

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 367 OF 2016**

Aaditya @ Sadanand Dilip Parab,

Aged 23 years, Occ: D.J. Operator,

residing at Bhigargaon Post Aajivali,

Taluka Panvel, Dist. Raigad

(At present is in Nashik Central Prison)

....Appellant.

Vs.

The State of Maharashtra,

(at the instance of Santacruz

Police Station vide C.R. No. 724/2013)

....Respondent.

Mr. Arun Rajput i/by Ms. Anjali Patil for the Appellant.

Smt. Rutuja Ambekar, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.
RESERVED ON : 11th SEPTEMBER, 2020
PRONOUNCED ON : 6th NOVEMBER, 2020.

JUDGMENT:-

The Appellant has questioned correctness of Judgment and Order dated 5th March, 2016, passed in Sessions Case No.49 of 2014 by the learned Special Judge under POCSO Act, Greater Mumbai, convicting the Appellant under Section 4 of The Protection of Children from Sexual

Offences Act, 2012 (for short, "*the POCSO Act*") and is sentenced to suffer rigorous imprisonment for Ten years and to pay fine of Rs.2,000/-, in default of payment of fine, to further suffer simple imprisonment for One month and under Section 366(A) of the Indian Penal Code (for short, "*IPC*") and is sentenced to suffer rigorous imprisonment for One year and to pay a fine of Rs.1,000/-, in default of payment of fine, to further suffer simple imprisonment for One month. As the Appellant has been convicted under Section 4 of the POCSO Act, the Trial Court has not punished him separately for the offence punishable under Section 376 of the IPC, as per the provision of Section 42 of the POCSO Act. The Trial Court has directed that, the substantive sentences imposed upon the Appellant to run concurrently.

2 Heard Mr. Rajput learned counsel for the Appellant and Smt. Ambekar, learned APP for the State. Perused entire record.

3 The prosecutrix (P.W. No.2) was aged about 13 years on the date of commission of the alleged offence and with a view to protect her identity and in consonance with the provisions of Section 228(A) of the IPC and Section 33(7) of the POCSO Act, the names of material witnesses and detailed narration of facts mentioned in the statement of the prosecutrix and relevant witnesses is hereby avoided.

4 Shorn of unnecessary details, the prosecution case in brief can be summarized as under:-

(i) The prosecutrix was aged about 13 years on the date of lodgment of crime and was studying in 9th Standard in a High School, at Bandra. The mother (P.W. No.1) of the prosecutrix was a housemaid and her father was working as a delivery man with one company. They had mobile phone bearing No.9819418058 at their home. In the month of November, 2013 the prosecutrix received a missed call from mobile No.9209832197. The prosecutrix called back on the said number, whereupon, the person on the other end told his name as '*Aaditya*' (Appellant herein). The Appellant introduced himself as a person taking education in 12th Standard and working in a private company as Driver. He also told that, he plays Piano. Thereafter, the prosecutrix and the Appellant used to talk on mobile phone. The Appellant in due course, asked the prosecutrix as to whether she likes him. After some days, the prosecutrix answered him in affirmative. The father of the prosecutrix noticed her talking on the mobile phone with somebody and therefore, he removed the sim card from it. The prosecutrix told the said fact to the Appellant. The Appellant bought a sim card No.9659632383 for the prosecutrix and gave it to her. At that time, the prosecutrix firstly met Appellant personally. The prosecutrix used to talk with the Appellant from the new sim card. Thereafter, on two occasions, the Appellant met prosecutrix. As the prosecutrix's mother did not allow her to use mobile phone for long time, she got annoyed. On 4th December, 2013, under the pretext of purchasing a

sports slacks, the prosecutrix left home and went away with the Appellant. Appellant took her to his native village, namely Bhingargaon near Panvel. Appellant introduced prosecutrix to his mother and sister as his friend and told them that, her uncle had left her at Panvel station and for her safety, he had brought her home. That, on the next day, he would leave her to her house.

(ii) On 5th December, 2013, the Appellant took prosecutrix to Pen. He booked a room in Kohinoor lodge at Pen and committed sexual intercourse with her. On 6th December, 2013, the Appellant and prosecutrix returned to Panvel. The Appellant was running short of money, rather he was not having money, and therefore, he pawned prosecutrix's gold chain with Mahendra Kothariya, (PW. No. 8) a Jeweller, through his friend Balu H. Bhopi (PW. No. 13) and received Rs.4,000/- from him. They thereafter, stayed at Panvel in one lodge where the Appellant committed sexual intercourse with the prosecutrix. On 7th December, 2013, they came to Nagothane and stayed at Anand lodge in Room No.103. There also, the Appellant established physical relations with the prosecutrix.

