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Court : Mumbai Aurangabad

Decided On : Aug-01-2016

Judge : A.I.S. Cheema

Appeal No. : Criminal Appeal No. 678 of 2003

Appellant : Milind

Respondent : The State of Maharashtra

Judgement :

1. The appellant - original accused (hereafter referred to as "accused") has been convicted in Sessions Case No.17/2003 on 1/10/2003 by IV Adhoc Additional Sessions Judge, Beed. He has been convicted under Sections 363, 366-A, 376 and 506 of the Indian Penal Code, 1860 (I.P.C. in brief) and sentenced to suffer rigorous imprisonment for terms as mentioned in the judgment, along with fine.

2. The case of prosecution in short is as under:

The accused was known to the family of complainant (P.W.1), who resides at Khilad, Taluka Ashti, District Beed. [I will not name the complainant, the father of prosecutrix as well as his wife (P.W.2) and the prosecutrix (P.W.3). I will refer to P.W.2 as the mother of victim and P.W.3 the prosecutrix as victim to conceal their identity.] The facts in nutshell are that, the accused being known to the family of victim, used to visit them. On 14.9.2002, the mother of victim was not well when the accused went to their house in the afternoon. He proposed to take the mother

to the hospital at Kada, which is about 14 Kms. away, in the jeep, which he had brought. The victim and her mother went along with accused to the hospital of one Gandhi at Kada. The victim and her mother and accused were sitting in the middle seat. On the way, the accused misbehaved with the victim by kissing her and pressing her chest. The mother of victim objected and even the victim opposed. After returning from the hospital, the mother of victim told the facts to the complainant i.e. the father of victim. The accused started saying that he will take away the victim with him. In spite of opposition, he forcibly took away the victim with him to his field at Kada. He kept her there in a hut. He forcibly committed intercourse on her that night on two occasions and yet again on 15.9.2002. On 16.9.2002, he took the victim with himself to Jamkhed Bus Stand. As he had problem of money, he called up Deputy Sarpanch Sitaram Garje of Khilad, who asked him to wait and he will come there. Sitaram Garje (P.W.5) went to the Bus Stand at Jamkhed. However, by that time, the presence of victim had attracted the attention of one Police Constable Dadasaheb Kakade (P.W. 8), who was on duty. This Constable questioned them and took them to the police station. There, statement of victim (Exh. 34) was recorded and she was sent with the Constable to Khilad and the victim came back to her family on 16.9.2002. The Constable got a statement-cum-receipt written from the complainant vide Exh.26 of safe reaching of the victim. Case of prosecution is that, thereafter the accused started calling up at the place of P.W.5 Sitaram Garje. It transpired that, he was quarreling with his family and on their plea, the victim along with her parents went to Kada. There the accused misbehaved with the mother of victim and they went to the Outpost and from there to Police Station, Ambhora, Tq. Ashti and filed F.I.R. Exh.12 in the night between 16-17th September 2002 at 12.30 in the night. The offence came to be registered under Sections 363 and 366-A of the IPC. At that time, the complainant did not report regarding the victim getting raped in the course of incident.

3. Investigation was taken up by A.P.I. Shaikh Rauf (P.W.11). In statement of victim, it transpired that, accused had also raped her. Sections were accordingly added. The investigating officer, did spot panchanama (Exh.47) of the house of complainant. He also recorded spot panchanama Exh.48 of the hut where the victim had been kept. The undergarments of the victim and accused were seized vide panchanama Exh.49. The same were sent to Chemical Analyser and report

(Exh.50) was obtained. The police collected certified copy of transfer certificate of the victim from the school, which was proved at Exh.39 through teacher of the school P.W.10 Vijaykumar Pawar. It was found that, victim was less than 16 years of age. Statements of witnesses were recorded. It was found in the investigation that the accused forcibly took the victim promising her that he will bring about his marriage with his brother-in-law and took her to the field and raped her. Charge sheet came to be filed and accused has been prosecuted.

