

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

CRIMINAL APPEAL NO.44 OF 2021

Manoj s/o Harihar Shukla
Age : 35 years, Occ. Service,
At present R/o in Room of Bharat Namdeo Pathare,
Tq. Parner, Dist. Ahmednagar.
Permanent r/o Bharsal, Tq. Sahejawa,
Dist. Gorakhpur (U.P.) ...Appellant

VERSUS

1. The State of Maharashtra
Through P.P. High Court
(copy served on P.P. Office
High Court Bench at Aurangabad).
2. X.Y.Z. ...Respondents

...

Ms. Surekha G. Chincholkar (Appointed through Legal Aid), Advocate
for Appellant.
Ms. V.N. Patil Jadhav, APP for the State.
Mr. Pratap Mandlik, Advocate for Respondent No.2 (Appointed
through Legal Aid).

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CORAM : S.G. MEHARE, J.

RESERVED ON : JULY 25, 2023

PRONOUNCED ON : OCTOBER 04, 2023

JUDGMENT:-

1. Being dissatisfied with the Judgment and Order of the
learned Special Judge (POCSO), Ahmednagar passed in Special
(POCSO) Case No.199 of 2017 dated 18.12.2019, the accused has
preferred this appeal under Section 374 of the Criminal Procedure

Code.

2. The parties will be referred to their original position.

3. The prosecution case in brief was that the victim was residing with her family in a chawl. The accused was also residing in one of the rooms in the same chawl. The victim was six and a half years old at the time of the incident. On 11.05.2017 at about 10.30 pm, the victim and her family had their dinner. Her mother, who was the first informant, was cleaning the utensils in the house. The victim told her that she was getting hot and wanted to sit out in the air. After finishing her work, she gave a call to the victim, but she did not respond. Therefore, she searched for the victim. However, she did not find her. When she was returning home, she noticed that the electric light in the room of the accused was on. Therefore, she peeped inside the room from the window. She found the victim in the said room. Therefore, she went inside the room and brought her out. She also noticed that her halfpant was blood-stained. She checked her and found bleeding on her anus. That time, the victim told her by weeping that the accused took her inside the room, locked the door from inside, switched off the light, threatened her to beat, pressed her mouth and inserted his penis into her anus. The first informant called her husband from his job. He came there and confirmed the facts from the victim. They slept over the night and lodged the report the next day, i.e., on 12.05.2017. On the report of the first informant, the Police

Station Raver, District Ahmednagar, had registered the crime bearing No.88/2017 for the offence punishable under Section 376(2)(i), 377 and 342 of the Indian Penal Code and under Section 6 of the Protection of Children From Sexual Offences Act (for short 'POCSO Act').

4. The charges were framed against the accused. He denied the charges and claimed the trial. The prosecution examined five witnesses. The accused had a defence of false implication and total denial. His statements under Section 313 of the Criminal Procedure Code were recorded. He did not enter the witness box nor examine any witness in support of his defence.

5. Heard learned counsel for the accused and the learned APP for the State at length.

6. Learned counsel for the appellant would argue that the shawl recovered from the room of the accused was not blood-stained, nor semen was found on it. The chemical analysis report does not support the prosecution of this fact. The first informant, in fact, was not the eyewitness. Considering the spot of the incident, the alleged crime was impossible in a chawl. Many tenants were residing there, but the incident was not immediately disclosed to anybody. The evidence of the victim and the first informant is contradictory. The victim did not specifically deposed that the accused inserted his penis into her anus. The F.I.R. was delayed. The medical evidence was

insufficient to believe that there was unnatural intercourse. The statement of the victim under Section 161 of the Criminal Procedure Code was not on record. Only her statement under Section 164 of the Criminal Procedure Code was filed. No semen was detected on the vaginal swab. There is no direct evidence of penetration of his private organ or any object. The neighbours were not examined. In his statement under Section 313 of the Criminal Procedure Code, the accused answered question no.13 that the light of the room always remained on. All were sleeping in their rooms. The question nos.14, 15, and 16 have been specifically denied. The aggravated sexual assault has not been proven. The appellant is 35 years old. He has a family and small children. The appeal may be allowed since nothing has been proven against the accused. In case the judgment is not reversed, considering the facts and circumstances of the case, a lenient view may be taken, and the sentence may be reduced.

