

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.380 OF 2014

RAHUL SHANKAR JADHAV)
Age – 20 years, Occupation – Agriculture)
Resident of Jaloli, Taluka – Pandharpur)
District – Solapur.)
At present in Yerwada Central Prison,Pune)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

CRIMINAL APPEAL NO.381 OF 2014

- 1) SHANKAR RAMCHANDRA YADAV**)
Age 60 years, Occupation – Agriculture)
)
- 2) URMILA @ SUJATA TANAJI LANDE**)
Age 30 years, Occupation – Household)
)
- 3) ANAND SHANKAR JADHAV**)
Age – 20 years, Occupation – Agriculture)
)
- 4) DHANAJI SHAMRAO JADHAV**)
Age – 36 years, Occupation – Agriculture)
)
- 5) MANGAL SHANKAR JADHAV**)
Age – 50 years, Occupation – Household)

)
All Residents of Jaloli, Taluka – Pandharpur)
District – Solapur.)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Vikas Singh, Advocate for the Appellants.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 12th OCTOBER 2018

ORAL JUDGMENT :

1 Criminal Appeal No.380 of 2014 is filed by accused no.1 Rahul Jadhav whereas Criminal Appeal bearing no.381 of 2014 is filed by accused nos.2 to 6, who happen to be his father, cousin sister, brother, cousin brother and mother. They are challenging the judgment and order dated 27th February 2014 passed by learned Additional Sessions Judge, Pandharpur, in Sessions Case No.28 of 2012. Appellant/accused no.1 Rahul Jadhav, by this judgment and order is convicted of offences

punishable under Sections 363, 366A, 376 and 506 read with 34 of the Indian Penal Code. For the offence punishable under Section 363 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for 5 years apart from imposition of fine of Rs.5,000/- and default sentence of rigorous imprisonment for 6 months. For the offence punishable under Section 366A of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for 7 years apart from imposition of fine of Rs.5,000/- and default sentence of rigorous imprisonment for 6 months. For the offence punishable under Section 376 of the Indian Penal Code, appellant/accused no.1 Rahul Jadhav is sentenced to suffer rigorous imprisonment for 10 years apart from imposition of fine of Rs.20,000/- and default sentence of rigorous imprisonment for 1 year. For the offence punishable under Section 506 read with 34 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for 2 years apart from imposition of fine of Rs.5,000/- and default sentence of rigorous imprisonment for 6 months. Appellants/accused nos.2 to 6 are convicted of offences punishable under Section 368 read with 34

of the Indian Penal Code and under Section 363 and 366A read with Section 109 of the Indian Penal Code. On the first count, they are sentenced to suffer rigorous imprisonment for 2 years apart from imposition of fine of Rs.5000/- and default sentence of 6 months rigorous imprisonment. On the second count, they are sentenced to suffer rigorous imprisonment for 2 years apart from imposition of fine of Rs.5,000/- and default sentence of rigorous imprisonment for 6 months. Apart from this, appellant/accused no.2 Shankar Jadhav is also convicted of the offence punishable under Section 506 read with 34 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 2 years apart from imposition of fine of Rs.5,000/- and default sentence of rigorous imprisonment for 6 months.

2 Facts leading to the prosecution of appellants/accused can be summarized thus :

- (a) PW3 is the alleged victim of the crime in question. Her parents were residing at Village Khairav whereas she, at the relevant time, was staying in the house of her maternal

uncles Samadhan and Dhanaji Narsale at Village Jaloli in Pandharpur Taluka of Solapur District. The PW3/victim female child was taking education in 10th Standard at Wamanrao School and Junior College, Jaloli. Manisha Narsale is the wife of her maternal uncle Dhanaji Narsale. Appellant/accused no.1 Rahul is brother of Manisha Narsale – maternal aunt of the PW3/victim female child. Appellant/accused no.2 Shankar Jadhav and appellant/accused no.6 Mangal are father and mother of Manisha Narsale. Appellant/accused no.4 is another brother of maternal aunt of the PW3/victim female child. Appellant /accused no.3 Urmila and appellant/accused no.5 Dhanaji are cousins of Manisha Narsale – maternal aunt of the PW3/victim female child. They all are residents of Village Jaloli in Pandharpur Taluka of Solapur District.

