

C. Arun Vs. State of Kerala

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Court : Kerala

Decided On : Aug-13-2012

Judge : M. Sasidharan Nambiar & P. Bhavadasan

Appeal No. : Criminal.Appeal Nos.881 of 2009, 885 of 2009, 886 of 2009, 893 of 2009, 899 of 2009, 918 of 2009, 925 of 2009, 930 of 2009 & 1952 of 2009 & 134 of 2010

Appellant : C. Arun

Respondent : State of Kerala

Judgement :

Bhavadasan, J.

Twelve persons were sought to be prosecuted for the offences punishable under Sections 366A, 376 (2)(g), 511 of 376, 109 and 120B of the Indian Penal Code. Among them, the second accused absconded and eleven accused were available for trial. The first accused, who is the appellant in CrI.Appeal No.134 of 2010, was found guilty of the offence punishable under Sections 366A, 376 and 120B I.P.C. and was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default of payment of which, to suffer rigorous imprisonment for three years for the offence punishable under Section 366A I.P.C. He was sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/-, in default of payment of which, to suffer rigorous imprisonment for a further period of

three years for the offence under Section 376 I.P.C. and he was also sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.10,000/-, in default of payment of which, to undergo rigorous imprisonment for two years for the offence under Section 120B I.P.C. Accused No.3, who is the appellant in Crl.Appeal No.918 of 2009, accused No.4, who is the appellant in Crl.Appeal No.886 of 2009, accused No.5, who is the appellant in Crl.Appeal No.893 of 2009, accused Nos. 6 and 10, who are the appellants in Crl.Appeal No.881 of 2009, accused No.7, who is the appellant in Crl.Appeal No.930 of 2009, accused No.8, who is the appellant in Crl.Appeal No.885 of 2009 and accused No.9, who is the appellant in Crl.Appeal No.925 of 2009 were found guilty of the offence punishable under Section 376 I.P.C. and each of them was sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/- each, and in default of payment of which, each of them had to undergo rigorous imprisonment for a further period of one year. Accused No.11, who is the appellant in Crl.Appeal No. 899 of 2009, though was tried for the offence punishable under Section 511 of S.376 was found guilty of the offence under Section 354 I.P.C. and was convicted for the said offence and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.2,000/-, in default of payment of which, to suffer rigorous imprisonment for a further period of one year. Accused No.12, who is the appellant in Crl.Appeal No.1952 of 2009, was charged with the offence punishable under Sections 109 and 120B I.P.C. and was found guilty on both counts and therefore convicted and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for a further period of six months for the offence under Section 109 I.P.C. and was also sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default of payment of which, to undergo rigorous imprisonment for six months for the offence punishable under Section 120B I.P.C. Set off was allowed as per law. It was directed that if the fine amounts are realised, the entire amount shall be paid to P.W.1 as compensation. Substantive sentences were directed to run concurrently. The case against second accused was split up and re-filed.

2. This case reveals the story of a sordid and depraved father molesting his daughter aged less than 16 years and compelling her for prostitution landing her in sheer despondency causing considerable trauma, dejection and aversion to both

the girl and her mother. Accused No.1 is the father, P.W.1 is the unfortunate daughter and P.W.4 is the despondent mother.

3. P.W.4 and the first accused had three daughters and a son. P.W.1 was the eldest among them. It all started in 2005 while P.W.1 was studying in the VIIth standard and the family was living at Ayipuzha in the house belonging to the sister of the mother of accused No.1. Prosecution allegation is that while P.W.1 was studying in VIIth standard, the first violation of her body took place. First accused was engaged in making advertisement announcements and was employed in a furniture shop. He also knew driving. While P.W.1 was 12 years of age and was studying in the VIIth standard, on a day in 2005, under the pretext of asking for water P.W.1 was drawn to the kitchen of the house where the first accused, her father, caught hold of her. Though P.W.1 wriggled and cried, she was gagged by accused No.1. When accused No.1 tried to remove her clothes, P.W.1 cried, she was then threatened with dire consequences and the first accused told her that if she cried and drew the attention of others, he would kill the entire family and commit suicide. Saying so and threatening her, P.W.1 was laid on the floor of the kitchen and ravished. Thereafter, according to the prosecution, accused No.1 repeated the acts on several occasions. When P.W.1 reached Xth standard in the year 2008, the real trauma for P.W.1 began. The allegation is that under the pretext of recording announcements for the purpose of advertisement of business carried on by persons, accused No.1, father of P.W.1, took her to Thai Resort at Parassinikkadavu where accused No.12 was working as Manager and accused No.5 was a room boy. On the first occasion accused No.2 raped P.W.1 and then after two or three days, the act was committed by accused No.3. First accused continued to take her to Thai Resort under the pretext of recording cassettes for the purpose of announcement and offered her to accused Nos.4, 5, 6, 9 and 10 who committed rape on her. Accused No.1 also had his lust satiated at the Resort. On 6.7.2008 under the pretext of recording cassettes for the purpose of announcements, P.W.1 was taken away by the first accused to Kannur where accused No.7 joined them. They then took P.W.1 to Kasaragod and then to Mangalore. They reached Mangalore by 7 p.m. They had food at Shalimar Hotel where accused No.11 joined them. Leaving accused No.7 and P.W.1 in the hotel, accused No.1 and 11 went out for a while and then took rooms in Sidhartha lodge

