

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 840 OF 2000**

Manoj Hanmant Bhintade
Age-19, Resident of Panas (Hateghar)
Taluka-Jaoli, District-Satara ... Appellant

V/s.

1. State of Maharashtra
2. Ms. 'X' ... Respondents

**WITH
CRIMINAL APPEAL NO.212 OF 2001**

The State of Maharashtra ... Appellant

V/s.

Manoj Hanmant Bhintade
Age-19, Resident of Panas (Hateghar)
Taluka – Jaoli, District – Satara. ... Respondent

Mr. Niranjan Mundargi i/by Mr. Omneel A. Jadhav for the Appellant
in Appeal No. 840/2000 and Respondent in Appeal No. 212/2001.

Ms. P.P. Shinde-APP for the State.

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

RESERVED ON : 10th SEPTEMBER 2020.

PRONOUNCED ON : 1st OCTOBER 2020.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The appellant herein takes an exception to the judgment passed by the Sessions Judge, Satara in Sessions Case No. 99 of 1998 vide judgment and order dated 14th November 2000, thereby

convicting the appellant for the offences punishable under sections 376 and 417 of Indian Penal Code and sentencing him to undergo Rigorous Imprisonment for 10 years and to pay fine of Rs.1,00,000/- on both counts and in default, to undergo further Rigorous Imprisonment for two years.

2. Such of the facts necessary for the decision of this appeal are as follows:-

a) The appellant at the age of 20 had fallen in love with an adolescent girl (hereinafter referred as 'Ms.X') in his native place. The appellant was taking education in a college at Satara, in Science Faculty. In the summer vacation he had been to his native place. The family of the appellant was acquainted with the family of Ms.X. One fine day he had expressed his love for Ms. X. One day when Ms.X had been to the house of Mr. Shedge for watching T.V. the accused-appellant asked her to meet him near the village well. She had alone gone to the well. She had reciprocated his love. She had quietly met him, thereafter, they continued to meet each other. They had vouched their love for each other and wanted to get married. In a moment of passion they had sexual intercourse. Thereafter, he had returned to Satara for pursuing his education but continued to visit his village Panas on each Saturday and Sunday, only to meet Ms. X. They had sexual relations every time they met. She had conceived pregnancy. She had concealed her pregnancy from her mother for quite some time. However, the parents had soon realised about the same. Her parents had gained her confidence and asked about the paternity of

the foetus. She had disclosed the name of the appellant. Thereafter, they had decided to forgive her and had visited the family of the appellant in his absence. The parents of the appellant were not willing to accept the narration of Ms. X and her family members. They had got it verified from their son. The appellant candidly admitted that he was in love with Ms. X. and wanted to get married with her. Initially, they assured the parents of Ms. X that they will consider the proposal of marriage. A village meeting was held since they were simply evading to fix the date of marriage. Ms. X had reached an advance stage of pregnancy. The efforts of the parents of Ms. X had failed. The persuasion of the elderly villagers also did not bear any fruits. Finally, when Ms. X was 32 weeks pregnant, the parents of the appellant refused the proposal. Hence, her mother was constrained to take Ms.X to Panchgani for the purpose of delivery. She gave birth to a baby girl on 2nd January 1998.

3. On 15th January 1998, the parents of Ms. X, along with her, had approached Medha Police Station and lodged a report against the accused-appellant, on the basis of which Crime No. 2 of 1998 was registered against the appellant for the offence punishable under section 376 of Indian Penal Code. The case was committed to the Court of Sessions and registered as Sessions Case No. 99 of 1998. The prosecution examined as many as 8 witnesses to bring home the guilt of the accused-appellant. The case mainly rests upon the evidence of PW.1 victim Ms.X, PW.2, Subhadra mother of Ms.X, PW.3 - Smt. Kusum Ranjane who was residing at Panchgani. PW.4 - Arun Gujar, a Panch to

the seizure of a chit written by the accused to the victim, PW.7 Mr. Suresh Babar - the Gram Sevak of Panas and PW.8 Dr. Balasaheb Jadhav, Medical Officer who had examined Ms.X on 16th January 1998.

