

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 934 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-X
Mukam Post, Mothi Jui,
Tal.Uran, Dist.Raigad.
(with a view to conceal an
identity of the informant,
she is referred as
"victim girl-X)

... RESPONDENTS

W I T H

CRIMINAL APPEAL NO. 919 OF 2014

Mr. Datta Somnath Jadhav,
Aged about 43 years, adult,
Indian inhabitant, Occ : Service
R/o.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-X
Mukam Post, Mothi Jui
Tal. Uran, Dist.Raigad ... **RESPONDENTS**

W I T H

**CRIMINAL APPEAL NO. 160 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, Occu. Service,
R/o. Prathamesh Society,
Flat No.10, Lokhadipada, 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. 934/2014.

Mr. Sathyanarayanan, Advocate for Appellant in Criminal Appeal No. 919/2014

Mrs. M.H. Mhatre, A.P.P. for Respondent – State in Criminal Appeal No. 934/2014 and Criminal Appeal No.919/2014 and for Appellant in Criminal Appeal No.160/2015.

...

**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. 919 of 2014 filed by accused No.1 Datta Somnath Jadhav (for the sake of brevity, hereinafter would be referred as accused No.1), is directed against the Judgment and Order dated 28th October, 2014 passed by the Additional Sessions Judge, Raigad-Alibag thereby convicting accused No.1 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 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 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 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. 934 of 2014 filed by Vanita Vasant Patil (for the sake of brevity hereinafter would be referred as accused No.2) 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 for the offence punishable under Sections 292, 509, 109 of Indian Penal Code read with Sections 14 and 17 of POSCO 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 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. 160 of 2015 is filed by the State for enhancement of the sentence imposed upon accused No.1 and 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] Complainant/victim girl (with a view to conceal an identity, name is not disclosed) resides at village Mothi Jui, Tal.Uran along with her mother, two sisters and brother. Her father Tulshiram Bhoir is no more. In the year 2013, she was taking education as regular student in VIIth standard, in Z.P. Primary School at village Mothi Jui. Accused No.1 was employed as teacher in the said school. At the relevant time and prior to the incident, he was discharging his duties, as class teacher of the victim. While accused No.2 was working as head mistress in the said school. At about two months prior to filing of the complaint, during the first recess in the school, at about 12.00 noon, complainant/victim girl was playing in the school premises along-with other

students. At that time, accused No.2 called her in the office, and told her to clean the room where rice was stored (for short, "rice room"), which was adjacent to the office of head mistress. As soon as complainant went inside the said rice room, accused No.2 bolted the door of the said room from outside. Accused No.1 was present in the said room, and he caught hold the hands of complainant and then kept her on the bench by removing her wearing clothes, and thereafter snapped the photographs of the chest and private part of complainant, on his mobile. So also, accused No.1 laid the victim girl on gunny bag (Gonpat) and pressed her breast and also told her to take his private part into her mouth, which she refused and so, accused No.1 penetrated his penis into the private part of the complainant and also threatened her to keep quiet. Accused No.1 told complainant to wear her clothes, and also threatened her that if she endeavor to disclose

the incident to others he will beat her like dog. Thereafter, accused no.2 removed the bolt of the door and the complainant went to her class room.

B) After some days, accused No.2 called the complainant to her office, and then told the complainant to go inside the rice room and when the complainant entered into the rice room, accused No.1 came in the said room and accused No.2 bolted the door of the room from outside. Then accused No.1 gave chocolate to the complainant and kept her on the bench with an intention to snap her photographs, and accordingly, the accused No.1 took photographs of her chest and private part on his mobile. Then after some days, accused No.1 again called the complainant. But the complainant did not go, so, accused No.1 got annoyed. One day accused No.1 threw duster towards victim girl-X which was hit on the head of the victim girl-X. Then the victim

girl-X informed the said incident to her mother. However, her mother did not lodge any complaint. As the victim girl-X came to know about the complaint lodged against accused No.1 by another school girl, she got courage to lodge the complaint. Accordingly, she lodged the report in Uran Police station on 22nd January, 2013. Police Inspector - Avate reduced the report of the complainant into writing and registered an offence vide Crime No.13/2013 and handed over the investigation to ACP - Borate. ACP - Borate visited the spot and prepared spot panchanama at the place of incident shown by the victim girl-X. So also, ACP - Borate prepared the panchanama in presence of forensic expert and seized gunny bag (Gonpat) from the spot. He seized the clothes of the complainant vide seizure panchanama. Accused No.1 came to be arrested in Crime No.10/2013 registered with Uran Police Station under Sections 354, 509 of the Indian Penal Code (for short,

"IPC") in which two mobiles were seized from accused No.1 vide arrest panchanama and ACP - Borate conducted the said panchanama as well as panchanama of the two mobiles containing obscene photographs of the student girls. ACP - Borate arrested the accused. Accused No.1 while in police custody showed his readiness to produce his clothes used at the time of the incident and accordingly, ACP - Borate prepared memorandum of accused No.1 and subsequently seized the clothes at the instance of accused Datta Jadhav vide seizure panchanama.

C) The complainant was examined by Dr. Minakshi Sawant of NMMC hospital, Washi and she issued medical examination report with an opinion that, hymen of victim girl-X was torn and admit one finger easily. ACP - Borate obtained the spot map from Circle Inspector, Koproli. As per the directions of ACP - Borate, PSI - Puri recorded

the statements of school students including the victim girl-X. So also, ACP - Borate recorded the statements of witnesses including guardian of the girl students. ACP - Borate sent the seized articles to Chemical Analyzer Office and received the Chemical Analysis reports in this behalf.

D) During the course of investigation, it was transpired that accused No.1 committed rape on minor victim girl-X 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 caused harassment of the girl students including the complainant, and also snapped obscene photographs of the complainant on his mobile and accused No.2 abetted accused No.1 in commission of aforesaid offences. After completion of the investigation, the investigating officer filed charge sheet against the accused persons in the Court of Judicial Magistrate, First Class,

Uran.

E) As the offence under Section 376 of IPC is exclusively triable by the Court of Sessions, the Judicial Magistrate, First Class, Uran committed the case bearing R.C.C. No. 54/2013 to the Sessions Court for trial.

