

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.448 OF 2020

Pradip Rambhau Gaikwad	Appellant
Versus	
The State of Maharashtra & Anr.	 Respondents

Mr. Nitin Sejpal, Advocate a/w. Akshata Desai, Sakshi Jha,
Siddharth Gharat, for the Appellant.

Mr. S.R. Agarkar, APP, for the Respondent No.1-State.

Mr. Mandar Soman, Advocate (appointed) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 04th JANUARY, 2023

ORAL JUDGMENT :

1. The appellant has challenged the judgment and order dated 18.2.2020 passed by the Additional Sessions Judge, Panvel, Raigad in Special POCSO Case No.381/2019. The appellant was convicted and sentenced as follows :

- i. He was convicted for commission of the offence punishable under Section 376(2)(j),(n) of the Indian Penal Code and was sentenced to suffer RI for 14 years and to pay a fine of Rs.20,000/- and in default of payment of fine to suffer RI for one month.

- ii. He was convicted for commission of the offence punishable under Section 506-II of IPC and was sentenced to suffer RI for 7 years and to pay fine of Rs.20,000/- and in default of payment of fine to suffer RI for one month.
- iii. He was further convicted for commission of the offence punishable under Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and was sentenced to suffer RI for 14 years and to pay fine of Rs.20,000/- and in default of payment of fine to suffer RI for one month.
- iv. He was also convicted for commission of the offence punishable under Section 5 read with Section 6 of the POCSO Act and was sentenced to suffer RI for 14 years and to pay fine of Rs.20,000/- and in default of payment of fine to suffer RI for one month.
- v. All the substantive sentences were directed to run concurrently.

He was granted set off under Section 428 of Cr.P.C. Learned Trial Judge directed that the fine amount, if recovered from the appellant, shall be paid to the informant/victim in view of Section 357(1) of Cr.P.C.. The District Legal Services Authority, Alibag-Raigad was requested and recommended for providing

compensation to the victim as per the provisions of Section 357(A) of Cr.P.C.

2. Heard Shri Nitin Sejpal, learned counsel for the appellant, Shri S.R. Agarkar, learned APP for the respondent No.1-State and Shri Mandar Soman, learned appointed counsel for the respondent No.2.

3. The prosecution case is that the victim's date of birth was 1.6.2001. The span of incidents was between 14.2.2018 to 18.7.2018. It is alleged that the appellant established forcible sexual relations with the victim causing her to become pregnant. She was taken to a doctor. Her pregnancy was confirmed. On enquiry, she revealed the complicity of the appellant. After that, the FIR was lodged at Panvel Taluka police station vide C.R. No.128/2018 on 18.7.2018. The appellant was arrested on the same day.

4. The victim as well as the appellant were sent for medical examination. The victim delivered a child in September, 2018. The blood samples of the victim, the appellant and the

child were collected for DNA analysis. The DNA report showed that the appellant and the victim were the biological parents of the child. The investigation was carried out. During investigation, panchnamas were conducted. The statements of witnesses were recorded. At the conclusion of the investigation, the charge-sheet was filed and the case was committed before the Special Court.

5. During trial, the prosecution examined ten witnesses including the victim, her mother, the medical officers, the analyst who conducted the DNA test, the headmaster of the school where the victim was studying and the investigating officers. The defence of the appellant was of total denial. According to him, he was having business disputes with the Police Patil of the village where the victim was residing. At his instance, false allegations were made against the appellant and he was falsely implicated. According to the appellant, he had no concern with the girl child born to the victim. He had never visited the victim's house. The victim was in love with a boy working on a Chinese Foods Stall

cart near her house and out of that relationship, she became pregnant.

6. The appellant also examined a defence witness in the form of Priyanka Pulvankar, who was Superintendent in the District Court at Alibag to prove an affidavit wherein the mother of the victim had affirmed that the victim's date of birth was in the year 1998.

7. Learned Judge considered the evidence led by both sides and after hearing the arguments, recorded his finding thereby convicting and sentencing the appellant, as mentioned earlier.