4. PW.1-victim had deposed before the Court in consonance with the First Information Report, which is at ***‘Exhibit-12’***. She had stated that the accused had expressed his love for her and asked her to meet him near the well, and also warned her of dire consequences in the eventuality she disclosed about it to her parents. She further stated that he had also expressed his desire to marry her. She had voluntarily been to the well to meet him. On the same day in the night at about 9.00 p.m. he had reiterated his love for her and his desire to marry her. That they had got into an intimate relationship. When he visited her on every Saturday and Sunday, they had sexual contacts more than two to four times. She conceived pregnancy. She disclosed the said fact to the appellant. He had advised her and requested her *“not to abort the fetus”*. He had claimed the paternity of the child and had promised to marry her as soon as possible. According to her, her parents had not realised about the pregnancy till 8 months but thereafter, they realized it because of the enlarged abdomen. Thereafter, her mother had taken her to her aunt’s house at Panchgani. She had narrated the facts to her aunt (PW-3). She stayed with her aunt. She had also admitted that the appellant was frantically searching for her. Her aunt had informed him that Ms.X has been staying at Panchgani with her. The accused visited her at Panchgani. Before her aunt (PW-3) he had vouched his love for Ms.X and had also claimed the paternity of the child to be born. He

had also admitted before PW-3 that he desires to marry Ms.X and that he would persuade his parents to get them married. According to PW-1 the efforts of her parents to get her married to the appellant with the consent of his parents had failed.

5. On 2nd January 1998, she gave birth to a girl child. On 15th January 1998 she lodged the report. According to Ms.X her date of birth is 22nd August 1982. It is elicited in the cross-examination that her elder sister Manisha got married two years prior to 1997. It is elicited in the cross-examination that Ms.X had got acquainted with the appellant in February-1997 and in April 1997, he had expressed his desire to marry her. She has also admitted that she had not disclosed the fact to anybody that the accused had asked her to meet him near the well. Half an hour is required to reach the well from village. She was confronted with her previous statement and she had denied to have stated that her mother had questioned her when she had missed her second menses, and at that juncture, she had narrated the entire incident to her. The said contradiction is marked as portion mark - 'A'.

6. It is also elicited in the cross-examination that she had attended school till October and thereafter, had discontinued her education. Her pregnancy had become a talk of the town and therefore, her mother had taken her to Panchgani. She had also admitted that the appellant met her at Panchgani and had assured her that he would keep up his promise to marry her. She had personally met the mother of the accused in the 8th month of pregnancy. His

mother had raised suspicion and therefore, she presumed that the accused would not marry her. She had not disclosed to her mother that she had been to meet the mother of the appellant. It is admitted that her parents were trying to get her married with the accused-appellant but there was a strong resistance from his parents.

7. Ms.X had proved the chit at '**Exhibit-13**' as the chit which he had written to her when she was at Panchgani. She has identified his hand-writing and his signature. She had repeatedly stated that the accused-appellant had told her not to abort the foetus.

8. At this juncture, it would be pertinent to appreciate the contents of Exhibit-13 dated 14th December 1997, written by the appellant to Ms. X. The contents of the letter show his immense and unflinching love for her. He had convinced her that the child, to be born, is the testimony to their love. He was feeling sad that their love was misconstrued by the villagers and there were rumors about their love affair. That he did not like to visit the village in her absence and that he visited all the places where they used to meet. That, his parents were opposing their marriage but he could not even think of living without her. He had expressed in the letter that irrespective of all hurdles he would marry her. He had reassured her of his intention to marry her.

9. It is admitted by her that for the first time she has disclosed her date of birth to be 22nd August 1982. It is clear that in the course of investigation the birth extract of Grampanchayat was not on record.

The Headmaster of the school was not examined to prove the school leaving certificate.

