



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

CRIMINAL APPEAL NO.611 OF 2020

Ram Shrimant Piske
Age 41 years, Occu. Agri.,
R/o Talmod, Tq. Omerga,
Dist. Osmanabad, At present-
Jagdamba Nagar, Tuljapur,
Dist. Osmanabad
(At present in Jail)

... APPELLANT
(Orig. Accused)

VERSUS

1. The State of Maharashtra
through its Secretary,
Home Department,
Mantralaya, Mumbai – 32

(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

2. X Y Z

... RESPONDENTS

.....
Mr. S.S. Bora, Advocate for appellant
Mrs. S.N. Deshmukh, A.P.P. for respondent No.1 – State
Mr. D.S. Ingole, Advocate for respondent No.2 (appointed)
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 21st August, 2024.

Date of pronouncing judgment : 9th September, 2024.

JUDGMENT (PER R.G. AVACHAT, J.) :

This appeal takes an exception to a judgment and order of conviction and consequential sentence, passed by learned Special Judge (Trial Court) appointed for trial of offences under the Protection of Children from Sexual Offences Act (POCSO Act for short), on 2/8/2018 in Special (POCSO) Case No.55/2018. The relevant part of the operative order of conviction and consequential sentence reads thus :

- (1) The accused Ram Shrimant Piske, Age 41 years, R/o Talmod, Tq. Omerga, Dist. Osmanabad at present Jagdamba Nagar, Tuljapur, Tq. Tuljapur, Dist. Osmanabad is found guilty for the offence punishable under Sections 376(2)(f)(i)(j)(n), 201 and 506 of the Indian Penal Code and Sections 6, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 vide Section 235(2) of the Code of Criminal Procedure.
- (2) The accused is convicted for the offence punishable under Section 376(2)(f)(i)(j)(n) of Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to undergo rigorous imprisonment for life and

pay fine of Rs.1 Lakh (Rs. One lakh only). If default, he shall undergo rigorous imprisonment for Three (3) years.

- (3) The accused is convicted for the offence punishable under Section 201 of the Indian Penal Code vide section 235(2) of the Code of Criminal Procedure and sentenced to undergo rigorous imprisonment for Three (3) years and to pay fine of Rs.5000/- (Rupees Five thousand only). In default, he shall undergo rigorous imprisonment for Five (05) months.
- (4) The accused is convicted for the offence punishable under Section 506 of Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to undergo rigorous imprisonment for one (01) year and pay fine of Rs.1000/- (Rs. One Thousand only). In default, he shall undergo rigorous imprisonment for one (1) month.
- (5) No separate sentence is inflicted upon the accused for the offences punishable under Sections 6, 10 & 12 of the Protection of Children from Sexual Offences Act, 2012.
- (6) The period of inquiry, investigation and trial undergone by the accused since 25/03/2018 till 02/08/2018, be set off vide Section 428 of the Code of Criminal Procedure.
- (7) The substantive sentence of the accused shall run consecutively vide Section 31(1) of the Code of Criminal Procedure.

- (8) If fine amount so realized, the compensation of Rs.1,06,000/- (Rs. One Lakh Six Thousand only) be paid to the victim, vide Section 357(1)(b) of the Code of Criminal Procedure after appeal period is over or subject to finality of appeal if any.

2. The case of the prosecution in short is as follows :-

The appellant is the father of victim (P.W.1), Aged 15 years at the relevant time. The appellant was a tractor driver by profession. He would live along with his wife "N" (P.W.2) and three daughters. The incident took place on the intervening night of 23 and 24 March 2018. the appellant's wife had just delivered a baby girl. She was, therefore, in Government Hospital for about 2 days. According to the prosecution, the victim was a 9th Class student of Jijamata Girls High School. The victim was Number Two daughter. By 10.00 p.m. on 23/3/2018, the victim and her two sisters, one elder and the other younger, went to sleep on a floor of the first room of two-room premises. Bathroom was outside of the premises. The appellant returned to his residence. Since his daughter had not cooked food for him, he took meal at the house of his brother-in-law (husband of wife's sister). On his

