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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.935 OF 2014

Vanita Vasant Patil
Age : 56 Yrs, Occu. Service,
R/o. Prathamesh Society,
Flat No.10, Lokhadipada, Panvel,
Dist: Raigad.
(At present lodged in Central Jail)

... **APPELLANT**
(Orig. Accused No.2)

VERSUS

- 1) The State of Maharashtra
(At the instance of Sr.P.I.Uran
Police Station, Dist. Raigad).
- 2) Victim Girl Y
[With a view to conceal an
identity of the victim girl, she
is mentioned as "Victim Girl Y"]

... **RESPONDENTS**

W I T H

CRIMINAL APPEAL NO. 921 OF 2014

Mr.Datta Somnath Jadhav,
Aged about 43 years, adult,
Indian inhabitant, Occ : Service
Residing at Navjeevan Society,
L-3, Yugant Colony, Sukapur
New Panvel, Dist.Raigad.
(Alibag Prison)

... **APPELLANT**
(Orig. Accused No.1)

VERSUS

- 1) State of Maharashtra
(Through Uran Police Station).
- 2) Victim Girl Y
[With a view to conceal an
identity of the victim girl, she
is mentioned as "Victim Girl Y"]

... RESPONDENTS**WITH**

**CRIMINAL APPEAL NO. 292 OF 2015
(For Enhancement of Sentence)**

The State of Maharashtra

... APPELLANT
(Orig. Complainant)

VERSUS

- 1) Datta Somnath Jadhav,
Age 43 years, Occ : Service
R/o.Navjeevan Society,
L-3 Yugant Colony, Sukapur
New Panvel, Dist.Raigad.
- 2) Vanita Vasant Patil
Age : 56 Yrs, Occ. Service,
R/o. Prathamesh Society,
Flat No.10, Lokhandipada, Panvel,
Dist: Raigad.

... RESPONDENTS

(Orig. Accused Nos.1 and 2)

...

Mr. Mahesh Vaswani a/w Mr. Jagdish Shetty a/w Ms.
Dharni Nagda a/w Ms. Sophia Hasan Advocates for
Appellant in Criminal Appeal No. 935/2014.

Mr. Sathyanarayanan, Advocate for Appellant in
Criminal Appeal No. 921/2014

Mrs. M.H. Mhatre, A.P.P. for Respondent – State in Criminal Appeal No. 935/2014 and Criminal Appeal No.921/2014 and for Appellant in Criminal Appeal No.292/2015.

...

**CORAM : S. S. SHINDE AND
A.S.GADKARI, JJ.**

DATE OF RESERVING JUDGMENT : 23RD OCTOBER 2018

DATE OF PRONOUNCING JUDGMENT : 2ND NOVEMBER 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. Criminal Appeal No. 921 of 2014 filed by accused No.1 Datta Somnath Jadhav, is directed against the Judgment and Order dated 28th October, 2014 passed by the Additional Sessions Judge, Raigad-Alibag thereby convicting accused No.1 Datta Somnath Jadhav for the offence punishable under Section 376(2)(b) of the Indian Penal Code read with Section 5(c), 6 of Protection of Children from Sexual Offences Act (for short, "POCSO Act") and sentencing him to suffer rigorous imprisonment for ten years and to pay fine of Rs.20,000/- and in default to suffer rigorous imprisonment for two years. The Trial Court

also convicted accused No.1 Datta Somnath Jadhav for the offence punishable under Sections 292, 509 of Indian Penal Code read with Section 14 of POCSO Act read with section 67-B of Information Technology Act and sentenced him to suffer rigorous imprisonment for five years and to pay fine of Rs.10,000/, in default to suffer rigorous imprisonment for one year. The Trial Court also convicted accused No.1 Datta Somnath Jadhav for the offence punishable under Section 342 of Indian Penal Code and sentenced him to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/, and in default to suffer rigorous imprisonment for one month. The Trial Court also convicted accused No.1 Datta Somnath Jadhav for the offence punishable under Section 354 of Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years and to pay fine of Rs.5,000/, and in default to suffer rigorous imprisonment for five months. All the sentences were directed to be run concurrently.

2. Criminal Appeal No. 935 of 2014 filed by accused No.2 - Vanita Vasant Patil is directed against the Judgment and Order dated 28th October, 2014 passed by the Additional Sessions Judge, Raigad-Alibag thereby convicting her for the offence punishable under Section 376(2)(b), 109 of Indian Penal Code read with Section 5(c), 6 and 17 of POSCO Act and sentencing her to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/- and in default to suffer rigorous imprisonment for one year. The Trial Court also convicted accused No.2 Vanita Vasant Patil for the offence punishable under Sections 292, 509, 109 of Indian Penal Code read with Sections 14 and 17 of POCSO Act read with Section 67-B of Information Technology Act and sentenced her to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/, and in default to suffer rigorous imprisonment for five months. The Trial Court also convicted accused No.2 Vanita Vasant Patil for the offence punishable under Section 342 of IPC and

sentenced her to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/, and in default to suffer rigorous imprisonment for one month. All the sentences were directed to be run concurrently.

