

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

CRIMINAL APPEAL NO.889 OF 2015

Bhagwan s/o Laxman Rakshe
Age 24 years, Occu. Labour,
R/o Shekta, Tq. Georai,
District Beed.

... **APPELLANT**

VERSUS

The State of Maharashtra
through Police Station, Beed Rural,
(Copy to be served through
the Public Prosecutor,
High Court of Judicature
of Bombay, Bench at Aurangabad)

... **RESPONDENT**

.....
Shgri Avishkar Shelke, Advocate for appellant
Shri R.B. Bagul, A.P.P. for respondent
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 20th September, 2016.

Date of reserving judgment : 25th August, 2016
Date of reserving judgment : 20th September, 2016.

J U D G M E N T :

1. The appellant – original accused No.1 (hereinafter referred as “accused”) faced prosecution before the Additional Sessions Judge, Beed in Sessions Case No.116/2013. Along

with him, one Annasaheb Bhagwat Gavhane was arrayed as accused No.2. In the incident concerned, prosecution alleged involvement of one another juvenile in conflict with law - Dnyaneshwar Kamble. The accused No.1 and 2 were charged with offence under Sections 363, 366-A, 376 read with Section 34 of the Indian Penal Code, 1860 (IPC in brief). By way of additional charge, the original accused No.1 and 2 were charged with offence under Section 4 as well as Section 6 of the Protection of Children from Sexual Offences Act, 2012 ("Act" in brief). Accused No.2 was additionally charged with offence under Section 16 of the Act. After the trial, the accused No.2 came to be acquitted of the charges which were framed against him while the appellant – accused came to be convicted under Sections 363 and 366-A of the Indian Penal Code. For both these Sections, there is sentence of rigorous imprisonment for 5 years and to pay fine of Rs.1000/-, and in default, to suffer simple imprisonment for one month. The accused has also been convicted under Section 4 of the Act and sentenced to suffer rigorous imprisonment for 10 years with fine of Rs.1000/-, and in default to suffer simple imprisonment for one month. The Trial Court found that in view of the conviction under Section 4 of the Act, need of invoking Section 376 of the Indian Penal Code became

redundant. The trial Court acquitted the accused of the offence under Section 376 of the IPC and also Section 6 of the Act, holding that, accused was not police officer etc.

2. The case of the prosecution in short may be stated to be as under :

- (a) P.W.9 is father and P.W.2 is mother of prosecutrix, who has been examined in the trial Court as P.W.14 (hereinafter referred as "victim"). The brother of the victim came to be examined as P.W.8. I am not referring to the names of these persons (which can be seen in the record) so as not to reveal identity of the victim. I will refer to them as father, mother brother and victim.
- (b) On 3.5.2013, P.W.9 father of victim filed report with Beed Rural Police Station, claiming that, on 2.5.2013 there was marriage of one Sheetal Nagargoje at Kapildhar, Taluka and District Beed. The victim and her family are residents of Shekta, Taluka Georai, District Beed. The report claimed that, for the marriage of Sheetal (P.W.7) the victim had gone along with the bride to Kapildhar and was

present at the time of marriage ceremony till about 4.00 p.m. The mother of the victim had also gone for the marriage. The mother could not find the victim after 4.00 p.m. and started searching for her. She rang up her husband (father of victim) and told the fact. The family searched for the victim at the place of relatives and when the victim was not found, the missing report (Exh.57) was being filed. Photograph of the victim was affixed on the same. In the missing report, the father expressed suspicion rather on P.W.7 Sheetal for the daughter going missing. The father followed up the missing report with a complaint or reminder to the Superintendent of Police on 4.5.2013 sending letter Exh.58 that no action has been taken.

- (c) Subsequently, P.W.2, the mother of victim on 6.5.2013, filed F.I.R. Exh.45 reporting to the police that the victim, aged about 15 years, had been studying in Rajmata Jijau Middle School in 9th Standard. There was marriage at Kapildhar in the brotherhood, for which the victim had gone along with bride Sheetal @ Balu (P.W.7). The bride had called the victim on 29.4.2013 itself, and it was

reported that, along with the marriage party she and her son (P.W.8), aged about 10 years had gone to Kapildhar. The husband remained back to attend another marriage in the village Shekta. The victim had gone along with the bride in jeep. The marriage took place at around 2.00 p.m. and the victim was seen to be around till 4.00 p.m. Thereafter, she was not seen. When she was not found, her son (P.W.8) told her that, some time back he had seen her talking with juvenile Dnyaneshwar and accused No.2 Anna Gavhane. Even thereafter they searched for the victim and came back to village Shekta and searched there also. It was noticed that, accused No.1 Bhagwan, aged 23 years, was also not in the village since 2.5.2013. The report alleged that, the accused No.1 Bhagwan had enticed and made the victim run away and that accused No.2 Anna and juvenile Dnyaneshwar had helped the accused No.1 in this regard. The victim had been taken away enticing her with the promise of marriage. Thus, the complaint.