8. The victim herself is the main witness in this case. She has deposed that she was staying with her parents. They were doing small labour work in agricultural fields. She had studied upto 8th standard in her village. She has stated that she did not know her date of birth and that she did not know the appellant. About one year prior to recording of her deposition, she had gone to a doctor at village Nere. The doctor told her that she was

pregnant and had referred her to a hospital at Panvel. Her pregnancy was confirmed there. Her mother made enquiries with her. At that time, she told that one 'kaka' who used to come to her house he had done this forcible act. She did not know the name of that person. She could not remember the date and day when he first came to her house, but, at that time she was alone in the house. According to her, he had committed rape on her on three to four occasions on the threats of killing her. The doctor, who had examined her, had sent her to the police. She narrated the incident to them. She was shown a photograph of the accused pasted on the arrest-form. She identified the photograph and according to her, that person was the offender. She has further deposed that he used to come to her house for performing some rituals. Her parents did not know him. The FIR lodged by her is produced on record at Exhibit-16. In the FIR, she had made similar allegations. There were some minor omissions in her FIR, which are brought on record in the cross-examination but those omissions do not affect the prosecution case. She further deposed that she delivered her child at a hospital at Vashi. She reiterated

that she did not remember her date of birth. She did have certificate and she showed willingness to produce that certificate but during the entire trial, the birth certificate is not produced. She emphasized that the appellant had performed sexual intercourse forcibly. Her statement was also recorded under Section 164 of Cr.PC.

Her cross-examination was mainly directed in establishing that her house was situated in a crowded locality. She denied the suggestion that her date of birth was 14.1.1998. She admitted that she gave birth to her child after completing nine months of pregnancy. She denied the suggestion that she had no complaints against the appellant till the doctor told her that she was pregnant. This suggestion was given to establish that possibly it was a consensual relationship. She admitted that the Police Patil of her village had come to police station along with her. Even her parents had accompanied her. According to her, she had never talked with the appellant. She denied the suggestion that she had consented for sexual intercourse. She denied the suggestion that

the child was born out of a consensual relationship with a person with whom she was in love. She could not give the exact dates when said 'kaka' had sexual relations with her.

9. PW-8 was the victim's mother. She had mentioned her own two names. The first name was used before her marriage and the second name was used by her after her marriage. She admitted that she was illiterate. She knew the appellant present before the Court. According to her, the appellant was on visiting terms in their house and the victim used to call him as 'kaka'. She and her husband used to leave their house at about 8.00 a.m. and used to return home at about 6.00 p.m. from their work. At that time, her children used to be at home. Her elder daughter had got married and the victim girl used to stay alone in the house. Then she narrated as to how the victim was taken to hospital and how her pregnancy was confirmed. She then made enquiries with the victim and at that time the victim had revealed the name of the appellant. Then they went to the police station and the victim gave her complaint. At that time, the victim was into the sixth

month of her pregnancy. Afterwards, the victim gave birth to a baby girl.

In the cross-examination, she deposed that the baby girl born to the victim was not with their family. The victim was engaged to get married at the time of her deposition. She was then specifically asked about the affidavit sworn in Alibag Court. To that, she gave evasive answers. She deposed that she did not remember as to whether she had attended the Court at Alibag and as to whether she had made certain affidavit there. She was shown that particular affidavit dated 31.10.2018 sworn before the Superintendent of Alibag District Court. She denied that the thumb impression on that document was her thumb impression. That particular affidavit was brought on record at Exhibit-49.

This affidavit has some significance in this case particularly in view of the evidence given by the defence witness DW-1. She denied that she had sworn the affidavit in presence of the Superintendent of the Court i.e. DW-1 and she was identified by an Advocate named Gaikwad. She admitted that even after

coming to know that the victim had become pregnant she had not gone to the police station to lodge the complaint against the appellant. She herself used to go to the house of the Police Patil for doing the domestic work. It was suggested to her that the FIR was lodged at the instance of that Police Patil. She denied that in the year 2018 the victim was 21 years of age. She further denied that the victim had any connection with that boy working at a Chinese Food Stall. She admitted that she did not have birth certificate of the victim. She had not made any application at the time when the victim had left her school.