3. Criminal Appeal No. 292 of 2015 is filed by the State for enhancement of the sentence imposed upon accused No.1 – Datta Somnath Jadhav and accused No.2 – Vanita Vasant Patil. (for the sake of brevity, hereinafter we would refer Datta Somnath Jadhav as “accused No.1” and Vanita Vasant Patil as “accused No.2”).

4. All these three Criminal Appeals are arising out of one and the same Judgment and Order passed by the trial Court, hence the same are being decided by this common Judgment.

5. The prosecution case, in brief, is as under:

A] The informant / victim girl [name is

concealed] resides at village Mothi Jui, Taluka Uran along with her parents, brother and sisters and was learning in 5th standard in Z.P. Primary School at village Mothi Jui. Accused No.1 was working as teacher, while accused No.2 was working as headmistress in the said School. Two months prior to the filing of the report, informant/victim girl was playing in the school premises along with other students. At that time, accused No.1 called informant and 2-3 girls and then took informant alone in 6th-A Class room by sending remaining girls to their class room. Then accused No.1 bolted the said class room from inside and gave Kachha Aam chocolate to the informant and kept the informant on a bench by saying that he wants to snap her photographs. Then accused No.1 laid the informant on the bench and removed her clothes and snapped photographs of the chest and private part of the informant on his mobile by assuring to give money. Informant did not narrate the incident to others. The informant along with her parents came to Uran

Police Station and lodged the report on 20th January, 2013, regarding aforesaid incident.

B] Upon receipt of the report, PSI Patil registered an offence vide Crime No.12 of 2013 and handed over the investigation to PI - T.D.Patil. PI Patil recorded the supplementary statement of the informant in which informant stated that accused No.2 bolted the door of computer room from outside, and accused No.1 committed rape on her and also snapped the photograph of her breast and private part. PI Patil visited the spot and prepared the spot panchnama. PI Patil referred the informant for medical examination and Dr. Jaya Shrinivasan examined the informant and opined that there was possibility of evidence of sexual abuse. PI Patil arrested the accused and referred accused No.1 for medical examination. Dr.Bhimrao Kamble examined accused and opined that accused No.1 was capable to do sexual intercourse. PI Patil seized the wearing clothes of the informant as well as of accused. He collected the seizure panchnama of the mobiles of

accused No.1 and panchnama of the said mobiles prepared in Crime No.10 of 2013 registered at Uran Police Station. API Puri recorded the statements of the girls students including the informant. Then investigation was handed over to PI Awate who sent the seized articles to C.A. office and collected the C.A. reports. So also he got obtained sketch map of spot through Circle Revenue Inspector. He collected the muster roll of the students and teachers from Z.P. Primary School, Mothi Jui. During the course of investigation, it transpired that accused No.1 committed rape on minor informant and accused No.2 abetted accused No.1 in commission of the said crime. So also accused No.1 taunted and committed sexual assault and harassment of the girl students including the informant and also snapped obscene photographs of the informant on his mobile. So, Police after completion of investigation, submitted charge sheet in the Court of JMFC, Uran.

C] As the offence under Section 376 of IPC is exclusively triable by Court of Sessions, so Judicial

Magistrate, First Class, Uran committed the case bearing R.C.C. No. 53/2013 to the Sessions Court for trial.

D] A charge under Section 376(2)(b), 354, 292, 509, 342, 109 of the IPC and under Section 5(c), 6, 14 and 17 of Protection of Children from Sexual Offences Act and under Section 67-B of Information Technology Act against accused No.1 and accused No.2 was framed vide Exhibit-3 and same was read over and explained to the accused in vernacular. The accused pleaded not guilty and claimed to be tried.

6. After recording the evidence and conducting full-fledged trial, the trial Court convicted and sentenced the Appellants – accused for the aforesaid offences. Hence Criminal Appeal No.921 of 2014 is preferred by Appellant – Datta Somanth Jadhav and Criminal Appeal No.935 of 2014 Appeal is preferred by Appellant – Vanita Vasant Patil challenging the conviction and sentence. Criminal Appeal No.292 of 2015 is preferred by the State for enhancement of the

sentence imposed upon the accused persons.

7. Learned counsel appearing for the Appellant- Vanita Patil in Criminal Appeal No.935 of 2014 submitted that victim girl has falsely implicated the Appellant in the alleged incident. Though the victim girl alleged that she was sexually assaulted, she admits that she did not sustain any injury or bleeding injury marks at the time of alleged incident of rape. Even the Medical Officer (PW-14) who examined the victim girl has specifically stated that the victim girl was not having any external injury on any part of the body including private part and her hymen was intact, and therefore the version of PW-1 victim girl is unbelievable. Learned counsel further submits that version of the victim girl is contrary to the medical evidence. In support of his submissions, learned counsel placed reliance upon the exposition of law in the case of Pratap Misra and others vs. State of Orissa¹, Amar Singh and others vs. State of Punjab², Jai Ram Prasad

1 AIR 1977 SC 1307

2 (1987) 1 SCC 679

Singh Alias Jai Ram Mandal vs. State of Bihar³ and Sham Singh V/s State of Hariyana⁴. Learned counsel further submits that the victim girl has falsely implicated accused in the incident alleged to have been happened on Sunday, because on Sunday every school remains closed and there was no reason for the victim girl or the accused to attend the school on Sunday. There was political pressure in implicating the accused persons in the alleged incident as the record before the trial Court shows that at every time including the time of filing of the FIR, Sarpanch of the village namely Ashok was very well present along with the victim girl and her parents. Even during the course of recording of the evidence though in camera, mother of every child witness along with one lady Police Officer were present and therefore the possibility of tutoring cannot be ruled out.