- (b) According to the prosecution case, at about 10.00 a.m. of 17th January 2012, the PW3/victim female child left her house for attending the school. When she was going

towards the school from the footway in the field of Vishnu Narsale, appellant/accused no.1 Rahul came from behind, pressed his hand on her mouth and dragged her in the sugarcane field which was 600 feet away. He then sat beside her and threatened her to kill her. That is how, the PW3/victim female child stayed in company of appellant/accused no.1 Rahul up to 10 p.m. of 17th January 2012. Then, appellant/accused no.1 Rahul asked her to accompany him to his own sugarcane field. She went with him to that field. At about 2.30 a.m. of 18th January 2012, appellant/accused no.1 Rahul again pressed mouth of the PW3/victim female child and took her to yet another sugarcane field. Then, in the night intervening 18th January 2012 and 19th January 2012, appellant/accused no.1 Rahul committed rape on her three times. At about 5.30 a.m. of 19th January 2012, he took her out of the field and made her to sit on the bandh of the field.

- (c) It is case of the prosecution that during stay of the PW3/victim female child with appellant/accused no.1 Rahul in the sugarcane fields in the night intervening 17th January 2012 and 18th January 2012, appellant/accused no.4 Anand Jadhav and appellant/accused no.5 Dhanaji Jadhav, who are brother and cousin brother of appellant/accused no.1 Rahul, came in the field, gave water and went away. At about 2.30 a.m. of the night intervening 17th January 2012 and 18th January 2012 they both came again and appellant/accused no.1 Rahul asked them to show the place. Then, appellant/accused no.1 Rahul again pressed mouth of the PW3/victim female child and took her to another sugarcane field by following appellant/accused no.4 Anand Jadhav and appellant/accused no.5 Dhanaji Jadhav. At about 1.30 p.m. of 18th January 2012, appellant/accused no.6 Mangal (mother of appellant/accused no.1 Rahul) came in that sugarcane field and provided lunch. She then went away. At about 8.00 p.m. of 18th January 2012, appellant/accused no.3 Urmila and appellant/accused no.4

Anand came in the field. Appellant/accused no.4 Anand informed appellant/accused no.1 Rahul that police would be coming in the morning. Appellant/accused no.3 Urmila told appellant/accused no.1 Rahul to transfer his agricultural land in the name of the PW3/victim female child and to do his work. At about 4.00 a.m. of 19th January 2012, appellant/accused no.2 Shankar Jadhav came in the field and threatened the PW3/victim female child not to tell anything to anyone.

- (d) According to prosecution case, in the morning hours of 19th January 2012, Samadhan – maternal uncle of the PW3/victim female child came to the Police Station Karkamb and informed PW5 Ashok Jadhav, Police Head Constable, about the fact of missing of the PW3/victim female child. He further informed that she was seen in the field of appellants/accused persons. PW5 Ashok Jadhav, Police Head Constable, then sent PW7 Satish Yelpalle, Police Constable, with another Police Constable by a government

jeep to the agricultural field. That is how, appellant/accused no.1 Rahul and the PW3/victim female child were brought to Police Station Karkamb. Then the PW3/victim female child lodged report Exhibit 28 against the accused persons which resulted in registration of Crime No.3 of 2012 for offences punishable under Sections 376, 363, 366A, 109 and 506 of the Indian Penal Code against accused persons.

- (e) Routine investigation followed. The PW3/victim female child was sent for medical examination. She was examined by PW11 Dr.Supriya Hambire, Medical Officer of the Civil Hospital, Solapur. Accused persons were arrested. They were medically examined. Clothes of the PW3/victim female child as well as that of appellant/accused no.1 Rahul came to be seized. The spot was inspected and Spot panchnama was drawn. Seized articles were sent for chemical analysis. On completion of routine investigation, appellants/accused persons were charge-sheeted.

- (f) The learned trial court framed Charge against appellants/accused persons. They abjured their guilt and claimed trial.
- (g) In support of their case, the prosecution has examined in all thirteen witnesses. PW1 Shahaji Narsale is a panch witness to the Spot panchnama Exhibit 22 recorded on 19th January 2012. PW2 Rajesh Konge is a panch witness to seizure of clothes of appellant/accused no.1 Rahul. The Seizure panchnama is at Exhibit 26. The victim female child is examined as PW3. Her mother Jayashree is examined as PW4. Police Head Constable Ashok Jadhav is examined as PW5. Vitthal Birajdar, Police Constable, who carried seized articles to the Forensic Science Laboratory, is examined as PW6. Police Constable Satish Yelpalle is examined as PW7. Dr.Mandar Sonawane, who examined the accused persons, is examined as PW8. Record keeper of the Municipal Council, Pandharpur, namely Sulbha Mahimkar is examined as PW9. Ashok Athre, Head Master of Zilla Parishad School

at Jaloli is examined as PW10. Dr.Supriya Hambire, the Medical Officer of the Civil Hospital, Solapur, is examined as PW11. Dr.Rahul Mhaskar is examined as PW12. He had answered the queries raised by the Investigating Officer. Investigating Officer Rajendra Takne is examined as PW13.