Crime No.58/2013 was registered on such

complaint on 6.5.2013 at about 12.30 noon. The investigation was taken over by P.W.17 A.P.I. Rangnath. He recorded statements of witnesses. After some days on 14.5.2013, police traced the location of the accused No.1 on the basis of location of mobile and the victim and the accused were found in an Omni Car parked on the side of the road about 3 Kms. from place called Badalwadi on Pune Solapur Road in the Taluka area of Indapur, District Pune. On the victim being found, she was taken to the police Station. She was got medically examined. Accused No.1 was also medically examined. Their clothes were seized. The statement of victim was recorded. Case of prosecution is that, accused No.2 and the juvenile had forcibly taken her and pushed her in Omni Car, which was driven by accused No.1. Accused No.1 had taken her from place to places and went on committing forcible intercourse with her. The Car had broken down when police found them. The investigating officer collected birth certificate of the victim from school and the evidence collected showed that the victim was a minor and consequently, the charge sheet came to be filed for

kidnapping and rape of the victim.

3. Trial Court framed charge under various Sections as mentioned earlier. The accused persons pleaded not guilty. The defence of the accused No.2 was of denial. Accused No.1 claimed that, he and the victim had a love affair and he did not entice her to go with him. It is a defence that, rather the victim herself ran away from the place of marriage at Kapildhar and joined the accused who was waiting at fixed spot in the Omni Car and she on her own went along with the accused. In the defence and statement under section 313 of the Code of Criminal Procedure, the accused claimed that, he had not committed any sexual intercourse with her. The accused being found with the victim from the Car as brought in evidence, was not disputed.

4. Prosecution examined 17 witnesses. Accused No.2 examined himself in defence. Trial Court considered the evidence and acquitted accused No.2, not accepting the evidence of the victim that accused No.2 and the juvenile had forcibly taken her. The evidence was read with statement under Section 161 of the Code of Criminal Procedure, 1973 and trial Court held that, the role of accused No.2 in the

kidnapping had not been proved beyond reasonable doubt. It, however, found that, the victim was taken by accused No.1. The acquittal of the accused No.2 has not been challenged and I need not enter into that aspect.

As far as regards accused No.1 – the appellant is concerned, trial Court found that, the offence of kidnapping and committing forcible intercourse was established. Trial Court found that the victim at the concerned time was minor and thus, her consent was immaterial. As mentioned, the trial Court invoked Section 4 of the Act and observed that, Section 376 was redundant. Trial Court observed that, Section 6 was not attracted because the accused No.1 was not a police officer nor a member of Armed Forces nor a public servant nor managing jail hospital or educational institution and so, Section 6 was not proved. (This observation is apparently not correct and the trial Court did not properly read Section 5 of the Act which deals with aggravated penetrative sexual assault. Section 5(I) clearly provides that, whoever commits penetrative sexual assault on the child more than once or repeatedly is said to commit aggravated penetrative sexual assault. This would attract Section 6 of the Act.) However, against such finding of the trial Court and acquittal under

Section 6, State has not come up in appeal and I may not go into those details.

5. I have heard learned counsel for the appellant – accused as well as A.P.P. for State. The learned counsel for the accused took me through the evidence and submitted that, statement of victim was recorded after she was found by police where she had spoken in favour of accused, but later contradicted her statement to police which was earlier recorded. According to the counsel, it was a case of consensual going of the victim with the accused and looking to the contradictions and omissions, the victim should have been disbelieved that she had been forcibly kidnapped and raped. The counsel submitted that, P.W.11 Dr. Deepali opined that the victim was between the age of 12 to 14 on the basis of ossification report she had obtained, but the Radiologist was not examined. According to him, the doctor accepted that the opinion regarding age varies by plus – minus two. Thus, according to the counsel, the victim should not have been held as below 16 years of age. It is stated that, the Head Master of the school P.W.12 Avinash stated that, as per school record, the date of birth was 5.6.1997. However, the victim in her evidence stated that, her date of birth was 6.5.1997.