(iii) As the prosecutrix did not return to her house on 4th December, 2013 and despite search with near relatives in the vicinity, she could not be traced out, her mother (PW. No.1) lodged First Information Report under Section 363 of the IPC with the Santacruz Police Station bearing No.724 of 2013 (Exh.11) against unknown person. The said First

Information Report was recorded by Police Sub-Inspector, Mr. Abhijit B. Thorat (PW. No.11). He started initial investigation of the present crime.

(iv) From 5th December, 2013 to 7th December, 2013, the Appellant was receiving phone calls on his mobile. He was falsely informing the persons on the other side that, the prosecutrix was not with him. On 7th December, 2013, he received a phone call from his sister informing him that, police had been to his house. The Appellant therefore, told the prosecutrix to go back to her home. He dropped her at Bandra Railway Station. From Bandra Railway Station the prosecutrix went to Khardanda and called her mother at Khardanda bus stop. Mother of prosecutrix and police came at Khardanda and took her to police station. Her statement was recorded by the police and on the basis of the same, offences punishable under Section 4 of POCSO Act and under Section 376 of the IPC were added to the present crime.

(v) The record indicates that, further investigation was handed over to Police Inspector, Sanjay P. Patil (PW. No.14). Assistant Police Inspector, Mr. Vishal V. Mane (PW. No.15) was assisting Police Inspector Sanjay Patil in investigating the present crime. The Investigating Officer got the Appellant and prosecutrix examined from the Medical Officers. The investigation of the present crime was subsequently transferred to Police Inspector Vishwanath T. Kolekar (PW. No.17) on 10th December, 2013. The Investigating Agency also seized clothes of Appellant and prosecutrix.

Investigating Officer visited Kohinoor lodge at Pen and Anand lodge at Nagothane and effected necessary seizure of clothes and extracts of Lodge Registers. They also collected call detail record of mobile phone of the Appellant bearing No.9209832197. Record indicates that, the statement of prosecutrix under Section 164 of the Code of Criminal Procedure (for short, "*Cr.PC.*") was also recorded. After completion of investigation, police submitted charge-sheet before the Trial Court.

(vi) Trial Court framed charge below Exh.4 for the offences punishable under Sections 376 and 366(A) of the IPC and under Section 4 of the POCSO Act. The said charge was read over and explained to the Appellant in Marathi vernacular. Appellant pleaded not guilty and claimed to be tried. His plea was recorded below Exh.5.

The Trial Court after recording evidence and hearing the learned Advocates for the respective parties was pleased to convict Appellant by its impugned Judgment and Order dated 5th March, 2016 as noted earlier.

5 Mr. Rajput, learned counsel for the Appellant submitted that, the prosecutrix at the time of her medical examination by Dr.Kiran Kalyankar (P.W. No.7) has stated that, she was having love affair with the Appellant, since past three months. That, she had quarrel with her mother a week ago and in a fit of rage, she called the Appellant and thereafter, they fled away on 4th December, 2013 to Vashi/Panvel at his house. That, the

prosecutrix has admitted that, she had multiple consensual sexual contacts with the Appellant in the said four days. He submitted that, the prosecutrix had voluntarily left the house and had joined the company of the Appellant. The Manager of Kohinoor lodge (PW. No.3), has admitted that, the prosecutrix disclosed her age as 24 years to him and also told him that, she was wife of Appellant. The said witness noticed the prosecutrix as a happily married person. He submitted that, it is therefore clear that, the prosecutrix willingly joined the Appellant and was a consenting party to the alleged crime. He submitted that, the statement of Ratnamala Sadanand Parab (Maiden name Ratnamala Gajanan Bhoir) the wife of Appellant (PW. No.16), under Section 161 of Cr.PC. was not recorded by police and she was directly examined in the Court by the prosecution and therefore, her evidence cannot be relied upon. He further submitted that, the prosecution has not produced on record Chemical Analyser's Report of the clothes of the prosecutrix. That, no stains or any other incriminating material is found on the clothes of the prosecutrix. He submitted that, the bill of purchase of gold chain, which was allegedly worn by the prosecutrix, has not been produced by the prosecution and therefore, its identity is disputed. He submitted that, the hand-writing of the Appellant in the Registers of the said two hotels, is not proved by the prosecution.

