

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.515 OF 2016**

Pintu S/o. Uttamrao Sonale,  
Age-24 years, Occu-Unemployed,  
R/o.Village Manatha, Taluka:Hadgaon,  
District: Nanded

**...APPELLANT**  
(accused)

**VERSUS**

The State of Maharashtra,  
Through the Police Station,  
Manatha, Taluka: Hadgaon,  
District: Nanded

**...RESPONDENT**

Mr.Rajendra Deshmukh, Advocate/Mr.Govind Kulkarni,  
Advocate for the appellant  
Mr.V.S.Badakh, APP for the respondent/State

**CORAM : S.M.GAVHANE, J.**  
**RESERVED ON : 26.03.2019**  
**PRONOUNCED ON : 12.04.2019**

**J U D G M E N T :-**

. By this appeal the appellant/accused challenges the judgment and order dated 28.07.2016 in Special Case (POCSO) No.02 of 2014 passed by Sessions Judge, Nanded convicting and sentencing him for following different offences under the Indian Penal Code (for short 'the IPC') and the Protection of Children from Sexual Offences Act (for short 'the POCSO Act');

a. The appellant/accused is convicted for the offence punishable under Section 376 (2)(n) of the IPC and he shall undergo rigorous imprisonment for ten years and shall also be liable to pay a fine of Rs.1,000/-, in default of payment of fine, he shall suffer rigorous imprisonment for three months.

b. The appellant/accused is also convicted for the offence under Section 5(j)(ii) punishable under Section 6 of the POCSO Act and he is sentenced to suffer rigorous imprisonment for ten years and shall also be liable to pay a fine of Rs.1,000/-, in default of payment of fine, he shall suffer rigorous imprisonment for three months.

c. No separate sentence is awarded for the offence punishable under Section 376(2)(i) of the IPC as the appellant/accused is convicted and sentenced under Section 376 (2)(n) of the IPC.

d. No separate sentence is awarded for the offence under Section 5(1) punishable under Section 6 of the POCSO Act as the said section is equivalent to Section 376(2)(n) of the IPC.

e. No separate sentence is awarded under Section 3 punishable under Section 4 of the POCSO Act as the appellant/accused is convicted and sentenced under Section 5(j)(ii) of the POCSO Act.

f. All the sentences of imprisonment were ordered to run concurrently.

g. The appellant/accused who is in custody since 07.12.2013 has been given set off against sentence for the period undergone by him.

2. The appellant is in jail since 07.12.2013 except period of temporary bail from 03.05.2018 to 07.05.2018 (both days inclusive) as per order dated 02.05.2018 of this Court. Therefore, the appeal was fixed for final hearing as per order dated 09.01.2017.

3. Facts leading to the institution of the present appeal, in short, are as under:-

A] Informant Godavari Sheshrao Narwade (PW-1) resident of Mantha, Tq. Hadgaon, Dist. Nanded lodged a report on 06.12.2013 in Mantha Police Station, that the victim girl (PW-2) aged about 13 years and 6 months is

her daughter and she was taking education in 8<sup>th</sup> std. at the relevant time of incident and her date of birth is 19.05.2000. Accused/appellant is educated unemployed and he is from her community. He is residing in the same locality. It is alleged that appellant used to promise the victim girl that he would get job as a teacher and would perform marriage with her. By taking disadvantage of her tender age accused used to call her and used to commit sexual intercourse against her will. Due to which the victim girl remained pregnant and was carrying pregnancy of seven months. The informant came to know about said fact about two months prior to lodging the report with the police station. She enquired with her daughter the victim about her pregnancy and the victim girl disclosed the informant about the act of the accused. Thereafter, the informant alongwith her daughter the victim girl went to the house of the appellant/accused and requested his parents to perform the marriage of the accused with the victim girl. Thereupon, they said that victim should cause abortion or she (informant) should kill the victim as she has become characterless and refused to marry with the victim girl. On the report crime No.66/2013 under Section 376(2)(h) and 506 of the Indian Penal Code and under Sections 3 & 4 of the POCSO Act was registered against the

appellant/accused and the investigation was commenced.

