IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 451 OF 2017

Sayyad Shabbir Sheikh
alias
Sayyad Shabbir Saha
Aged – 55 years, R/o. Anandnagar
Zopadpatti, Vasai West, Dist. Palghar,
at present Kolhapur Central Prison, ...**Appellant**
Kalamba, as convict prisoner no ,
Kolhapur.

Versus

State of Maharashtra
Through Mnikpur Police Station in
C.R. No.296 of 2014, District Palghar. ...**Respondent**

Mr. Madhusudan Pareek, for the Appellant.
Ms. M. H. Mhatre, APP for the State/Respondent.

CORAM: SMT. SADHANA S. JADHAV
& N. J. JAMADAR, JJ.
RESERVED ON : 22nd September, 2020
PRONOUNCED ON: 1st October, 2020

JUDGMENT : (Per: N.J. Jamadar, J.)

1. The challenge in this appeal is to the judgment of conviction and order of sentence dated 20th December, 2016 passed by the learned Additional Sessions Judge, Vasai, in Special Case No.1 of 2015, whereunder the appellant – accused came to be convicted for the offences punishable under Section 376 (2) (i) and (n); 323 and 506 of the Indian Penal Code, 1860 ("IPC") and sentenced to suffer imprisonment for life and pay

fine of Rs.10,000/- on the first count and rigorous imprisonment for six months and fine of Rs.5000/- each, on the second and third count, with default stipulation.

2. The accused came to be prosecuted for having committed rape on his minor daughter (hereinafter referred to as, 'the victim') repeatedly after threatening her out of her life and for causing hurt when she resisted, with the following accusation:

(a) The accused was residing at Anandnagar slum, Vasai (West) along with his 15 year old daughter (the victim) and 6 year old son. His wife and the mother of the children had left them. She solemnized second marriage. The accused was working as a rag picker.

(b) Since one year prior to 4th November, 2014, the accused had sexually exploited the victim. The accused used to disrobe the victim, tie her legs and forcibly commit sexual intercourse. When the victim tried to resist, the accused gagged her mouth. The victim attempted to reason with the accused. But the latter continued to ravish her. The accused threatened the victim out of her life if she narrated the exploitation to anybody. Initially the victim had apprised her ordeal to female members of her community but they did not assist her. Ultimately, the victim mustered courage and informed the sexual exploitation at the hands of accused to Mrs. Sunita

Bablu Chavan. The latter approached Smt. Geeta Ravindra Ayre (PW-1), a Member of Mahila Dakshta Samiti, who took her to Manikpur Police Station.

(c) The victim thus lodged report at Manikpur Police Station of having been subjected to forcible sexual intercourse by the accused during the period of one year preceding 4th November, 2014; on the night of which the last incident of penetrative sexual assault occurred. Crime was registered at CR No.296 of 2014 for the offence punishable under Sections 376, 323 and 504 of IPC and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 ('the POCSO Act').

3. During the course of investigation, the Investigating Officer visited the scene of occurrence: the house of the accused. Scene of occurrence panchnama was drawn and the clothes of the victim and bedsheet were seized. The accused came to be arrested. The victim was sent for medical examination. The accused was also sent for medical examination. The Investigating Officer interrogated the witnesses and recorded their statements. After obtaining the reports of medical examination and finding the complicity of the accused, charge-sheet came to be lodged against accused before the Special Court.

4. The learned Special Judge framed charge against the accused for the offences punishable under Sections 376(2)(i)(n), 323 and 506 of IPC and Sections 4, 6 and 8 of the POCSO Act. The accused abjured his guilt and claimed for trial.

5. At the trial, the prosecution examined eight witnesses including the victim (PW-2), Smt. Geeta Ayre (PW-1); the Member of Mahila Dakshata Samiti, Dr. Anjali Pimple (PW-3); the Medical Officer who had examined the victim, Dr. Rani Vikas Bhadlani (PW-6); the Medical Officer who had examined the accused, Mrs. Balvita Thomas Silhera (PW-8); the teacher of ZP School where the victim was enrolled and Ashwini Patil (PW-7) the Investigating Officer, who had conducted substantial investigation. After closure of the evidence for prosecution the accused was examined under Section 313 of the Code of Criminal Procedure, 1973. The accused did not lead any evidence in his defence which consisted of false implication at the instance of Bablu Chavan and Umesh Shetty who were bent on grabbing his house.