10. The school leaving certificate of Ms.X is at '**Exhibit-14**, which shows that her date of birth is 4th June 1982 whereas, the extract of birth and death register of village Panas indicates that the date of birth is 22nd August 1982 and the same was registered on 23rd August 1982. It is pertinent to note that the said certificate was issued on 30th October 2000. The evidence of victim has commenced and concluded on 2nd November 2000. It is clear that the certificate was issued only two days before the victim had stepped into the witness box. On 2nd November i.e. on the same day, an additional charge u/s.417 of IPC was framed against the appellant.

11. PW-2 is Smt. Subhadra is the mother of Ms.X. She has stated in her deposition that birth date of Ms. X is 4th June 1982. She had given the approximate date of birth as she was not carrying the birth extract alongwith her. PW.2 has categorically admitted that in the 3rd month of pregnancy she had asked her daughter about her last menses, and at that time, she had realised that her daughter has conceived pregnancy two months ago. That, she was engaged in agricultural work and, therefore, could not pay proper attention to her daughter. She had been to the house of the parents of the appellant and had informed them about the intimate relations between the appellant and their daughter. They had enquired with their son and he had admitted about their relationship and about her pregnancy. That,

they had decided to settle the matter mutually and they would get Ms. X married to the appellant.

12. According to PW-2, till the 7th month of pregnancy the parents continued to assure them that they are considering the proposal of getting their son married to Ms.X. However, in the 7th month, they had started evading to fix the date of the marriage. Thereafter, they had flatly refused to get them married. The meeting of the villagers was held. PW.2 and father of the appellant were present. On 2nd January 1998, Ms.X had delivered the child.

13. It is elicited in the cross-examination that in the first meeting in the village, the father of the appellant had stated that they could settle the matter before the next meeting. Reputed persons of the village were present. Almost four meetings were held, but soon the father stopped attending the meeting and therefore, they were rest assured that they would not get their son married to Ms. X and it was at that stage they had decided to lodge a police report.

14. PW-3 Smt. Kusum Ranjane has stated she was working as a tailor at Panchgani. That Ms. X has disclosed to her that the appellant had promised to marry her and had established sexual relationship with her. When PW-3 had been to village Panas, the appellant met her and asked her regarding whereabouts of Ms.X. He sought her permission to meet Ms.X at her place. She agreed. She had seen the appellant talking to Ms.X at Panchgani in her house. He had also

assured PW-3 that he would marry Ms.X after his education is completed and the impediment is that his elder brother is unemployed and unmarried.

15. PW-4 is Arun Gujar who has proved the contents of the panchnama at Exhibit-13 in which, the chit was presented by Ms. X before the police. The birth certificate of new born baby is at ***Exhibit-30*** which shows that on 2nd January 1988 the child (Kalyani) was born at Panchgani and the appellant is shown as the father of the new-born child.

16. PW-7 is Suresh Babar-Gram Sevak of village Panas. He was employed as Gram Sevak since 1984. He produced the original register of birth and death before the Court for the year 1982. He has proved the entry of the birth of Ms.X on 22nd August 1982 which is at Exhibit-32. In the cross-examination PW-7 has admitted that naming ceremony of a new born is not made soon after the birth. Initially, the entry of birth is recorded and thereafter, the information regarding name is mentioned in the register.

17. PW-8 - Dr. Balasaheb Jadhav has examined Ms. X - PW-1 on 16th January 1998. According to him, the age of PW-1 was between 18 years to 22 years. She had delivered the child just two weeks before her medical examination. According to him, the age of PW.1 is determined on the basis of X-ray examination. There was no fusion of iliac-crest. Hence, he gave an opinion that the age of PW-1 is below 22

years. He has also stated that there was fusion of epiphyseal end of elbow and knee bones which clearly indicated that the age of Ms. X is above 18 years. He had agreed with the proposition made by Dr. Modi in medical jurisprudence that *“owing to the variations in climation, dietetic, hereditary and other factors affecting the people of the different states of India, it cannot be reasonably expected to formulate a uniform standard for the determination of the age of the union of epiphysis for the whole of India.”* He had accordingly sent his opinion, about the age of prosecutrix to the investigating officer. The said communication dated 16th January 1998 is a part of the records and proceedings.