7. Per contra, learned APP opposing the arguments advanced by the learned counsel for the appellant submitted that the mother was the witness who saw the victim in the room. She had noticed the blood on her pants, and she had confirmed the bleeding from her anus. Her evidence is very specific that when she crossed the room for the first time, the electric light of the room of the accused was switched off. But the light was turned on when she was returning home after giving calls to the victim. She got the suspicion; hence, she

peeped into the room. Her evidence is natural. Considering the age of the victim, direct evidence of unnatural intercourse can not be expected. She led the evidence in her own language. Her evidence indicates that the accused had unnatural intercourse with her forcibly. The chemical analysis report supports the prosecution case. The blood was found in the nails of the accused. The victim and her mother were consistent and proved the incident. The impugned judgment and order of conviction is legally correct and proper. Hence, the appeal deserves to be dismissed.

8. The following points arises for the determination of this Court, and the findings thereon are recorded for the reasons to follow:

Serial No.	Points	What order
1	Does the prosecution prove that on 11.05.2017 at about 22.30 hours in a room, the accused residing as a co-tenant in a chawl had committed rape on a victim below 12 years?	Proved
2	Does the prosecution prove that on the above date, time and place, the accused committed forceful carnal intercourse with the victim and committed the offence punishable under Section 377 and 376(a)(b) of the Indian Penal Code?	Proved
3	Does the prosecution prove that on the above date, time and place, the accused wrongfully confined the victim in a room where he was residing, which was an offence punishable under Section 342 of the Indian Penal Code?	Proved
4	Does the prosecution prove that on the above date, time and place, the accused committed aggravated sexual assault on a child below 12 years, which is an offence under Section 5(m) and punishable under Section 6 of the Protection of Children From Sexual Offences Act, 2012?	Proved

As to Points Nos.1, 2 and 4 together :

9. All these points are intermingled; hence, taken up for discussion together.

10. The prosecution has examined five witnesses, all as follows :

PW. Nos.	Name of Witness	Type of witness	Documents Proved and marked as Exh. Nos.
1	Sudhir Dharmaraj Thodsare	Spot panch	11
2	The mother of the victim		16
3	Goraksha Laxman Dere	Panch on the seizure of clothes of the victim and accused	20 & 21
4	The victim		23
5	Rajendra Dashrath Pawar	The Investigating Officer	24

11. The prosecution has a case in which the victim was 6 and $\frac{1}{2}$ (six and half) years old at the time of the incident. The victim and her family are from Nepal. They admitted the victim to a school at the place of their residence. The prosecution produced the school bonafide certificate Exhibit-27, which was exhibited on the evidence of PW-5, the Investigating Officer. As per the bona fide certificate, the date of birth was 13.06.2010. The incident happened on 11.05.2017. So, she was about seven years old at the time of the incident. The accused did not seriously deny that the victim was not a child below 12 years at the time of the incident, and he also did not raise the objection exhibiting the bonafide certificate Exhibit-27.

12. PW-2, the mother of the victim, testified that on the date of the incident, after dinner, the victim went outside the room, telling her that she was getting hot; hence, she wanted to sit in the courtyard. She was cleaning the pots and doing other housework. After finishing her work, she called the victim but did not respond. Hence, she went to search her in the chawl where she and the accused were residing. However, the victim did not respond to her. Hence, she started to return home. That time, she had noticed that when she crossed the room of the accused, the electric light of his room was switched off. But when she was returning back, it was switched on. Hence, she peeped from the window in the room. She found that the victim was weeping and the accused was assaulting her by gesture of eyes and putting his finger on her mouth. She asked the accused to open the door. She took her daughter out of his room. She noticed that the mouth of the victim was swollen. When she checked the clothes of the victim, she found bleeding from her anus. She immediately called her husband. The victim told her that the accused led her, held her mouth and committed something with her anus. The accused fled away from the spot. On the next day morning, she took the victim to the hospital. The hospital personnel told her to lodge the report, and then they will treat the victim. Thereafter, she lodged the report Exhibit 16.

