

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.176 OF 2014**

Firoz Ibrahim Rauttar

Age : 32, Occupation – Teacher,

Residing at : PL/6/12/11

Sector No.17, Near Abhyudaya Bank,

New Panvel, Raigad.

(Currently lodged at Kolhapur Central Prison) ... Appellant

V/s.

1. The State of Maharashtra
(At the instance of Kalamoli Police
Station, Panvel).
2. Manjeet Kaur w/o Devendar Singh Gill,
37 years, residing at Jetu Nagar,
Majitha Amritsar, Punjab. ... Respondents

Mr. Shine Kamaluddin Mohd. for the Appellant.

Ms. Priyanka Chavan, for the Complainant.

Ms. P.P. Shinde, APP for the Respondent – State.

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**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

JUDGMENT RESERVED ON : 18th JANUARY 2021.

JUDGMENT PRONOUNCED ON : 22nd MARCH 2021.

JUDGMENT : (Per Sadhana S. Jadhav, J.)

1. The appellant herein takes an exception to the judgment
and order passed by the learned Additional Sessions Judge, Raigad-

Alibag dated 26th November 2013 passed in Sessions Case No.165 of 2010 thereby convicting the appellant in Crime No.249/2010 for the offence punishable under section 376(2)(f) of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.10,000/- in default, to suffer further RI for two years and six months.

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

(i) The appellant herein joined as a lecturer of Biology in St. Joseph's High School and he was teaching students of 11th and 12th Standard. The victim herein was studying in 3rd Standard in St. Joseph's High School and her school timings were 12.00 noon to 6.00 pm. Two brothers of the victim were also studying in the same school. The siblings used to go to school in an auto-rickshaw.

(ii) It is the case of the prosecution that on 22nd June 2010, the children did not return home upto 6.15 pm from the school. The mother of the victim (Ms.“X”) i.e. P.W.1 informed her husband that the children have not returned home. The father of the victim had been to the school. He was informed by the auto-rickshaw driver that the girl could not be traced. After sometime, one teacher had dropped the

victim near the rickshaw. Upon observing her sad appearance, her mother inquired with her. Upon inquiry, the victim disclosed that when she had been to the washroom along with her friend Anjali, her way was obstructed by one Teacher (Sir) who caught hold of her, took her to the washroom, placed her neck in the washbasin and ravished her. Her mother had noticed bleeding. Upon further inquiry, the victim had disclosed that it was “her drawing teacher” who had committed the said act. The victim girl had also disclosed that the perpetrator was accompanied by another male teacher who had gagged her mouth at the relevant time. The mother of the victim P.W.1 had visited the school, complained to the Principal. The parents had taken the victim to the family Doctor at Panvel. Dr. Neel examined her and directed them to visit the Government Hospital. Upon examination of the victim, the Doctor informed the parents that the victim has been ravished. She had been informed by the Doctor that the victim had been subjected to some kind of physical assault. The parents had then taken the child to the Government Hospital, Panvel. The victim was not examined at the Hospital at Panvel since, the parents had not taken a letter from the Police. On the next day, the parents along with the victim met the Principal of the school and narrated all that was

divulged to them by the victim. The Principal of the school was of the opinion that such incidents may not take place in their school. From there, the parents went to the Police Station and lodged a report. On the basis of the said report, Crime No.249/2010 was registered at Kalamboli, Navi Mumbai Police Station. The offence was registered against the appellant – Firoz under section 376(2)(f) r/w 34 of Indian Penal Code. At the trial, the prosecution has examined as many as 8 witnesses to bring home the guilt of the accused whereas, the accused examined 5 defence witnesses to establish that he was not the first person identified by the victim.