Thus, according to him, there was variance regarding the date of birth and exact age was not established. It is further argued that, the prosecution did not prove that it was the accused who enticed or induced the victim to leave the marriage premises at Kapildhar. She went on her own and thus, kidnapping was not established. The counsel stated that, to apply Section 366-A of IPC, it will have to be established the minor was procured to have sexual intercourse with "another person". For this, the counsel relied on the case of **Mohd. Nisar Vs. State of Maharashtra** reported in **2007 Cri.L.J. 562.**

6. Counsel for the accused further submitted that, looking to the provisions of Section 4 of the Act, it would be appropriate to reduce the sentence to 7 years instead of 10 years as imposed by the trial Court. According to the counsel, the accused is in jail since the time of arrest on 14.5.2013.

7. The learned A.P.P. for the State opposed the submissions made by the learned counsel for the appellant – accused. According to him, the victim was between the age of 12 to 14 at the time of incident, which takes care of the plus minus of two years. He supported the reasons recorded by

the trial Court. According to him, she was less than 16 years of age at the time of incident. At the time of arguments, it was noticed that, in IPC Section 375 defining rape was substituted for the earlier provisions and w.e.f. 3.2.2013, the law provided that it would be rape if the same was committed with or without the consent of the woman when she is under 18 years of age. It was further submitted that, the Act already provided that, child means a person below age of 18 years. Thus, according to the A.P.P., looking at the matter from any angle, the victim was a minor in the eyes of law. She was taken out of the custody of her parents without their consent and her willingness was immaterial. Apart from this, in spite of suggestion, there was no admission from the victim that she was in any love affair with the accused No.1. Her evidence is that, she was threatened and taken and subjected to forcible intercourse. The evidence of the witnesses as to the manner in which the victim was found along with accused No.1 on the Highway in the Omni Car standing on side of the road was not at all disputed. The medical certificate showed that, the hymen of the victim was ruptured. Reading the medical evidence with the evidence of the victim shows the kidnapping and rape and multiple forcible intercourse was proved. According to the A.P.P., the earlier report of the

parents to the police was that the daughter was missing and suspicion rather on P.W.7 Sheetal was expressed and this showed that, there was no love affair or else the parents would have in the first instance itself suspected the accused.

8. In reply, the learned counsel for the accused submitted that, between 2.5.2013 to 14.5.2013, the victim was with the accused and there was no evidence that, she tried to run away. On her person there were no marks of violence and thus, she was consenting party. Initially she gave statement in favour of the accused, but later on resiled at the time of evidence, it is stated.

9. I have gone through the evidence. Regarding the victim going missing on 2.5.2013, there are witnesses examined. P.W.2 is the mother of victim. Her evidence read with the evidence of P.W.9, the father of victim as well as P.W.8, the brother of victim shows that, these people are residents of Shekta and victim was residing with them. Victim went for the function of marriage with P.W.7 Sheetal from Shekta to Kapildhar. The evidence of these witnesses as well as P.W.6 Babasaheb Misal who also attended the marriage as well as P.W.7 Sheetal shows that, the victim indeed was

present at Kapildhar at the time of marriage. The marriage appears to have taken place in the afternoon and the evidence is that, after about 4.00 p.m., she was not to be seen and there was frantic search by the mother which did not yield results. P.W.2, the mother called up the husband P.W.9 and informed. The evidence shows that, these people searched at Kapildhar as well as Shekta, but the victim was not to be found. Consequently, P.W.9 father filed report Exh.57 on 3.5.2013, in which rather he expressed doubts on P.W.7 Sheetal, the bride to be responsible for his missing daughter.

10. Then the evidence of P.W.2 and P.W.9, parents of victim, which shows that, noticing that the accused No.1 Bhagwan was also not to be seen in the village since 2.5.2013 and his Omni Car was also not there, the mother filed F.I.R. Exh.15, reporting that they had learnt from the brother of victim that the victim had been seen on the date of marriage talking with P.W.2 Annasaheb and the juvenile Dnyaneshwar and that the accused No.1 Bhagwan was missing since 2.5.2013 from the village. And so the F.I.R. claimed that accused No.2 and juvenile Dnyaneshwar kidnapped the victim. It appears from the evidence of these parents and P.W.8, the brother that, the brother claimed that he had seen accused