return to his residence, he watched programmes on Television. It is the case of the prosecution that he would specially watch crime serials. He then slept on a cot. By 1.30 a.m., he came down on the floor. He laid himself nearby the victim and started fondling her breast and kissing her as well. He then removed his pant and underpant as well. He did the same thing with the victim. Appellant then committed sexual intercourse with her, said to be 5-6 times on the floor of the house. He then took the victim on the cot. He again did the same thing with her 2-3 times. Then he took her to the bathroom. He made her wash her undergarments. All these things took place within a span of about 4 hours. By 6.00 in the morning, both, the appellant and the victim woke up. The victim woke her sisters up as well. Then they went to the hospital to meet their mother. The appellant continuously remained around the victim only with a view to prevent her from disclosing anything to anyone. After a while, the victim went to school. She reached the school somewhat late. She related her friend "S" (P.W.3) what the appellant did with her. The victim left the school midway for the day. On return of the mother, she related her about the incident. The maternal uncle was also informed on phone. After having gathered courage, the mother accompanied the victim to the Police Station. The

victim's statement (F.I.R. - Exh.7) was recorded at the Police Station.

3. A crime vide C.R. No.74/2018 for offence punishable under Sections 376 of the Indian Penal Code and Sections 4, 8, 12 of the POCSO Act was registered at Tuljapur Police Station. The appellant was arrested. The victim was subjected to medical examination. Clothes of both, that of the victim and the appellant which were on their person at the relevant time, were seized under different panchanamas. A crime scene panchanama (Exh.21) was also drawn. All the seized articles were sent to Forensic Science Laboratory, Aurangabad for analysis and report. Statements of persons acquainted with the facts and circumstances of the case came to be recorded. Upon completion of the investigation, charge sheet was filed against the appellant.

4. The Trial Court framed the Charge (Exh.3). The appellant pleaded not guilty. His defence was of false implication on account of his earlier matrimonial dispute.

5. To bring home the charge, the prosecution examined 8 witnesses and adduced in evidence certain documents. On appreciation of the evidence in the case, the

Trial Court convicted and consequently sentenced the appellant as detailed above.

6. Heard. Learned Advocate for the appellant would submit that, it was a 10 x 10 ft. room in which the alleged offence took place. The victim's elder sister and younger sister as well were sleeping along with her on the floor. The allegation that the appellant committed sexual intercourse with the victim about 8 or 9 times is highly improbable. He would further submit that, there was matrimonial dispute between the appellant and his wife. The matter had even been to the Court. The wife had filed proceedings under Section 498-A of the Indian Penal Code and application for maintenance. The matters were settled in Lok Adalat. According to him, although the wife resumed matrimonial tie, there must not have been meeting of minds. He meant to say that, when a "broken rope" is tied again, it retains a knot.

The learned Advocate would further submit that, it was just difficult to imagine that the incident lasted for more than 4 hours, during which none of the sisters of the victim did wake up. The Medical Officer did not notice any injury on the person of the victim. There was delay in lodging of the F.I.R. The C.A. reports do not support the prosecution case.

According to learned Advocate, an Advocate appointed through legal aid represented the appellant before the Trial Court. He had not been properly represented. Our attention was drawn to Section 164 statement of the victim and her mother. According to learned Advocate, these witnesses were not confronted with those statements. The learned Advocate ultimately urged for allowing the appeal and acquit the appellant or at least remanding the matter to the Trial Court to offer the appellant fair opportunity to cross examine certain witnesses namely the victim, her mother and the doctor who examined the victim. He relied on the set of following authorities :-

- (1) Rai Sandeep Vs. State of NCT of Delhi
(MANU/SC/0623/2012)
- (2) Santosh Prasad Vs. The State of Bihar
(MANU/SC/0192/2020)
- (3) Tameezuddin Vs. State of (NCT) of Delhi
(MANU/SC/1621/2009)
- (4) Sadashiv Ramrao Hadbe Vs. State of Maharashtra
& ors. [MANU/SC/06072006]
- (5) State (GNCT of Delhi) Vs. Aleem
(MANU/DE/1997/2017)
- (6) Ramanand Vs. State of Uttar Pradesh
(MANU/SC/1324/2022)
- (7) Ashok Debbarma Vs. State of Tripura
(MANU/SC/0164/2014)

- (8) Mohd. Hussain Vs.The State (Govt. of NCT) Delhi
(MANU/SC/0700/2012)

7. The learned A.P.P. and learned Advocate representing the respondent No.2 – victim would, on the other hand, submit that, a daughter had no reason to give evidence against her own father. The conduct of the victim narrating the incident to her close friend (P.W.3) reinforces the prosecution version. The medical examination report supports the prosecution case. The C.A. reports relating to some of the items necessarily do not favour the prosecution since the victim had admittedly taken bath and passed urine many a time. We were taken through the cross-examination of each and every prosecution witness to submit that the Advocate appointed to represent the victim was competent enough to conduct such a case. The appointed Advocate had 8 years standing at the bar. Both the learned Advocates ultimately urged for dismissal of the appeal. The learned A.P.P. relied on the following two authorities :-