3. PW.1 happens to be the mother of the victim girl. She has deposed before the Court in consonance with the FIR. P.W.1 has proved the contents of the FIR which is at Exh.16. On the next day of the incident, P.W.1, her husband along with their minor daughter had been to the school. The Principal could not imagine that such an incident had happened in their school. Thereafter, they all went to the Police Station to lodge a report. The facts were narrated to the Police. The Police had inquired with the victim girl. The lady Police had also examined the child and personally inquired with her. The victim had categorically stated there also that she was abused by her drawing

teacher. The Police accompanied the parents and the victim to the school, they inquired with the Principal, the Police had then called for a register containing the addresses and photographs of all the staff members of the school. The register was shown to the victim for the purpose of identification. The victim had pointed out one photograph which was of Mr. Verghese. The parents disbelieved it and said that Mr. Verghese was known to them and would not commit such an act. Another photograph was also shown to the victim upon which she answered in the affirmative. It is also admitted that upon inquiry by the Police in the presence of the Principal, Ranjana and Preeti, the victim had disclosed that the perpetrator was a drawing teacher of 2nd Standard who was in the toilet at the relevant time. In fact, her classmate Anjali had accompanied the victim to the toilet. It is also admitted that in the year 2006, the victim had complained to her mother that her drawing teacher is misbehaving with her. P.W.1 had informed the Principal about the same. The Supervisor Ms. Preeti had then advised P.W.1 that the victim has hallucinations and a doctor should be consulted. In the year 2009 also there was a complaint by P.W.1 to the Principal that her daughter is being physically abused in school by a 4th standard boy. In the cross-examination, there are

material omissions in the nature of inquiry made by the mother to the victim. There is no averment that P.W.1 had noticed abrasions on the hand of victim or wheel mark bruises on her back.

4. According to P.W.1, in the evening, 4 to 5 persons came to the Police Station. The victim identified the accused. The victim was then sent to the Government Hospital. The clothes of the victim were given to the Police. The victim was taken to the school for spot inspection. The mother of the victim has testified before the Court that on one occasion when she found a pen, cadbury, pencil in her school bag she had inquired with her daughter and she was informed that the drawing teacher had given it to her. Upon directions of the Principal, the parents of the victim had met the Supervisor of the school - Ms. Preeti, who had assured the parents that she would inquire into it. They had also inquired with Preeti as to why she had inspected under garments of the victim and the reaction was that the victim is mad and concocts stories.

5. P.W.1 was confronted with her affidavit which was filed earlier, wherein she had stated that her daughter had disclosed to her that someone had entered a finger in her private part and therefore, it

had become reddish. According to P.W.1, no rape was committed on her daughter prior to the incident dated 21st June 2010. P.W.1 has testified that at the time of filing of the affidavit she knew the name of the accused but had not stated the same. That, the toilet is on the 4th floor of the school. There are classes adjacent to the toilet. She has denied that in the year 2009-2010, she had complained to the Principal that a boy studying in 4th standard had caught hand of her daughter but she has admitted that she had filed a complaint that someone in the school had cut her hair. It is also admitted that upon receiving complaints from P.W.1, the Principal had shifted the class of her daughter to the ground floor. According to P.W.1, Ms.Nayana Chitte was the class teacher.

6. P.W.2 – Ms.X is the victim herself. According to her, her school timings were between 12.00 noon to 5.00 pm. She has testified before the Court that after the recess at about 4.00 pm she had been to the toilet along with her friend Anjali. The toilet is on the 4th floor. That, when they were coming out of the toilet they came across two teachers. One of them caught hold of her and on seeing that Anjali fled from the spot, she was taken to the toilet, she was denuded of her garments, she was placed on the washbasin and then she was ravished.

She had suffered pain in her abdomen and became unconscious. She then dressed up and sat on the staircase. According to her, her mouth was gagged by the person whom she had identified in the photograph. Her teacher “madam” had taken her towards her father. Her mother had then taken her to the Police Station and Doctor. According to her, after learning from the Doctor that she had been sexually abused, on the next day in the morning they had approached the Police Station. She had then clarified that she had identified the photographs of the Sir who had committed wrong. She had also identified the accused at the Police Station. The victim had also identified the appellant in the Court. She has reiterated before the Court that she has rightly identified the accused and that she knew that he was not her teacher but she was informed that he is her drawing teacher and therefore, she deposed accordingly. She has identified her clothes. There is a clear admission on the part of the victim that a sketch of one person was shown to her in the Police Station before she went to the school along with her parents and Police. The said sketch is matching the accused before the Court.

