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

CRIMINAL APPEAL NO. 581 OF 2012

KAILASH KISAN MEMJADE

..APPELLANT

Vs

THE STATE OF MAHARASHTRA

..RESPONDENT

Ms. Farhana Shah, appointed Advocate for Applicant.
Mrs. V.S. Mhaispurkar, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 10th APRIL 2018.

ORAL JUDGMENT:

1] The present appeal is directed against the Judgment and Order dated 4th April 2012 passed by the learned Sessions Judge, Pune in Sessions Case No.395 of 2011, thereby convicting the appellant under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for six months; under Section 342 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default of payment of fine

to further undergo rigorous imprisonment for one month and under Section 506(2) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo rigorous imprisonment for three months.

By the said Judgment and Order, the learned Sessions Judge has directed that the substantive sentences to run concurrently. The said Judgment and Order dated 4th April 2012 is impugned herein.

2] By an Order dated 28th January 2014, Smt. Farhana Shah, the learned Advocate was requested by this Court to espouse the cause of the appellant in the present appeal to which she had gracefully acceded.

3] Heard Smt. Farhana Shah, the learned Advocate for the appellant and Ms. Mhaispurkar, the learned APP for the State.

4] The victim girl was aged about 12 years on the date of incident and therefore with a view to protect the identity of the victim girl who was a minor and in consonance with the provisions of Section 228(A) of the Indian Penal Code, the detailed narration of facts mentioned in the first information report and in the statement of the victim is hereby avoided.

5] The prosecution case in brief is as under:

(i) The appellant was working as Laboratory Assistant with Saint Hildas High School, Pune. The victim girl was studying in 5th standard, Section-B in the said school and was aged about 12 years on the date of incident i.e. on 23.2.2011. Her timing of the school was 10.00 am to 4.15 p.m.. Miss Chaitrali, Ms.Nisha, Ms. Ruksar and Ms. Rupali were also students of the said School and were close friends of the victim girl. Adjacent to class-room of the prosecutrix, there was a computer Section and Laboratory of the school. As the victim girl alongwith other students used to visit the laboratory for experiment and writing practicals, she was knowing the appellant and used to call him as 'Kailash uncle'. That the appellant used to pressurise the victim girl and other girl students to fetch water for him and to sweep the laboratory.

(ii) That on 23.2.2011 the victim girl as usual attended her school. In the 5th period when the class-teacher had gone to other class, the appellant asked the victim girl to come out for fetching water for him, however, she did not oblige him. That during the lunch recess, the appellant waited for the victim girl in the door of the class-room and asked her to fetch water for him in the water bottle. Therefore victim girl fetched

water and then went to the laboratory for giving it to the appellant. The appellant thereafter closed the door of the laboratory and took her to the inner room of the laboratory, gaged her mouth by means of a cotton ball and committed rape upon her. The appellant thereafter threatened the prosecutrix by saying that, if she discloses the incident to anybody, he will cut her by knife. After the threat of dire-consequence, the appellant opened the door of the laboratory. The victim girl came out of the laboratory weeping profusely. As it was lunch recess time, the friends of the victim girl saw her and the appellant coming out of the laboratory. The victim girl was weeping profusely as she had suffered the trauma and was silent, her friends asked her the reason about weeping. The victim girl initially did not disclose anything as she was under the fear of threat extended by the appellant, her friend Ms. Rupali slapped on her cheek and made her to speak. The prosecutrix thereafter disclosed the entire incident of the said sexual assault upon her by the appellant to her friends.

(iii) On 24.2.2011 after the school hours, her friends Ms. Rupali, Ms. Chaitrali and Ms. Nisha went to the house of the victim girl and disclosed the said fact of commission of sexual assault upon victim girl to her mother. The victim girl thereafter confided with her mother and grand-mother and

disclosed the incident to them. The mother of the victim girl then checked her private part and thereafter along with other close relatives and neighbouring ladies went to Saint Hildas High School and contacted Head Mistress Smt. Stella David and narrated the incident to her. However, unfortunately the said Head Mistress told them that she is going out of station and will return on Monday. The Head Mistress instructed mother of the victim girl not to disclose the incident to anybody till her return and on return she would take necessary action.