- (h) The defence of appellants/accused persons was that of total denial. However, they did not enter in the defence.
- (i) After hearing the parties, by the impugned judgment and order, the learned trial court was pleased to convict appellants/accused and sentenced them as indicated in the opening paragraph of this judgment.
- (j) The learned trial court while convicting appellants/ accused nos.2 to 6 was pleased to hold that they were well aware about kidnapping of the PW3/victim female child but none of them relieved her. They all had abetted appellant/accused no.1 Rahul to commit the offence.

3 I have heard Shri Vikas Singh, the learned counsel appointed to represent appellants/accused persons at the costs of the State. He vehemently argued that the Spot panchnama indicates that the PW3/victim female child had tons of opportunities to save herself. Spots where the PW3/victim female child was allegedly kept was surrounded by agricultural fields of other persons as well as by road. The PW3/victim female child could have very well ran away to rescue herself. She claimed that she was in company of only appellant /accused no.1 Rahul. However, instead of making any attempt to run away, she continued to be in company of appellant/accused no.1 Rahul for full two days, and that too, in the open agricultural field. This, according to the learned counsel, indicates consent on the part of the PW3/victim female child. He further argued that even if the case of prosecution is accepted, then also, appellant/accused no.1 Rahul cannot be convicted for the offence punishable under Section 366A of the Indian Penal Code. It is further argued that the alleged offence took place in January 2012 and viewed from this angle, sentence of 10 years for the offence punishable under

Section 376 of the Indian Penal Code is too harsh. Appellant/accused no.1 Rahul is a close relative of the PW3/victim female child and he, at the time of the alleged offence, was just 20 years old. Evidence on record indicates that they were in love with each other and that is how the incident in question took place. The learned counsel for the appellants further argued that so far as other accused persons are concerned, they all deserve acquittal, as evidence on record does not demonstrate commission of any offence by any of them. Even if it is accepted that appellants/accused nos.2 to 6 were visiting the couple in the field, then also it cannot be said that they all committed any offence, which is held to be proved against them by the learned trial court. The PW3/victim female child was closely related to them also. The entire case of the prosecution is inherently improbable.

4 The learned APP supported the impugned judgment and order of conviction and resultant sentence. He argued that the PW3/victim female child was below 16 years of age. Her date of

birth was 12th April 1999. The prosecution has proved age of the PW3/victim female child by producing birth certificate issued under the Registration of Births and Deaths Act, 1969, so also by examining PW9 Sulbha Mahimkar - Record keeper of the Municipal Council, Pandharpur and PW10 Ashok Athre - Head Master. According to the learned APP, the medical evidence is corroborating the version of the PW3/victim female child. According to the learned APP, other accused persons by visiting the couple from time to time had abetted the commission of offences punishable under Sections 363, 366A as well as 368 read with Section 34 of the Indian Penal Code.

5 I have carefully considered the rival submissions and also perused the record and proceedings including the oral as well as documentary evidence adduced by the prosecution. According to the prosecution case, by active assistance, incitement and provocation of rest of the accused persons, appellant/accused no.1 Rahul had kidnapped the PW3/victim female child from lawful custody of her guardians on 17th January 2012 and rest of the

accused persons thereby abetted procuring of the PW3/victim female child with intent that she will be forced or seduced for sexual intercourse with appellant/accused no.1 Rahul. They had wrongfully confined and concealed the PW3/victim female child. It is further alleged that appellant/accused no.1 Rahul and his father appellant/accused no.2 Shankar Jadhav indulged in criminal intimidation of the PW3/victim female child. Considering these averments, fate of the prosecution case to a large extent hinges on testimony of the PW3, who happens to be the victim of the crime in question. At the relevant time, undisputedly, she was residing with her maternal uncles namely Samadhan and Dhanaji Narsale, as seen from the testimony of her mother PW4 Jayashree. In the opening paragraph of this judgment, I have also narrated relationship between the prosecuting party and the appellants/accused persons. Suffice to state that accused persons are closely related to Manisha, who happens to be the wife of Dhanaji Narsale – maternal uncle of the PW3/victim female child. Her evidence will have to be appreciated by keeping in mind the fact that the PW3/victim

female child is, as such, closely related to the appellants/accused persons, who are parents, brothers and cousins of her maternal aunt. Undisputedly, the PW3/victim female child was residing with her maternal uncles at Village Jaloli for the purpose of education since long and her parents were residing at Village Khairav where facility of school education was not available. The PW3/victim female child, as per her evidence, was taking education in 10th Standard at the relevant time.