at Mangalore. They returned to Shalimar Hotel and from there accused Nos.1 and 11 mounted in an autorickshaw and went to Sidhartha lodge followed by accused No.7 and P.W.1 in another autorickshaw. At Sidhartha lodge, P.W.1 and accused No.7 were confined to one room and another room was occupied by accused Nos.1 and 11. The poor girl, namely, P.W.1, was raped twice in the night by accused No.7. The next day morning when accused Nos. 1 and 7 left the place, it is stated that accused No.11 came into the room and tried to molest P.W.1 which was resisted by her. Accused No.11 left the place. By 12.30 p.m. they returned from Mangalore and reached Kannur Railway Station at 3.30 p.m.. Accused No.7 left them at Kannur Railway Station and accused No.1 and P.W.1 hired an autorickshaw to go home. When they reached their house, they found that a large gathering had assembled near the house of accused No.1 and as soon as they dismounted from the autorickshaw, a few people surrounded the first accused and made enquiries to him. P.W.4, the anxious mother of P.W.1 took P.W.1 to the neighbourhood and enquired with her where they had been on the previous day. At first P.W.1 kept mum, but due to the persistence and insistence of P.W.4, she was compelled to reveal the entire story.

4. A shattered and crest fallen P.W.4 took P.W.1 to Mattannoor Police Station and P.W.1 lodged Ext.P1 First Information Statement on 7.7.2008. P.W.34, Sub Inspector of Police, recorded Ext.P1 and registered Crime No.400 of 2008 at 23.30 hours as per Ext.P1(a) FIR for offences punishable under Sections 366A, 376 and 376(2)(g) as against nine persons whose names were disclosed by P.W.1. He then had P.W.1 sent for medical examination at the District Hospital, Kannur. P.W.2, Dr.Thankamani, attached to the District Hospital examined P.W.1 and furnished Ext.P3 certificate. She collected vaginal smear, vaginal swab and pubic hair and Ext.P4 is the report. Investigation was taken over by P.W.35. As authorised by P.W.35, P.W.34 prepared Ext.P9 and P10 mahazars in relation to room Nos.101 and 104 of Thai Resort where the ravishing of P.W.1 is stated to have taken place. He recorded statements of a few witnesses. As directed by P.W.35, P.W.34 arrested accused No.8 on 10.7.2008 as per Ext.P59 arrest memo. On 11.7.2008 as directed by P.W.35, P.W.34 went to Sidhartha lodge at Mangalore. He prepared Ext.P40 scene mahazar of room No.308 where accused No.7 and P.W.1 had stayed on 6.7.2008 and he recorded the statements of

P.Ws.23 and 24. He seized Ext.P41 register of the lodge as per Ext.P42 mahazar.