6. After appraisal of the evidence, the learned Special Judge was persuaded to enter the finding of guilt against the accused. In the opinion of the learned Special Judge the testimony of the victim found necessary corroboration in the medical evidence and there was no justifiable reason to discard the evidence of

the victim. Since the accused had ravished his daughter and betrayed the trust and confidence reposed in him by the victim, the accused deserved to be punished with maximum sentence prescribed under Section 376(2)(i)(n) of IPC. Thus, the accused came to be convicted and sentenced as indicated above.

7. Being aggrieved by and dissatisfied with the impugned judgment the accused is in appeal.

8. We have heard Mr. Madhusudan Pareek, the learned Counsel for the appellant, and Ms. Mhatre, the learned APP for the State/Respondent at considerable length. With the assistance of the learned Counsels, we have perused the evidence and material on record.

9. Mr. Pareek, the learned Counsel for the appellant mounted a multi-fold challenge to the impugned judgment of conviction. Firstly, the learned Special Judge committed a grave error in placing implicit reliance on the testimony of the victim without there being necessary corroboration. Secondly, the testimony of the victim suffers from material omissions and improvements which rendered it unsafe to place reliance on the sole testimony of the victim. Thirdly, the fact that there was an inordinate and unexplained delay in lodging the FIR was lightly brushed aside by the learned Special Judge. Lastly, the non-examination of witnesses, especially the neighbours of the

victim, in the context of allegation of repeated sexual exploitation over a period of one year, dents the credibility of the prosecution.

10. In contrast to this Ms. Mhatre, the learned APP submitted that the sole testimony of the prosecutrix is worthy of reliance and the learned Special Judge has not committed any error in returning the finding of guilt against the accused. The learned APP stoutly submitted that the medical evidence in the form of the testimony of Dr. Anjali Pimple (PW-3) provides requisite corroboration. Laying emphasis on the circumstances in which the victim was ravished by her father in the four walls of their house, it was urged that the grounds of non-examination of independent witnesses and the alleged delay in lodging the FIR are of no significance.

11. Before adverting to deal with the aforesaid submissions, it would be apposite to note relationship between the parties and their situation in life. Indisputably the accused was residing at Anandnagar slum, Vasai, along with the victim and her brother. There is no qualm over the fact that the wife of the accused had walked out of their matrimonial home and was residing at Ratlam. By and large there is no dispute over the fact that the victim is the daughter of the accused, though at the fag end of the trial, a feeble attempt was made to suggest to the

Investigating Officer that the accused was not the genetic father of the victim. Nor there is much quarrel over the fact that the accused and the victim were residing in a densely populated slum.

12. The trustworthiness of the testimony of the victim (PW-2) is required to be appreciated in the aforesaid context. The victim (PW-2), after apprising the Court about the familial circumstances, testified to the fact that since one year prior to lodging of the report the accused had been sexually exploiting her. He used to disrobe her, tie her hands and do dirty things with her. When she resisted, the accused threatened her and also gave threats to kill her younger brother by pointing knife to the latter's neck. She further affirmed that the accused used to give some pill to her before ravishing her.

13. The victim (PW-2) wants the Court to believe that she apprised about the exploitation at the hands of the accused to Sunita Chavan, who resides near her house. Sunita approached Smt. Geeta Ayre (PW-1), a Member of the Mahila Dakshta Samiti, who took her to Manikpur police station.

14. Smt. Geeta Ayre (PW-1) lent support to the claim of the victim. Smt. Geeta (PW-1) informed the Court that, on being apprised by Sunita, she met the victim in the house of Sunita. The victim narrated her ordeal. Smt. Geeta (PW-1) claimed

to have inquired with the victim as to why the victim did not disclose the incident earlier and thereupon the victim replied that the accused had threatened her with dire consequences. Smt. Geeta (PW-1) claimed to have accompanied the victim to Manikpur police station to lodge the report. Nothing material could be elicited in the cross-examination of Smt. Geeta (PW-1) to discard her evidence on the aspect of having met the victim, and, upon being apprised of sexual exploitation at the hands of the accused, taken the victim to Manikpur police station to lodge the report.