4. Prosecution examined 11 witnesses. The defence of the accused is of denial. According to him, he met the victim at S.T. Bus Stand, Jamkhed and at that time, P.W.5 Sitaram Garje was with her. He was trying to convince the victim and at that time, P.W.8 Constable Kakade intervened and took her to police station. The victim was then taken to the place of her parents. Her parents asked him as to what about marriage of victim with his brother-in-law. He stated that the proposal was cancelled and the parents asked for compensation and when he refused, false case has been filed.

5. Trial Court considered the oral and documentary evidence as well as the defence and found the offence proved for Sections mentioned above. Trial Court convicted the accused and sentenced him to rigorous imprisonment and fine. Being aggrieved, present appeal is filed.

6. The learned counsel for appellant-accused has taken me through the oral and documentary evidence. According to him, when the victim was allegedly forcibly taken, the father of victim did not immediately file any report to police. It was only after the victim came back that in the concerned night the F.I.R. was filed. Victim was with the complainant at the time of filing F.I.R. at police station, but still in the F.I.R. allegations regarding rape were not incorporated. According to him, it was surprising that if on 14.9.2002 while going to Kada if the accused misbehaved with the victim, the mother and daughter still came back with him in the jeep after meeting the doctor. At the police station at Jamkhed, statement of victim was recorded, in which she did not make allegations against the accused. The statement of P.W.5 Sitaram Garje shows that, the victim was going to Beed in view of the marriage proposal. According to him, there was no reason to disbelieve

the evidence of P.W.5 in cross-examination as he is witness of the State. It was argued that, Exh.39, the copy of transfer certificate exhibited was not duly proved. The accused had questioned the school register itself which was brought and copy of which has been marked Exhibit 39-A. According to the counsel, the victim was going with the accused for the purpose of settling marriage and it was not kidnapping. The doctor did not collect evidence of age and documents regarding radiological evidence were not brought on record. The transfer certificate from the school was of admission taken one year before the incident. In the C.A. report, no semen or blood was found on the clothes. Thus, according to the counsel for accused, he deserves to be acquitted.

7. Against this, the learned A.P.P. argued that there was sufficient evidence of the victim and her parents to show that the victim was forcibly taken away and the accused took opportunity to rape her by taking her to the field and kept her in the hut at Kada. The age of the victim was duly proved on the basis of school register, which entries were before the incident took place. The oral evidence of the victim that she was 16 years of age is also not denied her date of birth was noted even by the doctor. According to him, the reasons recorded by trial Court to convict the accused are correct and proper and the same may not be interfered with.

8. I have gone through the evidence on record. The evidence of the victim (P.W.3) and her parents P.W.1 and P.W.2. In the examination-in-chief and the cross-examination certain details have come on record which need reference. The evidence of P.Ws.1 to 3 shows that the accused was known to the family. Rather he was frequent visitor to their house. The accused is resident of Kada and is married, having two children. Evidence shows that, he used to frequently come to Khilad. In the cross-examination of P.W.2, it was brought on record by the accused that, whenever he came to the house of P.W.5 Sitaram Garje, he used to come to the house of the victim also. The further cross-examination rather made it clear that he was almost a daily visitor. Thus, the evidence shows that, the accused was very well acquainted with P.W.5 Sitaram Garje, the Deputy Sarpanch and almost daily was going to Khilad and after meeting P.W.5 Sitaram Garje, used to visit the house of victim. Presence of P.W.5 Sitaram Garje is noticed on the day of incident of 14.9.2002 when victim was allegeldy kidnapped and it can also be

seen from the evidence that on 16.9.2002 also when the accused wanted money, he called up P.W.5 Sitaram Garje and this P.W.5 Sitaram Garje did go to the bus stand where the victim and accused waited. Even after the victim was recovered by the police at Jamkhed and given in custody of her parents, the accused appears to have reacted by getting aggressive with his own family at Kada, due to which the evidence shows that, calls were made to P.W.5 Sitaram Garje to ensure that the victim and her parents come to Kada. This Sitaram Garje appears to be friend of accused and he was Deputy Sarpanch of village Khilad.