F) 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 also under Section 67B of Information Technology Act, as 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 in the manner stated in paragraphs 1 and 2 herein before, the Criminal Appeal No. 919 of 2014 is preferred by the appellant Datta Somanth Jadhav and Criminal Appeal No.934 of 2014 Appeal is preferred by appellant – Vanita Vasant Patil challenging the conviction and sentence. As already mentioned in paragraph 3, Criminal Appeal No. 160 of 2015 is preferred by the State seeking for an enhancement of the sentence imposed upon the accused persons.

7. Learned counsel appearing for the Appellant- Vanita in Criminal Appeal No.934 of 2014 submitted that the appellant has been falsely implicated in the alleged incident. Though the victim girl-X alleged that she was sexually assaulted, however she admits that she did not suffer any bleeding during an alleged incident of rape. Even the Medical Officer (PW-12) who

examined the victim girl-X has specifically stated that the victim girl-X was not having any injury on her private part. The Medical Officer has specifically admitted that, generally if a tender aged girl like victim is raped, there is every possibility of having injuries on her private part, and therefore the version of PW-1 victim girl-X is unbelievable. Learned counsel further submits that version of the victim girl-X 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 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

1 AIR 1977 SC 1307

2 (1987) 1 SCC 679

3 1990 (1) BLJR 139

4 AIR 2018 SC 3978

been happened on Sunday, because on Sunday every school remains closed and there was no reason for the victim or the accused to attend the school on Sunday. Further, the victim has admitted that after 5th day of the incident she narrated the alleged incident to her mother, but the conduct of her mother is unnatural as mother has neither taken to her daughter to the hospital nor reported the incident to the Police, Principal or father of the victim girl-X. 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 mother. 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.

9. Learned counsel further submits that PW-2 has not supported the evidence of PW-1, as PW-2 has stated only about the indecent behaviour of accused No.1 and nothing has been stated about the sexual assault. PW-3 literally denied the version of PW-1 and exonerated the Appellant Vanita about any incident alleged to have happened in rice room. The evidence of PW-4 is not in consonance with the evidence of PW-1, as victim girl PW-1 has nowhere stated that she was pushed in the rice room. Even the evidence of PW-6 and PW-7 does not support the prosecution case. PW-7 stated that Appellant Vanita was in class room on the day of alleged incident and therefore it is doubtful whether really the incident had taken 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 relevant observation made in the case of **Dasarathi Mahanto V/s The State**⁵ (Para 7 and 9) and **Arbind Singh V/s State of Bihar**⁶. Learned counsel submitted that, the evidence of the victim girl-X and other girls is totally inconsistent with the medical evidence, and therefore, said evidence can not be believed and as a result the entire prosecution shall fail. 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 V/s The State of Punjab**⁷. 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 aforesaid submission, learned counsel placed reliance upon the ratio laid down in the case of

5 27(1961)CLT 169

6 AIR 1994 SC 1068

7 AIR 1975 SC 1727

Surjan and others vs. State of M.P.⁸ and Mohd. Ali Alias Guddu vs. State of Uttar Pradesh⁹. In support of aforesaid submissions, learned counsel further placed reliance 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.**

10. Learned counsel appearing for Appellant – Jadhav, in Criminal Appeal No. 919 of 2014 has adopted the arguments advanced by the learned counsel appearing for the Appellant – Vanita. In addition to it, learned counsel submitted that there is an inordinate delay of about two months in filing the first information report and therefore it is doubtful whether really such incident of sexual assault was happened. The informant vaguely stated in the FIR that the

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.)

incident occurred prior to two months of the incident but she does not remember the date of such incident. 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 bring on record medical evidence showing that sexual assault was committed on the victim girl-X. 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 while convicting both the Appellants. But so far as the quantum of sentence is concerned, she 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 accused No.1 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 by the Trial Court. Therefore learned A.P.P. prays that Criminal Appeal No. 160 of 2015 filed by the State 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 fifteen witnesses. As the allegations are of sexual a assault on a minor girl, we would not like to disclose the identity of the victim girl-X, as also the prosecution witnesses who are the minor girls and victim of sexual assault. The Supreme Court in the case of **Dinesh Alias Buddha vs. State of Rajasthan**¹³ 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

13 (2006) 3 SCC 771

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. Puttaraja*¹⁴)."

14. The prosecution has examined PW-1 victim girl (henceforth we would refer her as "victim girl-X"). The incident took place in the year 2012 when the age of victim girl-X 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-X 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-X in

14 (2004) 1 SCC 475

camera, the trial Court has allowed the mother of the victim girl-X i.e. informant, and also one lady police officer to be present. The evidence of informant shows that she was residing along with her mother, two sisters and one brother. At the time of recording her evidence, she was studying in P.N.P. school at village Mothi Jui. Her evidence shows that she studied up-to 7th standard at Primary School at village Mothi Jui. While studying in Primary School in 7th standard, accused No.1 was her class teacher and accused No.2 was Headmistress of the school. Her evidence further shows that she was studying in 7th standard, division A in Primary School and her class room was near to the office of Headmistress i.e. accused No.2. There was a computer room near the office of Headmistress. The school time from Monday to Friday was 10.30 a.m. to 5.00 p.m. and on Saturday the school time was from 7.00 a.m. to 11.00 a.m. Their short recess from Monday to

Friday was at 12.00 noon and the lunch recess was at 1.30 p.m. till half an hour. Accused No.1 used to teach her all the subjects. In absence of accused No.1, another teacher namely Pol or accused No.2 used to teach the students. Her evidence further shows that accused No.1 used to ask her whether she was undergoing M.C. period and whether to give pills/tablets for it. While attending the classes in the class room, Accused No.1 used to ask her, whether she is taking air from beneath side at the sitting place. Accused No.1 used to beat the boys with rod, and also used to beat the girls on buttock. Her uniform was half shirt and petticoat. Her evidence further shows that Accused No.1 used to catch hands of girl students and touch their breasts/chest due to which the girl students feel ashamed. Accused No.1 used to threaten the girls that, in case they disclose the incident to someone else, he would beat them mercilessly.

15. The evidence of PW-1 victim girl-X further shows that two months prior to filing of the report, accused No.2 called her during the lunch period and told her to clean the room where the rice was stored, and so she went in the said rice room. When she entered into the said room, accused No.2 bolted the door of the said room from outside. Accused No.1 was already present in the said room. Accused No.1 caught hold her hands and pulled her towards him. She tried to rescue but accused No.1 stripped her clothes and laid her on a mattress. Accused No.1 also removed his clothes. Accused No.1 penetrated his private part into her private part. She tried to cry but said accused threatened her to beat. Said accused No.1 also pressed her breasts. Accused No.1 snapped photographs of her breast and private part on his mobile. Then accused No.1 told her to wear the clothes and also gave call to accused No.2.