Exhibit-49 was the affidavit purportedly sworn by this witness. In that affidavit, she is identified by an Advocate Gaikwad. It was sworn before the Superintendent of Alibag Court i.e. before DW-1 Priyanka Pulvankar. Significance of that affidavit is that she had mentioned in the affidavit that the victim was born in 1998 during Ganpati festival. Since she was illiterate, she had not noted the date of birth of the victim. When the victim was taken to a school for her admission, she was asked about the date

of birth but since she did not know the date of birth, it was mentioned as '1.6.2001', but, in fact the victim was born in the year 1998. The affidavit goes on to mention that the appellant had no occasion to visit her house. He had never visited her house and that he had no connection with the victim. It is not clear under what circumstances this affidavit was sworn but it was sworn before the defence witness i.e. DW-1 Priyanka Pulvankar.

10. DW-1 Priyanka Pulvankar has stated that she was working as a Superintendent in the District Court, Alibag and it was part of her duty to endorse the affidavit sworn before her. She used to verify the identity of the person swearing the affidavit. She has deposed that Exhibit-49 bore the office seal as well as the necessary stamp below which she had endorsed her signature. The document also bears signature of Advocate Gaikwad. It was executed after following due procedure. One Advocate Gaikwad had identified the witness i.e. PW-8 and that the thumb impression on that document was that of PW-8.

In the cross-examination conducted by learned APP,

she further added that she had verified from PW-8 as to whether she was made to understand the contents of the affidavit. But, she could not state whether PW-8 was pressurized in giving that affidavit. In that affidavit, name of PW-8, which she used before her marriage, was mentioned.

This affidavit has some importance in the context of the case which shall be discussed at the appropriate place.

11. In that context, the next important witness is PW-9 Lahu Tatale. He was the Headmaster of a school at the victim's village. The victim was studying in his school. The school had maintained record at the time of admission of the students. He had brought the original register of the school record. At Sr. No.762, there was the entry regarding the victim and in that entry the victim's date of birth was mentioned as '1.6.2001'. The verified copy of the extract of the register was produced on record at Exhibit-55. PW-9 had also issued the school leaving certificate to the victim. A copy of that school leaving certificate was also produced on record at Exhibit-56.

In the cross-examination, he stated that his school was giving education from 5th to 10th standard. He had not taught the victim. Exhibit-55 was in the handwriting of his Clerk but it did not bear his signature. At Sr. No.764 there was another entry. There also the date of birth of that particular student was mentioned as '1.6.2001'.

He has given some important admissions in the cross-examination. He has stated that the said village was an economically backward area. Around 25% of the students were from the economically backward class. He accepted that many a time they brought the students in the school by visiting various houses of those communities. He further admitted that if the parents were not aware of the exact date of birth, the school authorities mentioned the date of birth being in the month of June. He volunteered that they were also taking date of birth from the earlier school's record. The entry in the register at Exhibit-55 was taken by the Clerk Bharat Palkar. It was recorded on the basis of the victim's earlier school leaving certificate.

According to him, he had brought it with him to the Court but that certificate is not produced on record. And, therefore, it is not possible to refer to that certificate purportedly issued by her earlier school. He further admitted that there was no reference to any birth certificate of the victim in their school record. Except for the school leaving certificate of the previous school, they did not have any record to confirm the date of birth of the victim. Significantly, he has not even deposed that he knew the handwriting of the clerk Bharat Palkar or that he identified his handwriting.

12. The next set of witnesses is of the medical officers. PW-2 Dr. Nagnath Yempalle was attached to the Rural Hospital at Panvel. On 20.7.2018, the appellant was brought to that hospital by the police. He then collected the blood sample, nail clippings and pubic hair. He handed over those samples to Police Constable Mhatre. He also filled the form for Chemical Analysis. They were necessary for DNA report. According to him, the appellant was potent. The identification form for DNA samples is produced on

record at Exhibit-40 which mentions the date of collection of sample as 20.7.2018. It has the photograph of the appellant and signatures of three witnesses.

In the cross-examination, he accepted that he did not have any document to show that he had handed over the samples to PC Mhatre or that he had handed over identification form to the police. Apart from that, there was nothing of any significance in his cross-examination.

13. PW-3 Dr. Ameya Dudhwadkar was the Medical Officer attached to Navi Mumbai Municipal Corporation Hospital. On 20.7.2018, he medically examined the victim. There was hymenal tear at three positions. The victim was pregnant for 28 weeks. According to him, the victim was subjected to sexual intercourse/assault.

In the cross-examination, he was asked about the DNA kit. However, he was not the Medical Officer who had collected the blood samples for DNA testing. This witness accepted that in the papers he has mentioned the age of the victim as 17 years

without verifying any document relating to her age.