5. P.W.35, who had taken over investigation on 8.7.2008 prepared Ext.P12 mahazar of Ayipuzha house where the victim, P.W.4, accused No.1 and others stayed. The clothes, M.Os.1 to 5, of P.W.1 were seized as per Ext.P13 mahazar. On the same day he arrested accused No.1 as per Ext.P60 arrest memo. Based on the information furnished by accused No.1, accused Nos. 3, 7 and 11 were arrested and arrest memos were prepared. He also seized KL 13-L-1823 Maruthi car belonging to accused No.4 in which accused Nos.1 and 4 took P.W.1 to Thai Resort as per Ext.P15 mahazar. He went to Thai Resort and arrested accused No.5 as per Ext.P61 arrest memo. He had arrested accused Nos. 6 and 10 and prepared Exts.P62 and 63 arrest memos. He caused all the arrested accused sent for potency test. P.W.8 examined accused Nos.1, 3, 4, 5, 6, 7, 10 and 11 and furnished Exts. P27 to 34 reports. P.W.35 submitted Ext.P65 report showing the details of accused persons. During investigation, it was revealed that the name Kiran was wrongly stated and his actual name is Arun and for correction P.W.35 filed Ext.P65 report. He had the test identification parade conducted. In the meanwhile, P.W.5, JFCM, Thalasserry had Exts.P2 and P7, the statements of P.Ws.1 and 4 under Section 164 Cr.P.C. recorded. P.W.6, JFCM, Kannur conducted the identification parade and furnished Ext.P8 report. During investigation, it was disclosed to P.W.35 that at the time of the incidents, accused No.12 was the Manager of Thai Resort and he had abetted and conspired with accused No.1 for the various acts. So, P.W.35 filed Ext.P67 report incorporating Sections 109 and 120B IPC. Finding that accused Nos. 8 and 12 were also involved, Ext.P67(a) report was filed by him to bring them on the party array. During investigation, it was revealed that accused No.11 had attempted to commit rape on P.W.1 and therefore Ext.P69 report was filed by P.W.35 to substitute offence under Section 511 of S.376 IPC as against accused No.11 instead of 376 I.P.C. P.W.35 seized the register from Thai Resort as per Ext.P50 mahazar. He also seized Ext.P51 series of Guest card and Ext.P55 register. He also seized KL-58-130, a car said to have been used by accused No.3 in which P.W.1 was taken to Thai Resort as per Ext.P22 mahazar. He then had the records obtained to show the age of P.W.1 at the relevant time from the Registrar of Births and Deaths, Tellicherry and also had the admission extract from the Schools where P.W.1 had

carried on her studies. He had the plans of site prepared, certificate regarding the ownership of Thai Resort, Ayipuzha house, RC particulars of the vehicles seized obtained. He recorded the statements of witnesses and produced articles seized during investigation before court. He seized the vehicles said to have been used by the absconding second accused to take P.W.1 to Thai Resort as per Ext.P24 mahazar. He recorded the statements of witnesses, completed investigation and laid charge before court.

6. JFCM, Mattannoor, before whom final report was laid, took cognizance of the offence. On finding that the offence is one exclusively triable by a court of Sessions, the learned Magistrate committed the case to Sessions Court, Thalasserry under Section 209 Cr.P.C. The said court made over the case to Additional Sessions Court Adhoc-II, Thalasserry for trial and disposal.

7. The latter court, on production of the accused before the said court and after hearing the prosecution and accused framed charges for the offences punishable under Sections 366A, 376, 376 (2)(g), 511 of 376, 109 and 120B I.P.C. as against the accused persons. When the charge was read over to them, they pleaded not guilty and claimed to be tried. The prosecution therefore had P.Ws. 1 to 35 examined and Exts.P1 to P92 marked. M.Os. 1 to 8 were got identified and marked. After the close of the prosecution evidence, the accused were questioned under Section 313 Cr.P.C. enabling them to explain the incriminating circumstances brought out in evidence against them. They denied all the incriminating circumstances and maintained that they are innocent.

8. The first accused in a detailed statement filed by him claimed that he is innocent and has been falsely implicated. According to him, he took objection to the wayward life led by his wife and P.W.1, which compelled them to shift their residence on more than two occasions and that had annoyed them. He had to pick up quarrels with them in that connection. He stated that he had a fall about five years ago and thereafter he has been under the treatment of Dr.Sudhakaran and he became impotent. He claimed that he was a CPI(M) activist, but later due to difference of opinion he had defected from CPI(M) and that caused ill-will between him and the party. His loan application to a Co-operative Bank which was under

the control of CPI(M) was rejected and that prompted him to make statements against the leaders of the party. That had considerably irritated the party leaders, who have falsely implicated him. The party was joined by women associations and with the connivance of Ayub, a relative of accused No.1, who was inimically disposed towards him as there was a dispute between him and Ayub regarding the tarwad house, he was implicated.

9. In the statement filed by the third accused, he came forward with a plea that his father Minikkan Khader is inimical towards CPI(M) leaders Kunhikannan, Ayub and Firoz and at the instigation of these persons, he has been falsely implicated to wreck vengeance against his father. His photograph was taken in the police station and he was arrested at 12'o clock while he was sleeping in his house. He denied any sort of acquaintance either with P.W.1 or accused No.1.