13. The victim testified similarly to her mother. She testified that she resides in a chawl. On the date of the incident, she told her

mother and went away. She played for some time outside the house. One uncle offered her a chocolate. He held her hand when she refused and took her to his room. It was an adjoining room to her room. He removed her clothes and committed bad things (गंदा गंदा किया). After some time, her mother started calling her. Thereafter, the said man switched on the light of the room. He opened the door. Due to the acts done to her by the said person, there was bleeding from her rectum. Thereafter, her mother took her away from that room. She again supported her mother when she narrated the incident to her. She was taken to the hospital. She was admitted there for three days. She identified the accused in the Court.

14. The accused cross-examined both witnesses. Cross-examination of PW-2, the mother of the victim, was on the line that many people were residing in the chawl. The landlord also resides at a short distance from the chawl. The mother of the victim went to somebody's place to watch the T.V. at the alleged time of the incident. On this material, it has been tried to point out that PW-2 is not the eyewitness to the incident, and it was not possible for her to peep into the room. It has also been vehemently argued that considering the number of families residing in the chawl, the neighbours were to be examined to corroborate the testimony of the mother and the victim.

15. The cross-examination of PW-1, who has proved the spot panchnama Exhibit-11 is on the line that there were no windows

through which the mother of the victim could peep. This witness has given an admission that there was a small gap between the wall and the tin shade for ventilation. He also admitted that the tenants occupied around nine rooms at that time.

16. On the next day of the incident, the spot panchnama was prepared. The specific description of the room has been mentioned, and the sketch was also drawn. Reading the contents of the spot panchnama as regards the description of the room with the sketch, there were two windows. One was on the front and the other on the back side of the room. No specific cross-examination was done about the non-existence of the windows in the room. From the fishy cross-examination, it has been pointed out that since there were no windows to the room, peeping inside the room was impossible. PW-1 categorically proved the spot panchnama, but in the absence of any admission affecting the spot panchnama, the indirect defence that PW-2 could not peep into the room fails.

17. Though it has been suggested to PW-2 that at the time of the incident, it was not specific at whose place or house she went to watch the T.V. at the relevant time. Hence, such a defence was unfounded and mere chance.

18. The cross-examination of the victim was that the room where she was taken was at some distance. She denied the suggestion. The accused nowhere denied that he was not residing in the room

where the alleged incident happened. The police also recovered one shawl stained with blood from the room where the incident happened. Hence, it cannot be believed that no incident happened in the room where the accused was residing.

19. The question was also ask, that the victim that before recording her statement before the Magistrate, the police did not ask any questions, to which she answered' that police did not record her statement. PW-5, the Investigating Officer, has denied the suggestion that she did not give a statement before him.

20. On the basis of the above admission of the victim, it has been vehemently argued that in the absence of a statement of the victim under Section 161, there shall be no direct statement under Section 164 of the Criminal Procedure Code. However, the record reveals that her statement was recorded by the police in question-and-answer form. Therefore, there is no substance in the arguments of the learned counsel for the accused that in the absence of her statement under Section 161 of the Criminal Procedure Code, her evidence is no evidence in the eye of the law.

21. Though it has been argued that tutoring was possible, nothing specific was suggested to PW-2 or PW-3 that the victim was tutored. The child witnesses are vulnerable to their parents, but in this case, PW-2, the mother of the victim, brought her out of the room where the incident happened. Reading the evidence of PW-2, the

mother of the victim, she did not state that she witnessed the accused having unnatural intercourse. When she went into his room, she saw that the victim was sitting in the room and the accused was threatening her. When she entered the room, she noticed that her clothes were stained with blood and there was bleeding from her anus, and then the victim narrated the incident. So, she cannot be an eyewitness to the incident. But she was the first person who noticed the blood on the clothes and anus of the victim. The victim was only 6 and $\frac{1}{2}$ (six and a half) years old at the time of the incident. So, naturally, she disclosed the entire facts to her mother. Therefore, the admission of the victim that her mother told her that she should be deposed in the Court does not damage the factum of the incident.

22. The victim admitted that she did not know who committed the 'gandha act' with her. She did not see the man at her home or in the locality. However, she had categorically identified the accused before the Court. She did not mistake identifying the accused before the Court. It was not suggested to her that before entering the Court, somebody showed her the accused. Her admission was natural. She may not have an opportunity to see him the chawl. Her evidence was specific: one unlce came, offered her a chocolate and took her in his room, which speaks much that she did not see him before the incident. Therefore, the admission of the victim does not make her testimony doubtful. Considering the nature of the incident that

happened with a girl, she had sufficient time to look at the accused and that his face must have been printed on her brain. Hence, the arguments that she had never seen him before, her identification in the Court was unnatural, and the possibility of showing him before cannot be ruled out has no force. Nothing suggests that she was tutored before recording her statement by the Magistrate.