9. The evidence of P.Ws.1 to 3 further shows that, the complainant, although he has 5 1/2 acre land at Khilad, besides agriculture, is in the profession of Bhikshuki. It appears from the evidence of P.W.2, the mother of victim that, she runs an Adult Education Camp at Khilad. The cross-examination of complainant shows that, it is night school for illiterate persons and it was aided by the Government. The said school was being run by P.W.2. The cross-examiner of complainant brought on record that, the said school was under supervision of Village Panchayat, Khilad. As I have just mentioned, P.W.5 Sitaram Garje's evidence shows him to be friend of the accused and was Deputy Sarpanch of the village and at the same time, the mother of victim happened to be running a school on Government aid, which was under the Village Panchayat. These facts and others in evidence make it clear as to how the accused who was friend of Deputy Sarpanch P.W.5 Sitaram Garje and almost a daily visitor to place of victim, had a dominating position.

10. In the cross-examination of the complainant, it was suggested to him and brought on record that his brother-in-law runs a pan shop at Kada. The evidence of victim and her mother shows that, ,there was talk regarding settling of marriage of the victim with the said brother-in-law of the accused. The mother admitted (cross-examination para 6) that the proposal regarding victim getting married with the said brother-in-law was made by the brother-in-law and they had given their consent for the proposal. The mother deposed that, they had stated that the marriage will be seen after Diwali. P.W.2 admitted that, she had a talk with the wife of accused about the proposal of brother-in-law of the accused. She stated that, at that time they had financial problem for marriage and had talked about it with the accused. These facts show that there was a proposal regarding marriage of victim

with the brother-in-law of accused and it also appears that, the complainant and his family were not rich people as such.

11. The further facts which emerge from the evidence of P.Ws.1 to 3 are that, about a month before the incident dated 14.9.2002 took place, the victim had consumed sleeping tablets. Her cross-examination brought on record that this happened due to her quarrel with her brother in the house and there was no special reason for the quarrel. What appears from the record is that, at that time, the accused had got the victim admitted at the Gandhi Hospital. The evidence of the mother shows that, when the victim consumed the sleeping tablets, they had taken the daughter to the Gandhi Hospital with the help of this accused. As per P.W.2, the mother, they had waited at the hospital for 3 days. After the victim was discharged from the hospital, it happened that the wife of accused delivered a child and the accused, who had helped the family of victim when she had consumed sleeping tablets, took the opportunity to ask the family to take the victim to his house so as to help his wife. Evidence of P.Ws.2 and 3 shows that, at such time, for about 15 days, the victim stayed at the house of the accused to help his wife. Evidence of P.W.2 is that, the victim was taken to help the wife with intention that the accused will bring about the marriage of victim with his brother-in-law Hari. Thus, it appears that, the family of victim had hope that the victim would get married to the brother-in-law of accused and thus, there was intention to help the family of accused in time of need.

12. Regarding the facts discussed above, there is hardly or no dispute if the evidence of P.Ws.1 to 3 are perused. The facts, however, are material to appreciate the evidence of P.Ws.1 to 3.

13. The evidence of P.Ws.1 to 3 shows that, on 14.9.2002, the accused had gone to the house of victim at about 3.30 - 4.00 p.m. It appears that, P.W.2 was not well and the accused offered to take her to the hospital at Kada in the jeep which he had brought while the complainant stayed back at home as it was on holiday and other younger children were there. P.Ws.2 and 3 accompanied the accused in the jeep. Another person who had come along with accused, namely Kalyan, stayed back with the complainant when these people went to the hospital. The evidence