Accused No.2 removed the door-bolt of the room from outside. She narrated the incident to accused No.2 but accused No.2 told her that accused No.1 was like her father. Then she went to her class room.

16. The evidence of victim girl (PW-1) further shows that one Kunal Bhoir who was studying in her class, on one Sunday came to her house to call her so as to go to the school since accused No.1 has called her in the school. So she went to the school. She met there to one girl student (name is not disclosed), who was studying in her class. Accused No.1 called that girl student in the computer room by keeping the victim outside the said room. There was door to the computer room. Then the said girl student came out of the computer room. The said girl student told the victim that accused No.1 removed her clothes and snapped her photographs. The evidence of

victim girl-X further shows that, then accused No.1 called her inside the computer room and snapped photographs of her breast and private part on his mobile and also told her not to disclose the said fact to others. She further named PW-2, PW-4 and other girl students, who were studying in her class. Her evidence further discloses that at one time, accused No.1 beat her with duster, as she did not follow his directions. The first information report (Exhibit - 16) was shown to her during recording of her evidence and she stated that the contents are as per her narration and the said report bears her signature. Her evidence further shows that Police came to her school and inspected the spot. She was medically examined by the doctor. When she was shown Article No.2/1 Payjama, No.2/3 Underwear, No.2/2 Slip and Article No.3 rice bag, she identified the same.

17. During the course of cross examination,

victim (PW-1) stated that she knows the watch time, she came to the Court at about 11.30 a.m. to 12.00 noon on the day of recording her evidence. She knew English months and the month in which her evidence was recorded, was June. She further stated that there used to be Summer vacation of one and half months to them in each year. She admits that school closes w.e.f. 15th April and opens in the first week of June. She further stated that her mother and friends were accompanying with her at the time of filing report. PW-2 and other three girls who were studying in her class, were accompanying with her. She lodged report in the Police Station. At the time of filing report, she was not knowing full name of Jadhav Sir (accused No.1) and Patil Madam (accused No.2). Nobody has told her the full name of accused at the time of filing of report. Victim volunteered that when she entered in 7th standard, at that time accused No.1 told his full name to

them. There used to be Diwali vacation for 8 days to her school, but she does not remember exact month. There were in all fourteen teachers in her school including both accused. Their lunch recess used to start at 1.30 p.m., the first short recess of her school was at 12.00 `O' clock and the same was for 10 minutes. She stated that accused No.2 Patil madam called her in the recess at 12.00 O'clock. She further states that she was present in the room of rice till half an hour and during the said period, her school period was started. According to her, half an hour means 5 to 10 minutes. The work of snapping her photographs and the work of illegal act with her occurred within half an hour and then she went to her class room. She does not remember the exact period and its subject going on in the class room when she went to her class room. Pol madam was teaching in the class room at that time. At that time PW-2 and other named three girl students were present in

her class room. On the said day, the school closed at about 5.00 to 5.30 p.m.

18. During further cross examination, victim (PW-1) further stated that, she has shown the place of incident to Police. She does not know the word "panchanama". She does not remember the exact date on which she showed the spot to the Police. She has shown the place of incident to Police at about 12.00 noon to 1.00 p.m. Her photographs were snapped by making to sit her on the broken bench. She further stated that at first accused No.1 laid her on the Gonpat and committed sexual act with her and then snapped her photographs. Her mother narrated incident to Police. She has read over the contents of complaint narrated by her mother to Police. She knows the month of December. She filed a report two months after the incident. She does not remember whether the incident occurred in the month of December or not. On the day of incident,

she was in her school uniform when she went to her school on the call of Kunal. She further stated that she lodged a report after the report was lodged by another victim girl (we would refer her as "another victim girl-Y). She admits that she narrated the incident to her mother and then they came to Police Station for lodging report. One day before filing report, she herself and her mother went to hospital at Vashi for her medical examination and lady doctor examined her. Lady doctor asked her about the incident and she narrated the incident to her. The incident occurred once in room of rice and once in computer room. She further stated that except rice room and computer room, accused No.1 did not commit any sexual act with her at any other place. She has worn school uniform when incident in rice room was occurred. She does not remember whether police collected her school uniform from her or not. She further stated that duster hit by accused No.1 was

struck on her head, she did not sustain bleeding injury but suffered giddiness. She further stated that she did not suffer any bleeding to her private part when accused No.1 penetrated his private part into her private part. She however stated that she suffered pain. She admits that villagers took a Morcha to the Police Station after the incident. Further the defence has brought on record certain omissions in her evidence which she stated to the Police but not mentioned in the FIR. She further stated that she went to Police Station along with her mother and 5-6 girl friends by vehicle. She herself and her girl friends took unanimous decision to go to Police Station. She admits that 300 to 350 students were taking education in her school. She stated that there were two windows to the rice room but both the windows were in closed condition.

19. During further cross examination, victim (PW-1) further stated that she did not narrate the incident to Pol Madam. Her girl friends asked where she went and she narrated the incident to 5-6 girl friends. She does not remember whether she sustained bleeding injury or other her clothes were torn or not. She further stated that when she went to Police Station at that time villagers, some women and Sarpanch of her village were present in the Police Station. She has stated before the Police at the time of lodging report that accused No.2 called her during the lunch recess, accused No.1 gave call to accused No.2 and accused No.2 removed the door bolt from the outside, she narrated the incident to accused No.2 and accused No.2 told her that accused No.1 was like her father. She was unable to assign any reason as to why the aforesaid facts are not written in her report (Exhibit-15).