15. It would be contextually relevant to have recourse to the testimony of Dr. Anjali Pimple (PW-3), who had examined the victim on 7th November, 2014, at Civil Hospital, Thane. Dr. Pimple (PW-3) apprised the Court that the victim had narrated history of forcible sexual assault during night hours repeatedly, after administrating sedative tablet before each episode by the father of the victim. The last reported episode was of 1st November, 2014. Dr. Pimple (PW-3) deposed that, on external examination, no injury was found on the person of the victim. On radiological examination the victim appeared to be 14 to 15 years of age. In her opinion, the victim had repeatedly undergone sexual intercourse. The said opinion was based on

the vaginal examination of the victim as the vaginal opening was broad.

16. First and foremost, the age of the victim. While lodging the FIR (Exhibit-18) the victim claimed to be 15 year old. In proof of age of the victim the prosecution examined Mrs. Balvita Thomas Silhera (PW-8), and relied upon the extract of the admission register of the students maintained by Zilla Parishad, Navghar Marathi School (Exhibit-47) and the extract of the general register of students (Exhibit-48). In the admission and general registers, 1st June, 2004 was recorded as the date of birth of the victim. The prosecution also banked upon the report of radiological examination of the victim, which revealed that the approximate age of the victim was 14 to 15 years.

17. During the course of cross-examination, the victim expressed her inability to state the year of her birth though she claimed that her date of birth was 4th October. The extracts of admission and general register (Exhibits-47 and 48), on the contrary, indicate that the birth date was recorded as 1st June, 2004. If we reckon the age of the victim on the basis of those entries then the victim was 10 year old at the time of occurrence. Mrs. Balvita Thomas Silhera (PW-8) conceded that the date of birth was entered in the register as per the claim of the parents without perusing supporting documents. Thus, the

extracts (Exhibits-47 and 48) are not of much assistance in conclusively establishing the age of the victim.

18. However, the claim of the victim that she was 15 year old while lodging the report went unimpeached. The accused, being the father of the victim, was expected to know the age of the victim and could have, thus, challenged her claim, nay suggested specific date and year of birth/age of the victim. Nor the claim of Dr. Pimple (PW-3) that on radiological examination the victim appeared to be 14 – 15 years of age was assailed. In fact, the said claim of Dr. Pimple (PW-3) went completely unchallenged.

19. The evidence on record thus leads to a legitimate inference that, in any event, the victim had not completed 18 years of age on the date of lodging of the FIR (Exhibit-18) to the effect that she was sexually exploited since a year preceding the said date.

20. Mr. Pareek, the learned Counsel for the appellant would urge that the evidence of Dr. Pimple (PW-3) is not of much assistance to the prosecution. Banking upon the claim of Dr. Pimple (PW-3) that no external injuries were found, especially when as per the claim of the victim the last of the sexual assault was on 4th November, 2014, it was submitted that had the victim been subjected to forcible sexual intercourse, after tying her hands, legs and mouth, as deposed to by the

victim, there must have been traces of injury to the private parts and associated injuries. The absence of external injuries thus erodes the veracity of the claim of the victim, submitted the learned Counsel for the appellant.

21. We are not impressed by the aforesaid submission. It is true that the victim has asserted positively that the last of the sexual assault took place on the night of 4th November, 2014. The victim was medically examined on 7th November, 2014. The absence of the injuries, in the case at hand, would at the most suggest absence of violent or stiff resistance by the victim. In the facts of the case, where the victim claimed to have been subjected to exploitation for almost a year, in her own house, the submission to the last act can only mean that the victim resigned herself to her fate. Nothing more can be inferred from the helpless surrender of the victim. Thus, the absence of external injuries on the person of the victim does not erode the trustworthiness of her claim. Conversely, Dr. Pimple (PW-3) has affirmed that the examination of the victim indicated that there was evidence of repeated sexual intercourse as the vaginal opening was broad.

22. The veracity of the claim of the victim was sought to be assailed on the count that there was a significant variance in her testimony before the Court from her previous statement.

During the course of the cross-examination of the victim certain omissions were elicited. It was brought out that her statement before the police does not find mention of the fact that accused used to threaten to her by pointing out knife on the neck of her brother and that the accused gave pills to her before subjecting her to exploitation and that the accused pressed her breasts and kissed her. These omissions, according to the learned Counsel for the appellant, are material and render the claim of the victim suspect.