No.2 and juvenile Dnyaneshwar talking with the victim some distance away from the place of the marriage and the evidence of the brother is that, both those persons told the victim that her mother was feeling giddy and to come with them but she was not ready and they forcibly took her on motorcycle. Even the victim has deposed in this regard claiming that she was forcibly taken by those two persons. However, further discussion regarding that aspect is not necessary as the accused No.2 has been acquitted and the juvenile has not been tried in this Sessions Trial. The material fact remains that, the victim claimed that she had been forcibly taken and was indeed found subsequently in the Car of accused No.1 with him on Highway. There is evidence of P.W.10 Police Constable Ramesh stating that he was attached at Police Constable to Jalas Chowki Highway Police on Pune Solapur Road. He was present in the Police Station on 14.7.2013. The witness appears to have confused with regard to the month as the undisputed other evidence on record shows that the victim was found on 14.5.2013. The evidence of P.W.10 Ramesh is that, he was told by the Hawaldar that A.P.I. from Beed has come as location of Bhagwan who has kidnapped minor is noticed at Badalwadi and he was directed to go with the A.P.I. According to him, he phone called his

friend Mane, resident of Badalwadi area, asking him to collect information about the Maruti vehicle in which the accused had kidnapped a minor. There is evidence of P.W.16 Santosh Mane, who has corroborated this P.W.10 claiming that on 14.5.2013, at about 10.00 a.m., he was in his field and received phone call from Constable Bhosale, asking whether there is Omni Car in the vicinity. He deposed that, he saw that vehicle while returning to his house and accordingly informed Bhosale. P.W.16 deposed that, police of Indapur and Beed then reached the spot and took custody of boy and girl from that Omni Car. This witness pointed out towards the accused as the same person. No cross-examination of P.W.16 was done by the accused and thus, the evidence on this count was unchallenged. The evidence of P.W.10 Constable Ramesh and P.W.15 Shivaji Kadam shows that, along with A.P.I., the police had gone in the vehicle of this P.W.15 and when they reached the concerned spot, at some distance from Badalwadi, they found the Omni vehicle standing. P.W.16 Mane appeared to have already caught the said boy and girl. The evidence shows that, the victim and the accused No.1 were sitting in the Car. The cross-examination of P.W.15 Shivaji shows that, P.W.16 Mane at the concerned time was accompanied with two friends and these people were standing

near the vehicle which was standing by the side of the road. The evidence of P.W.15 is that, he had asked accused No.1 why he did like this and he claimed that, he had love affair with the victim and was going to marry her. As per this witness, even the girl replied in the same fashion. Thus, what appears is that, in the couple of days after the victim was taken when she was with him she was under his threat (as deposed by her) or came under his influence to initially support him.

11. In the evidence, the victim deposed that, she was taken in the Omni Car by the accused and when she shouted, he had pressed her mouth. The Car proceeded towards Solapur. Her evidence is that, she was unable to tell the names of the places. The evidence is that, the accused used to halt at places where there was no locality and used to commit forcible intercourse on her in the vehicle. Only the two of them were in the Car. She deposed that, the accused committed forcible intercourse with her 4-5 times. She deposed that, when she was refusing and shouting, the accused was threatening her. The evidence is that, at a place the vehicle developed mechanical defect and the police reached and caught them. She deposed that, when the police

was making enquiries with her, she was unable to tell properly. (Thus the initial support to accused). I have gone through the cross-examination of the victim. In the cross-examination, it was suggested to her that, her menstruation started on 8.5.2013. She denied the suggestion. It was then suggested that, as the menstruation started on 8.5.2013, there was no intercourse between them from 8.5.2013 to 14.5.2013. Even this suggestion was denied. Substance remains that, the fact of forcible intercourse alleged by her after she was taken on 2.5.2013 is not challenged. The witness cannot be said to be shattered on this count. It was suggested to her that, she voluntarily left with the accused No.1 for performing marriage. The suggestion was denied. She was confronted with the portions of her statement to police earlier. The portions from her earlier statement to police have been proved at Exh.78, which relate to questions like - "If she had told to police that she had recorded mobile number of accused No.1 which was printed on the car; that she had talk with the accused on telephone; that they used to talk with each other on telephone since last four months; that she rang up accused on 30.4.2013 and asked him to come at Kapildhar on 2.5.2013 and then they would run away and perform marriage; that on the day of marriage at about 3.20

