

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.272 OF 2017
WITH
CRIMINAL APPLICATION NO.275 OF 2017
IN
CRIMINAL APPEAL NO.272 OF 2017**

Suresh @ Pintya Kashinath Kamble,
C/6533, Age. 43 Years, Occu.
Convict Presently Lodged at
Kolhapur Central Prison.

... **Appellant**

V/s.

The State of Maharashtra
(At the instance of Chinchani
Vangi Police Station, Sangli
in respect of C.R.No.35/2004
under Section 376(2)(f) of IPC
& POCSO Act.

... **Respondent**

.....

Ms.Nasreen S.K.Ayubi, Appointed Advocate for the Appellant.

Mr.Prashant Jadhav, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 25th JANUARY 2018.

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging the Judgment and Order dated 07/03/2016 passed by the Special Judge, Sangli in Special POCSO case No.215 of 2014 between the parties thereby convicting the appellant/accused of the offences

punishable under Sections 376 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' for the sake of brevity). The appellant is sentenced to suffer rigorous imprisonment for thirteen years apart from directing to pay fine of Rs.5,000/- and in default to undergo simple imprisonment for one month. For the offence punishable under Section 6 of the POCSO Act similar sentence was imposed on the appellant. The learned trial Court further directed that the substantive sentences imposed on the applicant shall run concurrently.

2 As the appeal accompanied by the application for suspension of sentence was sent through jail by the appellant, this Court had appointed Ms.Nasreen S.K.Ayubi, the learned Advocate on the Panel of the Legal Aid of this Court to represent the appellant at the cost of the State. Thereafter, in due course, Criminal Application bearing No.275 of 2017 sent by the appellant/accused through jail was considered. At the time of the hearing of that application, on 22/01/2018, the learned Advocate appearing for the appellant/accused as well as the the learned Additional Public Prosecutor submitted that for the purpose of deciding the application, considering the peculiar facts of the case, the entire evidence will have to be examined and appreciated and, therefore, the appeal itself be heard while deciding the application for suspension of sentence. This request came to be accepted by

this Court as the appellant is behind bars right from the year 2014. Virtually, equal amount of time will be required for hearing the application as well as for hearing the appeal. That is how the appeal is taken for final hearing at the request of the parties.

3 Facts in nutshell leading to the prosecution of the appellant/accused are thus :

(a) P.W.No.1 Gauri is the mother of the alleged victim of the offence, who is a minor female child aged about six years. The minor female child is examined as the P.W.No.2. According to the prosecution case, the incident in question took place at about 4.00 p.m. of 19/07/2014 at village Vangi in Kadegaon Taluka, Sangli District. The appellant/accused is also resident of village Vangi. Name of his daughter is Priyanka. The P.W.No.2/minor female victim of the crime in question is friend of Priyanka. The appellant/accused was residing in the vicinity of the house of the P.W.No.2/minor female child.

(b) On 19/07/2014, at about 4.00 p.m., the P.W.No.2/minor female child went to the house of Priyanka for playing. However, at that time, Priyanka was not present in the house. The appellant/accused took the P.W.No.2/minor female child inside the house on the pretext of giving her an amount of

Rs.1/-. Then he removed nicker of the P.W.No.2/minor female child, unzipped the chain of his full pant, made the P.W.No.2/minor female child to sit on the gunny bag. Thereafter, the appellant/accused touched his penis to the vagina of the P.W.No.2/minor female child. Thereafter, P.W.No.2/minor female child pushed the appellant/accused and ran towards her house and disclosed the incident to her mother.