18. It is elicited in the cross examination that he had conducted the ossification test for determination of age and therefore, after considering all her physical features along with other factors he had stated that her age was between 18 years to 22 years. The certificate of ossification is at ***‘Exhibit-35’***.

19. The learned counsel for the appellant vehemently submits as follows:-

- a) That PW.1 had been to meet the appellant voluntarily near the village well.
- b) She was acquainted with him.
- c) He had not only expressed his love for her but had promised to marry her.
- d) They had intimate relations.

- e) She had conceived pregnancy and after she disclosed about the same to the appellant, he had insisted upon her, not to abort the foetus as he desired to marry her.
- f) The parents of PW.1 had wanted to get their daughter married to the appellant and therefore had approached the parents of the appellant. That the appellant had admitted candidly before his parents about his intimate love for PW-1 and his intention to marry her.
- g) Meetings were held in the village panchayat to settle the issue mutually. The parents of the appellant postponed their decision to get the appellant married to PW-1 for nearly more than 4 months even after PW.1 had met them personally.
- h) The appellant had continued to visit PW-1 regularly and on each occasion expressed his intense desire to marry her.
- i) He had also met her at Panchgani. F.I.R. was lodged after PW-1 had given birth to their child. That appellant never refused to marry her.
- j) that there is variance in extract of birth certificate. The school leaving certificate shows the date of birth as 4th August 1982 whereas, the village panchayat record shows that the date of birth is 22nd August 1982.

20. The learned counsel has vehemently submitted that the certificate was issued by Grampanchyat only two days before recording of the substantive evidence of PW-1. That there is interpolation in the

birth and death register. PW-7 had brought the original records before the Court. That, there was an attempt to enter the name of PW-1 in the month of September, 1982 but since Ms. X was to state, her date of birth as 22nd June 1982, the register was accordingly tampered with. According to the learned counsel this aspect has to be read in consonance with the admission of PW-1 that for the first time before the Court she had stated that her date of birth is 22nd August 1982.

21. According to the learned counsel, the charge was initially framed only for offence under section 376 of Indian Penal Code on 18th September 2000 and on 2nd November 2000 an additional charge under section 417 of Indian Penal Code was framed. The said exercise was undertaken only after recording the evidence of PW-1 which was concluded on 2nd November 2000.

22. As against this, the learned APP has vehemently submitted that section 375 of Indian Penal Code, sixthly needs to be considered, which read as follows:-

“375. Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First-

Secondly-.....

Thirdly-.....

Fourthly-.....

Fifthly-.....

Sixthly — With or without her consent, when she is under sixteen years of age.”

23. According to the learned APP, under these circumstances, the conviction not only deserves to be confirmed but the sentence deserves to be enhanced as is prayed in Criminal Appeal No. 212 of 2000.

24. The learned APP submits that the prosecution has substantially proved the offence as charged against the appellant. That, the conviction deserves no interference. That, the prosecution has proved its case beyond reasonable doubt.

25. Exh.32 shows that the entry of birth of Ms.X was shown on 22nd August 1982 as well as in September 1982. However, the entry in the month of September was scored off. The register is from January 1982 to December 1982. The entry of birth date appears to be doubtful for the simple reason that the entry of 22nd September is shown at Sr. No.1 and thereafter, there are two entries of 5th September and 18th September. It was therefore scored off and inserted at Entry No.5 on 23rd August 1982 showing the date of birth as 22nd August 1982.

26. PW-7 was studying in school in 1982. He had not taken charge from Pharande, who was then the Gram Sevak and hence, he was not an authority to identify the signature of Mr. Pharande. Upon considering the rival submissions, it would be necessary to appreciate the evidence adduced by the prosecution.