While canvassing the point of quantum of sentence imposed upon the Appellant by the Trial Court, he submitted that, the Appellant has

already undergone imprisonment of 6 years and 9 months out of the total sentence of 10 years and taking into consideration his age on the date of alleged commission of offence, minimum sentence of 7 years, prescribed under section 4 of the POCSO Act may be imposed upon him.

He therefore, prayed that, the present Appeal may be allowed by acquitting the Appellant from the charges levelled against him.

6 Per contra, the learned APP vehemently opposed the present appeal and submitted that, the prosecution has proved through PW. No.1, the date of birth of prosecutrix as 9th January, 2000 by producing Birth Certificate (Exh.12) on record. That, P.W. No.7 i.e. the Medical Officer, who examined the prosecutrix has stated that, the age of prosecutrix was between 13 to 14 years. She submitted that, the Appellant is a married person and father of a child and by suppressing the said fact, he lured the prosecutrix and has committed the offence under Section 4 of the POCSO Act. She further submitted that, the omissions pointed out by the learned counsel for the Appellant are not material and are minor in nature. She submitted that, the Appellant has been rightly convicted and sentenced by the Trial Court. She therefore, prayed that, the present Appeal may be dismissed.

7 P.W. No.1 is the mother of prosecutrix. She has deposed that, the date of birth of prosecutrix is 9th January, 2000 and has produced on record and proved Birth Certificate (Exh.12) of prosecutrix issued by the

Municipal Corporation of Greater Mumbai. That, on 4th December, 2013, the prosecutrix went to school as usual and returned at about 2.30 p.m. P.W. No.1 also returned home at about 3.00 p.m.. Prosecutrix wanted to purchase a new slacks for participating in the tournament and therefore, she gave Rs.100/- to her. P.W. No.1 thereafter, went to hospital along with her daughter Savita who was suffering from Toothache. P.W. No.1 returned home at about 8.00 p.m.. Prosecutrix did not return home and therefore, P.W. No.1 took her search at all possible places in the vicinity, however, prosecutrix could not be found. She therefore, lodged First Information Report (Exh.11 colly).

After four days, on Saturday, prosecutrix called her and asked her to take her from Khardanda, Dhanpada bus stop. Police reached at the said spot before her reaching. P.W. No.1, prosecutrix and police went to Santacruz police station by Auto-rickshaw. She asked prosecutrix, whether she had physical relationship to which, prosecutrix answered affirmatively and told her that, she had physical relations with '*Aaditya*' (Appellant). Medical Examination of the prosecutrix was carried out on the same day. On 14th December, 2013, she identified gold chain (Article-1) produced by police, which was on the person of prosecutrix at the time of incident.

In her cross-examination, minor improvements and few omissions have been brought on record, which according to this Court, are not at all beneficial to the Appellant and the testimony of P.W. No.1 with

respect to material points remained unshaken.

8 Prosecutrix (PW.No.2) has deposed that, she was residing with father, mother and one sister. She has taken education in Apostolic Carmel High School at Bandra in 9th Standard. Her date of birth is 9th January, 2000. There was a mobile phone at her house bearing No.9819418058. In the month of November, she received a missed call from mobile No.9209832197. She called back the said number and the person on the other end told his name as '*Aaditya*'. From that phone call, she got acquainted with '*Aaditya*' (Appellant). He used to talk with her on phone and subsequently asked her, whether she likes him. After few days, she answered him in affirmative. Her father noticed her talking on phone and therefore, he removed the sim card from it. She told the said fact to Appellant and thereafter, he came to give her another sim card bearing No.9659632383. At that time, she met him for the first time. He told her that, he was taking education in 12th Standard and was working with a private company as a Driver and used to play Piano. Aaditya used to have conversation with her on the said mobile number. That, on the next day of 4th December, 2013 there was sports day in her school and therefore, she went to market near the Santacruz station for purchasing slacks. Before that, the Appellant had called her and told her that, he was coming to market near Santacruz Railway station. She met him there and thereafter, they went to Panvel by train and thereafter by a Jeep to the native place of

Appellant. In the night at around 1.00 a.m., they reached to the native place of the Appellant and stayed at the house of the Appellant. Appellant introduced her to his mother and sister as his friend and told them that, her maternal uncle had left her near Panvel Railway station and therefore, he brought her to house for safety. When the mother and sister of Appellant asked her, whether she was having a phone number of her family members, to which as per the directions of the Appellant, she denied.