- (1) Narayanamma Vs. State of Karnataka
1994 SCC (CRI) 1573
- (2) Lalchand Rohra s/o Shri Jhethamal Rohra Vs. State of
Chhatisgarh (CRA No.1188/2022, decided on 9/4/2024)

8. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein. Let us turn to the evidence on record and appreciate the same.

9. The School Transfer Certificates (T.C.) placed on record by the prosecution was admitted by the defence in so many words. It was, therefore, marked Exh.23. As per the said record, the date of birth of the victim was 29/6/2003. As such, on the date on which the crime took place, the victim was 14 years and about 9 months old (child).

10. It is in the evidence of P.W.1 that the incident took place by 1.30 a.m. on 24/3/2018 at her residence. She along with her two sisters went to sleep on the floor of the house. Her father (appellant) laid himself on the cot. Her mother was in hospital to take care of her infant sister. The appellant came down on the floor. He dragged her close to him. He asked her not to talk. He then started kissing her and fondling her breast. The appellant denuded himself partly i.e. removed his pant and underpant. He did the same thing with her. The appellant thereafter committed sexual intercourse with her 5-6 times on the floor. He then took her on the cot. Again he committed penetrative sexual intercourse 2-3 times. The

victim went out of the house for urinating. The appellant followed her. He made her wash her knicker and even clean it. She felt sticky substance on her knicker after the occurrence. She could not run away. The appellant again took her on the cot and slept with her.

11. It is further in her evidence that, on the following morning, both of them woke up. She then made her both the sisters wake up. Then they went to the hospital to meet their mother. The appellant had accompanied them. She did not dare to relate her mother due to presence of appellant. She then requested the appellant to drop her and her sister to school. She reached the school somewhat late. She started weeping. Her friend enquired with her. She thereupon related her what the appellant did with her on the previous night. It is further in her evidence that, she along with her sister left the school before school time was over as they wanted to relate the same to her mother. On the way, they met their father. He took them to the hospital. She, therefore, could not relate her mother. The appellant then took her and her sister home to do household work. On the way they stopped at a petrol pump. That time she related her sister the incident. Then the appellant brought them to the house to do household work. It

is further in her evidence that, then she made a phone call to her maternal uncle from neighbour's cell phone. Both, the victim and her sister started for the house of their maternal uncle. The uncle met them on the way. He took them to his residence. After a while, he brought her maternal aunt to his house. She then disclosed the incident. The appellant too was present at the house of their maternal uncle's neighbour. The appellant then enquired with the maternal aunt as to whether she had related anything to her. The aunt told him to have been informed that he beat her up. The appellant then took her and her sister back to his residence. He asked both of them not to disclose the incident. He again called P.W.1 to the bathroom and threatened her with dire consequences if she disclosed anything of the incident. It is further in her evidence that, the appellant used to make her sit on his lap and misbehave with her many a time. He was addict of watching crime serials on TV. The appellant had kept two swords in the house. She had, therefore, fear of her father (appellant). It is further in her evidence that, her mother and grandfather returned to the house in the evening. Same day she disclosed them the incident when the appellant was not present. The mother felt giddiness. She was required to be shifted to the hospital. The appellant left the house. After a

while, the maternal uncle came to their residence. They then went to the Police Station. Her statement (Exh.7) was recorded thereat. Her statement was recorded twice. According to her, she was medically screened.

12. During her cross-examination, it was brought on record that the appellant was previously addicted to liquor. There used to be frequent quarrels between him and her mother. The mother had lodged complaint against father under Section 498-A of the Indian Penal Code and even filed application for maintenance. On the night of 23/3/2018, she and her elder sister did not prepare food for dinner at home. The appellant, therefore, went to her maternal uncle's residence for dinner. She admitted that, she and her two sisters went to bed on the floor of the room. She denied to have woke up her father (appellant) to go out for relieving herself. She denied that she took her father to the bathroom due to fear of darkness. She denied that, she was suffering from bed-wetting since her childhood. She further denied that, she washed the clothes on her person in the bathroom on account of bed-wetting. She denied that, she had asked her father to accompany her out of the house due to darkness. It was further brought on record that, she tried to wake up her

younger sister. She admitted that, her maternal uncle took her to the Police Station. She, however, denied that, the F.I.R. was lodged at the behest of her maternal uncle. Rest of the questions are in the nature of suggestions disputing her incriminating evidence against the appellant.