20. We have carefully perused the evidence of victim girl (PW-1). As she was minor at the time of recording her evidence, the trial Court has taken every precaution and asked her certain questions to ascertain whether she knows the difference between true and false. Considering the nature of case, the statement of informant victim girl-X was recorded in camera. Though at the time of recording evidence of the informant, mother of the informant and one lady Police Officer were present, if the provisions of the Protection of Children from Sexual Offences Rules, 2012 are perused, it provides that a support person to take care of the child can accompany the child victim during the course of proceedings. The informant has specifically stated about the sexual assault by accused No.1. She has specifically stated that accused No.2 forced her to go into the rice room and bolted the said room from the outside. The record of the Trial Court shows that for entering

in the rice room, one has to go through the office of head mistress (accused Vanita). The victim girl-X further stated that accused No.1 was already present in the said rice room. She has in clear words stated about the sexual assault committed by accused No.1. Her evidence further shows that accused No.1 snapped photographs of her breast and private part on his mobile and thereafter he gave call to accused No.2 who removed the door bolt of the room from outside. The evidence of PW-1 further shows that after some days again she was called in the school by accused No.1 and forced her to remove her clothes and again snapped photographs of her breast and private part on his mobile and threatened her not to disclose the incident to anybody. Her evidence further shows that at one time, as she did not respond to the call of accused No.1 and did not act as per his say, accused No.1 assaulted her by throwing duster towards her in the class room

which struck on her head due to which she suffered giddiness. Thus it appears that evidence of PW-1 is trustworthy and reliable. She had given rational answers to the questions which were put to her. So as to ascertain her competency to depose before the Court. Though the prosecution has brought on record few contradictions and omissions regarding the spot, benches in the school, date, month and year of the incidents, in our opinion, the said contradictions and omissions are of a minor nature and do not affect substratum of the prosecution case.

21. The prosecution has examined PW-2 (name is not disclosed), minor girl student. Before recording her evidence the trial Court has followed the same procedure which was followed while recording the evidence of victim girl-X and after satisfying itself, the trial Court has recorded the evidence of PW-2. The evidence of

this witness was recorded in camera and mother of witness and also one lady Police Officer were present at the time of recording of the evidence.

22. The evidence of PW-2 shows that she studied up-to 7th standard at Primary School, Mothi Jui since 1st standard. Her evidence further shows that she knows accused No.2, head mistress of the school, accused No.1 - class teacher and she also knows victim girl-X. Her evidence further shows that when she was studying in 7th standard at that time victim girl-X was studying with her and another victim girl-X (who has filed separate proceedings alleging similar allegations as to the victim girl-X). Her evidence further supports the evidence of victim girl-X regarding the timing of her primary school including short recess and lunch recess. Her evidence further shows that accused No.1 was teaching them all subjects. She was studying in 7th-A standard in which some boys

were also studying with her. Their class room was adjacent to the office of accused No.2. The computer room was also adjacent to her class room. Her class room was in between the office of accused No.2 and computer room. There was a separate room for storing rice in her school.

23. The evidence of PW-2 further shows that in her class room, there were 17 girl students including her. Accused No.1 used to beat the boys with rod and girls on buttock by hand. Accused No.1 used to utter obscene words before the students. There were benches in her class room. Accused No.1 used to ask the girl students whether they were taking air from beneath side if sat on the bench. Accused No.1 used to stare at their chest. Accused No.1 used to touch the chest of girl students and due to the same, they felt ashamed. She has named other girl students including PW-5 who were studying with her. Her

evidence further shows that she along with other girl students made complaints against accused No.1 to the headmistress - accused No.2, but accused No.2 told them that Jadhav Sir was like their father and further told not to take his talk seriously.

24. The evidence of PW-2 further shows that two months prior to the registration of offence, she along with other girl students was playing in the school premises during the lunch recess at which time accused No.1 called the victim girl X and took her in the rice room. Her evidence shows that as she was playing with victim girl, so she knew that accused No.1 called the victim girl. Her evidence further shows that victim girl came in their class room after some time. Her evidence further shows that when asked, victim girl told her that accused No.1 called her in the rice room and behaved in indecent manner with ill motive.

Her evidence further shows that after some days, when she along with other girl students was sitting in the Varanda in the school premises, at that time accused No.2 called the victim girl by saying that accused No.1 has called her for some work and so victim girl-X went in the office accused No.2. Accused No.2 took the victim girl-X in the rice room and bolted the said room from outside. Victim girl-X came to the class room after one hour and at that time she was in frightened condition. Her evidence further shows that accused No.1 also called another victim girl and when she went in the rice room accused No.2 bolted the door of rice room from the outside. Her evidence further shows that at one time accused No.1 pelted a duster towards the victim girl-X which hit on the head of victim girl-X, due to which she suffered giddiness. Her evidence further shows that the victim girl in the present case and another victim girl lodged reports and Police

recorded her statement. Police made inquiry with her in presence of her mother. When photographs on arrest memo were shown to her, she identified the photographs of accused No.1 and accused No.2.

25. During the course of cross examination of PW-2, she stated that her date of birth is 13th February, 2000. Police did not collect her birth certificate from her parents. She admits that victim girl-X and another victim girl were attending the school after occurrence of incident in the rice room as well as incident of pelting duster by accused No.1 and uttering of obscene words by accused No.1. She admits that accused No.1 was teaching them including victim girl-X and another victim girl-Y. She further admits that after the afore said incidents victim girl-X and another victim girl-Y were playing and taking meal with them in the school. She further stated that mother of victim girl-X had been to the school

after the incident of pelting duster by accused No.1 towards victim girl-X. She personally did not inform anybody about the aforesaid incident including her parents. She further stated that she knows time and watch. Victim girl-X and another victim girl lodged reports in the Police Station in the month of January. She further stated that the incident of calling victim girl-X in the rice room occurred during the lunch recess i.e. from 1.30 p.m. to 2.30 p.m. and the said incident took place prior to two months of filing report. This witness PW-2 was further cross examined by the defence and brought some omissions on record regarding her Police statement.

26. Thus after careful perusal of the evidence of PW-2, it shows that she has given minute details about her class room, computer room, rice room, office of accused No.2 and fully supported the version of victim girl-X. Though the

defence has brought on record some contradictions, omissions and improvements in the evidence of PW-2, those are of minor nature and therefore much importance need not be given to the same. Thus the evidence of PW-2 is reliable, trustworthy and consistent with the prosecution case and the same lends support to the version of PW-1 victim girl-X.

27. The prosecution examined PW-3 (name is not disclosed). As this witness was also minor, before recording her evidence the trial Court has followed the same procedure which was followed while recording the evidence of victim girl-X and after satisfying itself whether she was able to give rational answers to the questions put to her, the trial Court has recorded the evidence of PW-3. The evidence of this witness was recorded in camera and mother of witness and also one lady Police Officer were present at the time of

recording of the evidence.

