of the incident by the victim girl that, there was sexual abuse by the accused on more than one occasion.

61] Therefore, in the light of the discussion in foregoing paragraphs, the Judgment and order passed by the trial Court and the sentence awarded deserves to be confirmed. Accordingly same stands confirmed. Appeal filed by the appellant – accused stands dismissed, so also Appeal filed by the State as well as complainant also stands dismissed.

Sd/-

[A.M.BADAR, J.]

Sd/-

[S.S. SHINDE, J.]

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DDC