10. In the statement filed by accused No.4, he denied having any acquaintance either with P.W.1 or accused No.1. He also denied that he was arrested from a car near the petrol pump at Peruvalam Paramb. He contended that he was arrested by the police on 8.7.2008 at 3 p.m. from his house at Kanad and his car was also taken into custody by the police. After having brought to Mattannoor Police Station, his photographs were taken using mobile phone and that was used to enable P.W.1 to identify him. He is claimed to be an Ex-serviceman and according to him the rough life at Kashmir had affected his health badly. He was also involved in a road accident and suffered serious injuries. Due to these incidents he became impotent. In support of his statement, he produced the wound certificate from a Hospital at Mangalore dated 10.8.1988 showing that he was referred from AKG Hospital, Kannur in connection with the injury sustained in the road accident. He also produced a certificate from the said hospital in which his disability was shown at 15%.

11. Though accused Nos.6 and 10 filed separate statements, their stand was almost similar. Both of them stated that they were taken into custody by the police from the residence of the uncle of accused No.6 during the early hours of the day and brought to the police station where there was a large crowd along with people from visual and newspaper media. They had taken his photograph. At the relevant

time, according to them, P.W.1 and her mother along with two other ladies were there in the police station. They were shown to P.W.1 on the same day by the police. In the Sub Jail during judicial custody, members of the Action Council were given free access to them and they had their photographs taken. Accused No.6 also pointed out that the owners of Thai Resort are the children of erstwhile (Priest) in Parassini Madappura who was inimically disposed towards the families of accused Nos.6 and 10 and there is dispute regarding the property of Parassinikadavu temple. It was further pointed out that it was virtually impossible for accused No.6 to go to Thai resort without being noticed by the employees of the temple and the traders who were carrying on business on the side of the road. He is familiar to all of them. He claims to be the grandson of Bhaskaran who was the Madayan of Parassinikadavu temple until his death in December, 2008. He took the stand that he is residing in the building adjacent to Madappura and attended to his grandfather Bhaskaran and also engaged in the performance of routine rituals in the Madappura. CPI(M) leaders were attempted to interfere with the affairs of the temple, which was resisted by accused No.6 and others and the attempt of CPI(M) was to bring the temple under the Devaswom Board. Since they did not succeed, accused Nos. 6 and 10 have been falsely implicated.

12. In the statement filed by accused No.7, he denied acquaintance with P.W.1 or accused No.1 and also that he had purchased dress materials for P.W.1. He too claimed that when he was brought to the Mattannoor Police Station, his photographs were freely taken. He claimed that the Circle Inspector of Mattannoor Police Station had a grudge against him since he had filed a complaint before the Superintendent of Police against the former for having illegally taken his brother into custody and tortured him.

13. Accused No.8, in his statement, denied having had any role in the incident or acquaintance with P.W.1. According to him, due to the ill-will nurtured by the Marxist Party at Valliyai he has been falsely implicated in the case and P.W.1 has been well tutored to dispose against him. He denied having gone to Thai Resort at any point of time and he claimed to be an autorickshaw driver by profession.

14. In his statement the 9th accused apart from denying any familiarity or acquaintance with P.W.1, pointed out that he had seen P.W.1 on his surrender before the Mattannoor Police Station. Police took him into custody and his photographs were taken by the police officials in the police station and they were shown to P.W.1 so as to enable her to identify him in the identification parade. He denied having gone to Thai Resort at any point of time and he claimed that he was incapable of indulging in sex.

15. In the written statement filed by accused No.12, he too denied having any acquaintance with accused No.1 or P.W.1. According to him, he was only a room attender in Thai Resort. A dispute arose between him and Smt.Remma, the owner of Thai Resort with regard to his hike in salary. Sri. P. Vasudevan, father of the owner of Thai Resort, who is the Area Secretary of CPI(M) intervened in the matter and due to his influence accused No.12 was thrown out of the Resort on 31.3.2008 without giving any service benefits and enabling him only to claim his salary of Rs.2500/- only. He was arrested from his house at Kolmotta on 8.7.2008 and produced before court on 10.7.2008. Till then, he was harassed by the police. During the period in police custody for two days, he claimed that the police with the help of P.P.Nirmal, who is none other than the Manager of the Resort, he was forced to sign some papers and was threatened with dire consequences if he revealed the matter to anyone. He has been falsely characterized as the Manager of the Resort so as to enable the owners of the Resort and P.P.Nirmal to save themselves from prosecution proceedings using their political influence.