6 Evidence of the PW3/victim female child shows the manner in which she was kidnapped at about 10.00 a.m. of 17th January 2012. As deposed by her, appellant/accused no.1 Rahul came from her back side when she was proceeding from the field of Vishnu Narsale, pressed his palm on her mouth, took her to the adjoining field situated at 600 feet away, made her to sit and he also sat near her. The PW3/victim female child deposed that appellant/accused no.1 Rahul, who happens to be real brother of her maternal aunt, threatened her not to shout. In this way, she claims to have stayed with him up to 10.00 p.m. of 17th January

2012 in an open agricultural field where sugarcanes were grown. Her evidence does not show that she made any hue or cry to get herself freed from custody of appellant/accused no.1 Rahul. Her evidence does not show that he was keeping surveillance on her throughout this period of twelve hours. It is not the claim of the PW3/victim female child that she was kept tied by appellant/accused no.1 Rahul in that open field.

7 Evidence of the PW3/victim female child further shows that after 10.00 p.m. of 17th January 2012, as appellant/accused no.1 Rahul told her to follow him silently, she obliged and followed him to another sugarcane field where she stayed in his company throughout the night intervening 17th January 2012 and 18th January 2012. She claimed that in that night appellant/accused no.4 Anand and appellant/accused no.5 Dhanaji, who happen to be brother and cousin of appellant/accused no.1 Rahul, came and gave water to them. They, then, went away. The PW3/victim female child is not attributing any overt act to both of them. She claimed that then

again at about 2.30 a.m., they both came in that agricultural field. She and appellant/accused no.1 Rahul then followed both of them to another agricultural field where sugarcane was grown. The PW3/victim female child claimed that on this occasion also appellant/accused no.1 Rahul pressed her mouth while undertaking journey to the other field.

8 As per version of the PW3/victim female child, at 1.30 p.m. of 18th January 2012, appellant/accused no.6 Mangal came to the agricultural field, provided lunch to them and then went away. Here also, the PW3/victim female child is not attributing any overt act to appellant/accused no.6 Mangal. She claimed to have continued to be in company of appellant/accused no.1 Rahul thereafter. She never claimed that she protested her confinement in the open agricultural field by appellant/accused no.1 Rahul to his mother, his brother or to his cousin, though she is closely related to all of them. This aspect assumes importance considering the fact that the PW3/victim female child is not attributing any overt act to all of them. Natural conduct of a

human being in such situation is to make grievance regarding her sufferings to her close relatives, who, as per her claim, were visiting her in the open agricultural field, from time to time.

9 The PW3/victim female child testified that at 8.00 p.m. of 18th January 2012, appellant/accused no.3 Urmila and appellant/ accused no.4 Anand came to the field. Appellant/accused no.4 Anand told that in the morning police would come to the spot. Appellant/accused no.3 Urmila told appellant/accused no.1 Rahul to transfer his agricultural land in the name of the PW3/victim female child and to do his work. This evidence also does not reflect any overt act on the part of appellant/accused no.3 Urmila and appellant/accused no.4 Anand.

10 The PW3/victim female child further stated that in the night intervening 18th January 2012 and 19th January 2012, in that sugarcane field, appellant/accused no.1 Rahul committed forcible sexual intercourse with her thrice. In the morning hours,

at about 4.00 a.m. of 19th January 2012, she claimed that appellant/accused no.2 Shankar Jadhav, who happens to be father of her maternal aunt Manisha, came in the field and threatened her not to disclose the incident to anybody. Thereafter, as per version of the PW3/victim female child, appellant/accused no.1 Rahul took her to the bandh of the agricultural field and they both sat on that bandh. Subsequently, police came and took them to the police station. Her cross-examination reveals that during her entire stay of about two full days with appellant/accused no.1 Rahul, she never attempted to flee from his custody. She candidly admitted that on 19th January 2012, she sat on the bandh of the agricultural field with appellant/accused no.1 Rahul for a period of half an hour, till arrival of the police on the spot.