9 That, on 5th December, 2013, in the morning, the Appellant told his mother that, he was going to reach the prosecutrix at Panvel station and they left house at about 11.30 a.m.. From Panvel station, the Appellant took prosecutrix to Pen. There he booked one room in Kohinoor lodge. In the Register of the said lodge, the Appellant entered his name as '*Deepak Sada Parab*' and the name of prosecutrix as '*Mrs. _____ Sada Parab*'. The prosecutrix has identified signatures of Appellant and herself, which are marked as Q-1 and Q-2 respectively. The said signatures are appearing from the extract of Register entries (Exh.14) of Kohinoor lodge. The Appellant committed sexual intercourse with her there. On 6th December, 2013, they came to Panvel. As no money was left with them, the Appellant took her gold chain which was on her person, pawned it and received Rs.4,000/-. Then, he booked a room at Panvel in one lodge and there also he had sexual intercourse with her. Prosecutrix has identified the gold chain (Article-1) in Court. That, on 7th December, 2013, they went to

Nagothane and booked a room in a lodge through the friend of the Appellant on mobile. The Appellant committed sexual intercourse with her at that place also. There were phone calls from her family and police on Appellant's mobile making inquiry about her to which, the Appellant answered that, he did not know anything about her. On 7th December, 2013, Aaditya received phone call from his sister and she told him that, police had been to their house for inquiry. Both of them got frightened and the Appellant told her to go back to home. Appellant dropped her at Bandra Railway station and went to his house. She engaged rickshaw, came to Khardanda and gave phone call to her mother. Her mother came at Khardanda bus stop. Police were already there at the spot. The prosecutrix along with her mother, went to Santacruz police station where, police recorded her statement and send her for Medical Examination. Police informed her that, the Appellant was married. Before that, she was not knowing the fact of his marriage. Prosecutrix has identified her clothes seized by the police bearing Article Nos. 2 to 7.

The defence has conducted an elaborate and searching cross-examination of prosecutrix. In her cross-examination, except few omissions, nothing beneficial to the Appellant has been elicited by the defence. However, in the cross-examination, certain admissions have been brought on record, which are detrimental to the Appellant. Prosecutrix has admitted that, the Appellant was calling her and therefore, she used to talk

with him and because of it, she developed love affair with the Appellant. The Appellant told her that, he was studying in 12th Standard and working in a company. That, the Appellant gave her a sim card bearing No.9619632383. On the date of incident, she received a call from the Appellant two hours prior to going to Santacruz. That, the Appellant had directed her not to tell anything to his family members at his house at Panvel. She has admitted that, police were calling on the mobile of Aaditya. After meeting her mother at Khardanda bus stop when she saw her mother crying, her fear, for her mother, got reduced and she felt that, she had committed a mistake. In police station, she came to know that, the Appellant is a married man having one daughter. That, after coming to know that the Appellant was married, she felt that the person for whom she left her parents has cheated her. After knowing the fact that, the Appellant was a married person, she got angry as the Appellant had cheated her and therefore, she has stated whatever the Appellant had done with her.

The prosecutrix has denied all suggestions given by the defence counsel and has maintained her version as narrated hereinabove in her examination-in-chief.

10 The prosecution has established the fact of stay of Appellant and prosecutrix at Kohinoor lodge at Pen by examining Niket R. Shahane (P.W. No.3), Manager of Kohinoor lodge. He has proved the entry of the Appellant from the Hotel Register (Exh.14) and the signatures of Appellant

and prosecutrix. He has also identified the Appellant as the same person who had been to his lodge along with prosecutrix on 5th December, 2013. Hemant R. Bhoir (P.W. No.4), is the panch witness to the spot and seizure panchanama (Exh.17) of the Articles from Kohinoor lodge and he has proved the said document. Irfan Ali Khan Bubere (P.W. No.5) is the panch witness for seizure of clothes, bedsheet and blankets from Anand lodge, Nagothane under a panchanama (Exh.19) where, the Appellant and prosecutrix had stayed on that day. This witness had identified the Appellant as the person who had been to his lodge on 6th December, 2013. He has also proved the said panchanama at Exh.19.