8. Learned counsel further submits that neither the informant nor the prosecution witnesses

3 1990 (1) BLJR 139

4 AIR 2018 SC 3978

have stated the exact day, month of incident and also their versions are inconsistent with each other regarding occurrence of the incident. The prosecution has not examined any teacher working in the school as witness. The accused is falsely implicated in the present case due to village rivalry and due to dispute with some staff members. The version of PW-2 is not believable.

9. Learned counsel further submits that there is a material contradiction about the place of the incident in the evidence of the victim and other prosecution witnesses. The informant has stated that alleged incident of snapping obscene photographs took place in 6th – A class room and alleged incident of sexual assault took place in computer room. However, PW-2 stated that the alleged incident took place in rice room. The evidence of PW-3 is also not consistent with the evidence of the informant. PW-4 stated that alleged incident took place in 7th – A class room. The evidence of PW-6 also does not support the prosecution case, and therefore it is

doubtful whether really the incident had took place. Thus, there is no consistency in the evidence of victim girl and other minor student witnesses and so the entire prosecution case falls. Learned counsel in support of his submissions that children are most untrustworthy class of witness, placed reliance upon the exposition of law in the case of Dasarathi Mahanto V/s The State⁵ and Arbind Singh V/s State of Bihar⁶. Learned counsel submitted that evidence of the prosecution witnesses is totally inconsistent with the medical evidence and therefore the same is sufficient to discredit the entire prosecution case. In support of his aforesaid submissions learned counsel relied upon the observations in Para Nos.6 and 14 of the Judgment in the case of Ram Narayan and others vs. The State of Punjab⁷. Learned counsel further submitted that there is an inordinate delay in filing the FIR and therefore the prosecution case is after thought and unbelievable. In support of his submissions, learned counsel placed reliance upon

5 27(1961)CLT 169

6 AIR 1994 SC 1068

7 AIR 1975 SC 1727

the exposition of law in the case of Surjan and others vs. State of M.P.⁸ and Mohd. Ali Alias Guddu vs. State of Uttar Pradesh⁹. Learned counsel also relied upon the exposition of law in the cases of Ram Swaroop and others V/s State of Rajasthan¹⁰, Tilak Raj V/s State of Himachal Pradesh¹¹ and Ram Gopal Yadav V/s State of Chhattisgarh and another¹², in support of his submissions. Learned counsel prayed that the Appeal deserves to be allowed.

10. Learned counsel appearing for Appellant – Datta Jadhav in Criminal Appeal No. 921 of 2014 has adopted the arguments advanced by the learned counsel appearing for the Appellant – Vanita Patil. In addition to that, learned counsel submitted that there is an inordinate delay in filing the first information report and therefore it is doubtful whether really such incident of sexual assault was occurred. The informant vaguely stated in the FIR that the incident occurred prior to two months but

8 AIR 2002 SC 476

9 (2015) 7 SCC 272

10 (2004) 13 SCC 134

11 (2016) 4 SCC 140

12 2018 All M.R. (Cri) 2304 (S.C.)

she does not remember the day and thus it is not specifically stated in the FIR actually on which day the incident occurred. So also the prosecution witnesses also not brought on record, the specific date of the alleged incident. Learned counsel further submitted that there are material contradictions, omissions and improvements in the statements of the prosecution witnesses. The victim was examined by the Medical Officer two months after the alleged incident and the prosecution failed to brought on record any medical evidence showing that sexual assault was committed on the victim girl. Learned counsel therefore submits that the Appeal deserves to be allowed.

11. Learned A.P.P. appearing for the State has supported the findings recorded by the learned trial Court in convicting both the Appellants. But so far as the sentence is concerned, learned A.P.P. submits that the trial Court ought to have considered that the victim was a minor girl of 12 years and heinous crime was committed by a teacher i.e. accused No.1

and in the commission of said crime, accused No.2 abetted him and in such case, there should not have been any leniency in awarding maximum sentence, and both the accused should have been sentenced for life imprisonment. Therefore learned A.P.P. prays that Criminal Appeal No. 292 of 2015 may be allowed.

12. Heard learned counsel appearing for the respective Appellants and learned APP appearing for the Respondent – State, at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

13. To prove its case, the prosecution has examined as many as sixteen witnesses. As the allegations are of sexual assault on a minor girl, we would not disclose the identity of the victim girl, as also the prosecution witnesses who are the minor girls and allegations are of sexual assault. The

Supreme Court in the case of Dinesh Alias Buddha vs. State of Rajasthan¹³ in para 7 of the Judgment, held thus :-

"7. We do not propose to mention the name of the victim. Section 227-A IPC makes disclosure of the identity of the victim of certain offences punishable. Printing or publishing the name or any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-B or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by the High Court or the Supreme Court. But keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court, the High Court or lower court, the name of the victim should not be indicated. We have chosen to describe her as "victim" in the judgment. (See State of Karnataka v.