16. Finding that the accused could not be acquitted under Section 232 Cr.P.C., they were asked to enter on their defence. The accused had D.Ws. 1 to 6 examined and Exts. D1 to D11 series marked. On an appreciation of the evidence in the case, the court below found that accused No.1 was guilty for the offence punishable under Section 366A, 376 and 120B IPC. Accused Nos.3, 4, 5, 6, 7, 8, 9 and 10 were found guilty for the offence punishable under Section 376 IPC. The court below also found that accused No.11 was found guilty of the offence punishable under Section 354 IPC and accused No.12 was found guilty of the offence punishable under Sections 109 and 120B IPC. They were therefore convicted and sentenced as already mentioned.

17. Before going into the various aspects of the case and the merits of the appeal, one fact needs to be noticed. Before this court, except in the appeals filed by accused Nos.1, 11 and 12, counsel appearing for the appellants in the other cases submitted that they are not serious about their appeals as the appellants had served out the sentence and they are no longer interested in the appeals. Learned counsel appearing for the 12th accused pointed out that though the 12th accused had served out the sentence, he is pressing the appeal. Counsel appearing for accused No.11 in the appeal filed by him pointed out that he is also pressing the appeal since accused No.11 was lucky to get suspension of sentence and get himself released on bail. Learned counsel for the appellant/5th accused in Crl.Appeal No.918 of 2009 had filed a petition enclosing a letter which he claims to have been received from his client stating that he is not interested in pursuing the appeal.

18. Since the first accused was unable to engage a counsel to present his appeal, this court appointed Smt.R.Bindu to represent him in the appeal on State Brief.

19. In her well prepared and well presented argument, Smt.Bindu assailed the finding against accused No.1 on several grounds. Contradictions in the evidence of P.W.1 and Ext.P1 were highlighted. In Ext.P1 it is stated that while P.W.1 was studying in the VIIth standard, the first incident took place in the afternoon and thereafter it was repeated by the first accused, though she had resisted the acts of the first accused. At the time of evidence, the first incident is said to have occurred in the dead of night and in box P.W.1 has no case that after the first incident in 2005 and before taking her to Thai Resort in August, 2008, she was ravished by the first accused. This glaring contradiction and inconsistency was omitted to be noticed by the court below. It was also pointed out that the evidence of P.W.1 is inherently improbable and was unconvincing. According to learned counsel, a father would not stoop to such a level so as to ravish his own daughter. Learned counsel went on to point out that there is plenty of evidence regarding the wayward life of P.Ws.1 and 4 and the act of accused No.1 questioning them and admonishing them. May be that the first accused had even beaten P.W.1 for her distorted way of life. Due to the objection taken by the first accused regarding the way of life led by P.Ws.1 and 4, they were quite annoyed and agitated. They did

not like the admonition of first accused and the restriction imposed on them regarding their way of life. Further, they also did not like the restriction imposed regarding the visit of strangers in the house in his absence. The evidence shows, according to learned counsel, that the first accused had occasion to notice the love affairs of P.W.1 and he had to warn her on several occasions. It was pointed out that according to the evidence on record, she had considerable acquaintance with strangers and on one occasion she was seen in a room with a neighbour, namely, Ummer. It is pointed out that the dubious activities of P.Ws.1 and 4 were so disturbing that the family had to shift the residence atleast on four occasions. At any rate, according to learned counsel, the evidence shows that P.W.1 had close acquaintance with a lady who was notorious in the locality and on coming to know about the same, P.W.1 was warned of severe consequences if P.W.1 continued liaison with that lady.

20. Learned counsel appearing for the first accused went on to point out that the solitary evidence regarding the objectionable conduct on the part of accused No.1 is furnished only by P.W.1 and considering the fact that she had been taken to task by accused No.1 for her wayward life coupled with the fact that he had to warn P.W.4 also since the life led by P.W.4 was not above board, it was extremely precarious to rely on the solitary evidence of P.W.1 to hold against the first accused. According to learned counsel, the story of P.W.1 being threatened by accused No.1 can be taken only with a pinch of salt. Evidence shows that P.W.1 had confided to one of her close friends about what had transpired and the deeds of the first accused. For reasons best known to the prosecution, though the friend of P.W.1 was cited as a witness, she was not examined. The prosecution thus failed to adduce independent corroborative items of evidence to support the version given by P.W.1 and an adverse inference needs to be drawn in that regard. In the absence of any independent or corroborative evidence, the evidence of P.W.1 being intrinsically weak and precarious, the court ought not to have held against the first accused.