23. We have carefully perused the evidence of the victim (PW-2). On appraisal of her evidence, as a whole, we do not find that the aforesaid omissions affect the core of her testimony. It is trite law that minor discrepancies and variations in the matter of trivial details which do not affect the core of the prosecution case should not be given undue importance to jettison away otherwise reliable testimony. The evidence is required to be appreciated through the prism of the circumstances in which the victim found herself. It was a broken home. The victim and her brother, aged barely six years, were under the care and custody of the accused. The victim has consistently asserted that at night the accused ravished her. The omission to state that, at times, the accused gave pills to her and threatened her by pointing knife on the neck of her

brother, in the given circumstances, does not detract substantially from her claim. It is imperative to note that while narrating the history to Dr. Pimple (PW-3) the victim did state that the accused had given pills to her before the incident of exploitation. The omission to state how the accused ravished her is again a matter of detail.

24. This takes us to the main plank of the submissions on behalf of the appellant that in the absence of corroboration to the testimony of the victim the conviction is legally unsustainable. Amplifying this submission, the learned Counsel for the appellant would urge that the non-examination of Sunita Chavan and Kalima Kaundar, who were present while lodging the report, impairs the credibility of the prosecution. As a second limb, it was submitted that the scene of occurrence panchnama (Exhibit-27) indicates that the house of the accused is bound by the residential houses on three sides. The non-examination of the next door neighbours, who would have had the opportunity to notice the ordeal which the victim allegedly faced, for almost a year, according to the learned Counsel for the appellant, is rather inexplicable.

25. It is well-neigh settled that if the evidence of the prosecutrix inspires confidence, it can be acted upon unhesitatingly without seeking corroboration of her testimony in

material particulars. If for some justifiable reason the Court finds it difficult to place implicit reliance on the testimony of the prosecutrix, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. Corroboration to the testimony of the prosecutrix is not the requirement of law. Sole testimony of the prosecutrix can form a sound basis for conviction.

26. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of ***Vijay alias Chinee vs. State of Madhya Pradesh***[1]***,*** wherein after referring to the earlier pronouncements in the cases of *State of Maharashtra v. Chandraprakash Kealchand Jain (1990) 1 SCC 550; State of U.P. v. Pappu (2005) 3 SCC 594; State of Punjab v. Gurmit Singh (1996) 2 SCC 384; State of Orissa v. Thakara Besra (2002) 9 SCC 86; State of H. P. v. Raghubir Singh (1993) 2 SCC 622,* the legal position was concluded to the effect that, "the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix".

27. A useful reference can also be made to the observations of the Supreme Court in the case of ***State of Uttar Pradesh vs.***

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1 (2010) 8 Supreme Court Cases 191.

***Chhotey Lal*[2]**, wherein the approach to be adopted by the Court in evaluating the testimony of victim of rape was illuminatingly postulated as under:

> "**26**. The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of woman's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge."

28. On the aforesaid touchstone, reverting to the facts of the case, in our view, the non-examination of Sunita Chavan and Kalima Kaundar, who accompanied the victim to the police station for lodging the report, or for that matter, who were present when Smt. Geeta (PW-1), the Member of Mahila Dakshata Samiti, interacted with the victim, is of no significance. Firstly, neither Sunita nor Kalima are the witnesses to the occurrence. Sunita Chavan had employed her acquaintance to solicit the assistance of Smt. Geeta (PW-1).

2(2011) 2 Supreme Court Cases 550.

Since Smt. Geeta (PW-1) was examined and her testimony could not be impeached during the course of cross-examination on the vital aspects, the non-examination of Sunita and Kalima does not detract materially from the prosecution case.

29. The failure of the prosecution to examine the immediate neighbours is also of little significance. The victim has deposed to her helpless condition and the methods adopted by the accused to prevent her from raising alarms. To her misfortune, her prime protector preyed on her as sexual predator. It was a case of fence eating into the crop. The neighbours would hardly suspect that the accused would ravish the victim in the manner deposed to by the victim. Thus the submission sought to be advanced by the learned Counsel for the appellant on the premise that had the victim offered resistance the neighbours would have known about the occurrence, does not merit acceptance.