- (c) The prosecution averred that upon hearing the incident from the mouth of P.W.No.2/minor female child, her mother P.W.No.1 Gauri went to the house of the appellant/accused along with P.W.No.2/minor female child. She questioned the appellant/accused, who was all alone in the house. The appellant/accused started speaking irrelevantly. Then P.W.No.1 Gauri called her husband and lodged report of the incident at Chinchani Vangi Police Station. That is how Crime No.35 of 2014 for offences punishable under Section 376(2)(f) of the IPC as well as Sections 3,4,8 and 10 of the POCSO Act came to be registered against the appellant/accused.
- (d) Routine investigation followed and the appellant/accused came to be charge-sheeted for the offences punishable under Section 376(2)(f) of the IPC as well as under Section 5(m) read with Section 6 of the POCSO Act. Accordingly, the

charge was framed and explained to the appellant/accused, who had abjured his guilt and claimed trial. The defence of the appellant/accused was that of total denial. As per the defence version, there was dispute between him and Kumbhar family in respect of land and at the instance of Kumbhar family, he is falsely implicated. Similarly, according to the appellant/accused, on the day of the incident and at the time of the incident, he was not present at the house, but he was present at village Lengare for attending funeral rites of father of D.W.No.1 Shivaji Khilare.

- (e) After hearing the parties, by the impugned Judgment and Order dated 07/03/2016, the learned Special Judge, Sangli was pleased to convict the appellant/accused of offences punishable under Section 376 of the IPC as well as under Section 6 of POCSO Act. He is accordingly sentenced as indicated in the opening paragraph of this Judgment.

4 I heard Ms.Nasreen S.K.Ayubi, the learned Advocate appearing for the appellant/accused. She drew my attention to the evidence of the prosecution witnesses and more particularly to the cross-examination of P.W.No.2/alleged victim of the crime in question. It is argued by the learned Advocate for the appellant/accused that small house of the appellant/accused is inhabited by his mother and brother, who was residing there with his family.

As such, it is not possible to commit such an act in presence of large number of family members. Ms.Ayubi, the learned Advocate further argued that medical evidence is not supporting the case of the prosecution. On the contrary, history narrated to the Medical officer is that of an attempted sexual assault and not that of the penetrative sexual assault. Ms.Ayubi, the learned Advocate further placed reliance on evidence of PW.No.5 Dr.Ramnath Khade and pointed out that evidence of this Medical Officer in no way demonstrates that he has personally examined the P.W.No.2/minor female victim. By drawing my attention to the cross-examination of this witness, Ms.Ayubi, the learned Advocate further argued that this Medical Officer has candidly admitted the fact that there was no external injury, swelling, tenderness to the genital of the victim as reflected from medical case papers at Exhibit 34. The learned Advocate for the appellant/accused further argued that though the prosecution has seized clothes of the appellant/accused, the report of the chemical analysis of those clothes was not placed on record by the prosecution and as such, adverse inference needs to be drawn against the prosecution. It is further argued that evidence of defence witness Shivaji Khilare goes to show that at the time of the incident, the appellant/accused was not even present at village Vangi and he was far away at village Lengare. Therefore, in submission of the learned Advocate for the appellant/accused, the appellant deserves acquittal.

5 As against this, the learned Additional Public Prosecutor drew my attention to the evidence of P.W.No.2/minor female victim of the crime in question and argued that there is no requirement of law that there should be complete penetration. The learned Additional Public Prosecutor submitted that slightest penetration is sufficient to establish the offence of such type and evidence of the minor female victim of the crime in question coupled with that of her mother points out that there was penetrative sexual assault on a female child below 12 years of age making the appellant/accused liable for penal consequences as mentioned in Section 376(2) of the IPC as well as Section 6 of the POCSO Act.

6 I have carefully considered the rival submissions and also perused the Record and Proceedings including depositions of prosecution witnesses and the documentary evidence adduced on record.

7 The law regarding appreciation of evidence of the victim of the sexual offence is set at rest by catena of Judgments rendered by the Honourable Apex Court. In the matter of ***State of Punjab v. Gurmit Singh*** reported in **1996 SC 1393**, it is held that in the matters of sexual assault on a female, the Court should examine the broader probabilities of a case and should not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix. In the matter of ***State of***

Himachal Pradesh v. Mangoram reported in **2000(2) SCALE 652**, the Honourable Apex Court has held that in cases of sexual offences, the Court should display a greater sense of responsibility and to be more sensitive while dealing with charge of sexual assault on a woman. It is well settled that the the victim of a sexual assault is not an accomplice to the crime, but her evidence carries more weight than that of an injured witness as apart from physical injury, she suffers mental trauma in such incident. Case of sexual violence on a minor female child, as such deserves more importance at the hands of the Court by taking sensitive approach in the matter.