21. Counsel appearing for the 11th accused pointed out that the charge against 11th accused was for the offence punishable under Section 511 of Section 376 IPC. According to learned counsel, the evidence against accused No.11 is far from

convincing. Even going by the prosecution allegation, accused No.11 came into the picture only at Mangalore and the trend of evidence adduced by the prosecution is that P.W.1 was brought by accused Nos.1 and 7 to Mangalore at his instance. The evidence now before court shows that accused Nos.1 and 11 stayed in one room and accused No.7 and P.W.1 in another room of Sidhartha Lodge on 6.7.2008. If as a matter of fact P.W.1 was brought at the instance of accused No.11, that would not have been the position. Further, it was pointed out that the evidence as against accused No.11 is only to the effect that after accused Nos. 1 and 7 had left the room in which P.W.1 stayed along with accused No.7 on 6.7.2008, accused No.11 entered the room and caught hold of P.W.1. According to learned counsel, this allegation and the evidence furnished by P.W.1 is inherently improbable and unconvincing for the reason that if P.W.1 was brought to Mangalore on his demand, he need not have waited for accused Nos.1 and 7 to leave the place to enter into the room in which P.W.1 was present. The story of P.W.1 i.e., accused No.11 having attempted to restrain P.W.1 and also her story of escaping from his clutches is open to serious doubt. Attention was also drawn to the fact that P.W.1 at the time of evidence developed a story and came forward with a version that accused No.11 had fondled her breast on the day on which he barged into her room. Such a statement is conspicuously absent in Ext.P1. It was pointed out that Ext.P1 came into existence on the same date of incident and there the only allegation against accused No.11 is that he had caught hold of P.W.1 and nothing more. Learned counsel went on to point out that the court below was not justified in relying on such a suspicious nature of evidence as against accused No.11 and according to learned counsel the conviction and sentence passed against accused No.11 is clearly unsustainable.

22. Sri.S.Rajeev, learned counsel appearing for the 12th accused very vehemently attacked the finding of the court below to the effect that accused No.12 was the Manager of Thai Resort at the relevant time and that he had aided accused No.1 in making arrangements for P.W.1 to be ravished. The theory of conspiracy developed as against accused No.12 with accused No.1 is based on no evidence and conclusions of the court below are based on conjunctures and surmises. A reading of the evidence adduced by the prosecution, according to learned counsel, would clearly show that it was in fact P.W.30 who was in charge of Thai Resort

and accused No.12 was only a room attender. He had picked up a quarrel with the owner of Thai Resort regarding hike in salary and his service was terminated. He received the last salary on 1.4.2008 and thereafter he was no longer an employee of the Resort. According to learned counsel, Exts.P51 and P54 series of documents are concocted documents and none of the witness examined by the prosecution has identified the handwriting of accused No.12 or his signature either in Ext.P51 series or P54 series.

23. Attention was drawn to the evidence of P.Ws.30 and 31 and it was pointed out that P.W.31 and the mother of P.W.30 became the owners of Thai Resort only in 2008. If so, P.W.31 could not have issued Ext.P53 appointment letter carrying a date in 2005. Learned counsel went on to point out that the definite stand of P.W.30 was that at the relevant time he had nothing to do with Thai Resort. Referring to the evidence of P.W.30 it was pointed out that the day on which P.W.35 seized the guest cards and register, accused No.12 telephoned him and informed him about the same. If as a matter of fact P.W.30 had nothing to do with the Resort, there could not have been any occasion for accused No.12 to inform him about the seizure. Reference was made to the evidence of D.W.6, the Accounts Officer of BSNL and Exts.D7 and D8 to show that the telephone installed in the premises of Thai Resort stands in the name of P.W.30. Prosecution has no explanation for the same. Learned counsel severely criticized the acts of the lower court resorting to comparison of the signatures to draw a conclusion against accused No.12. Neither P.W.30 nor P.W.31 had stated before the court that they were familiar with the handwriting of accused No.12 and the writings found in Ext.P55 and the signature found on Ext.P51 and P54 series are that of accused No.12. It is not a matter for presumption, but proof. There is no such evidence and therefore the court below was not justified in coming to the conclusion that accused No.12 was the Manager at the relevant time.

