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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1238 OF 2013**

Datta Rohidas Payale	]
Age 30 years, Occ: Labour	]
Residing at Prajapati Society,	]
Near National Highway Petrol Pump	]
Panvel, Taluka Panvel, Dist. Raigad	]
(Confined as Convict No. C-5858	]
Kolhapur Central Prison, Kalamba,	]
Kolhapur	]..Appellant [Ori. Accused]

Vs.

The State of Maharashtra	]
(At the instance of Panvel City	]
Police Station, Dist. Raigad	]
in C.R. No. 302 of 2011	]
tried in Sessions Case No. 146 of 2011]	]..Respondent

....

Mrs. Rohini Dandekar Advocate appointed for the Appellant
Mrs. A.S. Pai A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
SMT.I.K.JAIN, JJ.
DATED : JANUARY 07, 2015**

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 17.4.2013 passed by the learned Additional Sessions Judge, Raigad in Sessions Case No. 146 of 2011. By the said judgment and

order, the learned Sessions Judge convicted the appellant under Sections 363, 366-A and 376 of IPC. For the offence under Section 363, the appellant has been sentenced to R.I. for seven years and fine of Rs.5,000/- in default R.I. for one year. For the offence under Section 366-A, the appellant has been sentenced to R.I. for ten years and fine of Rs.5000/- i/d R.I. for two years. For the offence under Section 376, the appellant has been sentenced to life imprisonment and fine of Rs. 15000/- i/d R.I. for two years. All the sentences were directed to run concurrently.

2 The prosecution case, briefly stated, is as under:

The victim girl was 12 years old at the time of the incident. She was residing with her brother P.W. 2 Surbu at Takka Gaon at Panvel. Her father had expired much prior to the incident. Her mother was having affair with some other person and therefore, her mother was residing away from him. The appellant was residing in a hut near the house of victim. He was married. The victim girl used to do work of cleaning of floor and washing utensils. On the day of the incident, when the victim girl was returning home, Rekha the wife of the

appellant, took the victim girl to her house. Rekha tied the victim girl in the house. At about 12 mid-night, the appellant came home and gave threats to the victim girl. At that time, his wife Rekha was outside the house. The appellant tore the victim girl's clothes and told her not to disclose the incident to any one otherwise he would kill her. The appellant then committed rape on the victim girl. The victim girl raised hue and cry but nobody heard her. In the morning, Rekha the wife of the appellant came and gave her other clothes to wear. Then Rekha took the victim girl in a rickshaw to Pen to the house of one relative. The victim girl was then confined in one room. That room was locked from outside. After some time, the appellant came. The appellant had the key. The appellant unlocked the door and entered the room. The victim girl folded her hands and prayed that the appellant should leave her but he did not listen. Again he tore her clothes and had sexual intercourse with her. The victim girl felt giddy. She was about to vomit. On seeing this, the appellant left her. The victim girl was not able to stand and walk. The appellant then went outside. He locked the room from outside. The victim girl vomited. She was not feeling well. In the morning, the

appellant's wife Rekha came. She unlocked the door. The victim started crying and requesting Rekha to take her to her brother. Rekha told that she will take her to her brother's house. Rekha gave some other clothes to her to wear. The victim girl wore those clothes. Rekha brought her to Panvel. Rekha then took the victim girl to her own house and made victim girl sit there. In the morning, Rekha took the victim girl to the police station. She told the police that the victim girl was found in a garbage bin. The police had phone number of victim girl's brother as he had lodged missing complaint. However, call could not be connected. Then Rekha took the victim girl to her own house. At about 8.30 p.m. the victim girl's brother came to the house of Rekha and the appellant. The victim girl was in a frightened condition. She was crying. Her brother enquired what happened, however, she did not tell anything. Her brother then took her to the police station and told that he found his sister. Then her brother took her home. Due to fear, the victim girl did not disclose any facts to her brother for a few days. Thereafter on constant questioning by her brother she disclosed the facts to her brother. Her brother i.e. P.W. 2 Surbu then lodged F.I.R. (Exh. 21). Thereafter

investigation commenced. The victim girl and the appellant both were sent for medical examination.

3 P.W. 7 Dr. Naik examined the victim girl and he found that there were two nail marks on the lower inner quadrant on the right breast and her hymen was torn. The Doctor noticed that hymen not only torn but it was also inflamed. Doctor suggested for ossification test. Accordingly, she was sent for ossification test. P.W. 8 Dr. Bhanushali conducted the ossification test. In his opinion, the age of the girl was not over 16 years of age. After completion of investigation, charge sheet came to be filed.

4 Charge came to be framed against the appellant under sections 363, 366-A & 376 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

5 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we find that there is no merit in the appeal.