of P.Ws.2 and 3 shows that, on the way to the hospital, P.Ws. 2 and 3 were sitting with the accused in the middle seat of the said jeep. The victim was sitting in the middle and accused was on her side. The evidence of P.Ws.2 and 3 shows that, at such time, the accused took opportunity to behave indecently with the victim by kissing her and pressing her breasts. The evidence of P.Ws. 2 and 3 shows that, the mother objected to such behaviour, telling that the victim was like niece of accused and he should not behave like this. The evidence of P.W.2 shows that, the accused at that time started saying that he wanted to marry with the victim. The evidence of P.W.3 shows that even she had told the accused that he was like her maternal uncle and why he was behaving indecently. The evidence of these two ladies shows that, at the hospital, while the victim sat in the jeep, the mother went inside to the Doctor and coming out, they came back in the same jeep. Learned counsel for the accused expressed surprise on this evidence, claiming that if the accused had misbehaved with the victim while going to the hospital, it is unlikely that they should have come back with him in the same jeep. However, the evidence of the victim shows in the cross-examination that, when they reached Kada, she did quarrel with the accused at Gandhi Hospital. The evidence of P.W.2 in the cross-examination (para 7) shows that, she did not feel like coming back in the same jeep while returning. She volunteered that, there was no other vehicle to go back to their village and they were compelled to go in the jeep of the accused. The suggestion that S.T. bus and private vehicles were available, was denied by P.W.2. Thus, what appears is that, P.Ws.2 and 3 once they were on their way from Khilad to Kada, which is about 13 Kms. away, when the accused started misbehaving with the victim, objected to the misconduct, however, due to circumstances, had to come back in the same vehicle. The evidence shows that, these people returned at about 5.30 - 5.45 p.m. to Khilad and P.W.2 complained to her husband regarding the behaviour. Evidence of complainant P.W.1 is that, at such time, P.W.2 was crying and she was frightened.

14. The evidence of P.Ws.1 to 3 shows that, on 14.9.2002, after such returning from Kada at about 5.45 p.m., the accused started asserting with the parents of the victim that he would take her away. P.W.1 complainant has deposed that the accused started saying that he will take away his daughter and that he was threatening that he will kill them or will kill himself at their door. His evidence is

that, the accused thereafter forcibly took his daughter in his jeep at about 8.30 p.m. The accused was telling that he intended to marry with the victim and so saying, he kidnapped her. The complainant deposed that, he was under fear of the accused and afterwards was making only enquiry regarding his daughter on telephone. The cross-examination of complainant shows that, when his wife narrated about the incident in the course of travelling in jeep, he got angry. The accused had come at that time inside the house along with P.W.2. His cross-examination shows that, between the time of 5.45 p.m. to 8.30 p.m., when the accused took away the victim, no villager came to their house. No doubt he admitted that if call is given loudly, it can be heard in adjoining house. However, if the spot panchanama Exh.47 proved by P.W.11 A.P.I. Shaikh Rauf is perused, it can be seen that, surrounding the house of complainant there was no immediate resident. Even towards south, there was some dilapidated Wada and thereafter some resident Namdeo. The cross-examination of P.W.2 shows that, when the accused started asserting that he wanted to take the victim, they had called for P.W.5 Sitaram Garje to their house. In the cross-examination, she deposed that, they did inform Sitaram Garje about the said incident. She deposed that, she asked said Kalyan and P.W.5 Sitaram Garje to drive away the accused, but the accused was making noise. The said witness stated that, although accused was making noise, no neighbourer gathered. The mother P.W.2 has deposed that, the accused caught-hold of the hand of the victim and was forcibly taking her and victim was crying at that time. The complainant did not depose, but the evidence of this mother of victim shows that, she and her husband made efforts to get the victim released from the hands of accused. The evidence of the victim herself also is that, in the evening of 14.9.2002, the accused started threatening her parents that he will take away the victim and if he is obstructed, he will commit their murder. She deposed that, because of such fear, she went along with the accused. Regarding such evidence of the victim, she was asked in the cross-examination and she deposed (in para 13) that there was uproar and commotion at her house when accused said that he is going away. The cross-examination brought on record that she resisted accused when he was taking her and that she had even shouted for help, but nobody came to help her. Her evidence also shows that, P.W.5 Sitaram Garje was there. According to her, P.W.5 Sitaram Garje did

not resist the accused at that time. When Deputy Sarpanch did not help, helplessness of P.W.1 complainant is understandable where he deposed that after accused took away victim, due to fear of accused they did not come out of house but were only making enquiry of the daughter on telephone. Thus, there appears delay in going to the police also. Dominating position of accused; threats; lack of help from even the Deputy Sarpanch, hope of marriage of victim - various factors appear as cause for delay.