7. In the cross-examination, she has stated that in the year

2009, she had not gone to Dr. Neel, but she had gone on 29th June 2010. She had informed that it was not a boy but a Sir. According to her, the photographs of another person was not shown to her but he was with a fair complexion. She has denied that she had gone to the toilet during the recess and according to her, she had gone to the toilet at 4.00 pm. It is admitted that one female sweeper/ helper is always present near the toilet. She has feigned ignorance as to whether 4th standard class is near the girls' toilet. There are material omissions in her evidence. According to her, the accused was telling her that he is her drawing teacher and she had stated so to the Police. She has described another accused as the person who was tall, fat and with a fair complexion and he was the one who had pressed her mouth. She had no knowledge as to whether the photographs were seized or not and the person whom she had identified had a beard or not. The photograph of the accused was also shown to her in the Court. On the next day of the incident, the album was shown to the panch and one photograph was shown in the Court which she was unable to identify and the same is at Exh.55. She has asserted before the Court that she had rightly identified the accused who had committed wrong with her. The learned counsel has emphatically drawn our attention to the

material omissions in the evidence of the victim. The actual act of catching hold of her by two teachers outside the toilet and denuding her garments, placing her on the washbasin and then ravishing her is omission. She has stated that she thought something was entering into her vagina. Moreover, there is an admission that the accused was shown to her by the Police at the Police Station. The material omissions, according to the learned counsel go to the root of the matter.

8. The accused was arrested on 22nd June 2010 at about 8.35 pm.

9. The prosecution has examined P.W.3 – Dr. Trupti Lokhande who had examined the victim at Rural Hospital, Panvel on 22nd June 2010. On examination, she had found the following injuries :-

- “(1) Linear contusion right scapula, 5 x 2 c.m.,
- (2) contusion on left cheek, 1 x 1 c.m.,
- (3) contusion on right fore arm lateral aspect 1 x 1 c.m.
- (4) Abrasion left fore arm lateral aspect 3 x 1 c.m.”

10. She has opined that there was introitus. She had conducted only external examination. She was informed that the victim was treated at private Gynecologist and the treatment was going on. The findings are reflected in the M.L.C. Register which is at Exh.27. She

had also opined that the victim was subjected to sexual abuse with two fingers gapping and vulva redness. The age of the injury was not mentioned. Injuries on the forearm were attributed to the forcible catching of the arms. She has opined that injury nos.1 to 4 and vaginal injuries were within 36 hours. P.W.3 had also examined accused on 23rd June 2010. It is admitted by P.W.3 that the history recorded in the MLC register and in the proforma of examination in rape case is at variance. The victim was examined at 9.50 pm on 22nd June 2010.

11. Exh.29 is the MLC register which shows a history of alleged sexual assault on 21/6/2010 around 3 to 4 pm. No evidence of any external injuries. According to P.W.3, a brief history is recorded in MLC register. This was the first time she was examining a minor subjected to sexual assault. That, according to her, vaginal, vulva redness is not an injury. It can be caused by penetration of finger. The victim was taking tablet ZO 500 mg twice a day prescribed by private Gynecologist since long. P.W.3 has testified before the Court as follows :

“It is possible that victim girl was habituated for sexual intercourse. I can not say the duration since how long two finger gap was caused. However that gapping may be there prior to one year.”

12. The recitals of the scene of offence panchanama as deposed

by P.W.5, the panch for the scene of offence panchanama would show that the washroom is on the 4th floor of the St. Joseph's High School. There is a passage of 5 feet. On the East, there is a boy's toilet, on the West 3rd standard classes I to A, adjacent to the class of 3A is the Biology Laboratory, opposite to it is the 3B class and the Chemistry laboratory is adjacent to the class 3B. The victim is in class 3H. In the same passage, there is a room of electronic equipments, adjacent to it is the staff toilet and thereafter a staircase.