p.m., she left marriage hall and went directly to the vehicle of the accused; and that they had taken meals at Tembhurni". The evidence shows that, the victim had been taken by the accused in his Car from Kapildhar from place to places and the victim was with him from 2.5.2013 to 14.5.2013. The evidence of victim is that, she was being threatened so as not to shout and giving her threats, the accused had been committing forcible intercourse. The victim was of tender age (which I will discuss) and it was not difficult to pressurize such a person so as to speak in favour of the accused when the police party caught hold of the accused with victim on 14.5.2013. The argument that she had no injuries is thus not material. A school going young girl from village caught in such manner could be influenced with passage of days to speak in favour of accused when they were caught. The contradictions and omissions, in the circumstances, would not be material. Important is that, after the accused and victim were found, the accused was got examined from P.W.11 Dr. Deepali and the doctor found that the accused was capable of performing sexual intercourse and the victim when got examined from P.W.1 Dr. Deepali, it was found that the hymen of the victim was ruptured and opined that sexual intercourse had been committed on her. In the

circumstances, and taking overall view of the evidence, the evidence of victim deserves to be accepted that she was taken by accused and there were instances of forcible intercourse on her.

12. Regarding the age, the evidence shows that, the victim was studying in 9th Standard. The evidence of P.W.2, the mother is that, the victim was admitted in the school when she was about 5-6 years old and that she had not failed in any Standard. The mother herself has studied up to 5th Standard and it is not that she is illiterate as such. There is evidence of P.W.12 Avinash Pandit, the Head Master of school, who has proved certified copy Exh.74 from the school record. It is from school admission register of the victim showing that the victim had been admitted to that school on 18.6.2011 and in the school record, since then the date of birth shown of the victim was 5.6.1997. P.W.12 Avinash proved this document on the basis of original record. He deposed that, the original register was in his handwriting and that he had recorded the date of birth as per Zilla Parishad School Leaving Certificate which had been brought by the victim. Although that certificate of Zilla Parishad school had not been brought on record, the acts performed by P.W.12 were in ordinary course

of business much before the present incident took place and there is no reason to doubt the acts of P.W.12 performing duty in ordinary course of business. The learned counsel for the appellant – accused relied on the case of **Sunil Vs. State of Haryana, reported in 2010(1) SCC 742** to submit that, in that matter, interalia the Supreme Court observed that, admission form of the school had not been produced which would have been primary evidence regarding age of the prosecutrix. According to the counsel, the document of Zilla Parishad School Leaving Certificate should have been brought on record and thus, the evidence of P.W.12 should be discarded. I have gone through the judgment in the matter of "Sunil Vs. State of Haryana" (supra). The Hon'ble Supreme Court in that matter took note of various infirmities, holes and lacunae and the prosecution version in that matter, and in para 34 of the judgment, held that, on consideration of the totality of the facts and circumstances of that case, it would be unsafe to convict the appellant therein. In the present matter, I have kept in view the observations of the Supreme Court in that matter. The present matter will have to be considered on cumulative effect of facts proved in this matter. Reference needs to be made to the recent judgment of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court

referred to the procedure to be followed in determination of age under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. This was in the matter of **Jarnail Singh Vs. State of Haryana**, reported in **(2013) 7 Supreme Court Cases 263**. The Rule relates to Child or Juveniles in conflict with law, but the Hon'ble Supreme Court found that, similar approach can be taken in determining the age of prosecutrix. Keeping in view provisions of above Rule 12 and the above judgment of the Hon'ble Supreme Court, after the matriculation or equivalent certificate, the date of birth certificate from the school first attended is given primacy. No doubt in the present matter the date of birth certificate is not from the first school. However, the evidence of P.W.12 Head Master Avinash is that, he had made the entry on the basis of school leaving certificate of the Zilla Parishad school which had been attended. The witness P.W.12 Avinash does not have any reason to depose in favour of victim or against the accused. He acted in the discharge of his duties and the cross-examination cannot be said to have shattered his evidence that on the basis of official acts performed, he had taken the entry regarding date of birth of the victim as 5.6.1997. Relying on the evidence of P.W.12, it needs to be held that, the prosecution proved that as per school record,

the date of birth of the victim was 5.6.1997.