15. The evidence of these three witnesses- P.Ws.1 to 3 shows that, the accused, who was in a position to assert himself due to acquaintance, and who was friend of P.W.5 Sitaram Garje, appears to have become obsessed with the victim who had stayed at his house few days before, to assist his wife. He forcibly took away the victim in spite of opposition from the parents of the victim herself. The accused thus kidnapped the victim.

16. The evidence of the victim then shows that, the accused, after taking her forcibly from the place of her parents, took her to his field at Kada. There was a hut. He took her there and her evidence is that, he removed her underwear and started pressing her breast and after removing his clothes, (her evidence is that), he raped her. Her evidence is that, such act was committed twice in that night of 14.9.2002. She has deposed that, such act was again committed with her on the next day i.e. 15.9.2002. She deposed that, she was shouting, but the accused was threatening that if she shouts, he will commit her murder and with such, threat, he committed rape on her. In her cross-examination (Para 14), it has come on record that, she tried to rescue herself from the cluthces of the accused and resisted and that she was pushing accused aside and had even tried to pinch and scratch the accused. Thus, her evidence shows that, she did try to resist. The evidence shows that, she tried to pinch and scratch the accused. May be she did not succeed. The cross-examiner asked the victim and she stated that, there are farm houses in the field of accused and people reside there. She deposed that, she did not know if there are houses around the field of accused. If the spot panchanama Exh.48 proved by A.P.I. P.W.11 Shaikh Rauf is seen, it contains a sketch also and it can be seen from the same that, the said hut is on the bandh of the field of accused at village Kada. In fact, the accused has a house with Gotha at the other end of the

field. The spot panchanama does not show any immediate nearby resident. Thus, the victim was at an isolated place in the night of 14.9.2002 and the day of 15.9.2002. The cross-examination of the victim shows (para 14) that the victim did try to contact people, but the accused did not allow her to talk.

17. The evidence of the victim shows that, on 16.9.2002, the accused took her along to Jamkhed. The evidence of the victim is that, the accused did not have money and so he called P.W.5 Sitaram Garje. The evidence of P.W.5 Sitaram Garje is that, on 16.9.2002, he received telephonic message from accused that he was at Jamkhed taking daughter of the complainant. Of course, this P.W.5 Sitaram Garje has tried to say that the accused told him that he was taking the victim to show to his sister at Beed but that he had no money. P.W.5 Sitaram Garje deposed that, he informed about said telephonic message to the parents of the victim. He deposed that, he asked the accused to wait there and he will come there. He accordingly, went to the S.T. Stand and met the accused. In the examination-in-chief, this P.W.5 Sitaram Garje deposed that, before going to the S.T. Stand, he was told by the parents of the victim that their daughter had been kidnapped. According to P.W.5 Sitaram Garje, at the S.T. Stand, he was making enquiry with the victim that if her parents are accompanying her, then only she should go otherwise she should return to the house. This evidence of P.W.5, who apparently is friend of the accused, shows that, at that point of time, the victim was under the impression that she would be getting married to the brother-in-law of the accused. Otherwise, there was no need for this P.W.5 to try to persuade the victim not to go further unless she is accompanied by her parents. The evidence of P.W.5 as well as the victim and P.W.8 Police Constable Kakade shows that this constable got attracted to the accused and the victim and took them to police station out of suspicion. This incident itself belies the defence that victim was being taken to show for marriage purposes. It shows that, behaviour of accused with victim was such that, Constable did not believe them and took them to Police Station. The evidence shows that, at such time, the police at Police Station, Jamkhed got a statement recorded of the victim. The same is at Exh.34. In such statement, she gave details about her family and stated that, on 15.9.2002 in the evening she had come from Khilad to Kada along with the accused and had stayed there in the night of 15.9.2002 and in the morning of 16.9.2002, they had