14. PW-5 Dr. Pramila Mane had collected the blood samples for DNA testing from the victim. She was attached to Navi Mumbai Municipal Corporation Hospital. On 20.7.2018, the victim was brought to her. She collected the blood sample of the victim and handed it over to the police. She had filled the identification form which is produced on record at Exhibit-32. It has signatures of the witnesses.

In the cross-examination, she stated that she did not have documentary proof to show that the police had requested her to collect the blood samples or that the police had given a DNA kit.

15. PW-6 Dr. Rajkanya Patil was attached to Navi Mumbai Municipal Corporation Hospital. She had collected the blood samples of the victim's child on 5.9.2018 for DNA testing. She deposed that she had kept the samples in the tubes in the DNA kit and sealed and labeled it.

In the cross-examination, she admitted that she did

not have any documentary evidence to show that the victim was 18 years of age. There was hardly any material in favour of the defence in her cross-examination.

16. PW-4 Neha Bhale was the Assistant Chemical Analyst, Navi Mumbai. She had received the blood samples of the victim, the appellant and the child in connection with C.R. No.128/2018 of Panvel police station. She had received the blood samples of the victim and the appellant on 20.7.2018 and that of the child on 6.9.2018. She performed the DNA analysis and recorded the opinion that the appellant and the victim were the biological parents of the victim's baby. The report is produced on record at Exhibit-29.

In the cross-examination, she deposed that the samples were required to be preserved in the temperature of 4 degree Celsius. If it is not safely preserved it would get spoiled. She admitted that, in case the samples were not preserved in the required temperature, it was not possible to get the results. She had not mentioned in the report about the temperature at which

the samples were preserved in her office. Their office had received the samples of the appellant and the victim under one covering letter and the sample of the baby was received under a separate covering letter. The important DNA report, as mentioned earlier, is produced at Exhibit-29.

17. PW-7 Kunda Pawar was a pancha for spot panchnama. This evidence is hardly of any importance. The spot panchnama is produced on record at Exhibit-47.

18. PW-10 PSI Rupali Choudhari was the investigating officer. On 18.7.2018, she had recorded the statement of the victim which was treated as FIR at Exhibit-16. She had sent the appellant and the victim for medical examination. She had got DNA kit for samples. The samples were procured. She had sent the victim for recording of her statement under Section 164 of Cr.P.C. by the Magistrate. After delivery of the baby girl of the victim, the sample for DNA testing was collected from the baby. She had sent the samples for testing. To establish the age, she had collected the school leaving certificate from the victim's school.

The victim and her father had given a letter to the police that they were unable to maintain the baby girl and, therefore, she gave a letter on 15.9.2018 to CWC, which later on forwarded the baby girl to a shelter home at Alibag.

In the cross-examination, she answered that since the victim had produced the documents showing her date of birth, he had not sent the victim for ossification test. She had not filed copies of Exhibits-55 and 56 along with the charge-sheet. She had not recorded the statements of the staff of the two schools of the victim. She produced three station diary entries at Exhibits-67, 68 and 69 about sending the appellant for medical examination. On one occasion, the samples sent to the laboratory were returned and then they were re-sent. She then proved the omissions from the victim's statement, which as mentioned earlier were not very material.

. This, in short, is the evidence led in this case.

19. Learned counsel for the appellant made the following submissions :

- i. The age of the victim is not proved by the prosecution beyond reasonable doubt.
- ii. The school record is not properly proved. It is not based on any reliable material. There is nothing to show that the victim was a minor at the time of commission of offence and, therefore, no offence under POCSO Act can be proved.
- iii. He further submitted that the circumstances show that the victim had not made any grievance about the incident either to her family or to the police before her pregnancy was detected. This indicates that, if at all, it could be a consensual physical relationship and, therefore, even the offence of rape as defined under IPC is not made out.
- iv. The police did not take efforts deliberately to conduct ossification test and, therefore, an adverse inference is required to be drawn against the investigating agency.
- v. He further attacked the procedure of taking and sending the blood samples for DNA test. According to him, the necessary procedure was not followed. There is nothing to

show that the samples were preserved at the requisite minimum temperature and, therefore, the DNA report was not accurate.

vi. Lastly, he submitted that in case the offence is held to be proved against the appellant, since the sentence imposed on him is excessive, minimum sentence be imposed.