8 Let us, now examine whether in the case in hand, the prosecution has established the fact of commission of penetrative sexual assault/rape by the appellant/accused on the P.W.No.2, who is alleged victim of the crime in question. It is well settled that for making out the offence of rape or penetrative sexual assault on a child what is required is the slightest penetration. In other words, proof of penetration is *sine qua non* for such offence. Section 3 of the POCSO defines the offence of penetrative sexual assault and it reads thus :

“3. Penetrative sexual assault : A person is said to commit "penetrative sexual assault" if —

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person
or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.”

9 Similarly, Section 375 of the IPC defining the offence of rape prescribes that the rape is committed if there is penetration. It is further made clear by Explanation No.(1) to Section 375 of the IPC that for the purpose of the said Section, vagina would also include labia majora. This implies that penetrating labia majora even to a slightest extent amounts to rape. Thus partial or slightest penetration is necessary for making out such offence.

10 In the light of this discussion, let us understand what the P.W.No.2/minor female victim of the crime in question is telling against the appellant/accused. As per her version, she had been to the house of Priyanka for the purpose of playing with her, but Priyanka was not present in the house. She further deposed that the appellant/accused, who is father of Priyanka was very much present in the house watching the television and nobody else was present in the house. The P.W.No.2 further deposed that

the appellant/ accused allured her by telling that he will give an amount of Rs.1/- and called her inside the house. When she entered in the house, the appellant/accused removed her nicker, unzipped the chain of his pant, made her to sit on gunny bag and touched his penis to her private part. As stated by P.W.No.2/minor female victim of the crime in question, she then pushed the appellant/accused and ran towards her house and disclosed the incident to her mother. According to the prosecution case, this incident took place on 19/07/2014. Evidence of the P.W.No.2/minor female victim shows that on the very same day accompanied by her parents, she went to the police station.

11 Let us now examine the result of medical examination of the P.W.No.2/minor female victim of the crime in question. It is seen that immediately on the very next day of the alleged incident and more particularly, on 20/07/2014, P.W.No.2 – alleged minor victim was referred for medical examination to Sangli Civil Hospital. P.W.No.5 Dr.Ramnath Khade made entry of her arrival in the M.L.C. Register (Exhibit 34) and prepared her case paper. He then referred P.W.No.2 to the Gynecologist and the Radiologist Department and obtained reports from both the Departments. On the basis of those reports, he issued the age certificate (Exhibit 35) certifying the P.W.No.2 to be aged about 6 to 10 years. This witness also issued Medico-Legal Certificate (Exhibit 36) on the basis of report sent by several Departments of the Civil Hospital, Sangli.

12 Perusal of evidence of P.W.No.5 Dr.Ramnath Khade, as such, makes it clear that this witness has not at all examined the P.W.No.2/minor female victim of the crime in question, but had referred her to various Departments of the Civil Hospital and then issued certificate on the basis of reports sent by other Departments of the Hospital. Thus, going strictly by rules of evidence, the certificate issued by this witness are of no consequence. However, as this certificate and medical case papers in respect of medical examination of the P.W.No.2/alleged minor female victim produced by the prosecution are serving the purpose of the defence, those needs to be looked into as per the law laid down by the **then Nagpur High Court** in the matter of *Sheo Prasad v. Emperor* reported in **1939 Cr.L.J. 917**.

13 The M.L.C. Register at Exhibit 34 contains history of the alleged incident. The Medical Officer has reported that there was an attempt of sexual assault on the P.W.No.2/minor female victim at 4.00 p.m. on 19/07/2014. Entry in the M.L.C. Register (Exhibit 34) kept at Sangli Civil Hospital further shows that then the P.W.No.2/minor female victim came to be examined by the attending Medical Officer and following findings came to be noted:

“No any external injury seen over body parts. On gentle separation of labia majora, no bleeding seen, no injuries over private parts seen. PSPV not done.”