23. The clothes of the victim and the accused were seized before PW-4. Her mother produced the clothes of the victim before PW-3, and the clothes on the person of the accused were seized vide panchnama Exhibit-20. The clothes of the accused were recovered on the same day by a separate recovery panchnama Exhibit-21 in the police station. The top of the victim was stained with whitish and light reddish spots. The half-pants of the victim were also stained with reddish colour spots, and on the inner side, there were white spots. The jeans pant of the accused had no stains. However, the T-shirt of the accused seized bore blood spots in various places. In the same way, the banyan was also blood-stained. His knicker was also stained with reddish colour. The shawl recovered from his room was also blood-stained.

24. PW-5 deposed that the victim was sent for medical examination at a Rural Hospital. The doctor handed over the samples. He sent it to the Chemical Analyzer. The victim was sent to the District Hospital. She was admitted there the next day. The accused was also

sent for a medical examination. The blood samples, nail clippings and pubic hair collected by the doctor were also sent to the Chemical Analyzer. He also sent the seized clothes of the victim and accused and also the shawl recovered from the spot of the incident to the Forensic Science Laboratory.

25. The chemical analysis report Exhibit-29 reveals that no semen was detected on the pubic hair of the accused. The nail clippings of the accused were stained with blood. The blood was human, and its group was 'A.B.'. Similarly, the chemical analysis report Exhibit-30 reveals that the blood group of the victim was 'B' tested from the blood sample sent to it. However, there was neither blood nor semen on the vaginal and anal swab of the victim. There was no blood on the shawl. The halfpant of the victim had a few blood stains ranging from about 0.1 cm to 2 cm in diameter on the middle portion. It was of blood group 'B'. Similarly, on the top of the victim, a few blood stains were detected, ranging from about 0.1 cm to 5 cm in diameter on the lower portion. It was stained with blood group 'B'. The semen of the blood group detected on the half pants of the victim was 'A.B.'. Full track pant and half T-shirt of the accused was stained with blood, and it was of blood group 'B'. The underwear of the accused was stained with blood group 'B'. However, no semen was detected on the shawl, top of the victim, full track pants, half T-shirt, sando banyan and underwear of the accused.

26. On the basis of the above evidence, the prosecution would submit that the blood group of the accused was found on the clothes. The semen on the blood found on the halfpant of the victim was of the group 'A.B.', which was of the accused. However, the clothes of the victim were stained with blood group 'B', which was of the victim. This circumstantial evidence corroborated the oral testimony of the victim and her mother. There was no evidence in rebuttal; therefore, the prosecution may be believed.

27. The learned trial Court has recorded specific findings that the accused admitted the medical report of the victim and his own. Therefore, those may also be admitted in evidence. The medical examination report Exhibit-32 of the victim says that there was redness around the anus. An opinion has been expressed that the evidence of sexual intercourse/assault cannot be ruled out. However, the final opinion was kept reserved until the Forensic Science Laboratory report was received. The abrasions were also noticed on her cheek. The medical examination report of the accused reveals that he was capable of doing sexual intercourse. The evidence that the victim was admitted to the hospital for three days has not been denied.

28. Evaluating the oral, corroborative and trace evidence collected by the prosecution that inspires confidence in the victim and her mother. The mother was the first witness to the incident. On the

spot of the incident, there were no other objects which may cause bleeding from her anus. The accused was present there, and he also never specifically denied that he was not residing in the room where the incident happened. Therefore, the possibility of bleeding from her anus due to an object other than his penis has been ruled out.

29. It has been tried to argue that the victim did not specifically depose about the insertion. The evidence of the victim in such cases has to be recorded verbatim. Some terms used in society indicate the actual Act and the intention of the maker of such acts. Herein the case, the victim has deposed that the accused did dirty acts (गंदा गंदा) with her backside. The words used by her clearly indicates that the accused did sexual assault with her and penetrated his penis in her anus. Besides her oral testimony with the particular words for unnatural sexual assault, her mother had noticed the bleeding from her anus, and her clothes were blood stained. The chemical analysis report corroborates her mother. The medical evidence also supports the mother that her mouth was swollen. The victim identified the accused before the Court. Nothing has been procured from the cross-examination of the witnesses to disbelieve them.