20. Learned counsel for the respondent No.2 as well as learned APP opposed these submissions and made their own submissions as follows :

- i. The prosecution case is proved through the evidence of the victim herself.
- ii. The DNA report is sufficiently a strong circumstance and in view of that report there was no scope even to argue that the appellant had no connection with the alleged offence or with the pregnancy of the victim.
- iii. The school record was properly proved through the evidence of PW-9 the Headmaster of the school. There was no reason

to doubt the veracity of the entries made in the register.

The samples for DNA testing were collected after following due procedure and there is no flaw in the procedure.

- iv. If the samples were not preserved properly, there would not have been any report at all.
- v. The very fact that a proper report is prepared after analysis of the samples shows that the samples were preserved as per the requirement.
- vi. Lastly, they submitted that considering the seriousness of the offence, the sentence imposed is proper and it need not be reduced.

21. I have considered these submissions. One of the most important aspects in this case is the age of the victim. To establish that she was below 18 years of age, the prosecution has examined PW-9, the headmaster and has produced two documents i.e. Exhibits-55 and 56 on record to establish that the victim's date of birth was 1.6.2001. Therefore, according to the prosecution case, during the period when the offence took place between February,

2018 to July, 2018 the victim was 16 years & 8 months of age. In that behalf, it is necessary to closely scrutinize the evidence of PW-9. He has deposed that the register was not in his handwriting. It was maintained by a Clerk. He has not deposed that he identified the handwriting of the Clerk. Even ignoring this fact, it was necessary for the prosecution to establish the victim's date of birth reasonably. PW-9 has admitted that entry in the register was taken only on the basis of the school leaving certificate of the earlier school i.e. the Primary School where the victim had studied. PW-9 was the headmaster of the school where the education was imparted for the standards 5th to 10th. Therefore, the record of the first school was important. Significantly, PW-9 has deposed that he had brought the school leaving certificate issued by the first school to the Court but that school leaving certificate of the first school is not produced on record. There is no reference in the register of PW-9's school to that particular school leaving certificate and, therefore, the prosecution has not established that the entry in the register of PW-9's school was based on the school leaving certificate issued by the victim's first

school. Thus, that important link is missing.

22. Further more, this witness PW-9 has given an important admission. He has deposed that the students in the school were from economically backward community and many a time the students and their parents did not know the date of birth and in such cases generally some date of birth in the month of June of a particular year is mentioned. This is totally arbitrary and approximate. In this case, the victim's date of birth is mentioned as 1.6.2001. There is another entry at Sr. No.764 which also shows that the students date of birth as '1.6.2001'. PW-9's admission, therefore, assumes importance and there is a strong possibility that the victim's date of birth may not be correctly recorded in the school register.

23. There is another circumstance creating doubt about the date of birth of the victim. The defence had referred to Exhibit-49. It is an affidavit sworn before DW-1 who was Superintendent of Alibag Sessions Court. DW-1 is a reliable witness. Her evidence shows that the victim's mother had sworn

an affidavit before her mentioning that the victim was born in the year 1998 and her date of birth as '1.6.2001' was not correct. Though it is not clear under what circumstances and for what purpose this affidavit was sworn, it does establish a fact that at some point the victim's mother had taken a stand that the victim was major at the time of the incident. Therefore, this affidavit cannot be totally ignored. The defence has cross-examined PW-8 the mother of the victim with reference to this particular document and she had not given satisfactory answers.

All these factors throw reasonable doubt about the prosecution case that the victim was below 18 years of age at the time of commission of offence and, therefore, benefit of this doubt must go to the accused to that extent. Hence it has to be held that the prosecution has failed to prove beyond reasonable doubt that the victim was below 18 years of age at the time of commission of offence. Consequently, the charges for commission of offence under the POCSO Act cannot be held to be proved.

24. As far as the IPC offences are concerned, the

prosecution has failed to prove as to how Section 376(2)(j) of IPC is attracted in this case. There is no evidence led in that respect at all. Therefore, even the conviction under that Section needs to be set aside. Having observed thus, the next question would arise as to whether the appellant has committed the other offence under Section 376(2)(n) of IPC for which he was convicted and sentenced. Here, the prosecution has successfully proved beyond reasonable doubt that the appellant was the biological father of the victim's child. Therefore, there is no scope to observe that the appellant had not established physical relations with the victim. The DNA report sufficiently establishes that the appellant had physical relations with the victim.