13. P.W.6 – Dr. Swati Naik has deposed before the Court that on 21st June 2010, she was on casualty duty since 9.00 am. On 22nd June 2010, at about 9.00 am, she had examined the victim. The mother of the victim had informed her that when the victim returned from school she was upset and her under-garments were wet. She examined her and found an injury on her private part. She had also advised to take blood sample, vaginal swab and public hair of the victim but the parents were not ready. The parents of the victim girl said that they would contact the school principal and come on the next day. P.W.6 asserts that she had taken the notings in the OPD register but the same could not be filed since OPD register was lost while shifting. According to her, the parents of the victim girl were not ready to sign on any

paper. The original OPD papers and the extract of OPD register were given to the parents of the victim. She has further opined that when there are no marks of semen the possibility of rape is ruled out. That, after lapse of 24 hours sperm in the semen get destroyed and it cannot be examined. The parents were reluctant to approach the Police and had also requested P.W.6 not to report the same to the Police.

14. P.W.7 – Pratap Bhosale – happens to be the Investigating Officer attached to Kalamboli Police Station. According to him, on 22nd June 2010 at about 4.30 pm, the victim was brought to the Police Station by her parents. The mother of the victim had disclosed that her teacher had committed sexual assault on the victim in the school. To ascertain the facts he had accompanied the parents and the victim to St. Joseph's High School at the request of P.W.7. The register containing information of staff members was shown to him. The victim had identified one person as the person who had ravished her. At his request the Principal of School had sent the said person to the Police Station in the evening. He had identified the accused before the Court as the person who had visited the Police Station on 22nd June 2010. It is also admitted that the photographs of the accused was shown to the

mother and victim girl before they proceeded to the school. The name of the accused was known to the mother of the victim girl. The Investigating Officer has denied to have brought the album to the Police Station and has proved the contents of portion marked 'B' of his statement.

15. PW.8 – Sanjay Shukla was attached to Kalamboli Police Station as PI. Crime No.249/2010 was registered by PSI, Shaikh. He arrested the accused and sent him to Rural Hospital for examination. According to him, on 22nd June 2010, P.W.7 was officiating as PSO. P.W.7 had brought the album to the Police Station. He was not sure as to whether the album was shown to the victim girl at Police Station. The accused was accompanied by other staff members when he came to the Police Station. According to the IO, he had recorded the statement of Anjali who had accompanied the victim to the toilet. She had stated before the parents that she had accompanied to the toilet and returned back. The album was shown to the victim for identifying the second accused but to no avail. The victim had also not disclosed to the Investigating Officer that the Sir had beaten her. The victim was saying that he is her drawing teacher. He has admitted that he had not made any inquiry with the private doctors to whom the victim was

taken immediately. In the present case, the victim was subjected to psychological profiling. P.W.1 had refused to leave the child alone with the doctor. He has admitted that P.W.1 has not disclosed the date of the incident. That, he cannot recollect as to whether he had brought the album to the Police Station but is sure that he had not given any receipt while taking the album. It is admitted that he seized the uniform of the victim, and that there were no stains of any kind on it. He also could not recollect as to whether the Principal had told him that there is a sweeper posted at the toilet.

16. The accused has examined defence witnesses. D.W.1 is Anjali Singh has deposed before the Court that the victim was her good friend since Junior K.G. That, she had accompanied the victim to the washroom at 4.00 pm, since the class teacher does not allow any girl after recess alone to go to washroom. There is a lady sweeper to the said room viz. Smita Shinde who was present when they visited to washroom. That, the victim was sitting in front of her. She had admitted that on 28th August 2013, the accused had accompanied her to the Court.

17. D.W.2 is Smita Shinde who was working as Sweeper.

According to her, the victim was studying in 3rd standard 'H' division. On the date of the incident, D.W.1 and victim had been to the toilet but went to the class after toilet. She had no document to show that she was serving as Sweeper in St. Joseph's School.