13 (2006) 3 SCC 771

Puttaraja¹⁴)."

14. The prosecution has examined PW-1 victim girl-Y (to conceal the identity, name is not disclosed). The incident took place in the year 2012 when the age of victim girl was 12 years. Her evidence was recorded in camera. The record of the trial Court shows that as the victim was minor, initially the trial Court has asked some questions to the victim girl to ascertain whether she knows the difference between true and false and the importance of oath. At the time of recording the evidence of informant – victim girl in camera, the trial Court has allowed the mother of informant and also one lady police officer to be present.

15. The evidence of informant shows that she was residing along with her parents, one sister and one brother. At the time of recording her evidence, she was studying in 7th standard in Z.P. Marathi school. Her evidence shows that she was studying in

14 (2004) 1 SCC 475

the said school since beginning. She knows accused Nos.1 and 2. Accused No.1 was her class teacher and accused No.2 was Headmistress of the school. She has named other four girl students who were studying along with her in the said school. Her evidence further shows that she knows other victim girl X (who has filed separate proceedings). Her evidence further shows that other girls i.e. PW-2, PW-3 and PW-4 were studying in her school. At the time of lodging report she was studying in 5th standard. Her evidence further shows that on the day of incident, she was playing in the school premises during short recess. Accused No.1 called her and other three girl students in the office which was near to the school and they went there. Accused No.1 told her to stay there and sent the remaining girls for taking round. Her evidence further shows that accused No.1 took her in 6th-A class room and gave her Kachha Aam chocolate and told her that he will give her Rs.500/- and he wants to snap her photographs. She was sitting on the bench in the class room. Accused No.1 lifted up her

wearing clothes and then snapped photographs of her breast and private part on his mobile. She told accused No.1 not to do such thing else she will tell his name to her mother. Accused No.1 threatened that, if she discloses about incident, in that case he will beat her like dog.

16. The evidence of the victim girl-Y further shows that two days thereafter, accused No.1 again called her in lunch recess. She went to the computer room. Accused No.2 was standing near the door of computer room and accused No.2 pushed her inside the computer room, bolted the door of computer room from outside. Accused No.1 was present in the computer room. Her evidence further discloses that, accused No.1 removed her wearing clothes and also removed his wearing clothes, and then accused No.1 inserted his private part into her private part and committed rape. Accused No.2 removed the door bolt of the computer room and then she went to her class room.

17. The evidence of PW-1 further shows that

there used to be holiday to her school on Sunday. She went to her school on Sunday as her girl friend told her that accused No.1 has called her. Accused No.1 was standing near computer room. Her evidence further shows that accused No.1 called her inside the computer room and then removed his clothes. Accused No.1 also threatened her to beat if she did not remove her clothes. Accused No.1 snapped photographs of her breast and private part on his mobile. She narrated the incident to her mother. Then on 20th January, 2013, she went to Uran police station and lodged report (Exhibit-16). Police reduced her report into writing as per her say and she stated that contents of the report were correct. She also stated that printed FIR (Exhibit-17) bears her signature. The evidence of victim girl (PW-1) further shows that due to the act of accused, she felt ashamed. She has stated to the police at the time of filing report that accused No.1 inserted his private part into her private part. She does not remember when police again called her to police station. Police came to her

school and she has shown the place of incident to them. Police referred her for medical examination. At the time of incident she was studying in 5th standard. When muddemal article No.3 – slip and Muddemal Article No.4 – nicker shown to her, she identified the same to be her. When Muddemal Article Nos.1 and 2 – mobiles were shown to her, she identified the same to be accused Nos.1 and No.2. Her evidence further shows that her father was doing the work of fishing and mother was doing labour work in the field. The parents of other girl students were doing agricultural work. Father of another victim girl-X was no more.

18. During the course of cross-examination by the counsel for accused No.1, the victim girl (PW-1) stated that she does not remember the day on which report was filed. She does not remember the exact date of filing report. She has narrated the incident to her father Ashok and mother prior to four days of filing report. Her parents and she herself decided to

go to police station for lodging report. Her father informed to the respectable villagers, relatives about the aforesaid incident. Her father informed the incident to her uncle who was doing agricultural work. She does not remember the names of her neighbors. The parents of two girl friends had come to her house to inquire about the incident. She did not inform to her girl friends about the incident. When she was called in the computer room during the short recess, at that time the said girl friends saw her while going into the said computer room. Her three girl friends (names not disclosed) inquired with her when she came into class room. She was present in the computer room till half an hour. She narrated the incident to her three girl friends. PW-1 has specifically admitted that she did not narrate the fact that accused No.1 inserted his private part into her private part. She did not tell Police at the time of lodging report that accused No.1 inserted his private part into her private part. Thus defence has brought on record the material contradiction as in

her examination in chief victim girl deposed that she told the said fact to the police while lodging report.