B] During investigation the Investigating Officer API Bembade (PW-11) recorded the statements of witnesses and also recorded the statement of victim under Section 164 of the Code of Criminal Procedure. He also visited the spot and drew spot panchanama. Appellant was arrested and referred for medical examination. Blood samples of the victim girl and appellant were collected for DNA test. Victim girl was admitted in the hospital and she delivered a female child. Blood sample of the said child was also taken for DNA test. All the collected blood samples were forwarded to the Forensic Laboratories for chemical analysis. After completion of the investigation charge-sheet was submitted in the Court of Sessions, Nanded being a special Court under the POCSO Act.

C] Initially charge was framed under Sections 376 (2)(i) and 506 of the IPC and under Section 3 read with Section 4 of the POCSO Act and additional charge under Section 376(2)(n) of the IPC and under Section 5(j)(ii) and 5(1) of the POCSO Act were framed against the appellant/accused. Accused pleaded not guilty to the charge and claimed trial.

D] To bring home guilt of the accused the prosecution has examined in all 11 witnesses and relied upon the statement of victim (Exh.86) under Section 164 of the Code of Criminal Procedure, DNA report and graph (Exh.71 and 72), medical case record (Exh.51) and discharge card dated 06.12.2010. Considering the evidence adduced by the prosecution and defence of appellant the learned Sessions Judge held that the prosecution has proved all the offences except offence under Section 506 of the IPC, with which the accused was charged and convicted and sentenced him by the impugned judgment and order as mentioned in the opening para of this judgment. Therefore, this appeal by the appellant challenging the conviction and sentences recorded against him on several grounds mentioned in the appeal.

E] Statement of appellant under Section 313 of the Code of Criminal Procedure was recorded. His defence as it reveals from the trend of the cross-examination of the prosecution witnesses and his statement under Section 313 of the Code of Criminal Procedure is that he and the victim were in love with each other. The victim was aged about 18 years and their marriage was performed in Baudha Vihar by one Sunil Chawre Sir. The informant mother of the victim was insisting to perform the marriage on

grand-scale. When he and victim were cohabiting together, victim remained pregnant. His family members could not perform the marriage of victim with him on grand-scale. His parents tried to convince the mother of the victim, but she was not ready for it and therefore, she lodged false report against him.

4. I have heard Mr.Deshmukh, learned counsel for the appellant and Mr.Badakh, learned APP for the respondent/State and with their assistance I have perused the evidence adduced by the prosecution and the impugned judgment and order.

5. Mr.Deshmukh, learned counsel for the appellant submitted that the case of the prosecution is that the victim girl was 13 years and six months on the date of incident which took place between March, 2013 to May, 2013 and as such she was below 18 years of age. As per the prosecution case birth date of the victim girl is 19.05.2000. To prove this birth date the prosecution has relied upon the evidence of the informant (PW-1) mother of the victim girl, victim girl (PW-2) and Headmaster of the school (PW-7) in which the victim girl was admitted in the 1st std and the prosecution has relied upon the documents Exh.40 and 42 respectively copy of the

admission/Nirgam register and the original admission form of the victim girl. According to the learned counsel no ossification test of the victim girl was conducted during the investigation to ascertain her age and therefore, aforementioned documents are doubtful and as such said documents and the evidence of PWs-1,2 and 7 are not sufficient to state that birth date of the victim girl is 19.05.2000 and as such she was below 16 years at the time of incident. Thus, according to the learned counsel finding of the trial Court that the victim girl was below 16 years of age at the time of incident is incorrect and unsustainable.

6. Mr.Deshmukh, learned counsel further submitted that only after seven months pregnancy the victim girl disclosed the incident to her mother (PW-1) and only after seven months pregnancy the informant lodged the complaint in the police station and she kept mum for a period of seven months after alleged incident of forcible sexual intercourse of the appellant with the victim girl and this supports the defence of the appellant that he was married to the victim girl. According to the learned counsel the informant mother of the victim girl was insisting to perform the marriage of the appellant with the victim girl on grand-scale, but the appellant refused

for the same and therefore, the informant and her brother filed false case against the appellant. Further it is submitted that thus, the prosecution has failed to prove the offences against the appellant for which he has been convicted by the trial Court beyond reasonable doubt and as such he is entitled to be acquitted of the said offences by setting aside the impugned judgment and order by allowing the appeal.

7. Mr.Deshmukh, learned counsel for the appellant alternatively submitted that the appellant is behind bar since 07.12.2013 and as such he is in jail for more than 5 years and three months and hence in case, it is held that the appeal sans merit then leniency be shown to the appellant and the period undergone by him since the date of his arrest be treated as sufficient sentence for the offences proved against him and accordingly the judgment and order under challenge be modified by allowing the appeal to the said extent.