come to Jamkhed and that they wanted to go to Beed at the place of Sandhya Sharadrao Ghayal, who were waiting for P.W.5 Sitaram Garje from 6.30 a.m. to 1.30 p.m. and that the constable on duty made enquiries from them and made a phone call at their house. She then stated that, she now wanted to go back to her parents at Khilad and did not want to make any complaint against anybody. The accused has tried to show that, this Exh.34 shows that, there was nothing wrong going on, however, it is difficult to accept that a young girl is being sent for marriage purpose with an outsider and the parents are not accompanying. This is difficult to accept. The evidence of the victim shows that, she was a young girl of 16 years of age and admittedly there was earlier a talk about the marriage with the brother-in-law. The evidence is that, the brother-in-law had a pan shop at Kada. However, the victim was taken away from Kada to Jamkhed for reason which is not clear. At Jamkhed, when the police caught them, the accused was with the victim and his friend P.W.5 Sitaram Garje also appears to have reached. The victim was clearly under the pressure and threat regarding which she has constantly deposed. In her cross-examination when she was confronted with this Exh.34, she stated that, she had made false statement to police as she was under pressure. Looking to the circumstances in which this minor girl was caught, it was possible to pressurize her so that she does not tell the truth when suddenly the Police Constable picked them up at the Jamkhed Bus Stand.

18. It has come in the evidence then that, P.W.8 Constable Kakade brought the victim back to the complainant. The evidence of P.Ws.1 and 2 shows that, the victim was brought back at Khilad by the Constable around 4.30 p.m. of 16.9.2002. It appears that, the Constable got a statement written from the complainant which is at Exh.26. In the statement, it is recorded that, on 14.9.2002, in the night at about 9.00 p.m., the victim had gone along with the accused and "had been found" on 16.9.2002 at Jamkhed S.T. Stand and on that day (i.e. 16.9.2002), the constable Kakade from Jamkhed Police Station got her back and given in their possession and regarding such giving back in possession, there is no complaint.

19. The learned counsel for the accused has argued that, even when the Constable thus brought the victim back, the complainant at that time did not make any allegation of kidnapping. It has to be understood that, P.W.8 Dadsaheb Kakde

was only a Constable who was given the duty to reach back the victim which he did and he got a statement recorded of bare facts. It needs to be noted that, although in Exh.34 the victim under pressure appears to have stated that she had left Khilad only on 15.9.2002, in Exh.26, when she was taken back to her father, he did record that, the accused and the victim had gone on 14.9.2002 and had been found on

16.9.2002. The tone of Exh.26 clearly is that, the victim had been taken away by the accused although it was mentioned that the victim had gone with the accused.

20. The evidence of P.Ws.1 to 3 and P.W.5 Sitaram Garje shows that, after the intervention of police at Jamkhed, when the victim was taken away by the police and given back to her father, the accused vent his anger on his family. The evidence of P.W.2, the mother of victim shows that, after the victim was handed over to them, the accused started telephoning at the house of P.W.5 Sitaram Garje and was sending message that the victim should be called on the telephone and that he wanted to talk with her. As per P.W.2, they asked P.W.5 Sitaram Garje as to why the accused was making calls and it was then revealed that, the accused at his own house was quarreling with his wife. P.W.2 has deposed that, thereafter she along with P.W.5 Sitaram Garje and her husband as well as victim went to the house of accused at Kada. According to her, seeing them the accused started abusing them in filthy language and he slapped P.W.2. In the cross-examination of P.W.2 (in para 10), the cross-examiner brought details that when they went to the house of accused at Kada, his family members were there. She stated that, she did not feel like going to the house of accused, bus still they had gone. The evidence of the victim herself (P.W.3) also shows that, when she came back to her parents on 16.9.2002, the accused made phone calls to the place of P.W.5 Sitaram Garje, claiming that he wanted to talk with her. He called 2-3 times. Her evidence is that, there was telephone of wife of accused that he was drunk and was making noise and so they should come to her house. According to her, thereafter she along with her parents went to the house of accused at Kada and her evidence is that, seeing them, the accused started making noise and even assaulted her mother. Regarding this part of the incident, P.W.5 Sitaram Garje, friend as he is of the accused, has tried to slightly change the version to depose