28. The evidence of PW-3 shows that, at the relevant time when the incident took place, she was studying in 7th-A class at primary school Mothi Jui. There were 17 girls including her and 14 boys studying in her class room. There were 14 teachers in Z.P. primary school, Mothi Jui. Accused No.1 was their class teacher and accused No.2 was headmistress. Her evidence shows that accused No.2 used to sit in her office in the school and her class room of 7th - A standard was adjacent to the office of headmistress Vanita and computer room was adjacent to their class room. Her evidence further shows, the school timing, recess timing. Her evidence further shows that victim girl - X, PW-4 and other girl students were studying in her class room in 7th- A standard. Her evidence further shows that accused No.1 while teaching them used to taunt the girl students in filthy language and

he used to beat the girl students on buttock by hand. Accused No.1 used to touch the chests of the girls and used to ask whether the girl students were undergoing M.C. period and whether to give pills or tablets for it. Her evidence further shows that they were sitting on the benches in the school and accused No.1 used to tell them whether they were taking air from the beneath if they sat on the bench in the crossed legs. Due to such taunts of accused Jadhav, the girl students including her, feel ashamed. Her evidence further shows that when the girl students made complaints against accused No.1 to accused No.2, accused No.2 told them that Jadhav sir was like their father.

29. The evidence of PW-3 further shows that accused No.1 used to stare at the chest of girl students. Regarding the incident which took place in computer room of the school, her evidence shows that on the day of incident she was present in the

school Varandha. At that time victim girl-X was also present there. Accused No.2 called and pushed the victim girl-X inside the computer room and bolted the door of computer room from outside. Her evidence further shows that at the relevant time, she was standing there and told accused No.2 that accused No.1 was present inside the computer room but accused No.2 scolded her and told to go in the class room. Her evidence further shows that the victim girl-X returned to the class room at about 4.00 p.m. when she was in frightened condition. Her evidence further shows that two weeks thereafter same incident took place with another victim girl, accused No.2 called another victim girl and compelled her to go in the computer room and bolted the said room from outside.

30. During the course of cross examination, PW-3 stated that the incident of taunting by accused No.1 to the girl students occurred in the

month of December, 2012. She has further stated that her mother was present with her in the Police Station at the time of recording of her statement and one Ashok Anna was also present. She further stated that she has narrated the incident to Ashok Anna and her mother.

31. Thus the evidence of PW-3 is also consistent with the evidence of PW-1 and PW-2 and lends support to the prosecution case. The evidence of PW-3 shows that accused No.1 used to behave in indecent manner with the girl students and used to taunt them in filthy language. Further the evidence of PW-3 shows that she witnessed the incident of accused No.2 compelling victim girl-X to go inside the computer room and bolting the said room from outside.

32. PW-4 is another minor girl student who was, at the relevant time studying in 7th standard

of the primary school Mothi Jui along with victim girl-X. She has supported the version of PW-1, PW-2 and PW-3. Her evidence shows that accused No.1 was behaving in indecent manner and was talking in filthy language with girl students. Her evidence further shows that accused No.1 used to touch her chest by holding her arms. Her evidence further shows that at one time when she was in the school, accused No.1 called her and asked whether she was undergoing M.C. period and to tell him if M.C. period is started. Regarding the incident which took place in the rice room, the evidence of PW-4 shows that accused No.2 called victim girl-X and pushed her inside the rice room and bolted the door of said room from outside. Her evidence further shows that after 2-3 days when she asked about the incident, victim girl-X told her that accused No.1 behaved with her in indecent manner. This witness was extensively cross examined by the defence but nothing contrary was brought on

record.

35. Thus PW-4 has supported the version of PW-1, PW-2 and PW-3. Though some contradictions and omissions are brought on record in the evidence of PW-4 by the defence, but those are minor in nature and does not affect to the core of the prosecution case.

36. PW-5 Pramila Satish Gade is the witness to the spot panchanama (Exhibit - 22) of the rice room in the school and she has proved the spot panchanama. PW-6 is the minor boy student, who was studying with victim girl-X, at the relevant time. We would not disclose his name. PW-6 has supported the version of prosecution witnesses PW-1 to PW-4. His evidence shows that accused No.1 used to talk with girl students in filthy language. His evidence shows that on one day Jadhav sir asked him to go to the house of victim girl-X and to

tell her secretly her that Jadhav was calling her and therefore, he went to the house of victim girl-X and told that accused No.1 was calling her and accordingly she went to the school.

37. PW-7 is another minor girl student, who was taking education at the relevant time in 7th standard along with victim girl-X. She has supported the version of PW-1 to PW-4. Her evidence shows that accused No.1 used to behave in indecent manner with the girl students and used to touch the chest of girls.

38. PW-8 Nitesh Balkrishna Ghase who is panch to the spot panchanama (Exhibit-26) and seizure panchanama (Exhibit-27) in respect of seizure of gonpat from the spot, which was used by accused No.1 while committing sexual assault on victim girl-X. PW-9 Manish Vasant Ravaiya is panch witness and he has proved the memorandum of

accused No.1 (Exhibit-32) and seizure panchanama (Exhibit-33) regarding the seizure of clothes of accused No.1, which he was wearing at the time of incident, which were seized at the instance of accused No.1. PW-10 Anil Khalchandra Patil is also panch witness, who has proved the seizure panchanama (Exhibit-36) regarding the seizure of clothes of victim girl-X, which she was wearing at the time of incident.

39. The prosecution has examined PW-11 Prashant Narayan Patil. He deposed that he was called in the Police Station as panch for the personal search of accused No.1. His evidence shows that personal search of accused No.1 was taken in his presence in which two mobiles were found in possession of accused No.1, one of Sony Ericson company and another of Karbon company. He proved seizure panchanama (Exhibit - 39) regarding seizure of said two mobiles.

40. The evidence of PW-11 – Prashant further shows that on 20th January, 2013, Uran Police called him as panch in Police Station and police produced two mobiles seized earlier in his presence and another panch Ashok Patil. Police opened the seal of the said mobiles. Police attached the memory card of Sony Ericson company mobile, to the laptop through card reader and restored data recovery software in the laptop. Then police opened the software and scanned the memory card and found 4-5 folders. Then J.P.E.G. camera file was found in the folder in which 128 recovered photographs were found. Then each photographs were seen and photographs nos.115 to 127 were found in respect of obscene photographs of the school girls. He proved panchanama (Exhibit-40) regarding the obscene photographs. When he was shown muddemal article No.1 mobile of Sony Ericson Company along with memory card and

Article No.2 mobile of Karbon company along with memory card, he identified the same.