13. Apart from this, there is evidence of P.W.14, the victim herself. In her oral evidence, she deposed that, her date of birth is 6.5.1997. No doubt the school record shows that, her date of birth is 5.6.1997 and she stated the same to be 6.5.1997. This is slight variation or slip of tongue, but in the cross-examination of the victim, her evidence regarding her date of birth was not denied or challenged. Take it to be 5.6.1995 or 6.5.1997, on the date of incident of 2.5.2013, she would still be less than 16 years. This is apart from the fact that, at the concerned time, Section 375 of IPC had already been changed and the relevant age had become 18 years. Even under the Act, the relevant age is 18 years.

14. Again there is evidence of P.W.11 Dr. Deepali, who has deposed that, she had got done X-ray of the victim and obtained Radiologist report and opinion and found that the victim at the relevant time was between 12 to 14 years of age. In the cross-examination, she denied that, her opinion of the age was based only on the opinion of the Radiologist. She deposed that, the age of the victim could not be 16 to 18 years for the reason that, the line of fusion exists below the

age of 14 years or up to 14 years and then disappears. Her evidence regarding age of the victim to be between 12 to 14 at the concerned time was on the basis of the X-ray plates she had obtained. No doubt the X-ray plates were not proved in the trial Court and the Radiologist was not examined, but the evidence of the doctor who was medical officer in the District Hospital, Beed, is based on her own examination of the victim and supporting X-ray which she got done in the discharge of her official functions. Thus, the evidence of P.W.11 Dr. Deepali would be required to be given some weighage regarding her opinion.

15. Keeping in view the school record, the oral evidence of the victim as well as the medical evidence of P.W.11 Dr. Deepali, in any case the victim must be said to be minor and it could not be said that she was above 18 years of age.

16. The learned counsel for the appellant – accused relied on the case of **Mohd. Nisar Vs. State of Maharashtra** (supra) and referring to observations of this Court in para 12 of that judgment, stated that, Section 366-A of the IPC could be applied only if the minor girl was taken so as to force or

seduce her to illicit intercourse with "another person" and could not be applied if the accused had taken her to himself commit the forcible intercourse.

17. In the present matter, the accused was charged with Section 366-A of the IPC. Even if the submission is to be accepted that Section 366-A would get attracted if a minor girl is kidnapped with intention that she should be forced or seduced to illicit intercourse with "another person", still there appears no reason why Section 366 of IPC should not be applied. The basic ingredients are included in Section 366 of IPC also. Section 366 of IPC, apart from abduction or inducing a woman to compel her marriage, interalia, deals with offence of kidnapping with intention that the woman may be forced to illicit intercourse. Even for such offence, the punishment prescribed is of 10 years. In Section 366-A also, the punishment prescribed is of 10 years. It would be thus appropriate to convert the conviction awarded by trial Court under Section 366-A into a conviction under Section 366 of IPC and otherwise maintain the sentence as was passed by the trial Court.

18. I have gone through the judgment of the trial

Court. The Trial Court rightly found the accused guilty of kidnapping as well as committing repeated forcible intercourse on the victim who was minor. The accused has been rightly convicted for offence under Section 363 of the IPC as well as Section 4 of the Protection of Children From Sexual Offences Act, 2012.

19. There is substance in the argument of the A.P.P. that, had there been a love affair, the parents would not have in earlier filed Missing Report Exh.57 on 3.5.2013 suspected the bride Sheetal, whose marriage the victim had gone to attend. In the circumstances, taking a minor girl by the accused out of the guardianship of her parents for so many days cannot be looked at lightly so as to reduce the sentence imposed by the trial Court under Section 4 of the Act. No interference on that count is called for. It is not a case of consensual going of victim with the accused.

In judgment, Trial Court gave benefit to accused under Section 428 of the Code of Criminal Procedure w.e.f. 20.5.2013 to 14.5.2015 when judgment was passed. Facts proved and charge sheet show, he was arrested on 14.5.2013. The benefit shall be given from 14.5.2013 instead of 20.5.2013.

ORDER

(A) The conviction and sentence of the appellant – accused under Section 363 of the Indian Penal Code, 1860 and under Section 4 of the Protection of Children From Sexual Offences Act, 2012, as imposed by the trial Court, is maintained.

(B) The conviction imposed by the trial Court under Section 366-A of the Indian Penal Code, 1860 is converted into conviction under Section 366 of the Indian Penal Code, 1860 and the appellant-accused is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.1000/- (Rupees one thousand) and in default, to suffer simple imprisonment for one month.

The appellant-accused is entitle to set off period of imprisonment suffered since 14.5.2013. Order of trial Court is converted accordingly.

22. The appeal is disposed of in these terms.

(A.I.S. CHEEMA, J.)