13. P.W.2, mother of the victim testified that, on the given day, she was in the hospital to take care of her infant daughter. They were discharged from the hospital on 24 March. Little past 2.00 p.m., she came back to her residence along with her kid and daughter. The appellant was around. She questioned him as to why he did not attend his work. He told her not been feeling well. It was further in her evidence that, P.W.1 started loitering around her. She therefore, made enquiry with her. She was frightened. She took her into confidence. She then disclosed her the appellant to have committed rape of her during the previous night. She even expressed her desire to die. She (P.W.2 mother), thereby felt giddiness. She (P.W.2 mother) was, therefore, taken to the hospital. Her brother Pandu called her on phone and informed to have taken the victim (P.W.1) to the Police Station. He asked her to come to the Police Station. She, therefore, went there. She too put her signature on the complaint.

14. It was further in her evidence that, the appellant was hot-tempered. He had kept two swords in the house. All of them were apprehensive of the appellant. He would view crime serial – Crime Diary on TV. He would even read Weekly “Police Times”. He would take her daughters on his lap, kiss and fondle them. She even referred to her statement (Exh.15), recorded under Section 164 of the Cr.P.C. She referred to the swords (Articles 9 and 10) which were delivered by her to the police under panchanama (Exh.16).

15. During her cross-examination, she testified that, she had filed private complaint under Section 498-A of the Indian Penal Code and maintenance proceedings against the appellant. The cases were pending for about 3 years. She admitted that, both the proceedings were compromised in Lok Adalat. For some time the appellant and herself had stayed at Solapur. It was suggested to her that the appellant used to drink intermittently (implied admission of drunkardness). She denied that, her daughter (victim) was suffering from bed-wetting since her childhood. It was her brother who secured the appellant job as a tractor driver. It was further in her evidence that, her three daughters were at her residence on 23/3/2018. The daughters did not prepare food for dinner. As

a result thereof, there was bickering between them and the appellant. The appellant, therefore, took dinner at the house of her brother. Rest of the questions were in the nature of denial of her incriminating evidence against the appellant.

16. P.W.3 was a classmate of P.W.1 (victim). It was in her evidence that, the victim was Monitor of the Class. P.W.1 did not attend the school on time on that that day i.e. on 24 March. She came to the Class somewhat late. She was weeping. On enquiry, she related her the appellant to have committed rape of her. It was further in her evidence that, after recess, P.W.1 left for her residence.

In her cross-examination, a suggestion was put to her that, P.W.1 (victim) left the school after recess. This is nothing but an admission, which reinforces the prosecution case.

17. P.W.4 is a sister of P.W.1. She was categorical to state that, P.W.1 (victim) related her the appellant to have committed rape of her on the given night. Perusal of her evidence appears to be consistent with the evidence of P.W.1. According to her, the appellant dropped P.W.1 to school. By 11.00 in the morning, the appellant brought her both the sisters

to the hospital. On the way back to residence, they halted for filling petrol in the motorcycle. That time the victim (P.W.1) related her the appellant to have committed rape of her on the previous night.

18. During her cross-examination, it was brought on record that the appellant had picked up quarrel with her as she did not prepare food for dinner on 23 March. She admitted to have had not personally seen the appellant committing rape of her sister. She denied to have deposed untrue against her own father.

19. P.W.6 Chhaya is a witness to the statement given by the appellant that he would take out the clothes which were on his person on the given day. The said statement is at Exh.28. Then he took them to his residence and took out the clothes. Those were his underpant, banian and night pant. Those were seized under panchanama (Exh.29).

20. P.W.7 Dr. Kiran was a Medical Officer, Sub-District Hospital, Tuljapur. She examined the victim on 25 March by 1.40 a.m. It was in her evidence that the victim gave history of sexual assault by her father. Her medical examination report is at Exh.32. Her findings were consistent with the sexual

intercourse with the victim. She noticed absent and rupture of hymen and laceration at forchetti and spotting on vagina, labia minora-redness present, labia majora-redness plus. Perineum-redness plus. She took vaginal swab, blood sample, nail clipping and pubic hair of the victim. She sealed all those articles in bottle and container and handed over to the police for chemical analysis. She then referred C.A. reports (Exhs.35 and 36). It was further in her evidence that, the victim had told her to have taken bath and changed clothes. The same was noted in her medical certificate (Exh.32). The certificate also contained post incident activities of the victim namely changing of clothes, passing urine, cleaning and washing undergarments. She examined the victim 24 hours after the occurrence.