27. There is no doubt that there is inconsistency in the biological age and the birth extract register coupled with the fact that the certificate was issued just two days before the recording of evidence of PW-1. Moreover, the mother of the PW-1 had stated the date of birth of PW-1 as 4th June 1982. PW-2 has no plausible explanation for the variance. If the extract of gram panchayat register was in existence at the time of admitting PW-1 in school and had it been produced before the school authorities, there would have been no inconsistency. It is a fact that the extract of birth and death register was obtained on 30th October 2002.

28. In the case of *Ravinder Singh Gorkhi V. State of U.P.* MANU/SC/8161/2006: (2006) 5 SCC 584, the Apex Court has held as follows:

“The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the Plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of ‘abduction or rape’, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be

deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted”.

29. The learned counsel has also placed reliance upon the judgment of the Apex Court in the case of ***Varadrajan Vs. State of Madras (1965 SC 942)*** only to emphasize that the prosecutrix had attained the age of understanding at the time when she had intimate relations with the appellant and this aspect would go to the root of the matter. In the case of ***Varadrajan (cited supra)***, the offence alleged against the accused was under section 363 of Indian Penal Code. The learned APP reiterates that in view of the minority of the victim the consent of the victim cannot be taken into consideration, as it would be a case of statutory rape. The learned counsel for the appellant submits that it would be necessary to determine as to whether the accused had any intention to cheat the prosecutrix. He had no knowledge that Ms.X is a minor and had therefore proposed marriage. The letter at Ex.13 would clearly establish that the accused had no intention to cheat Ms.X. This has to be read in consonance with the assertion of Ms.X that the accused had insisted upon her not to undergo abortion.

30. As against this, learned APP submits that the requirement of law is clear on the issue that the consent of the minor cannot be taken into consideration as a minor is held to be incapable of giving consent and therefore, the conviction deserves to be confirmed.

31. Admittedly, the appellant and Ms.X were in love with each other irrespective of their age. The appellant was also hardly 20 years old when he fell in love with prosecutrix. They both knew what they were doing and were not only aware of the consequences but were prepared to accept the responsibilities. The appellant wanted to take the responsibility as a father. There is evidence on record indicating the loud and clear intention of the appellant to marry Ms.X and that he did not shirk his responsibility and hence, the charge u/s 417 ought not to have been framed.

32. In the course of investigation, the extract of birth and death register was not on record and hence, the same did not form part of the charge sheet and the same caused grave prejudice to the accused. The records were produced for the first time by PW-7 in the course of trial. There is no justifiable reason to discard the testimony of PW-8, who has determined the age of the prosecutrix on scientific basis. His findings are further fortified by Modi's Medical Jurisprudence. The ossification test or age as determined by the expert opinion of PW-8 deserves some consideration. The radio-logical age raises a doubt about the genuineness of the school leaving certificate. The birth extract register also becomes doubtful since, it was issued for the first time on 30th October 2002.

33. At this stage, the aforesaid material adduced by the prosecution needs to be appreciated in view of the Apex Court judgments.

34. In the case of *Jarnail Singh vs. State of Haryana (2013) 7 SCC 263*, Apex Court has held as follows :

“Even though Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is strictly applicable only to determine the age of a child in conflict with law, the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix PW6 (the victim of kidnapping and gang rape) in instant case.”

35. It is also held in paragraph 23 of the judgment in the case of *Jarnail Singh (cited supra)* as follows :

“The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3)

postulates the determination of age of the concerned child, on the basis of medical opinion.”

36. In the present case, according to the mother of the prosecutrix – PW2, the date of birth of the prosecutrix is 4th June 1982. The school leaving certificate was placed on record with a remark that the said document is subject to objection. The headmaster of the school is not examined. No implicit reliance can be placed on the birth and death register of the village Grampanchayat for the following reasons :

- i) There is no entry in the month of June;
- ii) There is one entry in the month of July;
- iii) The date of registration is shown as **1st September 1982** and the date of birth is shown as **22nd August 1982;**

37 It is apparent from the variance in the ink that the entry is made subsequently, however, it was realised that it would not be a correct entry in the month of September, hence scored off.