30. The prosecution witnesses are consistent on the facts of the case, and they proved that the accused, on the date of the incident, raped the victim and also committed aggravated penetrative sexual assault. The prosecution witnesses are believed. Since the prosecution

has proved the charges against the accused beyond reasonable doubt, the presumption under Section 29 of the POCSO Act would attract. It provides for the presumption that the accused had committed the offence under the POCSO Act. Hence, Points Nos.1, 2 and 4 are answered as proved.

As to point no. 3 :

31. The evidence of the victim that the accused took her forcibly to his room, pressed her mouth and opened the door of the room and the evidence of her mother that when she saw the victim in the room, she was sitting there and the accused was threatening by the gesture of his eyes, and the electric light of his room was firstly switched off and then switched on, is sufficient that, he had wrongfully confined the victim. There was nothing to disbelieve the prosecution witnesses. Hence, the point no. 3 is answered as proved.

As to point no. 5 :

32. In this case, the accused has been held guilty for the offences punishable under Sections 376(2)(i), 377 and 342 and Section 5(m) and punishable under Section 6 of the POCSO Act. Section 42 of the POCSO Act provides for the alternate punishment. It has been provided that where an act or omission constitutes an offence punishable under this Act and also under the Indian Penal Code, which includes Sections 375 and 376 of the Indian Penal Code, the offender found guilty of such offence shall be liable to punishment

under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

33. The penetrative sexual assault has been defined in Section 3 of the POCSO Act. The penetration of the penis to any extent into the vagina, mouth, urethra or anus of a child is a penetrative sexual assault. Similarly, the term 'rape' under Section 375 of the Indian Penal Code has also been redefined in 2013, and a man is said to commit rape if he penetrates his penis to any extent into the vagina, mouth, urethra or anus of a woman. The definition of penetrative sexual assault under the POCSO Act and rape under the Indian Penal Code is mostly similar.

34. Section 376 of the Indian Penal Code has classified the punishments for the offence with a woman under different situations. Herein the case, it has been alleged against the accused that he committed rape with a woman below 16 years. It was an offence punishable under Section 376 (i). In this case, the incident happened in the year 2017. Therefore, the charges were framed against the accused for the offence punishable under Section 376 (2) (i) of the Indian Penal Code. However, this clause (i) from Section 376 of the Indian Penal Code has been omitted by Act 22 of 2018 Section 4 w.r.e.f. 21.04.2018. Since the offence was committed before the omission of clause (i), the accused was correctly charged. The punishment for an offence under Section 376 (2)(i) was rigorous

imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, which shall be imprisonment for the remainder of the natural life of that person and shall also be liable to fine.

35. In the case of a child as defined under the POCSO Act below the age of twelve, the accused is punishable under Section 6 of the said Act as provided under clause (m) of Section 5. The punishment for such penetrative sexual assault is rigorous imprisonment for a term not less than twenty years but may extend to imprisonment for life, which shall mean imprisonment for the remainder of the natural life of that person and shall also be liable to fine or with death. The punishment provided for aggravated sexual assault is greater in degree than the punishment for an offence under Section 376 (2)(i) of the Indian Penal Code. So, in view of Section 42, instead of punishing the accused for an offence punishable under Section 376 (2)(i), he has been correctly convicted under Section 6 of the POCSO Act.

36. Apart from the penetrative sexual assault and rape, the accused was also held guilty of the offence punishable under Section 377 of the Indian Penal Code, which provides an independent punishment. The punishment for an offence of carnal intercourse is imprisonment for life or imprisonment of either description for a term which may extend to ten years and shall also be liable to a fine.

37. The question is, can the accused tried for carnal sexual assault/rape be separately punished for the offence punishable under Section 377 of the Indian Penal Code or as per Section 42 of the POCSO Act.