She denied that the injuries noticed at the victim's private part were possible by urinal infection and itching.

21. True, the C.A. reports (Exhs.35 and 36) do not indicate semen stains on the vaginal swab. No semen was also detected on pubic hair of the appellant and that of the victim as well.

22. True, the appellant was represented before the Trial Court by an Advocate appointed through Legal Aid. It is, however, not in dispute that the said Advocate had 8 years standing. From the tenor of cross-examination of all the prosecution witnesses, we do not find the appellant to have not received a fair trial. He has been behind the bars from day one of his arrest. We do not find it a case fit to remand the matter back to the Trial Court and give the appellant opportunity to cross-examine certain witnesses.

23. True, as per the case of the victim, the appellant did have sexual intercourse with her 8 times during a period of 4 hours. The same may sound improbable. In our view, since the medical examination report of the victim reinforces her case and the fact that she related the same to her friend and sister as well, we do not find her to have filed a false case to teach her father a lesson. In our view, her case that the appellant had sexual intercourse with her 8 times is an exaggeration. We have reason to observe so because the history given by her to the Medical Officer is as under :

History of Sexual Violence			
Date of incident/s being reported : 24/3/18	(ii) Time of incident/s : Around 1.30 a.m.	(iii) Location/s : at home	
Estimated duration : 1 day			

Multiple : No	Chronic (> 6 months) No.	Unknown : No.
(v) Number of Assailant(s) and name/s : Ram Piske		
(vi) Sex of assailant(s) : Male Approx. Age of assailant(s) : 41 yrs. If known to the survivor – relationship with the survivor : Father		
(vii) Description of incident in the words of the narrator : Narrator of the incident, survivor/ informant (specify name and relation to survivor)		
History narrated by victim herself.		
15 yrs. Female adolescent child giving H/o sexual intercourse/ rape by her father at their home <u>only on 24/3/18 around 1.30 a.m.</u> She told that her father removed her clothes & kissed her all over body & then inserted penis inside vagina & She also told that her mother was not at home.		

24. The victim had changed her clothes, cleaned and washed them as well. She had taken bath before her medical examination. She passed urine number of times. This could be the reason, according to the Medical Officer, as to the C.A. reports not disclosing semen stains on pubic hair or vaginal swabs. The Medical Officer had noticed on local examination of genital parts/ other orifices as under :

18. Local examination of genital parts/ other orifices :	
A. External Genitalia : Record findings and state NA where not applicable	
Body parts to be examined	Findings
Urethral meatus & vestibule	(N)
Labia majora	No cuts, abrasions, bleeding only redness present.
Labia minora	Redness (+)
Fourchette & Introitus	Laceration over the fourchette
Hymen	Ruptured
Perineum	Redness (+)
External Urethral Meatus	No injury or laceration

25. In our view, for all aforesaid reasons, though we find the victim to have exaggerated her version that the appellant to have committed sexual intercourse 8 times with her, the medical history given by her undoubtedly indicates the appellant to have had sexual intercourse with his own daughter, who was below 16 years of age at the relevant time. He, is therefore, guilty of offence punishable under section 376(2)(f)(j)(k) of the Indian Penal Code. We also uphold the conviction of the appellant for offences punishable under Sections 201 and 506 of the Indian Penal Code (since evidence is there as to made her wash undergarment and threatened with dire consequences, if went public with the incident) and under sections 6, 10 and 12 of the POCSO Act, recorded by the Trial Court. Since we find it to be not a case of repeated rape on the same woman, the appellant stands acquitted of the offence punishable under Section 376(2)(n) of the Indian Penal Code.

26. While hearing the appellant on the question of quantum of sentence, it appears that, no appropriate opportunity was given to him. A fine of Rs.1 Lakh has been imposed without taking into consideration whether he was financially sound enough to pay the amount. In default of

payment of fine, he was directed to undergo sentence of three years rigorous imprisonment. Moreover, after having sentenced him to suffer imprisonment for life, he has been sentenced to various terms of imprisonment as stated above with a direction that those terms of imprisonment to run consecutively. The same is impermissible in law in view of Section 427(2) of the Code of Criminal Procedure, which reads thus :

“427. Sentence on offender already sentenced for another offence.—

(1)

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.”