8. Per contra Mr.Badakh, learned APP submitted that the prosecution has proved that the date of birth of the victim is 19.05.2000 on the basis of evidence of PWs-1,2 and 7. The Headmaster (PW-7) of the school has produced the record in the form of original admission form of the

victim girl and the copy of the admission register and said documents have corroborated the evidence of PWs-1,2 and 7 regarding birth date of the victim girl. Therefore, according to the learned APP once the prosecution has proved that the age of the victim girl was less than 18 years and she was child within the meaning of definition of the child under Section 2(d) of the POCSO Act it cannot be said that she was consenting party either to the sexual intercourse or to alleged marriage as per the case of the defence and her consent is immaterial. It is further submitted that samples of the blood of the victim girl, the appellant and the female child born to the victim girl on 01.02.2014 were taken and sent to the Chemical Analyzer for conducting DNA test and as per the report of the DNA the victim girl and the appellant are biological parents of the female child. Thus, according to the learned APP the prosecution has proved all the offences for which the appellant has been held guilty and sentenced by the trial Court as mentioned in the opening para of this judgment. Therefore, the appeal sans merit and is liable to be dismissed and thus he claimed to dismiss the same.

9. Considering the conviction and sentence recorded against the appellant for the offences punishable under

Section 376(2)(n), 376(2)(i) of the IPC and under Sections 5(1), 5(j)(ii) read with Section 6 and under Section 3 read with Section 4 of the POCSO Act the age of the victim girl on the date of incident is material because Section 376(2)(i) says that whoever commits a rape on a woman when she is under 16 years of age and definition of child given under Section 2(d) of the POCSO Act says that child means any person below the age of 18 years. As per the prosecution case, the incident took place from March, 2013 to May, 2013. To prove the age of the victim girl at the material time of the incident, the prosecution has mainly relied upon the evidence of PWs-1,2,7 and documentary evidence Exh.39,40,41 and 42.

10. Now coming to the evidence of informant Godavari Sheshrao Narwade (PW-1) the mother of the victim girl, her evidence is that the victim girl (PW-2) is her daughter. Her date of birth is 19.05.2000. Accused is residing opposite to their house. Her evidence that birth date of the victim girl is 19.05.2000 has gone unchallenged during her cross-examination and she has denied that the victim girl was aged between 18 to 19 years at the time of lodging report by her. Thus, nothing is found in favour of the appellant in the cross-examination of the informant and her evidence regarding

the age of the victim girl has not been shattered.

11. The evidence of victim girl (PW-2) is that her date of birth is 19.05.2000. She is knowing the appellant/accused. He is residing near their house. Said evidence of the victim girl has gone unchallenged in the course of her cross-examination on behalf of the appellant taken prior to framing the additional charge against him. After the additional charge was framed the victim girl stated that when she and the appellant had sexual relations she was aged about 18 years and further she has stated that her age is 22 years when her evidence after charge was recorded on 15.07.2016. It appears that after the additional charge was framed against the appellant, her evidence was recorded and at that time the victim girl was own over by the appellant and she has resiled from her earlier evidence recorded on 08.01.2016 in respect of her age. When her evidence recorded on 08.01.2016 about her birth date i.e. 19.05.2000 was not challenged in the course of her cross-examination on behalf of the appellant as observed earlier her evidence after additional charge that she was 18 years when she and the appellant had sexual relations is not sufficient to brush aside her evidence that her date of birth is 19.05.2000. The victim girl has thus corroborated the

evidence of her mother about birth date of the victim girl.

12. The next is the evidence of Kisan Gajanan Landge (PW-7) who is Headmaster of Bapurao Patil Ashtikar Primary School, Mantha and his evidence is that the victim girl is the student of the said school. She was admitted in the 1<sup>st</sup> std on 14.06.2006 and in the admission form, her date of birth is mentioned as 19.05.2000. The admission form of the said student i.e. victim girl is 1198. Copy of the said admission form (Exh.39) bears his signature. Headmaster has further testified on the basis of original admission form and school leaving register that entry regarding admission of the victim girl is on page No.116 at Sr. No.1198 of said register and in the said register also her date of birth is mentioned as 19.05.2000 and copy of said register is proved by this witness as Exh.40. Moreover, this witness has proved Exh.41/copy of school leaving certificate of the victim girl issued to her as she had passed 4<sup>th</sup> std examination. Moreover, he has stated that in the original admission form (Exh.42) of the victim girl her date of birth is 19.05.2000. In the cross examination the evidence of PW-7 that birth date of the victim girl is 19.05.2000 and she was admitted in the school in the 1<sup>st</sup>