11 The PW3/victim female child was taking education in 10th Standard at the time of the incident in question. The Spot panchnama shows that she stayed with appellant/accused no.1 Rahul in the sugarcane field for those two days. At a distance of about 60 feet from the place where she was in the company of

appellant/accused no.1 Rahul, there was a cart-way. For those two days, she had ample opportunity to extricate herself from the so called clutches of appellant/accused no.1 Rahul, who was brother of her maternal aunt, in whose house she was staying. She never claimed that she was under constant surveillance by appellant/accused no.1 Rahul. She was not kept tied in that open agricultural field. She never claimed to have protested about act of appellant/accused no.1 Rahul to his mother, father, brother or cousin, who are arraigned as accused, particularly when no overt act is attributed to all of them, except father of appellant/accused no.1 Rahul. In this view of the matter, it is hard to believe the version of the PW3/victim female child in respect of the incident in question, as it is not in tune with the probability factor. Evidence of the PW3/victim female child indicates that she was in company of appellant/accused no.1 Rahul on her own volition. Her evidence indicates that she was a consenting party to what was happening with her from 17th January 2012 to morning hours of 19th January 2012. It cannot be said that the PW3/victim female child was under the spell of threat of appellant/accused

no.1 Rahul, who is her near relative. She has not described what were the threats extended by him and how she felt that such threats would materialize, if she attempted to get herself freed from company of appellant/ accused no.1 Rahul. Omnibus statement is made by her in her evidence that even appellant/accused no.2 Shankar Jadhav had threatened her not to tell the incident to anyone. What was the threat is not specified by her in order to enable this court to assess the effect of such threat on her. To crown this all, as per own version of the PW3/victim female child, she sat with appellant/accused no.1 Rahul on the bandh in the morning hours of 19th January 2012 for half an hour. At that time also, she did not attempt to rescue herself.

12 How the couple was apprehended by police has come on record through evidence of PW5 Ashok Jadhav, Police Head Constable, and PW7 Satish Yelpalle, Police Constable, of Kurkamb Police station. Evidence of PW5 Ashok Jadhav, Police Head Constable, shows that at about 4.00 a.m. of 19th January 2012, maternal uncle of the PW3/victim female child, namely Samadhan Narsale, came to the police station and disclosed whereabouts of

the PW3/victim female child. Therefore, he sent two constables with Samadhan by jeep to bring her to the police station. PW7 Satish Yelpalle, Police Constable, is one amongst those two Police constables. Version of PW7 Satish Yelpalle, Police Constable, shows that along with Samadhan, he went to the spot to find appellant/accused no.1 Rahul and the PW3/victim female child sitting closely to each other on bandh of the agricultural field. That is how they were brought to the police station. This conduct of the PW3/victim female child seen by PW7 Satish Yelpalle, Police Constable, speaks volumes. It indicates that the PW3/victim female child was in company of appellant/accused no.1 Rahul of her own will rather than being there under the spell of terror or threat of accused persons. The evidence on record, as such, indicates that the couple may be in love with each other and appellant/accused no.1 Rahul, taking advantage of this fact, had enticed the PW3/victim female child, and that is how she was kidnapped from the custody of her lawful guardians. It is not seen that there was any element of forcefulness (or taking) in kidnapping of the PW3/victim female child.

13 The prosecution has proved date of birth of the PW3/victim female child by placing on record her Birth certificate issued under the Registration of Births and Deaths Act, 1969, by the Registrar. The said certificate is at Exhibit 48. The prosecution has also examined Record keeper of the Municipal Council, Pandharpur, namely Sulbha Mahimkar as PW9. This witness has also proved entry at Serial no.851 in Births Register kept by the registering authority under the Registration of Births and Deaths Act, 1969. The Birth certificate as well as the Births Register shows that the PW3/victim female child was born on 12th April 1999. As per provisions of Rule 9 of the Maharashtra Registration of Births and Deaths Rules, 1976, the Certificate is issued by the Sub-Registrar acting under the provisions of the Registration of Births and Deaths Act, 1969. Section 7 thereof deals with appointment of Registrars for each local area comprising the area within the jurisdiction of the municipality, panchayat or other local authority. It is the duty of the Registrar to register every birth and every death which takes place in his jurisdiction. This Act mandates that the Registrar should

discharge his duties carefully. Section 8 of this Act mandates each head of the house to report birth in the family to the Registrar. The Act provides for maintenance of register for recording birth and death within the local area. That is how, Certificate at Exhibit 48 came to be issued by the Sub-Registrar as per provisions of Sections 12 and 17 of the said Act. The certificate at Exhibit 48, as such, is issued by the Public Officer and it is a document forming the record of the acts of the Public Officer and therefore the same is a public document within the meaning of the said term as per provisions of Section 74 of the Indian Evidence Act, 1872. The same is admissible in evidence by mere production thereof in view of provisions of Section 77 of the Evidence Act. Section 17 of the Registration of Births and Deaths Act, 1969, provides for search of Birth Register and supply of extract thereof by certifying the same by the Registrar or other authorized Officer. Section 17 of the said Act provides that such extract shall be admissible in evidence for the purpose of proving birth or death to which the entry relates. The Birth Certificate Exhibit 48 is, infact, the extract of Birth Register in respect of entry of birth of the PW3/victim

female child, and as such, admissible in evidence. Section 35 of the Evidence Act, 1872, makes it clear that if entry is made by public servant in the official book in discharge of his official duty, then such entry becomes the relevant fact and admissible in evidence.