41. Thus through the evidence of PW-11 – Prashant, the prosecution has brought on record that there were about 13 obscene photographs of the school girls in the mobile of accused No.1, which were seized by the Police. Thus the evidence of this witness supports the prosecution case that accused No.1 used to take obscene photographs of the girl students in his mobile phone.

42. PW-12 – Dr. Minakshi Rohit Sawant is the Medical Officer who examined the victim girl-X (PW-1). Her evidence shows that on 21st January, 2013 Uran Police referred victim girl-X to her hospital for medical examination. The age of the said girl was 13 years. The said girl was referred to her hospital for medical examination in respect of rape. She has taken history from the victim

girl and the victim girl stated before her the history that teacher called her in an empty class room, gave a toffee after which she got dizzy, but did not loose consciousness and teacher touched her chest, undressed her and himself and inserted penis in her vagina and this happened once and he took photographs of the incident. Her evidence further shows that she examined the victim girl on 21st January, 2013 and on examination, she found that the victim girl was conscious, co-operative, well oriented to time, place and person. The victim girl was not having any injury on her private part and her sex characters were developed. Her evidence further shows that hymen of victim girl was torn having old tear and was admitting one finger easily and two fingers but with pains. No foreign body was found and no signs of STD. Her evidence further shows that as per history given by victim girl and as per her medical examination, she was of the opinion that

hymen of the victim was torn and admits one finger easily indicative of sexual assault.

43. Thus the evidence of Medical Officer (PW-12 – Dr. Minakshi) shows that history of sexual assault was given by the victim girl-X. PW-12 opined that hymen of victim was torn and admits one finger easily, indicative of sexual assault.

44. Learned counsel appearing for the Appellants submitted that the evidence of the medical officer (PW-12) discloses that victim girl-X was not having any injury on her private part and therefore in the submission of learned counsel, the alleged incident of sexual assault did not happen at all. At this stage, it would be useful to refer the observations of the Supreme Court in the case of **Ranjit Hazarika V/s State of Assam**¹⁵. In the facts of the said case of **Ranjit**

¹⁵ (1998) 8 SCC 635

Hazarika, the prosecutrix, a young girl of 14 years of age was subjected to the rape by the appellant therein. In para-5 of the Judgment it is observed thus:

"5. The argument of the learned counsel for the appellant that the medical evidence belies that testimony of the prosecutrix and her parents does not impress us. The mere fact that no injury was found on the private parts of the prosecutrix or her hymen was found to be intact does not belie the statement of the prosecutrix as she nowhere stated that she bled per vagina as a result of the penetration of the penis in her vagina. She was subjected to sexual intercourse in a standing posture and that itself indicates the absence of any injury on her private parts. To constitute the offence of rape, penetration, however slight, is sufficient. The prosecutrix deposed about the performance of sexual intercourse by the appellant and her statement has remained unchallenged in the cross-examination. Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we find that in the cross-examination of the prosecutrix, nothing has

been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake. The opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the prosecutrix. This opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. Besides, the opinion of the doctor appears to be based on "no reasons".

45. In present case, the prosecution has brought on record sufficient medical evidence disclosing that hymen of the victim girl-X was torn having old tear, indicative of sexual assault. Therefore, we find no substance in the submissions of learned counsel in that behalf.

46. PW-13 Rani Laxman Puri was working as P.S.I. at Panvel Town Police Station at the relevant time. This lady Police Officer has recorded supplementary statement of victim girl on 25th January, 2013. Her evidence further shows that

she recorded statements of witnesses including the victim girl-X on different dates from 23rd January, 2013 to 28th January, 2013.

47. PW-14 Shashikant Devrao Borate, A.C.P. at Port Division Navi Mumbai at the relevant time, was the Investigating Officer in this crime. He deposed about the manner in which he has carried out the investigation. PW-15- Sudam Ganu Avate was Senior P.I. at Uran Police Station at the relevant time, who recorded the first information report (Exhibit-16) of victim girl-X and registered the offence vide Crime No.13/2013.

48. Thus prosecution has brought on record sufficient evidence against accused No.1 and accused No.2. Victim girl-X (PW-1) has specifically stated about the indecent behaviour of accused No.1 and sexual assault committed by him. The evidence of PW-1 discloses that accused

No.1 used to take her obscene photographs. The evidence of PW-1 further discloses that at the time of incident of sexual assault by accused No.1, she was forced to go in the rice room by accused No.2 and thereafter accused No.2 bolted the said rice room from outside and thus the prosecution has convincingly proved that accused No.2 abetted to accused No.1 in the commission of the offence of sexual assault. The other minor school girls who were studying in the class of victim girl-X, at the relevant time i.e. PW-2, PW-3, PW-4 and PW-6 have supported the version of victim girl-X. The evidence of PW-2 shows that she was present when accused No.1 took victim girl-X to the rice room. PW-3 stated that she was present when accused No.2 pushed victim girl-X inside the computer room and bolted the door of the computer room from outside and at the relevant time, accused No.1 was present inside the computer room. PW-4 deposed that accused No.2 pushed victim girl-

X inside the rice room and bolted the door of the rice room from outside. Even PW-6 supported the version of PW-1 that on one Sunday on the say of accused No.1, he went to the house of victim girl-X and told her to go to the school and as per his message, victim girl-X went to the school. Thus all these prosecution witnesses i.e. PW-2, PW-3, PW-4 and PW-6 have supported the version of PW-1. They all have stated in clear words that accused No.1 used to behave in indecent manner with the girl students and used to snap obscene photographs of the girl students in his mobile phone. The prosecution has brought on record through the evidence of PW-11 Prashant, that in the memory card of the mobile phone of accused No.1, as many as 13 obscene photographs of girls were found. Regarding the incident of sexual assault, as observed earlier, the victim girl-X has specifically stated that accused No.2 asked her to go in the rice room on the pretext of cleaning the

said room and when she went in the said room, accused No.2 bolted the door of the said room from outside. Accused No.1 was already present in the said room. Accused No.1 stripped her clothes and laid her on a mattress (gonpat). Accused No.1 also removed his clothes and penetrated his private part into her private part. The evidence of victim girl-X is reliable, trustworthy and inspiring confidence. Nothing significant has been suggested by the defence, as to why her oral testimony should not be believed, or why she would falsely implicate the appellants by putting her reputation at stake. Therefore, the evidence of victim girl inspires confidence. It is the settled position in the law that, if evidence of the victim of sexual assault inspires confidence, it must be relied upon even without seeking corroboration of her statement in material particulars. Minor contradictions and insignificant discrepancies in the statement of the victim, which are not of