that, after the victim was given back to the custody of her parents, after half an hour, the accused made phone call. He claimed that, the same was received by the victim. According to him, at that time, the complainant, his wife (P.W.2) and he were convincing the victim and the victim was telling the accused to wait there and not to be afraid and that she will come. P.W.5 deposed that, the victim was not in a position to listen and so they took her to the house of accused and when they reached there, there was quarrel between P.W.2 and accused, regarding which the mother made the complaint to Outpost. In the cross-examination of P.W.5, the accused asked him and he stated that, the girl was to be taken to Beed for marriage proposal and that the sister of accused was at Beed and that the marriage proposal was for brother-in-law of accused. The suggestion of the counsel for accused was conveniently accepted by this P.W.5 Sitaram Garje that the victim was sent by her parents for the said marriage proposal. The fact that this P.W.5 wanted to support the accused is apparent from the cross-examination which shows that, although in the examination-in-chief he stated that before he went to the Bus Stand, the parents of victim had told that she was kidnapped, in the cross-examination, he accepted that this he had stated inadvertently. The evidence of this P.W.5 trying to twist the reasons why in the evening of 16.9.2002 the victim and her parents were required to go to the place of accused needs to be ignored. There was no reason for the accused to make phone call to place of P.W.5 Sitaram Garje wanting to speak with the victim if he did not have any extraordinary interest in her. The accused is taking defence that, he had cancelled the proposal of marriage between the victim and his brother-in-law. If that was so, and if police had taken her away from him, there was no reason for him to vent anger on his own family and make repeated calls so as to get in touch with the victim. It shows that, P.W.5 Sitaram Garje, who was Deputy Sarpanch, having got caught as involved due to incident at Bus Stand, Jamkhed, appears to have tried to twist the facts to suit the accused who was his friend. The learned A.P.P. in the trial Court appears to have been aware of the leaning of PW.5 Sitaram Garje towards the accused as in the cross-examination of earlier witness P.W.4 Maruti and even subsequent witness P.W.6 Navnath, the A.P.P. made suggestions to those hostile witnesses that they were speaking lie at the instance of this P.W.5 Sitaram Garje. A.P.P. was aware that this witness has bend of mind in favour of

the accused, but still took the risk of examining him and did bring on record whatever facts possible. He took the risk as the presence of this P.W.5 Sitaram Garje was constantly there in various parts of the incident. The evidence needs to be properly read and appreciated and it shows that, the accused had got obsessed with the victim and reacted angrily at his own house when police forcibly took away the victim. It could not have been reaction of a person who piously wanted the victim to get married with his brother-in-law. It shows that he had unreasonable interest in the victim. In the circumstances, it shows that, there is ring of truth to the evidence of P.Ws.1 to 3 that the victim was forcibly kidnapped by the accused with the object of violating her.

21. The evidence of P.Ws.1 to 3 shows that, after the incident in the evening of 16.9.2002 at the house of accused, they went to the police station at Ambhora and filed the F.I.R. in the night between 16-17th September 2002. The F.I.R. Exh.12 of course limited itself to making complaint that on 14.9.2002 the accused had misbehaved with the victim when they were travelling from Khilad to Kada in the jeep and that, in the evening the accused had forcibly taken away the victim in jeep and that he had kidnapped her promising her that she would be getting married and that she had been taken away to establish illicit relations. There is cross-examination and the learned counsel for the accused has tried to argue that, when such F.I.R. was filed, the victim was with the complainant P.W.1, but in the F.I.R. no allegations of rape were made. The victim has no doubt stated in the evidence that, before they went to the police station, she had told complete details of the incident to her parents, however, in Exh.12, the complainant does not appear to have incorporated details about she being raped. There can be various reasons why father may try to suppress such fact of rape even when due to circumstances where the accused is repeatedly asserting himself on them, he is forced to register F.I.R. that his daughter was kidnapped by the accused. It appears that, when the police took up the investigation, the victim did tell the police regarding the fact that she was raped at the field. The witnesses were cross-examined. There is not a single contradiction or omission proved by the accused. No such contradictions or omissions were brought on record from the cross-examination of A.P.I. P.W.11, who had recorded the statements.