18. D.W.3 – Meera Kunthe is the Principal of the said school. The deposition of defence witness No.3 shows that she was officiating as Principal of St. Joseph's High School since the year 2003. She has deposed before the Court that in the eventuality, any complaint is filed or made against any of the staff member of the school she initiates an inquiry and takes appropriate action. She has given the topography of the school and according to her, the school building is of 6 floors. Her office is situated on the ground floor. The school has three gates. First gate is on the rear side of the school whereas two gates are on the front side. The rear gate is used only for school buses as the school has its own school buses. Except for entry and exit of the school buses the rear gate remains close and two watchmen are posted at the said gate. On the frontal portion also after commencement of the school hours only one gate remains open and a watchman is posted there. No outsider is given entry in

the school without his name being recorded by the watchman and the entrance is permitted by the school. The topography of the school and the rules for entry and exit are admitted by P.W.2.

19. She has further testified that in the year 2010, the 3rd standard classes were located on the fourth floor and a separate toilet for boys and for girls is located at the end of the passage. A sweeper is posted at both the toilets. That, at the relevant time, Smita Shinde was a Sweeper and was given the duty of girls toilet on the 4th floor. There are two monitors one near the toilet and the another at the end of the queue during recess. Besides recess hours, a student cannot go to the toilet unless accompanied by another student.

20. That, on 22nd June 2010, the mark-sheets of the 10th standard students were being distributed as the results were declared one week prior to 22nd June 2010. On that day, at 4.00 pm, Ms. 'X' and her parents had been to her office. The complaint was made to the Principal about an untoward incident which occurred on the previous day thereby stating that two men had sexually abused the victim. The Principal had suggested that it would be appropriate to approach the

Police Station immediately, however, father of the victim was insisting upon settlement of the matter instead of going to the Police Station and the said gesture had shocked the conscience of the Principal. At her behest after 5 minutes the parents had gone to the Police Station only to return after half an hour with the Police. The Police had questioned the victim in presence of the Principal, Headmistress Ranjana and Supervisor Preeti Gill about the identity of the two persons who had abused her. The victim had candidly and assertively disclosed that one of the perpetrator was taller than her father, fair in complexion and he was teaching drawing to her. According to the Principal, they have only one drawing teacher and that is Mr. Gaikwad who was summoned by the Principal immediately. Mr. Gaikwad appeared before the Principal, victim and her parents and at that time, the victim asserted that he was not the person. In fact, it was Mr. Gaikwad who is the drawing teacher of the victim. The victim had recognised the perpetrator as her drawing teacher and that was not hearsay evidence. The Principal was sure that at the relevant time, there was no male teacher teaching the primary section of the school and she was constrained to show the album of photographs of the staff to the girl which was maintained in the album. Ms.X had pointed out

to the photograph of Mr. Verghese who happens to be the officer in-charge. The parents saw the photograph but had categorically expressed that they know Mr. Verghese and were sure that he would not indulge into such an act. Thereafter, Ms.X could not identify any other photograph and therefore, the Principal had called the class teacher Ms. Chitte who took the victim into confidence and inquired about the incident that had occurred on the previous day. Ms. Chitte had stated before the Principal, Supervisor and the parents of the victim that at around 4.30 pm, Ms. X wanted to revisit the toilet and therefore, she was sent along with Anjali. After two minutes, both the girls had returned to the classroom and thereafter, Ms.X had participated in the school activities. The sweeper Smita Shinde was also questioned by the Police who had corroborated the statement of the Headmistress Ms. Chitte. Thereafter, the Police had returned to the Police Station along with the victim and the parents and they had carried album of the staff along with them.

21. The Principal claims to be busy with the school functions in which toppers of the S.S.C. Examination were being felicitated. At that time, she received a phone call from the Police Station asking her to

send Mr. Firoz Ibrahim to the Police Station. However, Firoz Ibrahim had left the school at 3.00 pm. The Principal had asked him to visit the Police Station. Firoz Ibrahim i.e. the appellant was on his way to Sanpada for taking classes but at the request of the Principal, he agreed to visit the Police Station first. He had also reciprocated the Principal by calling her after he reached the Police Station. The Police had not returned the album to the school but in June 2013, the Police had written a letter to the school requesting them to give the album. The Principal had informed that the album is not with them but in the month of August 2013 Mr. Verghese received a summons asking to bring the original letter to the Court and when he had taken the letter to the Alibag Court, he received the album along with the letter asking him to produce the album along with a letter of the Principal. Accordingly, the Principal had given a letter. Since Mr. Verghese was on leave the album was sent with a covering letter with another staff member.