14 If we compare evidence of P.W.No.2/alleged minor female victim of the crime in question with the medical evidence, then it becomes clear that in her thorough medical examination by the attending Medical Officers, no injuries were seen on her private parts, nor there was bleeding from it. The medical examination of the P.W.No.2 was conducted within few hours of the alleged incident. The findings in the medical examination of the P.W.No.2 are in tune with her deposition to the effect that after removing her nicker, the appellant/accused unzipped chain of his pant and touched his penis to her private part and thereafter, she ran away by pushing him. The findings of the medical examination do not reveal any penetration.

15 It is well settled that a child is competent to testify if she understand the question put to her and give rational answer thereto. It is broad proposition that as child witnesses are susceptible to tutoring due to tender years, their evidence requires close scrutiny and is required to be scanned carefully. In the case in hand, the P.W.No.2, who is a child witness is candidly stating the mere act of touching his penis by the appellant/accused to her private part. Truthfulness of this version is reflected from the medical examination of the P.W.No.2, which came to be conducted immediately at the Rural Hospital and subsequently, at the Civil Hospital, Sangli. The result of medical examination of the P.W.No.2 shows that there was no penetration.

16 As against the version of the P.W.No.2 regarding mere touching of a male organ to her private part by the appellant/accused, P.W.No.1 Gauri, who is mother of the minor female victim has stated that at about 4.00 p.m. of 19/07/2014 her daughter/P.W.No.2 returned to the house while crying and told her that the appellant/accused touched his penis to her private part and started pressing her. This 'pressing' appears to be adding embellishments to the narrations of her daughter by P.W.No.1 Gauri. The P.W.No.2 has not deposed that she disclosed her mother that after touching the penis to her private part, the appellant pressed it inside her private part. That apart, medical evidence on record is not supporting this part of narrations allegedly made by the P.W.No.2 to her mother P.W.No.1 Gauri and recited by P.W.No.1 Gauri before the Court. If this portion of evidence of P.W.No.1 Gauri which is not supported by the victim of the crime in question is ignored then what remains is touching his male organ by the appellant/accused to the private part of the P.W.No.2.

17 Cross-examination of P.W.No.1 Gauri shows that house of the appellant/accused is also inhabited by his son Ganesh, family members of Ganesh, which includes his wife and three sons. Mother of the appellant/accused is also used to reside in his house. However, this does not necessarily imply that other family members must be present in the house at the time of the incident

in question. There is no such material coming on record through cross-examination of P.W.No.1 Gauri or from cross-examination of P.W.No.2. On the contrary, there is positive evidence of the P.W.No.2 to the effect that at the time of the incident, the appellant/accused was all alone in the house and evidence of P.W.No.1 Gauri also shows that when she took her daughter i.e. P.W.No.2 to the house of the appellant/accused after the incident, there was nobody in the house except the appellant/accused.

18 During the course of investigation, the Investigating Officer had seized clothes of the appellant/accused vide seizure panchanama (Exhibit 30) on 21/07/2014 and P.W.No.4 Panjabarao Kumbhar acted as panch to this seizure. Upon being produced by the father of the P.W.No.2, clothes of the P.W.No.2 also came to be seized vide seizure panchanama (Exhibit 28) on 20/07/2014 by the Investigating Officer. P.W.No.3 Madhukar Yadav is a panch witness to this seizure. Seized clothes were sent for chemical analysis. However, reports of chemical analysis of seized clothes were not produced before the trial Court. This aspect casts a shadow of doubt on the case of the penetrative sexual assault on a minor female.

19 It is defence of the appellant/accused that he was not present on the spot of the incident at the time of the incident in question and for establishing this defence, the appellant/accused

has examined Defence Witness named Shivaji Khilare. This defence is resident of village Lengare. He deposed that there was death of his father on 19/07/2015 at village Lengare. This fact was then intimated to the appellant/accused. D.W.No.1 Shivaji further deposed that all his relatives came to his house at 2.00 p.m. and funeral rites of his father were performed in between 5.00 to 5.30 p.m. Thereafter, his relatives gathered at his house and while leaving, all of them met him. D.W.No.1 Shivaji further deposed that the appellant/accused also met him.