std on 14.06.2006 has gone unchallenged. So also, he has denied that, approximate date of birth of the victim girl is mentioned by school authority. Moreover, he has denied that he obtained printed form and prepared false documents and that he is not Headmaster of the school. Of course, he stated that he has no personal knowledge about the date of birth of the victim girl, but when Exh.39 copy of admission form when the victim girl was admitted in 1<sup>st</sup> std of the Bapurao Patil Ashtikar Primary School, Mantha in which PW-7 is a Headmaster shows that date of birth of the victim girl was 19.05.2000 and she was admitted in the school in 1<sup>st</sup> std on 14.06.2006 there is no reason to disbelieve to the evidence of PW-7 regarding birth date of the victim girl even if he has no personal knowledge about the date of birth of the victim girl. Exh.39 copy of admission form, Exh.40 copy of admission/Nirgam and school record, Exh.41 school leaving certificate and Exh.42 admission form when the victim girl was admitted in 5<sup>th</sup> std show that birth date of the victim girl is 19.05.2000. The entry of birth date of victim was taken in the school record in the discharge of official duty by the public authority and as such it is relevant as per Section 35 of the Evidence Act and hence there is no reason to doubt genuineness of the said record. Thus, the evidence of PW-7 and the documents

Exh.39 to 42 have corroborated the evidence of informant (PW-1) mother of the victim girl regarding birth date of the victim girl. Thus, on the basis of above all oral and documentary evidence, I find that the prosecution has proved that date of birth of the victim girl is 19.05.2000 and as such her age at the material time of incident during March, 2013 to May, 2013 was 12 years 10 months to 13 years. Thus, there is no substance in the argument advanced by the learned counsel for the appellant that the documents Exh.39 to 42 referred to above are doubtful as ossification test regarding the age of the victim was not conducted, is not acceptable.

13. Now, it is to be seen whether the prosecution has proved that the appellant has committed rape on the victim girl under 16 years of age, that he committed rape repeatedly on her, and that he has committed penetrative sexual assault on her as alleged by the prosecution. To prove these facts, the prosecution has relied upon the evidence of PWs.1,2,5,6,8,9 and DNA report Exh.72 with opinion. As regards the incident the evidence of victim girl (PW-2) is that in the month of March, 2013 when she was in 8<sup>th</sup> std. he (appellant) called her in his house. He removed her clothes. He committed rape on her. He called her at his house which is opposite to their house.

He said her that he would get job and that he would perform marriage with her and he had committed rape on her. He said her that she should not disclose this fact to her mother and that they would perform marriage. He was calling her for about four months and used to commit sexual intercourse with her. She deposed that as her stomach was inflated she told her mother that the appellant had called her at his residence, he removed her clothes and committed rape. Therefore, her mother visited his house to ask him about the same. His father said that they would not perform marriage and said her mother that she should do whatever she wants. Therefore, her mother lodged the complaint.

14. In the cross-examination on behalf of the appellant she (PW-2-victim girl) stated that they used to talk to each other. She is having love with the appellant at present also. The appellant was ready to perform marriage with her. He is ready to marry with her. As they were to perform marriage they came close to each other. Prior to filing the case they had given one month time to perform marriage. She denied that their marriage is performed and that she is deposing false.

15. When evidence of victim girl was further

recorded after the additional charge was framed against the appellant she stated that prior to the month of March about three months her marriage took place with the appellant and she cohabited with him and as such she tried to support the defence of the appellant that she married with the appellant and then the appellant had sexual relations with her. But, when as referred earlier at the time of recording her evidence prior to framing of additional charge against the appellant, she had denied the suggestions on behalf of the appellant that their marriage was performed and when she deposed that appellant was committing sexual intercourse with her after giving assurance to her that he would perform the marriage with her, her evidence that the appellant had sexual relations with her after she married with the appellant is not believable and acceptable. Another aspect to be noted is that as mentioned earlier the age of the victim girl at the material time of the incident was below 13 years and as it was less than 16 years, it cannot be said that she was consenting party to the sexual intercourse and her consent she being a minor below 16 years was immaterial. Thus, on the basis of her evidence, it can be said that the appellant repeatedly committed sexual intercourse with her (victim girl) and he also committed act of penetrative sexual assault and

aggravated penetrative sexual assault.