22. She has further certified the accused as a sincere teacher. In the cross-examination, D.W.3 has admitted that after registration of the crime Ms.Preeti Gill and herself had prayed for an anticipatory bail which was opposed by the complainant. She has proved the documents

before the Court i.e. the birth certificate of the victim which is at Exh.75, attendance sheet of students of 21st June 2010 at Exh.76, Bio-data with photograph of accused at Exh.77, application of accused for the post of lecturer at Exh.78, joining letter of accused at Exh.79 and the muster roll of staff members at Exh.80. It is reiterated by her that at the relevant time the accused was working as a lecturer of 11th and 12th standard in Junior College. It is admitted in the cross-examination that in March 2010, the parents of the victim had approached her and complained for two to three times about the misbehavior with Ms.X firstly by a boy from the 4th standard. In that incident, Ms.X had told her parents that the Sweeper had beaten the said boy with a broom. On the second occasion, there was a complaint that a drawing teacher is troubling Ms.X. The said complaint was inquired by Ranjana Chaphel. Similar complaint was made on the third occasion. Thereafter, for one month, the classroom of Ms.X was shifted to ground floor. Thereafter, it was shifted to second floor. D.W.3 has asserted that the Sweeper Smita Shinde was working on the 4th floor but there was no record to show that she was deputed on 4th floor as a Sweeper. After the incident an inquiry was made by Kalamboli Police Station as well as the Police from Crime Branch. She has denied the suggestions that

the victim had not identified Mr. Verghese. She has further asserted that it was she who had insisted upon the parents to approach the Police Station and not settle the matter. The muster roll shows that the accused had attended the classes on 22nd June 2010.

23. D.W. 4 – Ms. Preeti Gill had joined St. Joseph's High School in the year 1994 and was working as Supervisor since 2005. She has stated before the Court that the pre-primary section has four classes which runs in two shifts. The first shift is from 8.30 am to 11.30 am and the second shift is from 1.30 to 4.00 pm. Her working hours are 8.00 am to 4.30 pm. At that time, on 22nd June 2010, the parents of Ms. X had been to the school at about 4.00 pm and she was asked to bring attendance register by the Principal. A police personnel was also present at that time. Ms.X was shown the album containing the photographs of the staff members. Ms.X had pointed out the photograph of Mr. Verghese as the perpetrator of her sexual assault, however, father of Ms.X did not believe her and expressed an opinion that Mr. Verghese would not indulge into such an act.

24. D.W.4 has referred to an incident wherein her brother-in-law had met the parents and relatives of Ms.X at Gurudwara at

Kalamboli. That, the parents of Ms.X had objected to D.W.4 supporting a Muslim person despite being Punjabi and slapped her brother-in-law Manjit Singh. A complaint was lodged by Manjit Singh with the Police regarding the said incident. The parents of Ms.X had again assaulted Manjit Singh outside the Police Station for lodging the complaint. It is admitted in the cross-examination that in the year 2010 the parents of Ms.X had filed a complaint before the Principal that Ms.X is being subjected to teasing. Thereafter, the classroom of Ms.X was brought on the ground floor from the upper floor. On 21st June 2010, D.W.5 was on leave. She has denied the suggestion that Ms.X had identified the photograph of the accused. That, the parents of the victim and D.W.4 belong to 'Sikh' Religion. However, D.W.5 belongs to 'Punjabi' Community whereas, the parents of Ms.X belong to 'Jaat' Community. She has admitted that on 22nd June 2010 when the accused was taken to the Police Station, D.W.4, Principal – D.W.3, Ms. Chitte, Mr. Verghese and Mr. George were in the premises of the Police Station.