19. Cross examination of PW-1 further shows that the class room of 6th-A and 7th-A were separate and both the class rooms were adjacent to each other. Accused No.1 took her in 7th-A class room. She again said that accused No.1 took her in 6th-A class room. Accused No.1 did not take her in 7th-A class room. Thus, victim girl was not sure about the spot of incident. She further stated that Police recorded her supplementary statement. She did not tell at the time of recording her supplementary statement that it was 7th-A class room and not 6th-A class room. Portion marked - A of her supplementary statement was shown to her and she stated that the same was not correct and she has not stated before Police and she cannot assign any reason as to why the said portion was written in her Police statement. Her cross examination further shows that at the time of filing

report and recording of supplementary statement, she did not tell Police that accused No.1 took her in the computer room. Thus, these are material omissions. She has stated before Police at the time of filing report that accused No.1 called three named girl students during short recess. She has stated before Police at the time of filing report that accused No.1 had told her that he will give her Rs.500/- and chocolate, but she was unable to tell as to why the said word "Rs.500/-" is not mentioned in her report (Exhibit-16). She has stated before Police at the time of filing report that she told accused No.1 not to do the said act, or she will tell his name to her mother and accused told her that he will beat her like dog if she disclosed the incident.

20. It has further come in the cross examination of PW-1 victim girl that she does not remember who was accompanied with her to Police at second time. She admits that her report and supplementary statement were reduced into writing on

the paper. She does not remember whether her mother narrated the incident to Police at the time of filing report and at the time of recording her supplementary statement. She does not remember whether accused No.1 was arrested by Police at the time of filing report or not. She does not remember whether any woman namely Neela Tulpule came to her for inquiry or not. She does not remember the exact month of the incident. Thus, the defence has brought on record that the victim girl does not remember anything about the incident.

21. It has also come in the cross examination of PW-1 victim girl that the incident occurred three days prior to filing of the report. She knows English months. She does not remember current month when her evidence was recorded. They were taught English months in the first standard and thereafter she forgot English months. She never used to write date of homework. She does not remember the exact month in which incident occurred. She does not remember

whether Police seized her clothes or not. Two days after filing the report, Police referred her for medical examination and at that time, Muddemal slip had worn by her. She does not remember whether she was referred for medical examination prior to filing of report or not. She does not remember whether doctor made inquiry with her or not. She does not remember whether she narrated the incident to the doctor or not. Thus, the defence has further brought on record regarding the incident and other events occurred, the victim girl does not remember anything.

22. During the course of cross examination by the Advocate for the accused No.2 PW-1 victim girl stated that she does not remember whether they proposed to go to Police station for lodging report. She does not remember how many persons were accompanying with her to Uran for lodging report. In all six girls accompanied her at the time of filing report but she does not remember name of said girls. The said six girls were from her class. Thus, defence

has brought on record that the victim girl even does not remember the names of her girl friends who were studying with her. The victim girl further stated that she does not remember whether Police made inquiry with the said six girls at the time of filing report or not. They all girls went in Police Station. She does not remember exact time when they went to Police Station for lodging report. She was unable to tell whether they went to Police Station at morning or at noon time or at evening. She does not remember exact vehicle by which they went to Police Station from their village.

23. PW-1 victim girl further stated that she does not remember whether many villagers were gathered in the police station or not. Accused No.2 was not present in police station at that time. She has narrated the incident to her parents on the same day of its occurrence. She has stated to police the name of accused No.2 at the time of filing report. She has narrated the role played by accused No.2 in

the incident and what accused No.2 has done with her. She has stated to police at the time of filing report that accused No.2 was standing near the computer room and accused No.2 bolted the door of the computer room from outside, and then accused No.2 removed door belt of the computer room. She has stated before police at the time of filing report that another girl student told her that accused No.1 called her in the school. She has stated before the police at the time of filing report that, another victim girl was present in the school when she went to the school. Thus, the prosecution has brought on record various omissions and improvements in the evidence of victim girl.

24. PW-1 victim girl further stated that she did not sustain any injury or bleeding injury marks at the time of incident. Thus, it is difficult to accept that a school going girl, aged about 12 years when was sexually assaulted by a grown up man like accused No.1, aged about 43 years at the time of incident, still she had not sustained any injuries to

her private part.

25. PW-1 victim girl further admits that after the incident, she has attended the school regularly and she went to play with her girl friends in the school premises. She further admits that after the incident accused Nos.1 and 2 were on duty in the school. She does not remember whether some 4-5 teachers of her school were resident of her village or not. She does not remember whether Jaydas Koli and Dinkar Bhoir were the teachers in her school or not. She does not remember whether Pramila Gade of Uran was present in Police Station or not and whether Pramila signed the report or not.

26. Thus, defence has brought on record several contradictions, omissions and improvements in the evidence of victim girl. We find that the omissions and contradictions in her evidence are on material aspects. The defence has brought on record that she did not tell police at the time of lodging report

that accused No.1 sexually assaulted her. The defence has brought on record that regarding the incident and the events soon thereafter, the victims girl does not remember anything. Initially victim girl stated that accused No.1 took her in 7th-A class room and in another breath she again said that accused No.1 took her in 6th-A class room. Thus, entire evidence of the PW-1 has been shattered in the cross examination. Therefore, we are of the considered view that the evidence of victim girl is not at all reliable and does not inspire confidence and therefore the same deserves to be discarded.