fatal nature, shall not be used to throw out an otherwise reliable prosecution case. It is pertinent to note that in present case, the oral testimony of victim girl is corroborated by as many as three prosecution witnesses. Accused No.1 was teacher in the school where victim girl-X was prosecuting her studies and taking undue advantage of the said dominating position as class teacher of class of victim girl-X with the help of accused No.2, he has committed sexual assault on the victim girl-X. Thus the prosecution has proved beyond reasonable doubt that the accused No.1 had committed an offence punishable under Section 376(2)(b) of the IPC read with section 5(c), 6 of the POCSO Act. The prosecution has also proved that accused No.1 has committed offence punishable under Sections 292, 509 of IPC read with section 14 of the POCSO Act read with 67 B of Information Technology Act, so also the offence punishable under Sections 342 and 354 of IPC.

49. The prosecution has brought on record sufficient evidence against accused No.2, showing that accused No.2 has taken active part and fully supported accused No.1 in commission of offence of sexual assault. She abetted accused No.1 in commission of offences as alleged by the prosecution. The prosecution, by bringing on record sufficient, cogent and trustworthy evidence has proved that, accused No.2 had committed an offence punishable under Section 376(2)(b), 109 of IPC read with section 5(c), 6, 17 of the POCSO Act. The prosecution has further proved that accused No.2 had committed an offence punishable under Section 292, 509, 109 of IPC read with Section 14 and 17 of the POCSO Act read with section 67 B of the Information Technology Act, as also the offence punishable under Section 342 of IPC.

50. As observed earlier, victim girl-X was taking education in the school where accused Nos.1 and 2 were the teachers. Thus, victim girl-X was in exclusive custody of accused Nos.1 and 2 when she used to be in the school. Taking undue advantage of the position being teacher, accused No.1 committed sexual assault on girl student i.e. victim girl-X, and in the said commission of offence, accused No.2 had abetted accused No.1 and thus, actively participated in the commission of said offence. At this stage, it would be useful to refer the observations made by the Supreme Court in the case of **Mohan Lal and another V/s State of Punjab**¹⁶. Para 17 and 18 of the judgment reads as under :-

“17. The requirement of education for girls and the functions of a teacher have been dealt with and explained at some length by this Court in *Avinash Nagra v. Navodaya Vidyalaya Samiti*, which read as follows: (SCC pp. 541-42, paras

¹⁶ (2013) 12 SCC 519

11-12)

"11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as 'Gurur Brahma, Gurur Vishnu, Gurur Devo Maheswaraha'. As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to

abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51-A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an enquiring mind but not with blind customary beliefs. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant

to mould the calibre, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by a teacher.

12. It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal

participation in socio-economic and political democracy. Only of late, some middle class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girl. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing-up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher, who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parentis and such is the duty, responsibility and charge expected of a teacher. The question arises whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the

rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but a nail in the coffin."

(emphasis added)

18. As there was a fiduciary relationship between the accused and the prosecutrix being in their custody and they were trustees, it became a case where the fence itself eats the crop and in such a case the provisions of Section 114-A of the Evidence Act, 1872 (hereinafter referred to as "the Evidence Act") (which came into effect from 25-12-1983) are attracted. Undoubtedly it is a case which provides for a presumption against any consent in a case of rape even if the prosecutrix girl is major, however, every presumption is rebuttable, and no attempt had ever been made by any of the appellants or other accused to rebut the said presumption."

51. The defence has challenged the prosecution case on the ground that there has been delay of about two months in filing the first information report. In this respect, it is pertinent to note that the victim girl-X was the

minor girl of aged about 13 years taking education in the primary school and the sexual assault was committed by her teacher. It appears that, the victim girl is coming from socio-economically backward family residing in the village with mother, two sisters and brother. It has come on record that, at the relevant time her father was no more. She was threatened of dire consequences by accused No.1 if she would disclose the incident to anybody. Therefore, it is apparent that due to fear victim girl-X did not disclose the incident to her mother and, when another victim girl lodged first information report in the Police Station against the accused persons, then she got courage and filed first information report against the accused persons. Therefore, delay has been occurred in filing the first information report in afore stated circumstances, which is not fatal to the prosecution case as the case is of sexual assault on a minor girl. The Supreme Court in the

case of **Mohd. Ali alias Guddu vs. State of Uttar Pradesh** (supra), in Para 21 of the Judgment, held thus:

"21. It is apt to mention here that in rape cases the delay in filing the FIR by the prosecutrix or by the parents in all circumstances is not of significance. The authorities of this Court have granted adequate protection/ allowance in that respect regard being had to the trauma suffered, the agony and anguish that creates the turbulence in the mind of the victim, to muster the courage to expose oneself in a conservative social milieu. Sometimes the fear of social stigma and on occasions the availability of medical treatment to gain normalcy and above all the psychological inner strength to undertake such a legal battle. But, a pregnant one, applying all these allowances, in this context, it is apt to refer to the pronouncement in *Rajesh Patel vs. State of Jharkand*¹⁷ wherein in the facts and circumstances of the said case, delay of 11 days in lodging the FIR with the jurisdictional police was treated as fatal as the explanation offered was regarded

¹⁷ (2013) 3 SCC 791

totally untenable. This Court did not not accept the reasoning ascribed by the High Court in accepting the explanation as the same was fundamentally erroneous."

52. In the present case though there is delay of about two months in lodging the FIR, considering the facts and circumstances of the case as discussed herein above in paragraph 51, and also considering the fact that the victim was minor girl of about 12 years of age at the relevant time of commission of offence of sexual assault, which was committed by her teacher, who was supposed to be her custodian and guardian during school hours, the delay in lodging the FIR was not fatal to the prosecution case and same has been properly explained.

53. Learned counsel appearing for the appellants have challenged the oral testimony of the victim girl-X on the ground that, she has not

specifically stated the date and time of the incident. In this respect, it is to be noted that she was minor school going girl, residing in the village in a family having socio-economical backwardness, taking education in 7th standard, and in such tender age offence of sexual assault was committed with her, which with certainty can be said mental trauma to her. Therefore, merely non mentioning of time and date would not nullify overwhelming evidence of victim girl-X and other prosecution girl witnesses supported by the medical evidence and other evidence brought on record by the prosecution.