14 With this evidence, the prosecution has proved that the PW3/victim female child, on the date of the offence, was below 16 years of age. As such, even though the act of joining the company of appellant/accused no.1 Rahul by the PW3/victim female child and subsequent indulgence in sexual intercourse appears to be consensual, still, it cannot be said that the prosecution has failed to prove the offence punishable under Sections 363 and 376 of the Indian Penal Code, committed by appellant/accused no.1 Rahul. The PW3/victim female child was enticed by him to join his company and then he had committed rape on her. Version of the PW3/victim female child, in respect of the incidents of sexual intercourse with her by appellant/accused no.1 Rahul, is gaining corroboration from evidence of PW11

Dr. Supriya Hambire, Medical Officer, who had examined her soon after the incident. This Medical Officer found hymen of the PW3/victim female child torn at 5 O'clock and 6 O'clock position. Those tears were found to be fresh with minimal bleeding.

15 Evidence of PW13 Rajendra Takne, Assistant Police Inspector, who conducted the investigation, shows that during course of investigation he had seized clothes of the PW3/victim female child vide Seizure panchnama Exhibit 85. Sample of blood of appellant/ accused no.1 Rahul was also collected. The clothes of the PW3/victim female child were subjected to chemical analysis. Chemical Analyzer's Report at Exhibit 71 shows that blood of appellant/accused no.1 Rahul is of "B" group. Salwar and knicker of the PW3/victim female child were found to be stained with semen of "B" group. This evidence corroborates the version of the PW3/victim female child regarding commission of rape on her by appellant/accused no.1 Rahul.

16 Now let us examine what offence, if any, is proved to have been committed by appellants/accused nos.2 to 6, who happen to be relatives of appellant/accused no.1 Rahul. As stated in foregoing paragraphs, appreciation of evidence of the PW3/victim female child does not show that these accused persons or any of them have abetted, instigated, provoked or incited appellant/accused no.1 Rahul to kidnap the PW3/victim female child from custody of her lawful guardians. It is not seen from the evidence of the PW3/victim female child that these accused persons or any of them, by any means, induced her to leave company of her maternal uncles, with intent that she will be seduced or forced to sexual intercourse with appellant /accused no.1 Rahul. So far as appellant/accused no.1 Rahul is concerned, he is also not liable for conviction and resultant sentence for the offence punishable under Section 366A of the Indian Penal Code, as that penal provision deals with procuring a minor girl with intent that she will be forced or seduced to sexual intercourse with some other person. Version of the PW3/victim female child, even

if accepted, only reflects that other accused persons had visited the agricultural field, where she was in company of appellant/accused no.1 Rahul, for supplying water or meals. This evidence cannot be construed to mean that these accused persons had wrongfully concealed or confined the PW3/victim female child after her kidnapping by appellant/accused no.1 Rahul. So far as offence of criminal intimidation is concerned, which is held to be proved against appellant/accused no.1 Rahul Jadhav and his father appellant/accused no.2 Shankar Jadhav, by the learned trial court, I am of the considered opinion that there is no sufficient evidence to come to the conclusion that both these accused persons are guilty of criminal intimidation of the PW3/victim female child. Her omnibus statement that these two accused persons threatened her is not of sufficient gravity to convict them on this count. This evidence is lacking details, and therefore, it is not possible to conclude that the threatening was of such a magnitude to create alarm in the mind of the PW3/victim female child. Thus, it cannot be said that the prosecution has established the offence punishable under Section 506 read with 34

of the Indian Penal Code against appellants/accused nos.1 and 2, namely, Rahul Jadhav and Shankar Jadhav. In other words, it is not proved by the prosecution that appellant/accused nos.2 to 6 have abetted appellant/accused no.1 Rahul in kidnapping and procuring the PW3/victim female child and then confining her or concealing her. The learned trial court erred in holding the offence, alleged against these accused persons, proved, with a reasoning that they were well aware of the kidnapping of the PW3/victim female child but none of them had relieved her.