11 Dr. Baban S. Shinde (P.W. No.6) had examined the Appellant on 9th December, 2013 at Police Hospital, Nagpada. From medical examination of the Appellant nothing was found to him to suggest that, the Appellant was impotent.

Dr. Kiran Kalyankar, (P.W.No.7) was working at Police Hospital, Nagpada as a Medical Officer. On 8th December, 2013, he examined prosecutrix, who was brought by Santacruz police station. Before examination, he jotted down history given by the prosecutrix. The prosecutrix narrated him that, she was having love affair with the Appellant since last 3 months. She had quarrel with her mother a week ago and in a fit of rage, she called the Appellant and they fled away on 4th December, 2013 to Vashi at the house of Appellant. They, thereafter went to Pune,

Panvel and Nagothane. She had repeated multiple consensual sexual contacts with the Appellant during the said four days. In her local examination, he found position of tears at 9, 12, 2, 5 and 6 O'Clock. Large tears at 5 and 6 O'clock position were in healing stage. That, the injuries were consistent with the history given by the prosecutrix i.e. 4 to 5 days prior to Medical Examination she had sexual contracts. He has further stated that, ossification test of prosecutrix was carried out to determine her age and thereafter, he concluded her age between 13 to 14 years.

12 Mahendra P. Kothariya (P.W. No.8), was a Jeweller by profession and was running his business under the name and style '*Pukhraj Jewellers*', at old Panvel. The Appellant through his friend Balu H. Bhopi (P.W. No.13), had pawned one gold chain of the prosecutrix with P.W. No.8 and had received Rs.5,000/- for it. The said gold chain (Article-) was seized by the police from the shop of P.W. No.8 in presence of panch witness Omprakash Jaiswal (P.W. No.9) by effecting seizure panchanama at Exh.30.

Kuppuswami M. Harijan (P.W. No.10) and Mangal R. Tiwari (P.W. No.12) are the panch witnesses to the seizure panchanamas at Exhs.32 and 35 of the clothes of prosecutrix and Appellant respectively.

13 Ratnamala Sadanand Parab, nee Ratnamala Gajanan Bhoir (P.W. No.16) is the wife of the Appellant. She has deposed that, she married with Appellant on 13th June, 2012. After marriage she was residing with the Appellant, her mother-in-law and sister-in-law at her matrimonial

house. Appellant had obtained hand-loan at Vashi from some persons. Those persons were demanding money back and therefore, the Appellant shifted his family to Bhingargaon, Panvel. They have a daughter from the wedlock. The date of birth of daughter is 9th November, 2013. When she was carrying 7 months, the Appellant had kicked in her abdomen and therefore, her mother took her to hospital. She has further deposed that, her marriage with the Appellant is still subsisting. This witness has produced on record Birth Certificate Exh.46 and two photographs which are marked as Exhs.47 and 48 respectively. The defence has taken her searching cross-examination, however, nothing beneficial to it has been elicited from it. Suggestions given to this witness by defence counsel have been denied by her.

14 PW. No.11, PW. No.14, PW. No.15 and PW. No.17 are the various Police Officers, who have conducted investigation of the present crime at different stages and their evidence is formal in nature. No omission or improvement has been brought on record by the defence from their cross-examinations.

15 The School Leaving Certificate produced by PW. No.1 (Exh.12) coupled with the testimony of PW. No.7 Dr. Kiran Kalyankar clearly establishes the fact that, the prosecutrix's age on the date of commission of crime i.e. on or about 5th December, 2013 was 13 to 14 years. Even if an error of margin of two years in calculating her age is taken into