25. D.W.5 – Pushpalata Dighe was attached to Crime Branch, Navi Mumbai as Assistant Police Inspector. She was entrusted with the investigation of Crime No.249/2010 on 18th June 2010. The

investigation was handed over to her as it was an offence registered against a female. There was an allegation that the accused was assisted by another accused in commission of the offence of rape. The second accused was not traced out and she had reported the same vide letter at Exh.87.

26. Upon meticulous appreciation of the evidence that is adduced by the prosecution the facts that are established are as follows :-

- (i) That the victim Ms.X was studying in 3rd standard 'H' division in St. Joseph's High School and her classroom was on the first floor of the said building. The accused was a teacher of Biology and was teaching only standard 11th and 12th and the classroom was on the 4th floor;
- (ii) Since inception, it is the specific case of the victim that it was her drawing teacher who had sexually abused her on 21st June 2010 at about 4.00 pm i.e. after the recess and that too when she was accompanied by her classmate Ms. Anjali. The muster roll of the school dated 22nd June 2010 makes it clear that the accused had attended the school at 7.50 am and had left the school premises at 3.00 pm. Hence, no one had seen the accused in the school after 3.00 pm. The muster roll is

kept on the ground floor in the office of the Principal and the same is to be signed at the time of leaving the school.

- (iii) That, on the 4th floor the boys' toilet and the girls' toilet are opposite each other and are manned by the attendants and in the case of the girls' toilet it was attended by Smita Shinde, Sweeper who has been examined as a defence witness. The spot panchanama shows that the washroom is located on the 4th floor, the width of the passage is 5 ft. On the East of the passage is the boys' toilet, on the West 3rd standard classes I to A, Biology Laboratory is adjacent to the class of 3A, opposite to the Laboratory is 3B and the Chemistry Laboratory is adjacent to it. Victim is studying in 3rd standard 'H' division. It is, therefore, clear that any class teacher of classroom 3A or 3B would have seen the accused accompanied by another man going towards or leaving the passage at the relevant time. Moreover, the victim has categorically asserted that she was sexually abused by her drawing teacher and at the time of identification of the accused by seeing the album of the staff members she had pointed towards Mr. Verghese. It was the parents who had denied and disbelieved the said assertion by the victim which cannot be acceptable as the assailant would be known to the victim alone.

- (iv) That, at the outset, the parents of the victim were unwilling to approach the Police Station and had expressed the desire to settle the matter but were forced to report to the Police Station by the Principal. They had also expressed their reluctance to approach the Police Station and had further requested that she should also not report to the Police.

- (v) The medical opinion that the victim had been sexually abused even prior to 21st June 2010 needs to be examined with caution as the earlier complaints were against a senior student of the same school. On previous occasions also the allegations were against the drawing teacher. A student of 3rd standard would naturally be able to identify her drawing teacher as well as the person who had sexually abused her. The conduct of the parents disclosing that Mr. Verghese was known to them and could not have done such an act does not appeal to a prudent mind. There was no reason for the mother of the victim – P.W.1 to know the name of the accused – appellant even prior to the incident.

- (vi) The conduct of the accused also needs to be appreciated under section 8 of the Indian Evidence Act. On 22nd June 2010, the accused was on his way to Sanpada, however, at the request of the Principal he had reached the Police Station immediately. In case of any guilt, he

would have refrained from visiting the Police Station immediately. Moreover, the co-accused could not be traced despite of efforts which shows that the victim was in a confused state of mind. It is surprising that the parents had not taken any action against the School Authorities or had not taken their complaint to its logical end on the previous three occasions.

- (vii) The Doctor categorically opined that there is evidence that the victim was habituated for sexual intercourse since one year. The victim was taking tablet ZO 500 mg twice a day prescribed by a private gynecologist almost one year prior to the incident. The said medicine is prescribed for treatment of vaginal infection and the redness of vulva which is not an injury.

27. All these facts would establish that no doubt, the victim was subjected to sexual abuse, however, the question that falls for determination is as to whether the accused – appellant is the perpetrator of the said offence.