22. The evidence of P.W.9 Dr. Bharti shows that, on 17.9.2002 at about 3.30 p.m. the victim was brought to her and she examined the victim. In her examination, she found that the victim had an abrasion on left buttock. The hymen was not intact. Her evidence is that, no external injury was found on her body except one noted on vulva. Her conclusions were that the victim was habituated to sexual intercourse. When the victim was taken to this doctor, she stated to the doctor, and the doctor recorded in medical certificate Exh.37 that the date of birth of the victim is 14.11.1986.

23. Then there is evidence of P.W.10 Vijaykumar Pawar. He is Assistant teacher from the school where the victim had studied. He had brought the school admission register. He deposed that, T.C. has been issued to the victim. From the register, he deposed that the victim had been admitted to their school on 6.6.2010 in 10th Standard. Her date of birth recorded was 14.11.1986. The entry was at Sr.No.418 and T.C. No.184 had been issued. It appears that, the T.C. had been issued on 14.6.2002. Thus, the admission in the said school as well as the T.C. taken were all before the present incident dated 14.9.2002. The witness proved the document Exh.39. The evidence of this witness shows that, the T.C. which had been issued, had been signed by this witness as Class Teacher. Exh.39 is photo copy of the transfer certificate which had been issued. It shows that, it was marked as true copy by the Principal. The evidence of P.W.11 A.P.I. Shaikh Rauf shows that, he had collected this document from the school and he has also endorsed this document when he took it from the school by putting his signature on the lower left side. In the cross-examination of this P.W.10, he was asked and stated that, xerox copy is not issued by the school. This does not mean that, photo copy cannot be taken to the Principal and cannot be got authenticated. The evidence of P.W.10 shows that, this document Exh.39 was photo copy of the school leaving certificate and had been marked true copy by the Principal. Apart from this, the evidence proved the contents also from the school register which he had brought. It appears from the evidence of P.W.10 that the Court got a photo copy made from the witness of the school register. The same appears to have been marked as Exh.39-A. The cross-examiner made enquiries from this witness regarding why particular columns in the school register were not filled up etc. The fact remains that the school register was brought and on the basis of the school register photo

copy was made and the Court marked it Exh.39-A. Even that has shown the date of birth of the victim recorded in the school as 14.11.1986. It was suggested to the witness P.W.10 that the school admission register brought was not original record. The witness denied the suggestion. There is no reason to show that the school register was required to be doubted. It appears to have been maintained in ordinary course as can be seen from the evidence of the witness. It has been argued that, evidence of admission in the first school should have been brought. However, even if the State brought the evidence of P.W.10 with regard to the admission in 10th Standard in that particular school at Hanuman Vidyalaya, Pangri, it was an act which was done in ordinary course and it was before the incident took place. There is no reason to doubt such act committed in ordinary and official course of business. Apart from this, the evidence of victim herself who gave her age as 16 years, is not denied. Even P.W.1 has deposed that the victim was 16 years old at the time of incident. There is no denial of such evidence and the evidence on this count is not shattered. The incident occurred on 14.9.2002. At that time, the victim was yet not 16 years of age. This being so, the consent, if any, of the victim would be immaterial. Of course, the evidence is that, the victim was forcibly taken and forcibly ravished. The evidence where, it appears that, the victim was allured into believing that she would in fact be married with the brother-in-law of the accused, cannot be read in favour of the accused, looking to her minor age.

24. I have gone through the judgment of the trial Court. The trial Court properly appreciated the facts and evidence and has found the accused guilty. The trial Court found that the accused had threatened the parents of the victim with dire consequences and had also threatened the victim while committing rape and while taking her, she was under threat of injury to her person and her parents. The trial Court found that, the victim had been forcibly taken from the lawful guardianship and had been raped. I find no reason to disagree with the trial Court.

25. There is no substance in the criminal appeal. The criminal appeal is dismissed. Bail bonds of the accused are cancelled. Trial Court to ensure execution of sentence.

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