6 The conviction is mainly founded on the evidence of the victim girl who has been examined as P.W. 1. The victim girl has stated that she was 12 years old at the time of the incident. Her father had expired long back and the victim girl was residing with her brother Surbu in a slum locality in Takka Gaon in Panvel. She knew the appellant as the appellant's hut was situated near her house. The appellant was married. The name of the appellant's wife is Rekha. The victim girl used to do work of cleaning floor and washing of utensils. On the day of the incident, when the victim girl was returning home, Rekha the wife of the appellant, took the victim girl to her house. Rekha tied the victim girl in the house. At about 12 mid-night, the appellant came home and gave threats to the victim girl.

At that time, his wife Rekha was outside the house. The appellant tore the victim girl's clothes and told her not to disclose the incident to any one otherwise he would kill her. The appellant then committed rape on the victim girl. The victim girl raised hue and cry but nobody heard her. In the morning, Rekha the wife of the appellant, came and gave her some other clothes to wear. Then Rekha took the victim girl in a rickshaw to Pen to the house of one relative. The victim girl was then confined in one room. That room was locked from outside. After some time, the appellant came. The appellant had the key. The appellant unlocked the door and entered the room. The victim girl folded her hands and prayed that the appellant should leave her but he did not listen. Again he tore her clothes and had sexual intercourse with her. The victim girl felt giddy. She was about to vomit. On seeing this, the appellant left her. The victim girl was not able to stand and walk. The appellant then went outside. He locked the room from outside. The victim girl vomited. She was not feeling well. In the morning, the appellant's wife Rekha came. She unlocked the door. The victim was crying and requesting Rekha to take her to her brother. Rekha told that she will take

the victim girl to her brother's house. Rekha gave some other clothes to the victim to wear. The victim girl wore those clothes. Rekha brought her to Panvel. Rekha then took the victim girl to her own house and made victim girl sit there. In the morning, Rekha took the victim girl to the police station. She told the police that the victim girl was found in a garbage bin. The police had phone number of victim girl's brother as he had lodged missing complaint. However, call could not be connected. Then Rekha took the victim girl to her own house. At about 8.30 p.m. the victim girl's brother came to the house of Rekha and the appellant. The victim girl was in a frightened condition. She was crying. Her brother enquired what happened, however, she did not tell anything. Her brother then took her to the police station and told that he found his sister. Then her brother took her home. Due to fear, the victim girl did not disclose any facts to her brother for a few days. Thereafter she disclosed the facts to her brother. Thereafter her brother i.e. P.W. 2 Surbu lodged F.I.R. (Exh. 21).

7 The evidence of the victim girl is supported to some extent by the evidence of P.W. 2 Surbu. Surbu stated that his

sister i.e. the victim girl was 12 years of age at the time of the incident. Surbu was residing with his wife, younger sister i.e. the victim girl and two younger brothers at Takka, Panvel. He found his sister was missing, hence, he lodged missing complaint at the police station. He searched for his sister but he could not find her. He then went to the house of the appellant. The appellant stated that the victim girl had not come to his house. After lodging of complaint, on the next day, Surbu learnt that his sister had come to the house of the appellant. His sister was not speaking anything but she was weeping. He enquired with his sister again and again what happened but she did not disclose anything. After few days, his sister disclosed about the incident. She disclosed that the appellant had confined her in his house and he had committed rape on her. She also disclosed that she was taken to Pen and there also, the appellant committed rape on her. Surbu then lodged F.I.R.

8 It is the prosecution case that the appellant committed rape on the victim girl. This is corroborated by the medical evidence. P.W. 7 Dr. Naik examined the victim girl. He saw that the victim girl was about 12 years of age. On

examining the victim girl, he found two nail marks over the lower inner quadrant on the right breast. Hymen was torn. The Doctor noticed that hymen was not only torn but it was also inflamed. Dr. Naik opined that the victim should be sent for ossification test. P.W. 8 Dr. Bhanushali conducted the ossification test. After examining the X-ray reports, he found the victim girl was not above 16 years of age.

9 On going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the appellant committed offence under Sections 363, 366-A and 376 of IPC. Hence, the conviction and sentence as imposed by the learned Sessions Judge does not call for any interference. Hence, the appeal is dismissed.

10 Office to communicate this order to the appellant and the Jail Superintendent in which Jail, the appellant is lodged.

11 We quantify legal fees to be paid to appointed advocate Mrs. Rohini Dandekar by the High Court Legal Services Committee at Rs.5000/-.

[SMT.I.K. JAIN, J.]

[SMT. V.K.TAHILRAMANI, J.]

Kandarkar