20 Evidence of D.W.No.1 Shivaji is not proving the plea of alibi attempted to be taken by the appellant/accused. Evidence of this witness is conspicuously silent about the distance between village Vangi, where the incident took place and that of village Lengare. The incident took place at 4.00 p.m. on 19/07/2014. D.W.No.1 Shivaji has not deposed that the appellant/accused came to his house at about 2.00 p.m. of 19/07/2014 though he has spoken that his relatives came to his house by that time. D.W.No.1 Shivaji has not even stated in his evidence that at the time of funeral rituals of his father, the appellant/accused was present. As has been stated by the D.W.No.1 Shivaji, while leaving village Lengare after funeral of his father, all his relatives including the appellant/accused met him. This evidence does not makes out a defence that after commission of offence at 4.00 p.m. of 19/07/20114 at village Chinchani Vangi, it was impossible for

the appellant/accused to remain present after 5.30 p.m. at village Lengare. Thus, the appellant/accused failed to establish or prove the plea of alibi. That apart, there is positive evidence coming from the mouth of P.W.No.2 and her mother P.W.No.1 Gauri to the effect that at the time of the incident and thereafter also the appellant/accused was present at village Chinchani Vangi.

21 Birth certificate of the P.W.No.2 issued by the Registrar of Birth and Death from Sangli-Miraj-Kupwad Corporation City Hospital is at Exhibit 56. The said certificate is issued as per provisions of Section 12 and 17 of the Registration of Births and Deaths Act, 1969. It is having presumption about correctness of entries. Therefore, the same does not require formal proof. That apart, the Birth Certificate is admitted by the defence and it shows that date of birth of P.W.No.2 is 07/07/2008. As such, she was a female child below 12 years of age at the time of the incident dated 19/07/2014. The over all scrutiny of evidence of P.W.No.2 which is also corroborated by other evidence in the form of proof of her former statement by her mother P.W.No.1 Gauri shows that the P.W.No.2 is witness of truth and she is not exaggerating her version in respect of the incident. There is no reason to disbelieve her evidence in respect of the alleged incident in question.

22 Now, let us examine what offence is committed by the appellant/accused by touching penis to the private part i.e. vagina

of the P.W.No.2. The learned trial Court after scanning this evidence has concluded that a mere touch of the penis to the vagina is sufficient to constitute rape in the wake of provisions of Section 3 (1) of the POCSO Act. This observation can be found in paragraph 24 of the impugned Judgment and Order. With this reason, the appellant/accused is held to be guilty of the offence of rape and aggravated penetrative sexual assault on a female child below 12 years of age.

23 I have already reproduced the definition of penetrative sexual assault as found in Section 3 of the POCSO Act in the foregoing paragraph. Clause (a) of Section 3 of the POCSO Act in clear words states that penetrative sexual assault is committed if a person penetrates his penis to any extent into the vagina. The word 'penetration' used in Clause (a) of Section 3 of the POCSO Act, cannot be construed to mean touching of the male organ to the vagina. Such an exercise would amount to deleting the word 'penetrates' from the wordings of Clause (a) of Section 3 of the POCSO Act defining the term 'penetrative sexual assault' and substituting it by word 'touches'. Such exercise of amending the Statutes is not permissible at the hands of the Courts. The words used in Clause (a) of Section 3 of the POCSO Act 'if he penetrates his penis' which implies piercing or puncturing. These words indicate an entry and signifies a movement into or through the vagina. In the case in hand, neither the minor female child

deposed about even slightest penetration of his penis by the appellant/accused in her vagina, nor the medical evidence indicates such contingency. In this view of the matter, it cannot be said that the appellant/accused had either committed the offence punishable under Section 376(2) of the IPC by committing rape on minor female child of 12 years of age, nor it can be said that he had committed the aggravated penetrative sexual assault on the P.W.No.2 she being a female child below 12 years of age.