(iv) The mother of the victim girl after discussing the said matter with her close relatives and other ladies, lodged the first information report with the Khadak Police Station, Pune on 25.2.2011. The said report is numbered as Crime No.62 of 2011 under Sections 342, 376 and 506(2) of the Indian Penal Code against the appellant. The appellant came to be arrested on 25.2.2011 itself. The medical examination of the victim girl was conducted by Dr. Milind Waghmare (PW No.9). After completion of investigation, the police submitted chargesheet before the Court of competent jurisdiction.

(v) As the offence punishable under Section 376 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Magistrate

committed the said case to the Court of Sessions as contemplated under Section 209 of Cr. P.C.

vi) The Trial Court framed charge below Exhibit-7. The said charge was read over and explained to the appellant to which he denied and claimed to be tried. The prosecution in support of its case, examined in all twelve witnesses. The learned Trial Court after recording the evidence and after hearing the parties to the said case, was pleased to convict the appellant by the impugned Judgment and Order dated 4th April 2012 as stated hereinabove.

6] The prosecutrix in her substantive evidence before the Trial Court has narrated the entire incident and has also identified the appellant as the perpetrator of the present crime. She has in detailed narrated the facts of sexual assault committed by the appellant upon her and threats of life administered by him. She has further stated that when her friends saw her profusely weeping while coming out of the computer laboratory, they enquired with her about the reason for it and when she could not explained the incident, her friend Ms. Rupali slapped her and made her to speak upon which she told the fact of sexual assault upon her to Ms. Rupali. The evidence of Ms. Rupali (PW No.4) duly corroborates the version of the

prosecutrix in all respects. The evidence of mother of the prosecutrix (PW No.2), further corroborates the evidence of the prosecutrix on all counts including the fact that she examined the private part of the prosecutrix immediately. The evidence of prosecutrix, Ms. Rupali (PW No.4) and the mother of prosecutrix (PW No.2) undoubtedly lends assurance to the prosecution case in all respects.

7] The evidence of Dr. Milind Waghmare (PW No.9) who has conducted medical examination upon the prosecutrix has clearly opined that the prosecutrix was subjected to sexual assault. The Doctors namely Dr. Ajay Taware (PW No.11) and Dr. Gururaj Lacchyan (PW No.12) deposed that the appellant was potent enough to have sexual intercourse.

8] It is the well settled position of law as has been enumerated by the Hon'ble Supreme Court in the case of Aman Kumar And Anr Vs. State Of Haryana [AIR 2004 SC 1497], that the prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. That there is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. That in the later case, there is injury on the physical form, while in the former it is both physical as well as

psychological and emotional. The same view is further expressed by the Supreme Court in the case of State of Himachal Pradesh Vs. Shree Kant Shekari [AIR (2004) SC 4404].

9] The evidence on record thus fully establishes the guilt of the appellant beyond reasonable doubt. It is to be noted here that, there was no reason for the prosecutrix to implead the appellant falsely in the present crime. In the present case, the substantive evidence of the victim girl is indubitably trustworthy and reliable. The medical evidence on record also duly corroborates the version of the victim girl.

10] In view of the above, this Court is of the opinion that the learned Trial Court has rightly convicted the appellant for the charges framed against him. There is no error in the Judgment and Order passed by the Trial Court.

11] In view thereof, the conviction and sentence of the appellant is upheld. Appeal is accordingly dismissed.

12] Before parting with the judgment, this Court deems it appropriate to place on record a word of appreciation for the efforts put in by Smt. Farhana Shah, the learned Advocate appointed to represent the appellant, in ably assisting this Court. Her professional fees are quantified

at Rs.5000/- to be paid to her by the High Court Legal Services Committee.
The professional fees be paid within a period of three weeks from the date
of receipt of this Order.

(A.S.GADKARI, J.)