54. Learned counsel for the Appellants further submitted that the Appellants have been falsely implicated in the incident alleged to have been occurred on Sunday, as on Sunday every school remains closed. In this respect, if evidence of PW-6 is considered, he has specifically stated

that accused No.1 used to come in the school on Sundays also. Further through the evidence of PW-6, the prosecution has proved that on Sunday as per the say of accused No.1, PW-6 went to the house of victim girl-X to call her to the school.

55. So far as the submissions of learned counsel appearing for the Appellants that the prosecution witnesses PW-2, PW-3, PW-4, PW-6 and PW-7 did not support the evidence of PW-1 are concerned, we are not in agreement with the said submissions. We have already discussed in detail the evidence of aforesaid witnesses and we are of the considered view that, those witnesses have fully supported the version of the victim girl-X.

56. Learned counsel appearing for the Appellants have also submitted that the prosecution case is politically motivated and the accused – Appellants are falsely implicated at the

instance of Sarpanch of the village namely Ashok Patil. It is pertinent to note that though the prosecution witnesses have admitted that during the process of filing FIR and recording their statements by the police said Sarpanch Ashok was present with them, but the defence has not brought on record material in defence showing that there was an enmity between said Ashok and the accused persons. The victim girl-X, the prosecution witnesses who were the minor girls and their parents all were the residents of village, and it is a matter of common knowledge that such villagers had no courage to face such uncommon incidents, and so in such a situation they always try to take the assistance of known person/s in the village when they had to go to police station for lodging report of such heinous crime. It is significant to note that the evidence on the record shows that father of victim girl-X was no more when the incident took place and thus there

was no male member in her family. Therefore there is nothing abnormal that while filing the FIR the victim girl-X and so also other girl student, when went to lodge FIR, said Ashok who was the Sarpanch of the village at the relevant time was present in the Police Station. It needs to be remembered that if such ghastly and heinous crimes take place in the villages, it creates serious impact on the minds of the villagers and puts question marks on future of minor victim girls, in view of socio-economical backwardness existing in villages.

57. Thus, as observed earlier, after considering the entire evidence brought on record by the prosecution, it is clear that the evidence of victim girl-X is consistent, reliable and trustworthy. She has specifically stated that accused No.1 committed sexual assault with her and in the said process, accused No.2 had abetted accused No.1 and thus, actively participated in

the commission of said offence. The version of victim girl-X is fully corroborated by the oral account of PW-2, PW-3, PW-4, PW-6 and PW-7. The evidence of minor prosecution witnesses is consistent with each other. Though all the above prosecution witnesses were minor including the victim girl-X, the Trial Court after taking every precaution in that respect, recorded their evidence and their evidence is consistent, trustworthy and reliable. The prosecution has convincingly proved that at the time of assault victim girl-X was minor as at the relevant time she was taking education in 7th standard. Further the prosecution has brought on record the bona fide certificate (Exhibit-68) showing her date of birth as 23rd January, 2000, and the incident of sexual assault took place in the month of December, 2012. Thus at the time of said incident, the age of victim girl-X was about 12 years. Thus, the offence under the relevant provisions of the

POCSO Act has been proved. Even the evidence of PW-12 Dr. Minakshi lends support to the version of the victim girl-X. This medical officer has specifically stated that upon her examination, she noticed that hymen of victim girl-X was torn having old tear. Thus this Medical Officer has also supported the case of the prosecution, including other witnesses.

58. The evidence of minor victim girl-X so also the other minor prosecution witnesses who were studying in the class of victim girl-X shows that accused No.1 used to snap their obscene photographs and in the said process accused No.2 actively supported him. Their said contention is further supported by the evidence of PW-11 Prashant, who has specifically stated that when the mobile phone of the accused No.1 was checked, it was found that there were as many as 15 obscene photographs of girl students. Though the

prosecution has not specifically proved that the said photographs were of the victim girl-X or that of the other prosecution witnesses who were minor girl students, but accused No.1 being in the profession of a teacher of the school, was having no reason to have such photographs in his mobile phone. Even the defence has neither denied nor given any explanation why such objectionable photographs were in the mobile phone of accused No.1. Thus, the prosecution has brought on record sufficient evidence to prove the offence against accused Nos.1 and 2.

59. We have carefully perused the impugned Judgment. The trial Court has considered all the evidence brought on record and rightly convicted and sentenced both the accused for the offences as afore-stated. After considering the entire evidence, the trial Court has observed that complainant has specifically deposed the role

played by accused No.2 in the commission of crime and evidence on record clearly shows that accused No.2 abetted accused No.1 in committing aggravated penetrative sexual assault on complainant minor girl and for snapping obscene photographs of complainant on mobile. The trial Court has further observed that if accused No.2 had not pushed the complainant inside the rice room or computer room and had not bolted the door of the said rooms, then the incident of rape or snapping obscene photographs would not have occurred. The trial Court has thus observed that accused No.2 is also responsible for the commission of offence along with accused No.1. Thus, the trial Court has held accused No.1 and accused No.2 responsible for the offence punishable as observed in Para Nos.1 and 2 of the Judgment, and sentenced them as afore-stated.

60. Upon considering the evidence in its entirety, we are of the considered opinion that the findings recorded by the trial Court are in consonance with the evidence brought on record and therefore we do not think it necessary to cause interference in the findings recorded by the trial Court in convicting and sentencing original accused Nos.1 and 2, and therefore, Criminal Appeal No.934 of 2014 and Criminal Appeal No.919 of 2014 are liable to be dismissed.

61. So far as Criminal Appeal No.160 of 2015 filed by the State for enhancement of sentence is concerned, we are of the opinion that considering the evidence and nature of offence the trial Court has convicted and sentenced both the accused persons for the imprisonment of ten years including other sentences. The sentence awarded by the trial Court is appropriate and no case is made out for enhancement of sentence. Thus, Criminal

Appeal No.160 of 2015 is also liable to be dismissed.

62. In the light of discussion made herein above, we do not find that there is any substance in the Appeals filed by both the Appellants and the Appeal filed by the State. Accordingly, Criminal Appeal No.934 of 2014, Criminal Appeal No.919 of 2014 and Criminal Appeal No.160 of 2015 stand dismissed.

[A.S. GADKARI, J.]

[S.S. SHINDE, J.]