27. Section 376(2) of the Indian Penal Code reads thus:

376(2) Whoever,

- (a)
- (b)
- (c)
- (d)
- (e)

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g)

(h)

(i)

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or
.....

(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

28. Section 376(2) of the Indian Penal Code provided the punishment for the offences falling under any of the sub-clause (a) to (n) of Section 376(2) with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean, imprisonment for the remainder of that person's natural life and shall also be liable to pay fine.

29. We have perused the judgments relied on by learned Advocate for the appellant. In our view, there can

hardly be a precedent in criminal cases. A variance in facts here and there may change all the equations. The facts in case of Rai Sandeep (supra), indicate that the prosecutrix therein was not found to be a sterling witness. Paragraph No.9 of the said judgment indicate that, after having deposed to in examination-in-chief against the accused therein, she made a U-turn in her cross-examination.

30. In case of Santosh Prasad (supra), the Court found material contradictions in her deposition. A reference thereto would be found in paragraph No.6 of the judgment.

31. The facts in case of Tameezuddin (supra) indicate the medical evidence therein was not supporting commission of rape. 2 or 3 persons whose statements were recorded, were not examined.

32. In case of Sadashiv Hadbe (supra), it was observed that, the accused could be convicted on sole testimony of prosecutrix, if it was capable of inspiring confidence in the mind of the Court. If the prosecutrix version is unsupported by medical evidence or whole surrounding circumstances, the Court shall not act on the solitary evidence

of the prosecutrix. The factual difference is found in paragraph No.7 of the judgment.

33. In case of Ramanand (supra), it has been observed that, failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law.

34. At the cost of repetition, we need to observe that, close reading of the cross-examination of all the prosecution witnesses, we do not find the appellant to have not been properly represented by a Legal Aid Advocate. True, one or two suggestions were given indicating implied admission. We have come across in a number of matters, wherein the convicts represented by Advocates engaged by them on their own choice gave such suggestions.

35. The crime scene panchanama and delivery of swords by the wife of the appellant to the police would be of little relevance since there is no evidence to indicate the swords were in the room.

36. The Trial Court appears to have not given an appropriate and fair opportunity to the appellant to make his submissions on the question of quantum of sentence. In

paragraph No.25 of the judgment, it has simply been observed, "The accused confessed his blooper and maintained silence." While the learned defence Advocate prayed for clemency.

37. In the peculiar facts and circumstances of the case, we deem it fit to interfere with the impugned order to the extent of quantum of sentence. In view of the above, the appeal stands partly allowed in terms of the following order :-

ORDER

(i) The Criminal Appeal is partly allowed.

(ii) Conviction of the appellant for the offence punishable under Section 376(2)(f)(i)(j), recorded by learned Special Judge, Osmanabad in Special (POCSO) Case No.55/2018, by order dated 2/8/2018 is maintained. However, the sentence of life imprisonment imposed by the Trial Court is reduced to rigorous imprisonment to a period of ten years with a fine of Rs.5000/- (Rupees five thousand), in default of payment of fine, rigorous imprisonment for 1 month.

(iii) Conviction of the appellant for the offence punishable under Section 376(2)(n) is hereby set aside. The appellant is acquitted thereof.

(iv) Conviction of the appellant for the offence punishable under Section 201 of the Indian Penal Code is maintained, with the quantum of sentence imposed as a substantive sentence. The fine amount is, however, reduced to Rs.2000/-, in default of payment of fine, simple imprisonment for 1 month.

(v) Conviction of the appellant for the offence punishable under Section 506 of the Indian Penal Code is maintained, with the quantum of sentence imposed as a substantive sentence. The fine amount is, however, reduced to Rs.500/-, in default of payment of fine, rigorous imprisonment for 1 month.

(vi) Clause (7) of the operative order, which directs the substantive sentences of the appellant to run consecutively, is hereby withdrawn with a direction that all the substantive sentences to run concurrently.

(vii) Clause (8) of the operative order is maintained as it is, except the figure appearing therein, i.e. Rs.1,06,000/- is replaced by the figure as Rs.7500/-.

(viii) Fees of learned Advocate Mr. Ingole, appointed for respondent No.2 is quantified at Rs.10,000/- (Rupees ten thousand).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-