30. Mr. Pareek then urged that there was an inordinate delay in lodging the FIR. This submission was premised on the fact that there was no credible evidence to indicate that the victim was lastly exploited on 4th November, 2014, as deposed to by the victim. If the victim was subjected to sexual exploitation for the prolonged period of one year, the victim would have approached the neighbours, relatives and the authorities at an earlier point

of time. This delay, according to the learned Counsel for the appellant, impairs the prosecution.

31. We are not persuaded to accede to the submission that there is no credible evidence to indicate that the victim was subjected to sexual exploitation on 4th November, 2014. We do not find any justifiable reason to disbelieve the victim, on the said count. Even if we assume that the victim was not ravished on 4th November, 2014, in our view, the aspect of delay in lodging the report cannot be appreciated in the abstract. Nor can it be considered *de hors* the attendant circumstances. In the case at hand, the victim has affirmed that she was threatened out her life by the accused. She tried to reason with the accused but the latter continued to exploit her. The victim was a girl of tender age. Apart from the accused, there was nobody in her life to whom the victim could look up to. In the circumstances, the explanation offered by the victim cannot be said to be inconceivable or unsatisfactory.

32. In a prosecution for rape, delay in lodging the report by itself is not fatal to the prosecution. Nor delay in lodging the FIR can be used as a ritualistic formula to throw the prosecution overboard. If an explanation for delay is offered, the Court has to examine whether it is satisfactory or not. And if found satisfactory, the delay does not impair the prosecution.

33. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of ***Tulshidas Kanolkar vs. State of Goa***[3]. The observations of the Court in paragraph 5 are instructive. They read as under:

> "**5**. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactory explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of first information report does not in any way render the prosecution version brittle."

34. The learned Counsel for the appellant made a strenuous effort to draw home the point that Sunita Chavan and her husband Bablu Chavan were the slumlords of the area wherein the accused and the victim resided. Since the victim conceded in the cross-examination about the efforts on the part of the said Bablu Chavan to usurp the house of the accused, the learned Special Judge could not have placed implicit reliance on the testimony of victim, urged Mr. Pareek.

3(2003) 8 SCC 590.

35. It is true that in the cross-examination of the victim it was elicited that Sunita Chavan and Bablu Chavan wielded influence in the said area. She went on to concede that residents of the said slum were scared of Sunita Chavan. She further admitted that Bablu Chavan had threatened the accused that if the accused failed to vacate his house a false case would be lodged against the accused. She went on to admit that the accused used to tell her not to go to the house of Bablu Chavan as the latter wanted to transfer the said house in the name of the victim and her brother. The victim (PW-2), at one stage, conceded that Sunita had told her to speak against her father. At the same breath, the victim asserted that she replied to Sunita that she would speak the truth about the bad things happened to her.

36. On the strength of the aforesaid admissions and the manner in which the victim fared in the cross-examination, an endeavour was made on behalf of the appellant to draw home the point that the testimony of the victim is not worthy of credence. Undoubtedly, the victim admitted that Sunita and her husband Bablu were slumlords. However, the defence on the aspect of foisting of a false case so as to usurp the house of the accused wavered from one end to another. In the course of the cross-examination of the victim, it was suggested that false case

was foisted against the accused at the instance of Bablu Chavan as the accused refused to vacate the house. In contrast, in his examination under Section 313 Criminal Procedure Code the accused asserted that Bablu Chavan and Umesh Shetty were demanding his house and there was a quarrel between him and Bablu Chavan and Umesh Shetty over the said issue and thus false prosecution was initiated. Interestingly, to the Investigating Officer it was suggested that as the victim herself wished to grab the room of the accused a false report was lodged against the accused.

37. The learned Special Judge, after noting the demeanor of the victim and the fact that the victim was in tears when it was suggested to her that she was deposing falsely at the instance of Sunita Chavan, put Court questions to ascertain the truth. In answer to the Court questions, the victim deposed that the accused had done wrong with her and she was under no pressure to depose against the accused.

38. Evidently, the learned Sessions Judge made an effort to satisfy himself about the truthfulness of the claim of the victim and that the victim deposed before the Court on her free volition and was not under duress. The learned Sessions Judge had the benefit of observing the manner in which the victim deposed; her conduct and demeanor. We do not find any justifiable reason

to discard the inference of truthfulness of the testimony of the victim, drawn by the learned Sessions Judge, after careful evaluation of the evidence of the victim.