consideration, then also, on the date of commission of crime, her age was below 16 years. Thus, the prosecutrix was a 'child' as contemplated under Section 2(d) of the POCSO Act. The evidence of Mrs. Ratnamala S. Parab (P.W. No.16), establishes the fact that, the Appellant was married to her and was father of a daughter born out of their wedlock. Though her statement recorded under Section 161 of Cr.P.C. is not available on record, it clearly appears that, the said witness was thoroughly cross-examined by the Appellant. Exhs.47 and 48 produced by her are two photographs. Exh.47 is of P.W. No.16 and Appellant as a couple and Exh.48 is a photograph of four persons i.e. one male and 3 ladies. The Appellant in his statement recorded under Section 313 of Cr.Pc. has admitted that, in the photograph at Exh.47, he is the same person in it. As far as photograph at Exh.48 is concerned, the Appellant has identified the other two ladies as his mother and sister and has denied to identify P.W. No.16 as unknown person. From the photographs it clearly appear that, the Appellant was married with P.W. No.16 Ratnamala S. Parab, prior to the incident in question. Dr. Baban S. Shinde, (P.W.No.6) has opined that, the Appellant is a potent person. There is more than sufficient material available on record in the form of Call Detail Record (CDR) including Tower locations of the mobile phone of the Appellant to establish the fact that, from 4th December, 2013 to 7th December, 2013, the Appellant was present at different places mentioned in the foregoing paragraphs.

16 It is thus crystal clear from the above that, the Appellant developed intimacy with the prosecutrix on mobile phone, lured her and enticed her to leave her parents house on 4th December, 2013 though the Appellant was married with P.W. No.16, much prior to it. The prosecutrix was infatuated with the rosy picture of love affair presented before her by the Appellant. By taking undue advantage of the situation that the prosecutrix in the fit of rage had left her parents house, the Appellant by pretending to help her, took her at Pen, Panvel and Nagothane, resided with her in different lodges and committed sexual intercourse with her. Though the prosecutrix while narrating history to the P.W. No.7 has admitted that, she had love affair with Appellant and she indulged into repeated multiple consensual sexual contacts with him in the said period of four days, her consent to the said act is irrelevant and immaterial in the eyes of law. Admittedly, the prosecutrix was minor/child aged about 13 to 14 years on the date of commission of the present offence.

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

form, while in the former it is both physical as well as psychological and emotional. The same view is further expressed by the Supreme Court in the case of *State of Himachal Pradesh Vs. Shree Kant Shekari*, AIR 2004 SC 4404.

17 In the present case, the evidence of the prosecutrix is wholly trustworthy and reliable. The medical evidence on record also corroborates the version of the prosecutrix. Even otherwise, there was no reason for the prosecutrix to falsely implicate the Appellant in a crime of present nature where her reputation in the society was at stake. It appears from record that, it is only when she realized that the Appellant is a married person and is father of a daughter, has cheated her only to exploit her sexually, she revealed all the facts to the police.

18 The Trial Court has rightly observed in paragraph No.9 of the impugned Judgment that, it is not a matter of simple love affair but of deliberate planned sexual assault on a school going teenaged girl by a married man, having one child, who satisfied his lust at the cost of money of victim by duping her of her gold chain under guise of love, started after kicking his pregnant wife in her abdomen.

19 The prosecution has thus, proved beyond reasonable doubt that, the Appellant committed penetrative sexual assault on the prosecutrix punishable under Section 4 of POCSO Act read with Section 376 of the IPC. As noted earlier, the Appellant enticed prosecutrix from her parents lawful

custody and committed sexual assault on her. He has thus, committed an offence under Section 366 of the IPC.

20 As far as quantum of sentence is concerned, Section 4 of the POCSO Act, prescribes punishment with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and also with fine. The Trial Court has awarded sentence of 10 years of rigorous imprisonment to the Appellant under Section 4 of the POCSO Act. In view of Section 42 of the said Act, the Trial Court has not awarded separate sentence/punishment under Section 376 of the IPC.

As noted hereinabove earlier, the Appellant in a planned manner, lured and enticed the prosecutrix, who was of adolescent age at the time of offence. She got infatuated by the rosy picture depicted by the Appellant and left her parents house. The Appellant by suppressing the fact that, he was a married man, lured the prosecutrix to join him and has further exploited her. After taking into consideration the mitigating and aggravating circumstances of the present crime, this Court is of the view that, the sentence awarded by the Trial Court is just, right and proper. No leniency can be shown to the Appellant in view of the facts mentioned hereinabove by reducing the said sentence.

21 In view thereof, this Court is of the opinion that, the Trial Court has not committed any error either in law or on facts while passing the

impugned Judgment and Order. There are no merits in Appeal.

Appeal is accordingly dismissed.

This Judgment will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this Judgment.

(A.S. GADKARI, J.)

Sanjiv S.
Mashalkar

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Mashalkar
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