16. The evidence of PW-1 mother of the victim girl as regards the incident is that the appellant during March, 2013 to May, 2013 has committed forcible sexual intercourse with her daughter. When she was carrying seven months pregnancy she (PW-1) found her (PW-2's) stomach getting inflated. She asked her and at that time she disclosed her that the appellant called her in his house in the month of March and committed sexual intercourse with her. The appellant used to say her that he would perform marriage with her and he continued to have sexual intercourse with her. She stated that she visited the appellant and his parents, they said that they would not perform the marriage. They said that she should carry her abortion or kill her and removed them from their house. Thereupon, she lodged the report (Exh.16) with the police. Though she has been cross-examined at length on behalf of the appellant nothing is found in his favour. Thus, PW-1 has corroborated the evidence of victim girl (PW-2) regarding the act of the appellant of committing sexual intercourse with her during March, 2013 to May, 2013 and there is no reason to disbelieve the evidence of PW-1.

17. The defence of the appellant is as referred earlier in detail in paragraph 3(E) (supra) and at the cost of repetition his defence is that he and the victim girl were in love with each other, they performed marriage and the victim girl was aged about 18 years and therefore, he has committed no offence. His defence is that mother of the victim girl was insisting to perform marriage of the victim girl on grand-scale to which parents of the appellant refused and hence this false case. All the suggestions put to the informant (PW-1) mother of the victim girl and Investigating Officer (PW-11) were denied by them. Moreover as referred earlier even the victim girl had denied in her evidence which was recorded prior to framing of additional charge that she was married to the appellant. Thus, there is no substance in the defence of the appellant.

18. Now, coming to the evidence of Dr. Ravindra Vishnupant Nakhate (PW-5) who was attached to the Civil Hospital, Nanded at Gynec department at the relevant time, his evidence is that on 07.12.2013 he examined the victim girl and found that she was pregnant and carrying 32 weeks pregnancy. There were no injuries on the private part, breast or on her person. Said evidence has gone unchallenged in the course of his cross-examination on

behalf of the appellant. If this medical evidence is considered on the background of the evidence of the victim girl (PW-2) and her mother (PW-1) said medical evidence corroborates the evidence of these two witnesses that the appellant had sexual intercourse with the victim girl. Not only this but in answer to question No.65 in the statement under Section 313 of Code of Criminal Procedure appellant states that victim girl cohabited with him for three months as a wife and during said period she became pregnant, which clearly shows that appellant had sexual intercourse with the victim girl below 13 years.

19. There is no dispute that the victim girl delivered a female child on 01.02.2014. Material evidence in this respect is of Dr. Abhay Waiko (PW-8) who was attached to the Civil Hospital, Nanded as a Medical Officer at the relevant time. According to him on 01.02.2014 the victim girl was admitted in the hospital. She delivered a female child on 01.02.2014 at 07.20 am. He stated that as the victim girl/patient was unmarried and her age was shown as 13 years, the MLC was prepared in this case and Dr. Sayyad (PW-9) had collected blood sample of the child. Moreover, evidence of Dr. Sunil Kale (PW-6) was attached to the Civil Hospital, Nanded at the

relevant time as Medical Officer in the casualty department shows that on 11.12.2013 after receipt of letter from Mantha Police Station (Exh.34) he collected blood samples of the victim girl and appellant/accused and the same were collected in DNA kit. Said evidence has not been shattered in the course of his cross-examination on behalf of the appellant. PW-9 (Dr.Shaziya Sayyad) has also stated that on 06.02.2014 she collected blood sample of female child/baby of the victim girl for DNA test. There is evidence of Investigating Officer that he sent blood samples of the victim girl, appellant and female child of the victim girl to the Chemical Analyzer for DNA test. Evidence of Supriya Shailesh Gaikwad (PW-10) Assistant Chemical Analyzer shows that on 12.12.2013 they received sample for DNA of the victim girl and the appellant and on 07.02.2014 they received blood sample of baby brought by Police Constable Shri Gaikwad. Her evidence further shows that analysis of three samples were made. It was transpired from it that the DNA profile of the child was matching with father i.e. accused at 50% and mother the victim girl at 50%. Accordingly, they had prepared the table of said analysis and DNA report was forwarded alongwith table of analysis. Said table of analysis and report are respectively Exh.71 and 72. Her evidence further shows that on the basis of analysis, she