39. The situation which thus obtains is that the testimony of the victim in the backdrop of the attendant circumstances, allures confidence. It does not appeal to human credulity that the victim would depose against her father at the instance of third person, who was bent on grabbing her house, wherein she was residing with her father and brother. The tussle over occupancy rights of a room in a slum area, in a metropolis like Mumbai, is not uncommon. However, it does not stand to reason that the victim would stake her life and that of her father and side with a third person for the purpose of getting exclusive rights over the room wherein she has been reisding. In addition, the medical evidence renders necessary assurance about the truthfulness of the testimony of the victim.

40. The learned Counsel for the appellant lastly urged that the CA reports do not indicate that any semen was detected on the clothes of the victim, which were seized from the scene of occurrence. The submission losses sight of the facts that the clothes were not seized immediately after the last incident of exploitation and that the victim was subjected to repetitive exploitation over a period of time. The absence of semen on

clothes and pubic hairs of the victim thus does not dent the prosecution.

41. We must note that during the course of hearing of this appeal, while perusing the original record, it transpired that though communication was addressed by the investigation officer to record the statement of the victim under section 164 of the Code, yet the statement of the victim did not form part of the record. We were anxious to know whether the statement of the victim under section 164 of the Code was recorded as the prosecution was for the offences punishable under POCSO Act, 2012 as well. Thus, by an order dated 8th September 2020, we called a report from the jurisdictional Magistrate as to whether the statement of the victim under section 164 of the Code was recorded and, if so, whether it was sent to the Court of the learned Special Judge. The learned Magistrate reported that though the statement of the victim under section 164 of the Code was recorded on 20th November 2014 by the then Magistrate, 3rd Court, Vasai, yet, inadvertently, the same was not forwarded to the Court of learned Special Judge. The original statement of the victim recorded under section 164 of the Code is also forwarded to this Court. We have perused the statement. We simply note that it is in consonance with the deposition of

the victim before the court, without construing the same against the appellant as it was not tendered during the trial.

42. The upshot of the aforesaid consideration is that the testimony of the victim is worthy of credence. The learned Special Judge was thus justified in placing reliance on the testimony of the victim and returning the finding of guilt.

43. On the aspect of punishment, the learned Special Judge was persuaded to impose the maximum punishment prescribed under Sections 376(2) of the IPC. The acts of the accused fall within the dragnet of clauses (f), (i) and (n) of sub-section (2) of Section 376 of the IPC. The offences are grave. The relationship between the accused and the victim exacerbates situation and the aggravates the gravity of the offence. As observed earlier the protector turned out a predator. The dictate of justice demands that the sexual predator is dealt with sternly and visited with condign punishment. Undoubtedly, the social and financial position of the accused appeared to be unfavourable. However, in the context of the circumstances in which the offences were committed, the situation in life of the accused does not constitute a mitigating factor. We are thus not inclined to interfere with the quantum of sentence as well.

44. By the impugned order though the learned Special Judge sentenced the accused to pay fine as well, yet, no order for payment of compensation to the victim under Section 357 of the Code was passed. The victim was dependent upon the accused. Her mother had already left. The accused – father has been incarcerated since the day of his arrest. The victim was thus left in the lurch. In these circumstance, in our view, the victim is entitled to compensation under the Victim Compensation Scheme framed by the State Government under Section 357-A of the Code. We are thus persuaded to make a recommendation to the State Legal Services Authority to award appropriate compensation to the victim under the Victim Compensation Scheme framed by the State of Maharashtra.

45. Before parting, we place on record our appreciation for the fair and efficient manner in which Mr. Madhusuan Pareek, who was appointed by the Legal Aid Committee to espouse the cause of the appellant, presented the case of the appellant.

46. Resultantly, the appeal deserves to be dismissed. Hence, the following order:

: O r d e r :

(i) The appeal stands dismissed.

(ii) The Maharashtra State Legal Services Authority is requested to award appropriate compensation to the

victim under the Victim Compensation Scheme framed by the State of Maharashtra.

[N. J. JAMADAR, J.] [SMT. SADHANA S. JADHAV J.]