27. So far the alleged incident of sexual assault and snapping of obscene photographs of victim girl is concerned, different prosecution witnesses have given different version and there is material variance in the evidence of prosecution witnesses exactly on which spots the said incidents took place. In this respect, the evidence of PW-2 (name is not disclosed) shows that she was studying in 7th-A

standard which was adjacent to office of accused No.2. The computer room was also adjacent to her class room. Her class room 7th— A was in between the office of accused No.2 and computer room. There was a separate room for storing rice in her school. The evidence of PW-2 further shows that accused No.1 called victim girl, and when victim girl went in the rice room, accused No.2 bolted the door of rice room from outside. The evidence of PW-2 further shows that, she called the victim girl for going to the office of accused No.2 and victim girl went in the rice room and accused No.2 bolted room from outside. Her evidence further shows that accused No.1 called victim girl in the rice room and when victim girl went in the rice room, accused No.2 bolted the rice room from outside. Thus it is clear from the perusal of evidence of PW-2, a girl student who was studying in the same school at the relevant time, that both the alleged incidents took place in rice room, whereas the victim girl alleged that the incidents took place in 7th — A class room and computer room.

Thus version of PW-2 does not corroborate to the version of PW-1. There is material contradiction about the place of incident in the version of PW-1 and PW-2.

28. So far as the evidence of PW-3 (name is not disclosed) in this respect is concerned, her evidence shows that on the relevant day she was present in the school Varanda. Victim girl-Y was playing along with her classmates near the school Varanda. Accused No.2 told another girl student (PW-2) to call the victim girl in the computer room. Victim girl went in the computer room and accused No.2 pushed victim girl in the computer room and bolted the computer room from outside. Her evidence further shows that she does not remember any incident took place in the rice room in the school. Thus the evidence of PW-3 shows that the alleged incident took place in the computer room of the school.

29. In respect of the alleged incident, the

prosecution has brought on record the evidence of PW-6, minor girl student (name is not disclosed). The evidence of PW-6 shows that she knows the victim girl- Y who was studying in 5th standard. Her evidence further shows that accused No.1 has snapped obscene photographs of the victim girl and the victim girl has filed report. But the evidence of PW-6 nowhere states where the alleged incident exactly took place.

30. In respect of the alleged incident, the prosecution has brought on record the evidence of PW-11 (identity is concealed), who is the father of the victim girl. His evidence shows that his daughter i.e. victim girl, narrated her incident of snapping the photographs of her body by accused No.1 on mobile and according to the victim girl, the alleged incident took place in 6th - A class room.

31. Thus, it is clear from the perusal of the evidence of the prosecution witnessed that, they

have stated different spot of the alleged incident. Thus, so far as the alleged incident is concerned, the prosecution has failed to prove the exact spot where the alleged incident took place. Thus, it is doubtful whether such incident had taken place or not.

32. Now, we will examine the evidence of Medical Officer PW-14 Dr. Jaya Shrinivasan who has examined the victim girl. Her evidence shows that on 20th January, 2013 the victim girl was referred to her hospital for medical examination. The age of victim girl was 14 years. The alleged history was being sexually abused by school teacher accused No.1 in the school. The evidence of the medical officer (PW-14) further shows that she examined the victim girl on 20th January, 2013. PW-14 has specifically stated that there was no external injury on any part of the body including private part of the victim girl. The hymen of victim girl was intact, but admitting two fingers. Thus, the evidence of PW-14

shows that at the relevant time the age of victim girl was 14 years. Thus, as observed earlier, if a girl of such tender age like victim girl is sexually assaulted by a grown up man like accused No.1 - Datta Jadhav, aged about 43 years at the relevant time, it is difficult to believe that the victim girl would not sustain any injuries on her private part. Even the evidence of PW-14 shows that hymen of victim girl was intact. Thus, considering the medical evidence brought on record by the prosecution, it is difficult to believe that alleged incident of sexual assault had really taken place.

33. Further, in the cross-examination medical officer (PW-14) has specifically admitted that according to her the case referred to her by police was not of rape but sexual abuse. The evidence of PW-14 further shows that according to her opinion there was evidence of possible sexual abuse. Thus, even if the evidence of this prosecution witness (PW-14) is accepted as it is, it was not the case of

sexual assault. This medical officer has opined that there was evidence of possible sexual abuse. Thus, this medical officer (PW-14) has not definitely opined that it was the case of even sexual abuse. Thus, the prosecution has failed to prove that victim girl was sexually assaulted.

34. Upon further perusal of the evidence of the prosecution witnesses i.e. girl students, PW-2, PW-3, PW-4 and PW-6 is perused, their evidence shows that accused No.1 used to behave in indecent manner with the girl students. Their evidence further shows that accused No.1 while teaching in their class room, used to taunt the girl students in filthy language, accused No.1 used to beat girl students on their buttock, he used to touch the chest of the girl students. The evidence of these girl students further shows that they were sitting on the benches and accused No.1 used to tell them whether they were taking air from the beneath. In this respect if the evidence of victim girl (PW-1) is perused, she has no

where made allegations against accused No.1 that he was behaving in indecent manner with the girl students while teaching in the class room. These other prosecution witnesses have not filed any report alleging the indecent behaviour of accused No.1.