25. In that behalf, the victim's case that it was repeated on a few occasions will have to be accepted. In this context, the presumption under Section 114A of the Indian Evidence Act, 1872 plays a vital role. Said Section reads thus :

“114-A. Presumption as to absence of consent in certain prosecution for rape. – In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause

(l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

Explanation.-- In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860)."

26. In this case the victim had very clearly emphasized that the offender had established physical relations with her against her wish. It was done forcibly. Hence, there was clear absence of consent according to her. Therefore, under Section 114A of the Indian Evidence Act, the burden shifted on the appellant which he has failed to discharge in this particular case. He has not led any evidence and nothing can be gathered from the prosecution evidence that such burden stood discharged. There is no force in the submission that till her pregnancy was confirmed the victim did not make any grievance and hence it indicated that it was a consensual relationship with the appellant. In the present case the victim's case is clear that the appellant had forcibly

established physical relations with her under threats. He had threatened to kill her and, therefore, though the house was in a crowded locality the incident had taken place inside the house, when the victim was helpless. The offence was committed without her consent and under threats. Therefore, the victim could not seek help from anybody else. The conduct of the victim of not making grievance before her pregnancy was confirmed cannot be said to be unnatural. Only when she was left with no option, she had made grievance after her pregnancy was confirmed. Hence there is neither any unexplained delay nor unnatural conduct on her part in approaching the police belatedly. As discussed earlier, there is nothing to show that the appellant and the victim were on more than friendly terms or that they were in a consensual relationship. The appellant has not taken the specific defence of consensual relationship. Therefore, the offences under Section 376(2)(n) of IPC as well as under Section 506 Part-II of IPC are proved beyond reasonable doubt.

27. I have also heard the parties for deciding the quantum

of sentence. Though the appellant is held as not guilty as far as the offences under the POCSO Act are concerned, the offence under Section 376(2)(n) of IPC is also quite serious. However, the appellant's acquittal from the offences under POCSO Act can be considered to show him some leniency as far as the quantum of the sentence is concerned. It is observed in the impugned judgment that the appellant's family consists of his old parents, wife and children. In this background, the question of sentence can be considered which would strike a balance so that the offence does not go unpunished with unnecessary leniency; but at the same time the victim gets some benefit i.e. at least monetary benefit from the verdict. In my opinion, the substantive sentence can be reduced to the minimum prescribed for the offence but at the same time, the fine amount can be enhanced substantially so that the recovered amount can be given to the victim which she can use for the child as well. Therefore, in my view, the substantive minimum sentence of ten years RI with additional fine of Rs.75,000/-, will meet the ends of justice. The amount of additional fine, if recovered, can be directed to be paid to the

victim which she can utilize for the benefit of the child.

28. Hence, the following order :

:: O R D E R ::

- i. The appeal is partly allowed.
- ii. The appellant is acquitted from the charges of commission of the offences punishable under Section 3 read with 4 & 5 read with 6 of the POCSO Act. Consequently, the substantive sentence and the fine imposed on him for these offences are also set aside.
- iii. The appellant is acquitted from the charges of commission of the offence punishable under Section 376(2)(j) of IPC. Consequently, the substantive sentence and the fine imposed on him for that offence are also set aside.
- iv. The conviction of the appellant under Section 376(2)(n) of IPC is maintained. However, instead of fourteen years, the appellant is sentenced to suffer RI for ten years and to pay fine of Rs.20,000/- (as earlier imposed) + Rs.75,000/- (as

additional fine) i.e. Rs.95,000/- and in default of payment of fine to suffer RI for two years and one month.

- v. The appellant's conviction and sentence under Section 506 Part-II of IPC are maintained.
- vi. All the substantive sentences are directed to run concurrently.
- vii. The appellant is granted set off under the provisions of Section 428 of Cr.P.C.
- viii. If the fine amount is paid by the appellant, the entire amount be paid to the victim by way of compensation, which she can use for the benefit of the child.
- ix. All the other clauses of the impugned judgment and order which are not inconsistent with this order, are maintained.
- x. With these observations, the appeal is disposed of.

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(SARANG V. KOTWAL, J.)

Deshmane (PS)