24 Ms.Ayubi, the learned Advocate for the appellant/accused argued that evidence on record indicates that the appellant/accused, at the most had committed the offence of aggravated sexual assault because what is proved from the evidence of prosecution is touching of vagina of the minor female child by the appellant/accused. At the first blush, such submission may appear to be impressive, but the deeper scrutiny of the evidence of the P.W.No.2 does not allow me to hold that only an act of commission of aggravated sexual assault on the female child below 12 years of age is proved against the appellant/accused. Evidence of the P.W.No.2 as narrated and discussed *supra* shows that the appellant/accused allured her to enter in his house with a payment of Rs.1/- to her. Once she entered into the house of the appellant/accused, he removed her nicker and unzipped the chain of his full pant. The appellant/accused then touched his penis to vagina of the P.W.No.2 and thereupon the P.W.No.2 managed to

escape by pushing him. It, thus, makes it clear that the appellant/accused determined to satisfy his lust at all times, but fortunately, P.W.No.2 managed to escape before the appellant/accused succeeded in commission of act of penetration. At this juncture, observations of the Honourable Apex Court in the matter of *Koppula Venkat Rao v. State of A.P.* reported in AIR 2004 SC 1874 needs to be quoted with advantage and they read thus :

8- The plea relating to applicability of S. 376 read with Section 511, I.P.C., needs careful consideration. In every crime, there is first, intention to commit, secondly, preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the act. Section 511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded.

25 It is thus clear that the appellant/accused had intended to commit penetrative sexual assault on the P.W.No.2 and to execute his intention, he had made all preparation to commit the said offence. However, his attempt was unsuccessful and, therefore, though the offence of aggravated sexual assault or rape is not made out, the prosecution is successful in proving the

offence punishable under Section 511 read with Section 376(2) of the IPC as well the one punishable under Section 18 read with Section 6 of the POCSO Act.

26 The punishment prescribed for the offence of aggravated penetrative sexual assault is rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to imprisonment for life apart from liability to pay fine. Similarly, punishment for the offence punishable under Section 376(2) is rigorous imprisonment for a term of not less than 10 years, but which may extend to imprisonment for life apart from the payment of fine. Section 18 of the POCSO provides for one half of the longest term of imprisonment provided for the offence and Section 6 of the POCSO Act provides for longest term of imprisonment, which is imprisonment for life. Therefore, as the attempt to commit aggravated penetrative sexual assault by the appellant/accused on the P.W.No.2, who at the relevant time was below 12 years of age is proved by the prosecution, the appellant/accused is liable to undergo rigorous imprisonment for one half of the imprisonment for life.

27 It is seen from provisions of Section 42 of the POCSO Act that when act or omission constitutes an offence punishable under the POCSO Act as well as under Sections 376 of the IPC, then the offender found guilty of such offence shall be liable for

punishment under the POCSO Act or under the IPC as provided for punishment which is greater in degree. This aspect appears to be missed by the learned trial Court as the appellant/accused is punished for the offences punishable under Sections 376 of the IPC as well as under Section 6 of the POCSO Act by imposing different punishments.

28 In the result, the following Order :

- (i) The appeal is partly allowed.
- (ii) Conviction and resultant sentence imposed on the appellant/accused for the offences punishable under Sections 376 of the IPC and for the offence punishable under Section 6 of the POCSO Act is quashed and set aside.
- (iii) Instead, the appellant/accused Suresh @ Pintya Kashinath Kamble is convicted for the offence punishable under Section 18 read with Section 6 of the POCSO as well as for the offence punishable under Section 511 read with Section 376(2) of the IPC.
- (iv) The appellant/accused is sentenced to suffer rigorous imprisonment for one half of the imprisonment for the

life and he shall also be liable to pay fine of Rs.5,000/- and in default of payment of fine to suffer simple imprisonment for one month for the offence punishable under Section 18 read with Section 6 of the POCSO Act.

(v) As the appellant/accused is sentenced for committing the offence punishable under Section 18 read with Section 6 of the POCSO Act by imposing punishment, which is greater in degree, no separate sentence for commission of offence punishable under Section 511 read with Section 376 (2) of the IPC is imposed on him.

(vi) Rest of the impugned Judgment and Order of the learned trial Court is maintained. The appeal stands disposed of accordingly.

29 In view of disposal of this Appeal, Criminal Application bearing No.275 of 2017 therein also stands disposed of.

(A.M.BADAR J.)