17 In the result, I hold that the prosecution has failed to prove any offence against appellant/accused nos.2 to 6, deserving their acquittal of the offence held to be proved against them. So far as appellant/accused no.1 Rahul is concerned, offence of kidnapping the PW3/victim female child, so also, the offence of committing rape on her, is required to be held as proved, in the wake of cogent and trustworthy evidence in support of this Charge, which includes evidence regarding the age of the PW3/victim female child, forensic evidence and medical evidence.

However, appellant/accused no.1 Rahul is entitled for acquittal of the offence punishable under Section 366A of the Indian Penal Code as well as Section 506 read with 34 of the Indian Penal Code.

18 So far as quantum of sentence is concerned, for the offence punishable under Section 376 of the Indian Penal Code, appellant/accused no.1 Rahul is sentenced to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.20,000/- and in default, to undergo rigorous imprisonment for 1 year. It is well settled that it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was committed. The sentencing court is expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The sentence is required to be adequate, just and proportionate with the gravity and nature of the crime. At the same time, circumstances of the accused are also required to be kept in mind while imposing the

sentence, as one of the objects of the criminal justice system is to rehabilitate the transgressors and the criminals.

19 Prior to substitution by the Criminal Law (Amendment) Act, 2013, the offence of rape was punishable with imprisonment of either description for a term which shall not be less than 7 years but which may be for life or a term which may extend to 10 years apart from fine. Sub-section (2) of Section 376 of the Indian Penal Code, however, was prescribing the punishment of rigorous imprisonment for a term which shall not be less than 10 years but which may be for life, apart from imposition of fine. The case in hand is not falling in sub-section (2) of Section 376 of the Indian Penal Code, as it stood prior to amendment in the year 2013.

20 In the matter of **State of Himachal Pradesh vs. Mange Ram**¹ the evidence on record was showing that the prosecutrix was below 16 years of age. It is held thus in paragraph 16 by the Honourable Apex Court while sentencing the accused in

1 2000 CRI.L.J. 4027

that case :

“16 In view of the foregoing conclusions, we reverse the findings of the learned Sessions Judge which was confirmed by learned Single Judge and find that the accused is guilty of the offence punishable under Section 376 I.P.C. As regards the sentence, we take a lenient view for the reason that the prosecutrix and accused are related. They were both teenagers with an age difference of about 2-3 years. Both were immature and young. Evidence indicates no marks of violence at all on any part of the body of the prosecutrix. The incident happened in 1993. After the acquittal by passage of time, the members of the two families must have buried their hatchet if any arisen on account of this incident. The learned Counsel for the respondent argued that a further order for custodial sentence at this distance of time may cause rapture to social harmony in the village life and may only help to rekindle the flames of anger which have been smouldering for so long between near relatives. Having regard to all these matters, we hold that sentence already undergone by the accused would be sufficient to meet the ends of justice, and we do accordingly.”

21 In the matter of **Zindar Ali SK vs. State of West Bengal and Another**² there was no love affair between the prosecutrix and the accused but the accused was after the prosecutrix requesting her to marry him and ultimately committed forcible sexual intercourse with the prosecutrix. While dealing with quantum of sentence, following are the observations of the Honourable Apex Court in paragraph 15 of the judgment :

“15 This takes us to the last argument about the quantum of sentence. The Courts below have awarded 10 years of imprisonment and a fine of Rs.5,000. In our opinion, considering the fact that the incident took place about 6 years back and the fact that the accused is behind the bars for last about 5 years, as also poverty on the part of the accused, we feel that the sentence already suffered would be sufficient. The sentence of fine is however, confirmed. Fine, if recovered shall be paid to the Prosecutrix. She shall be intimated by sending notice to her. We, accordingly, modify the sentence. The appeal is disposed of with this modification.”

2 2009 CRI.L.J. 1324

22 In the matter of **Phul Singh vs. State of Haryana**³, the accused was aged about 22 years and was not a habitual offender. He was found guilty of the offence punishable under Section 376 of the Indian Penal Code. While dealing with quantum of sentence, following are the observations of the Honourable Apex Court found in paragraphs 7 and 8 of the judgment :

“7 He is a youth barely 22 with no criminal antecedents save this offence. He has a young wife and a farm to look after. Given correctional courses through meditational therapy and other measures, his erotic aberration may wither away. A man like the appellant has a reasonable prospect of shaping into a balanced person, given propitious social environs, curative and congenial work and techniques of internal stress release or of reformatory self expression.”