35. The prosecution has examined PW-5 Pramila Satish Gade, who is the panch to the spot panchnama (Exhibit-23) in respect of 7th – A class room of the school. During the course cross examination, PW-5 Pramila admitted that being social worker on various occasions she used to visit Police Station. She used to help Police for preparing panchanama. Her cross examination further shows that PI Patil was well acquainted with her prior to panchanama being social worker and PI Patil requested her to act as panch. Thus, defence has brought on record that PW-5 always used to help Police for preparing panchanama. Thus it appears that this panch is a got-up witness and therefore the evidence of this panch witness is not useful to the prosecution case.

36. PW-7 Nitesh Balkrishna Ghase is the panch to the seizure panchanama (Exhibit - 28) of one piece of cloth of red colour from the computer room of the school. However, PW-7 stated in the cross examination that he does not remember the room in which the piece of cloth was found. Thus evidence of this witness is also not helpful to the prosecution case.

37. PW-8 Anil Khalchandra Patil is the panch to arrest panchanama (Exhibit - 32) regarding arrest of accused Jadhav and seizure panchanama (Exhibit - 33) in respect of clothes of accused No.1, which he was wearing at the time of alleged incident. PW-8 has specifically admitted in his cross examination that at the relevant time of preparing panchanama, he was working in a Canteen and was supplying tiffins to the Police officers at the police station and he was acquainted with PI Patil since two and half years. Thus it appears that this witness is also got-up witness.

38. PW-9 Nahida Irfan Thakur is the panch to the seizure panchanama (Exhibit-36) of wearing clothes of victim girl like slip of red colour and nicker of brown colour, which clothes the victim girl was wearing at the time of incident as per the prosecution case. The evidence of PW-9 shows that at the time of filing of report, she was present in the Police Station. Her evidence further shows that the parents of victim girl informed Police that the clothes produced by them were of the victim girl. Her evidence further shows that she used to go to Police Station to help the persons in need being social worker. PW-10 Kamalakar Ganya Patil is the panch witness to the spot panchanama (Exhibit-38) regarding the computer room of the school where the alleged incident took place.

39. Upon careful perusal of the evidence of these panch witnesses i.e. PW-5, PW-7, PW-8, PW-9 and PW-10, we are of the opinion that their evidence is not useful to the prosecution case.

40. PW-11 (to conceal his identity, his name is not disclosed), is the father of the victim girl. His evidence shows that his daughter i.e. victim girl, narrated her incident of snapping the photographs of her body by accused No.1 on mobile. PW-11 stated in the cross examination that he did not remember the exact time when they went to Police Station. He further stated that he does not remember the exact date or period of narration of incident by her daughter to him. He further stated that he did not inform to Police immediately when his daughter narrated the incident to him. He further stated that he never went to the school of his daughter when she narrated him the incident. Thus the conduct of PW-11 does not appears to be natural as his evidence shows that he did not inform Police immediately when his daughter narrated the incident to him. If really such uncommon incident would have been happened with the daughter, natural conduct of the father would have been to go immediately first to the school of the daughter to complain the incident and then to the

Police Station and report the matter.

41. PW-14 Dr. Bhimrao Dyanabarao Kamble is the medical officer who has examined accused No.1. evidence of PW-14 shows that on examination of accused No.1 he found no injury on the glance penis, no injury over the front of the chest of accused No.1. In his opinion, accused No.1 was capable of doing sexual intercourse. It is pertinent to note that upon careful perusal of the evidence of victim girl, it is difficult to believe that alleged incident of sexual assault took place and therefore the evidence of this medical officer is also not useful to the prosecution case.

42. PW-13 – Rani Laxman Puri is the lady police officer who has recorded the statements of students of Primary School, Mothi Jui. PW-16 Tanaji Dadasaheb Patil and PW-17 Sudam Ganu Avate were the Investigating Officer who have deposed about the manner in which they have carried out the

investigation in the crime.

43. We have carefully considered the entire evidence brought on record by the prosecution. As observed earlier, we are of the view that the evidence of the victim girl is not reliable and the same does not inspire confidence of this Court. The prosecution has brought on record several contradictions, omissions and improvements in her evidence showing that the same is not trustworthy. The evidence of other prosecution witnesses is not consistent with each other and the same is also not reliable. The prosecution has failed to prove that obscene photographs were of the victim girl or that of the prosecution witnesses who are minor girls. The prosecution failed to prove beyond reasonable doubt that victim girl was sexually assaulted at the hands of accused No.1 and that in the said process accused No.2 abetted him. There is material variance in the core of the prosecution case as to where exactly the alleged incident of sexual assault took