38 The certificate is issued just two days before recording of substantive evidence of the prosecutrix. It was not a part of the charge sheet. That the certificate was not put for admission or denial under section 294 of Cr.P.C. The statement of one Mr. Gurav as the Principal of New English School, Kharshi was recorded however, he was not examined. The charge sheet was filed on 15th January 1998 and the list of witnesses whose statements were recorded as noted in column no.4 does not show the name of PW7 – Suresh Babar whose statement was

recorded in the course of investigation and therefore, we are of the opinion that the issuance of the said extract is shrouded with mystery.

39. In the case of *Sunil vs. State of Haryana (2010) 1 SCC 742*, the Hon'ble Apex Court was considering the question in respect of the minority of the prosecutrix at the time of incident. There was variance in the medical report and the school leaving certificate. The Doctor who had clinically examined the prosecutrix found that her secondary sex characters were well developed and in the said circumstances, the Apex Court has held as follows :-

“In a criminal case, the conviction of the appellant cannot be based on an approximate date which is not supported by any record. It would be quite unsafe to base conviction on an approximate date. PW8, the father of the prosecutrix also could not give the correct date of birth of the prosecutrix. PW8 stated that he was giving an approximate date without any basis or record.

The prosecutrix was admitted in the school by A, her brother. A was not examined. The alleged school leaving certificate on the basis of which the age was entered in the school was not produced.

On consideration of the totality of the facts and circumstances of this case, it would be unsafe to convict the appellant when there are so many infirmities, holes and lacunae in the prosecution version. The appellant is clearly entitled to the benefit of doubt and consequently the appeal filed by the appellant deserves to be allowed. The appellant is directed to be released forthwith, if no required in any case.

The prosecution has also failed to produce any admission form of the school which would have been primary evidence regarding the age of the prosecutrix. The school leaving certificate produced by the prosecution was also procured six days after the incident and three days after the arrest of the appellant. As per that certificate also, she joined the school in the middle of the session and left the school in the middle of the session. The attendance of the school in 100 days is also not reliable.”

40. In the case of *Rajak Mohammad vs. State of Himachal Pradesh (2018) 9 SCC 248*, the Apex Court has held thus :

“9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.”

41. The Hon’ble Apex Court in a catena of decisions has held that Golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced by the prosecution, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

42. In the present case, it would be difficult to conclude that the relationship was not consensual, neither it can be deduced that the appellant had any intention of cheating the prosecutrix right since inception of their relationship and therefore, we have arrived at the

conclusion that charge under section 417 of Indian Penal Code which was framed subsequently, necessarily needs to fail. It is neither the case of the prosecutrix that the appellant had forced himself upon her or that there was coercion or intercourse by playing fraud upon her and therefore all that is alleged by the prosecution is that this would be a case of statutory rape as it is the case of the prosecution that she was below 16 years of age at the time of incident and, therefore, a question falls for determination before this Court, is whether the prosecution has proved beyond reasonable doubt that the victim was minor at the time of incident especially when there is sufficient evidence to show that by application of scientific and clinical method, the prosecutrix was shown to be more than 18 years and less than 22 years.

43. Black's law dictionary defines *"reasonable doubt as the doubt that prevents one from being formally convinced of a defendant's guilt, or the belief that there is a real possibility that a defendant is not guilty"*.

44. When the material adduced by the prosecution falls outside the realm of reasonableness and logical inference the accused would be entitled to benefit of doubt. A logical inference, would be a principle of deducing a fact or a conclusion by reasoning. In the totality of the circumstances, it cannot be said that the prosecution has proved beyond reasonable doubt that the victim was minor at the time of incident.

45. A person cannot be acquitted or convicted on the basis of hypothesis, surmises or conjectures. Similarly, there cannot be moral conviction. The prosecution has to firmly stand on its own legs and cannot plead probabilities. In fact, there is always a presumption of innocence of accused unless the prosecution has proved its case beyond reasonable doubt.