24. Learned counsel for accused No.12 also contended that even assuming that accused No.12 was an employee in the Thai Resort at the relevant time, all that he had done was to provide room for accused No.1 and P.W.1 and by doing so, even if he had knowledge about the activities carried on in the room occupied by P.W.1, that is not sufficient to attract Section 109 IPC. Section 120B IPC can have no

application to the facts of the case. Drawing attention to the charge, it was pointed out that the allegation against accused No.12 is that he had abetted and conspired with accused No.1 in facilitating the acts against P.W.1 thereby committed offence under Section 120B IPC. Learned counsel pointed out that there is no charge of conspiracy against accused No.1 and in the absence of charge of conspiracy as against accused No.1, accused No.12 could not have been found guilty of the offence of conspiracy. Referring to Sections 108 and 109 of IPC, merely because accused No.12 had made available rooms to P.W.1 and accused No.1 on frequent visits by them and also assuming that he had served food and water to them, those acts are insufficient to bring accused No.12 within the ambit of Sections 108 and 109 of IPC. Therefore, it is contended that the conviction of accused No.12 on the basis of the available evidence for the said offence is clearly unsustainable in law.

25. Learned counsel appearing for the appellants did not address this court in respect of the appeals preferred by accused Nos. 3 to 10.

26. Learned Public Prosecutor on the other hand contended that the lower court has considered the evidence against each of the accused and found against them. Learned Public Prosecutor contended that the act of accused No.1, to say the least, was most heinous and glaring instances of perversion resulting in humiliation, agony and torment not only to the victim, but to members of the entire family. Accused No.1 did not flinch inspite of the strong protest and resistance offered by P.W.1. Apart from the brutal act of ravishing his daughter, he had gone to the extent of compelling his minor daughter, who has not completed the age of 16 years, to be an object of sexual exploitation. Normally, according to the learned Public Prosecutor, no wife or daughter will level such an allegation against her husband or father as the case may be. More so, a mother would by no stretch of imagination would venture to make such an allegation against her husband making her daughter as the victim. It is imprudent to accept the plea that merely because accused No.1 had admonished P.Ws.1 and 4 for their way of life, even assuming it to be true, they would have gone to the extent of framing him in such a manner. Learned Public Prosecutor reminded this court that by levelling such an allegation and exposing the activities of accused No.1, the persons who were to

suffer were P.Ws. 1 and 4. They face humiliation, social wrath and social ostracism. It is rather inconceivable that P.Ws.1 and 4 would take upon themselves the consequences of levelling such an allegation or it is inconceivable that they were unaware of the consequences. There is sufficient evidence to show that the allegations of P.W.1 are true. Referring to the evidence of P.W.1, learned Public Prosecutor pointed out that, she had given details of what had transpired both in her house, in Thai Resort as well as in Mangalore. Ext.P1 was laid on 7.7.2008 and it contains all the details including the names of most of the accused. According to the learned Public Prosecutor, the acts spoken to by P.W.1 as against accused No.1 are not challenged. More so, in the case of accused No.1, P.W.1 has spoken in detail about the resistance offered by her and she was overpowered by the threats of accused No.1. The fact that P.W.1 used to assist accused No.1 in advertising announcements and that she used to be taken for cassette recording are not seen challenged. So also, the violation of her body by accused No.1 and other accused persons. According to learned Public Prosecutor, it was not even suggested to P.W.1 that what she had spoken about accused No.1 is untrue or that she had never been taken to Thai Resort by accused No.1. The attempt on the side of accused No.1, according to learned Public Prosecutor, to show that P.Ws.1 and 4 had questionable character and also that P.W.1 had completed the age of 16, and if at all anything of the sort as spoken to by P.W.1 has taken place, it was on the volition of P.W.1. Learned Public Prosecutor pointed out that though the facts spoken to by P.W.1 may look incredible, they contain a ring of truth and she gets corroboration to certain extent from P.Ws.4 and 9. Learned counsel pointed out that on 7.7.2008 when the first accused returned with P.W.1, a lot of people had gathered near the house and this fact is admitted by accused No.1 when questioned under under Section 313 Cr.P.C. His case is that he was beaten up by a few persons at that time and the police had come and took him away. According to the learned Public Prosecutor, no daughter will venture to knit such a story against her father to wreck vengeance. More so, it is rather inconceivable that the daughter would get sufficient support from the mother in this regard. According to learned Public Prosecutor the attempt of accused No.1 throughout was to tarnish P.Ws.1 and 4 and the suggestion to them was that it was due to their way of life that the family had to frequently change their

residence. It is true, according to learned Public Prosecutor, that P.W.1 had been seen in sticky circumstances by her father, but to say that it was that which had driven her to make an attack against her father is inconceivable. In fact a reading of her evidence would show that it is natural and convincing. According to learned Public Prosecutor, in a case of this nature, it is imprudent and unwise on the part of the court to insist for corroboration. Unless it is shown that the evidence furnished by the victim is totally false and unacceptable, the court will not be justified in entertaining a doubt regarding the evidence furnished by the victim. No serious infirmities could be pointed out in the evidence of P.W.1 and accordingly it is contended that there are no legal reasons to discard her evidence.