38. Section 71 of the Indian Penal Code speaks of the limit of punishment of offences made up of several offences. It has been provided therein that where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for anyone of such offence. In view of the definition of 'rape' under Section 375 of the Indian Penal Code, the accused may be punished for carnal sexual assault under Section 376 of the Indian Penal Code as well as under Section 6 of the POCSO Act. Therefore, the Court is of the view that the offender tried for an offence punishable under Section 377 with Sections 376 of the Indian Penal Code and Section 6 of the POSCO Act cannot be separately punished as such an act is an offence falling in two definitions i. e. in the Indian Penal Code and POSCO Act. Therefore, the learned Sessions Judge has correctly not imposed a separate sentence for the offence punishable under Section 377 of the Indian

Penal Code.

39. The next question is, the learned trial Court held the accused guilty for the offence punishable under Section 342 of the Indian Penal Code but did not impose the sentence or punishment independently. The learned trial Court in clause 1(b) of the operative part of the impugned judgment and order has observed thus:

“b) In view of sentence imposed for offence under Section 5(m) punishable under Sec.6 of the Protection of Children From Sexual Offences Act, no separate sentence is awarded to the accused for offence under Section 376(2)(i), 377, 342 of Indian Penal Code, though he is found guilty for the same.”

40. The offence under Section 342 of the Indian Penal Code is not defined in the POCSO Act. It has been independently defined in the Indian Penal Code. Considering the evidence against the accused, it would be difficult to accept that the offence of wrongful confinement punishable under Section 342 of the Indian Penal Code is either an offence made up of parts or any of this part is itself an offence. It is an independent offence and not part of the offence of rape or sexual penetrative assault. It is evident that before committing the crime of rape/penetrative sexual assault, the accused took the victim forcibly to his room and wrongfully confined her and then committed rape. Till he committed rape, his acts were the offence of wrongful confinement. Therefore, this Court is of the view that the accused was to be convicted independently for the offence punishable

under Section 342. Here, the learned trial Court committed the error of law in not imposing a sentence upon him as he has been convicted under Section 6 of the POCSO Act as provided under section 42 of the said Act.

41. Now, the question is, what is the power of the appellate Court under Section 386 of the Criminal Procedure Code in an appeal from conviction?

42. As per clause (b) of Section 386 of the Criminal Procedure Code, the appellate Court, in an appeal from a conviction, may reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or alter the finding, maintaining the sentence, or with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same. The provision is very specific that the appellate Court, in any case, shall not enhance the sentence unless the appeal for enhancement of the sentence has been filed.

43. Appreciating the evidence, this is not a fit case to order the retrial. Section 31 of the Criminal Procedure Code mandates that the accused, subject to the provisions of Section 71 of the Indian Penal Code, shall be sentenced for each offence proved against him. Under Section 386 of the Code of Criminal Procedure, the appellate Court

cannot enhance the sentence imposed upon the accused in an appeal from conviction. But in a case where the accused has been held guilty for a particular offence and has not been punished for the same as has been sentenced for the other offence, in the absence of any provision like Section 42 of the POSCO Act, is an illegal order. Where the Court cannot order the accused to be re-tried, in such circumstances, the Court is of the opinion that if the maximum punishment for the offence for which the accused has not been punished though held guilty is lesser than the punishment for the other offences for which he has been convicted, the Court may impose the punishment exercising the powers under Section 386 of the Indian Penal Code. Hence, clause 1(b) of the impugned judgment and order needs to be modified. Hence, the following order :

ORDER

- (I) Criminal Appeal stands dismissed.
- (II) The accused is convicted for the offence punishable under Section 376(2)(i), 377 and 342 of the Indian Penal Code and under Section 5(m), punishable under Section 6 of the Protection of Children From Sexual Offences Act.
- (III) In view of the sentence imposed for the offence punishable under Section 5(m) punishable under Section 6 of the Protection of Children From Sexual Offences Act, no separate sentence is awarded to the accused for the offence punishable under Section 376(2)(i) and

377 of the Indian Penal Code, though he has been held guilty for the same.

(IV) The accused is sentenced to suffer R.I. for six months and a fine of Rs.200. In default to pay the fine, he shall further suffer R.I. for one month.

(V) All the sentences shall run concurrently.

(VI) Rule stands discharged.

(VII) The Secretary, High Court Legal Services Sub-Committee at Aurangabad, shall pay the legal service charges to the learned counsel appointed for the appellant and respondent no.2/victim, as per schedule.

(S.G. MEHARE. J.)