“8 In this background, we regard a four year term of rigorous imprisonment more hardening than habilitative, even though we deplore the sex violence the young appellant has inflicted on his cousin's wife snatching a tricky opportunity. Even

3 1980 CRI.L.J. 8

so, the incriminating company of lifers and others for long may be counter-productive, and in this perspective, we blend deterrence with correction and reduce the sentence to rigorous imprisonment for two years. We wish to emphasise that the special circumstances of this case constrain us to relent a little on principle because the restorative approach to sentencing has been jettisoned by the courts below.”

23 Lastly, in the matter of **State of Rajasthan vs. N.K. (Accused)**⁴ the Honourable Apex Court has observed thus while deciding the quantum of sentence for the offence punishable under Section 376 of the Indian Penal Code.

“19 Now remains the question of sentence. The incident is of the year 1993. The accused was taken into custody by the police on 3.11.1993. He was not allowed bail. During the trial as also during the hearing of the appeal by the High Court he remained in jail. It is only on 11.10.1995 when the High Court acquitted him of the charge that he was released from jail. Thus he had remained in jail for a little less than two years. Taking into consideration the

4 2000 CRI.L.J.2205

period of remission for which he would have been entitled and the time which has elapsed from the date of commission of the offence, we are of the opinion that the accused-respondent need not now be sent to jail. It would meet the end of justice if he is sentenced to undergo imprisonment for the period already undergone by him and to a fine of Rs.2000/- with further simple imprisonment of one year and nine months in default of payment of fine as passed by the Trial Court. The appellant is allowed time till 1st May, 2000 for payment of fine. The accused-respondent is on bail. The bail bonds shall stand discharged on payment of fine as directed. Ordered accordingly."

24 In the case in hand, because of penury appellant/accused no.1 Rahul was required to be provided with legal aid to prosecute his appeal before this court. The offence took place in January 2012. At the relevant time, the sentence procedure for the offence punishable under Section 376 of the Indian Penal Code was ranging from 7 years to imprisonment for life. In the case in hand, appellant/accused no.1 Rahul at the time of commission of offence was barely 20 years old, as seen from the

charge-sheet itself. Evidence on record unerringly points out that the PW3/victim female child was residing at the maternal house of his sister Manisha. She was niece of Manisha – sister of appellant/accused no.1 Rahul. Evidence of the PW3/victim female child shows that the couple was in love with each other and that is how, she was found in company of appellant/accused no.1 Rahul, who enticed her and committed rape on her. Considering age of appellant/accused no.1 Rahul as well as the inter-se relations between the parties and the fact that appellant/accused no.1 Rahul had no criminal antecedents, sentenced imposed on him by the learned trial court appears to be too harsh. It needs to be scaled down to rigorous imprisonment for 7 years for the offence punishable under Section 376 of the Indian Penal Code. Similarly, the default sentence imposed on appellant/accused no.1 Rahul of 1 year for the offence punishable under Section 376 of the Indian Penal Code is excessive and the same is also scaled down to six months. So far as the sentence of imprisonment as well as fine imposed for the offence punishable under Section 363 of the Indian Penal Code is concerned, the

same is maintained. In the result, the following order :

ORDER IN CRIMINAL APPEAL NO.380 OF 2014

- i) Criminal Appeal No.380 of 2014 is partly allowed.
- ii) Conviction and resultant sentence of appellant/accused no.1 Rahul Jadhav for the offence punishable under Section 366A and 506 read with 34 of the Indian Penal Code is quashed and set aside.
- iii) Conviction and resultant sentence of appellant/accused no.1 Rahul Jadhav for the offence punishable under Section 363 of the Indian Penal Code is maintained.
- iv) Conviction of appellant/accused no.1 Rahul Jadhav for the offence punishable under Section 376 of the Indian Penal Code is maintained. However, his sentence on this count is modified, and for this offence, he is directed to undergo rigorous imprisonment for 7 years and in default of payment of fine of Rs.20,000/-, he is directed to undergo rigorous imprisonment for 6 months.
- v) Criminal Appeal No.380 of 2014 stand disposed off in accordance with this order.

ORDER IN CRIMINAL APPEAL NO.381 OF 2014

- i) Criminal Appeal No.381 of 2014 is allowed.
- ii) Judgment and order dated 27th February 2014 passed by the learned Additional Sessions Judge, Pandharpur, in Sessions Case No.28 of 2012, so far as it relates to conviction and resultant sentence imposed on appellant/accused nos.2 to 6 is quashed and set aside.
- iii) Appellant/accused nos.2 to 6 stand acquitted of offences with which they are charged and held to be proved by the learned trial court.
- iv) Their bail bonds stand cancelled.
- v) Criminal Appeal No.381 of 2014 stands disposed off accordingly.

(A. M. BADAR, J.)