28. As far as in the cases under section 376 of IPC, the Apex Court in the case of **Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P and Anr**¹, has held as under :-

“On an overall appreciation of the evidence of the prosecutrix

¹ (2003) 3 SCC 175

and her conduct we have come to the conclusion that PW.1 is not a reliable witness. We, therefore, concur with the view of the High Court that a conviction cannot be safely based upon the evidence of the prosecutrix alone. It is no doubt true that in law the conviction of an accused on the basis of the testimony of the prosecutrix alone is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality, and there is no other evidence on record which may even lend some assurance, short of corroboration that she is making a truthful statement.”

29. The Supreme Court, in the case of *Sadashiv Hadbe Vs. State of Maharashtra*², has held as follows :-

“8. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring of confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”

30. The evidence of the defence witnesses cannot be ignored and it cannot be held that only because the defence witnesses are the staff members of the said school their evidence needs to be looked upon with suspicion instead they are the responsible officers of the system and the reputation of the school and the interest of the victim is also of paramount importance to the defence witnesses. It is true that

² (2006) 10 SCC 92

equal weightage needs to be given to the evidence of defence witnesses. The Supreme Court, in the case of *State of Haryana Vs. Ram Singh*³, has held thus :-

“Incidentally be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one - the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution. Rejection of the defence case on the basis of the evidence tendered by defence witness has been effected rather casually by the High Court. Suggestion was there to the prosecution's witnesses in particular PW-10 Dholu Ram that his father Manphool was missing for about 2/3 days prior to the day of the occurrence itself - what more is expected of the defence case : a doubt or a certainty - jurisprudentially a doubt would be enough : when such a suggestion has been made prosecution has to bring on record the availability of the deceased during those 2/3 days with some independent evidence. Rejection of the defence case only by reason thereof is far too strict and rigid a requirement for the defence to meet - it is prosecutor's duty to prove beyond all reasonable doubts and not the defence to prove its innocence - this itself is a circumstance, which cannot but be termed to be suspicious in nature.”

31. The contention of the learned Prosecutor that since the laboratory is situated on the same floor, in all probabilities, the accused could be the person who had abused the victim cannot be taken into consideration for the simple reason that conviction of the accused cannot rest upon the probabilities. There has to be cogent and convincing evidence which is inconsistent with the innocence of the

3 AIR 2002 SC 620

accused. It would amount to conviction on surmises and conjectures and therefore, the accused is entitled to be acquitted in the present case.

32. The Supreme Court in the case of *Sarwan Singh Vs. State of Punjab*⁴, has accepted the argument of the learned counsel for the appellants and has observed as under :-

“That considered as a whole, the prosecution story may be true; but between ‘may be true’ and must be true’ there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence.”

33. The complainant is arraigned as a party respondent in the present case as the Sessions Court had granted compensation to her. It is reported that the respondent – complainant is not staying in Maharashtra. Therefore, we had requested Ms. Priyanka Chavan to espouse the cause of the respondent. Ms. Chavan has assisted the Court to the best of her capacity. The learned counsel has placed on record the Rules framed by the Government for Compensation awarded to the rape victim. We appreciate the efforts taken by Ms. Chavan in assisting the Court. Ms. Chavan is entitled to the professional fees as per Rules.

4 1957 AIR 637

34. In view of the discussion hereinabove and the judgments of the Supreme Court and in the facts of the present case, the accused deserves to be acquitted of all the charges levelled against him. Hence, we pass the following order :-

ORDER

- (i) Appeal is allowed;
- (ii) The conviction and sentence against the accused in Sessions Case No.165 of 2010 passed by the learned Additional Sessions Judge, Raigad-Alibag vide judgment and order dated 26th November 2013 convicting the appellant in Crime No.249/2010 for the offence punishable under section 376(2)(f) of the Indian Penal Code is hereby quashed and set aside;
- (iii) The appellant – accused be acquitted of all the charges levelled against him. He be released forthwith, if not required in any other case;
- (iv) Appeal is disposed of in above terms.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)