place. Thus, the main incident of sexual assault, on which prosecution is based, is not at all proved by the prosecution. Even the medical evidence does not support the prosecution case. As observed earlier, the evidence of PW-14 Dr. Jaya who examined the victim girl - Y shows that, there was no external injury on any part of the body including private part of the victim girl and her Hymen was intact. The evidence of this medical officer clearly shows that the case referred to her was not of rape. The evidence of medical officer (PW-14) further shows that according to her opinion there was evidence of possible sexual abuse. Thus, the medical officer has not stated definitely that it was even the case of sexual abuse and only opined that incident of sexual abuse may have happened. We are conscious of the fact that in the present case there are allegations of sexual assault on a minor girl. However, in absence of cogent, trustworthy, reliable and sufficient evidence, we are unable to subscribe the view taken by the trial Court. We have to remind ourself of the

observations made by the Supreme Court in the case of

Sarwan Singh Rattan Singh V/s State of Punjab¹⁵,

which are as under :-

"The result is that, if the approver's evidence is discarded as unworthy of credit and his own retracted confession is excluded from consideration as not being voluntary of true whatever circumstantial evidence remains is obviously insufficient to bring home to Sarwan Singh the charge framed against him. If that be the true position, we must hold that, the learned Judges of the High Court were in error in convicting Sarwan Singh of the offence of murder.

It is no doubt a matter of regret that a foul cold-blooded and cruel murder like the present should go unpunished. It may be as Mr. Gopal Singh strenuously urged before us that there is an element of truth in the prosecution story against both the appellants. Mr. Gopal Singh contended that, considered as a whole the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long

15. AIR 1957 SC 637(1)

distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence."

44. Thus upon re-appreciation of entire evidence, we are of the considered opinion that, the evidence of the victim girl-Y, medical officer (PW-14) and other prosecution witnesses is not acceptable and cannot form basis for conviction. So also, the evidence on record do not establish that actually the alleged incident of sexual assault took place. The evidence on record is not sufficient to prove the guilt of accused beyond reasonable doubt. There is no clinching and credible evidence to convict the accused for the offences levelled against them. The reasons and findings recorded by the trial court are found to be perverse and based upon improper appreciation of evidence on record and not sustainable in law. We are of the view that prosecution has failed to prove the guilt against both the accused beyond reasonable doubt. Therefore, both the accused deserves to be given benefit of

doubt.

45. It would be necessary to mention here that there are another two Appeals which are also filed by the present Appellants – i.e. original accused Nos.1 and 2, challenging their conviction and sentence passed by the trial Court, wherein crime was registered at the instance of another victim girl-X, alleging the same offences like present one. As ample evidence was brought on record by the prosecution in the said case including supporting medical evidence, We have dismissed those Appeals and confirmed the conviction and sentence passed against the Appellants therein i.e. accused No.1 Datta Jadhav and accused No.2 Vanita Patil, who are the Appellants in the present Appeals. But, in the present case the evidence is very scanty and the Appellants deserve to be given benefit of doubt.

46. In the result, the Appeals filed by both the accused-Appellants deserve to be allowed and conviction of both the Appellants is liable to be set

aside. Consequently, the Appeal filed by the State for enhancement of the sentence, deserves to be dismissed. We, therefore, pass the following order :

O R D E R

(I) Criminal Appeal No.935 of 2014 and Criminal Appeal No.921 of 2014 are hereby allowed.

(II) The Judgment and order dated 28th October, 2014, passed by the Additional Sessions Judge, Raigad-Alibag in Sessions Case, thereby convicting and sentencing the Appellant – accused No.1 – Datta Somnath Jadhav for the offence punishable under Sections 376(2)(b) of the Indian Penal Code read with Section 5(c), 6 of Protection of Children from Sexual Offences Act, Section 292, 509 of the Indian Penal Code read with Section 14 of the Protection of Children from Sexual

Offences Act read with Section 67-B of Information Technology Act, Section 342, 354 of the Indian Penal Code, is quashed and set aside.

(III) The Judgment and order dated 28th October, 2014, passed by the Additional Sessions Judge, Raigad-Alibag in Sessions Case, thereby convicting and sentencing the Appellant – accused No.2 – Vanita Vasant Patil for the offence punishable under Sections 376(2)(b), 109 of the Indian Penal Code read with Section 5(c), 6 and 17 of Protection of Children from Sexual Offences Act, Section 292, 509, 109 of the Indian Penal Code read with Section 14 and 17 of the Protection of Children from Sexual Offences Act read with Section 67-B of Information Technology Act, Section 342 of the Indian Penal Code, is quashed and set aside.

(IV) Both the Appellants i.e. - Datta Somnath Jadhav and Vanita Vasant Patil, are acquitted of the offence under Section 376(2)(b), 354, 292, 509, 342, 109 of the IPC and under Section 5(c), 6, 14 and 17 of Protection of Children from Sexual Offences Act and under Section 67-B of Information Technology Act. Fine amount, if deposited as per the impugned Judgment and order, be refunded to both the Appellants.

(IV) Both the Appellants are in jail, they be set at liberty forthwith, if not required in any other case.

(VI) Both the Appellants shall furnish Personal Bond of Rs.15,000/- each and surety in the like amount each, under Section 437-A of the Code of Criminal Procedure, before the concerned trial Court at Raigad-Alibag.

(VII) Criminal Appeal No.292 of 2015
filed by the State for enhancement of
sentence, stands dismissed.

(A.S.GADKARI, J.)

(S. S. SHINDE, J.)