formed the opinion that victim girl and the appellant are biological parents of the baby. In the cross-examination she denied that opinion is given approximately. Thus, nothing is found in favour of the appellant in the cross-examination of this witness. Exh.72 results of analysis includes three items i.e. report, interpretation and opinion. Opinion shows that the appellant and the victim girl are concluded to be the biological parents of the baby/ female girl. Thus, results of analysis of blood samples for DNA test corroborates the evidence of the victim girl and her mother that the appellant had sexual intercourse with her as alleged by the prosecution. Apart from this in his statement under Section 313 of Code of Criminal Procedure appellant admits that victim girl delivered female child and so also to the question Nos.50 and 52 in respect of finding of blood samples of victim girl, her child and appellant and that he and the victim girl are biological parents of the female child born to victim girl etc. answers given to said questions by him are that 'he does not know'. As such, he does not deny the fact that he is biological father of female child of victim girl.

20. For the reasons discussed above on the basis of evidence of PWs-1,2,5,6,8,9,10 and results of analysis

and DNA report Exh.71 and 72, I hold that the prosecution has proved beyond doubt that the appellant committed rape on the victim girl under 16 years of age punishable under Section 376 (2)(i) and further he committed rape repeatedly on the victim girl punishable under Section 376 (2)(n) of the IPC. So also, on the basis of said evidence I hold that the prosecution has proved aggravated penetrative sexual assault as the appellant committed penetrative sexual assault on the victim girl/child within the meaning of Section 5(j)(ii) i.e. of making the child (victim girl) pregnant as a consequence of sexual assault and further committed penetrative sexual assault on the child/victim girl more than once or repeatedly within the meaning of Section 5(1) punishable under Section 6 of the POCSO Act. Moreover, on the basis of aforesaid evidence, I find that the prosecution has proved the offence of penetrative sexual assault under Section 3 punishable under Section 4 of the POCSO Act against the appellant/accused.

21. On perusal of the impugned judgment and the order the learned Sessions Judge has properly appreciated the evidence and after assigning the detailed reasons in paragraph Nos. 10 to 40 of the judgment on the age of the victim girl and further after assigning the detailed

reasons after referring the evidence of the victim girl as well as her mother and the medical evidence alongwith report of the DNA test rightly concluded that the prosecution has proved beyond doubt the aforesaid offenses against the appellant and the findings so recorded by the learned Sessions Judge on the points framed for its consideration are proper and correct. The view taken by the learned Sessions Judge holding the appellant guilty for the aforesaid offences is quite just, possible and proper.

22. In view of the above discussion, I hold that on proper appreciation of the evidence adduced by the prosecution the learned Sessions Judge has rightly held the appellant guilty for the aforesaid offences and rightly convicted and sentenced for the offences punishable under Section 376(2)(n) of the IPC and under Section 5(j)(ii) punishable under Section 6 of the POCSO Act and it has rightly not awarded separate sentences for the offence under Section 376(2)(i) of the IPC, under Section 3 punishable under Section 4 and under Section 5(1) punishable under Section 6 of the POCSO Act. Considering the punishments provided for the offences punishable under Section 376 (2)(n) of the IPC and under Section 5(j)(ii) of the POCSO Act, that rigorous

imprisonment for a term which shall not be less than 10 years, but which may extend to imprisonment for life and shall also liable to fine, and in case of offence under Section 376 (2)(n) of the IPC imprisonment for life mean imprisonment for the remainder of that person's natural life, the punishment imposed for these offences on the appellant by the learned Sessions Judge of rigorous imprisonment for ten years with fine is the minimum and proper punishment and therefore, said punishment cannot be reduced to the period undergone by the appellant in the light of alternative submissions made by the learned counsel for the appellant.

23. In view of above discussion, there is no reason to interfere with the impugned judgment and order convicting and sentencing the appellant/accused for the offences mentioned in the opening para of this judgment and since the appeal sans merit, it is liable to be dismissed. Accordingly, the appeal is dismissed.

**[ S.M.GAVHANE, J. ]**