46. Hence, we are of the view that the appellant is entitled to benefit of doubt.

47. Hence, the appeal deserves to be allowed.

CRIMINAL APPEAL NO.212 OF 2001

48. The State of Maharashtra being aggrieved by the inadequacy of the sentence imposed upon the original accused in Sessions Case No. 99/1998 by the learned Sessions Judge, Satara vide judgment and order dated 14th November 2000 for the offences punishable under section 376 and 417 of Indian Penal Code is seeking enhancement of sentence of the respondent. Hence, this Appeal.

49. The learned APP submits that the appellant had taken undue advantage of the tender age of the victim and had established sexual relations with her.

50. According to learned APP the victim had given birth to a child when she was merely a girl of 15 years old. The claim of the respondent that it is a case of consensual sex cannot be taken into

consideration as the victim was a minor and hence legally incapable of giving consent. As contemplated under section 375 of IPC her consent, if any, cannot be taken into consideration.

51. Inconsistency in radio-logical report and the extract of birth and death register is not explained by the prosecution. Nor it is the case of the prosecution that the testimony of PW-8 is unreliable or cannot be taken into consideration. The inconsistency in the radio-logical examination and the birth and death extract goes to the root of the matter as it is the basis of determination of exact age of the prosecutrix.

52. This Court cannot be oblivious of the fact that at the time of incident the appellant was a student prosecuting his education. The appellant was 19 to 20 years old. That, the prosecutrix has denied that she was coerced by the accused to have sexual relations or that it was forcible sexual intercourse. It is unfortunate that the prosecutrix had become a mother before being able to marry the appellant.

53. The learned counsel for the respondent submitted that the prosecutrix had tried her level best to get married to the appellant. She had approached his mother in her personal capacity. The appellant had not refused to marry the prosecutrix but his parents had reservations. PW-2, the mother of prosecutrix had forgiven the appellant and had accepted their relationship.

54. According to the learned counsel for the respondent, the prosecution has not proved beyond reasonable doubt that the victim was minor at the time of incident. That on 16th January 1998, her radiological age is shown as 18 – 22 years and moreover, the date of birth as per the documents is shrouded with mystery. It is submitted that the victim had attained the age of understanding and moreover, even according to the prosecutrix, the respondent had not forced himself upon her and had neither coerced her to have sexual intercourse. Hence, the respondent is entitled the benefit of doubt.

55. The appellant is enlarged on bail during the pendency of the appeal. The appellant has deposited the amount of fine of Rs.1,00,000/-, imposed upon him, by the learned Sessions Judge, while recording conviction. The learned counsel for the appellant, upon instructions, submits that the said amount of fine be allowed to be withdrawn by the daughter of the appellant and the prosecutrix i.e. Ms.Kalyani. In any case, the prosecutrix Ms.X is Respondent No.2 in the appeal. The amount of Rs.1,00,000/- be disbursed in favour of the daughter of the appellant and the Respondent No.2.

56. For the reasons assigned in extending benefit of doubt to the appellant in Criminal Appeal No. 840 of 2000, the present appeal deserves to be dismissed. Hence, the Criminal Appeal No.212 of 2001 is disposed of accordingly.

57. In view of the above observations, the following common order is passed :-

ORDER

- i) Criminal Appeal No.212 of 2001 is dismissed;
- ii) The Criminal Appeal No.840 of 2000 is allowed;
- iii) The conviction and sentence imposed upon the accused Manoj Hanmant Bhintade under sections 376 and 417 of Code of Criminal Procedure passed by Sessions Judge, Satara in Sessions Case No.99 of 1998 vide judgment and order dated 14th November 2000, stands quashed and set aside;
- iv) The bail bonds of the appellant are cancelled and surety stands discharged;
- v) The amount of fine of Rs.1,00,000/- deposited in the Sessions Court by the appellant be disbursed in favour of the daughter of the appellant and the Respondent No.2;
- vi) The Criminal Appeal No.840 of 2000 and Criminal Appeal No.212 of 2001 are accordingly disposed of on above terms.

58. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

(N.J. JAMADAR, J)

(SMT. SADHANA S. JADHAV, J)