27. Learned Public Prosecutor also referred to the evidence of P.Ws.4 and 9. According to him, the evidence of P.W.4 shows that on 6.7.2008 she had sent her son along with P.W.1 when P.W.1 was summoned by accused No.1. After returning home soon thereafter, accused No.1 is said to have telephoned P.W.1 to come near the bridge for recording purpose. The evidence of P.W.4 shows that when accused No.1 informed her that they would not return home that day, she asked accused No.1 to bring back P.W.1 to the house. When P.W.1 did not return the next day morning, she informed the neighbours. In this regard, her evidence gets ample support from the evidence of P.W.9. P.W.9 also speaks about accused No.1 forcibly taking P.W.1 on 6.7.2008. The inconsistencies pointed out between Ext.P1 and evidence of P.W.1, according to the learned Public Prosecutor, are insignificant and do not affect the substratum of the prosecution case. None of the contentions raised by the first accused are tenable.

28. As regards accused No.11, it was contended that his presence is spoken to by P.W.1 and his act finds a place in Ext.P1, the earliest version of P.W.1. There was no time for manipulation and embellishment and there is no suggestion to P.W.1 as to why she should falsely implicate him. There are no reasons given to disbelieve the evidence of P.W.1 as against accused No.11 and the conviction and sentence against accused No.11 does not call for any interference.

29. As regards accused No.12, according to learned Public Prosecutor, there is ample evidence to show that he was a privy to the various transactions between

accused No.1 and others of which P.W.1 was the victim. He aided accused No.1 in the illegal activities. He made available rooms as and when demanded by accused No.1 and others and promoted the illegal activity. The evidence is clear to the effect that he was the Manager of Thai Resort at the relevant time and his complicity in the matter could be discernible from the version given by P.W.1 that on one day accused No.12 telephoned somebody and informed him "the thing has arrived". Learned Public Prosecutor contended that the 'thing' referred to by accused No.12 could be none else than P.W.1. Exts.P53, 54 and 51 etc. produced by the prosecution and proved through P.W.30 and 31 sufficiently show that the affairs of Thai Resort at the relevant time was being managed by accused No.12.

30. Learned Public Prosecutor pointed out that conspiracy is hatched in secrecy. Direct evidence is virtually impossible. Presumption will have to be drawn from proved circumstances. Evidence is clear to the effect that P.W.1 was frequently brought to Thai Resort by accused No.1 and accused No.12 provided rooms and other conveniences for them. At any rate, he is guilty of abetting the crime. According to learned Public Prosecutor, no interference is called for with regard to the conviction and sentence passed against accused No.12 for the offence under Sections 109 and 120B IPC. Learned Public Prosecutor pointed out that there is no merit in any of the appeals and they are only to be dismissed.

31. This is yet another story of a helpless and hapless young girl who watches in horror and despondency what is happening to her unable to respond since the predator is none other than her father. The story is indeed very painful.

32. Regarding the actual incidents, we have the evidence of P.W.1, victim alone. She encountered her first horrifying attack on her body by none other than her father when she was only 12 years of age and was studying in VIIIth standard. P.W.1 in her evidence has narrated the incident. She has also stated as to how she was terrorized by the first accused to keep mum and her sufferings continued. Ext.P1 First Information Statement given by P.W.1 does say about the repeated acts of accused No.1 soon after the first incident. At the time of evidence she does not say in so-many words about the subsequent frequent violations of her body by accused No.1 after the first incident when she was 12 years of age, but does refer

to some of his acts.

33. The evidence of P.W.1 shows that she was staying along with her parents, accused No.1 and P.W.4, two sisters and a brother. P.W.1 is the eldest among them. She says that the first incident took place while the family was residing at Ayipuzha. In her evidence P.W.1 also stated about the repeated acts committed by accused No.1 frequently. When she was promoted to the VIIIth standard, the family shifted their residence to Chedicherry. When she was promoted to the IXth standard, they shifted to the present residence which is the tarwad house of the family. The ground floor was occupied by accused No.1 and his family and the first floor by the sister of the mother of accused No.1 and her family. P.W.1 says in her evidence that in the present house in the dead of night she used to be awakened by the first accused, taken near to the kitchen and raped beneath the staircase. P.W.1 also says that the first accused had no hesitation to rape her even during day time. She says that since she was threatened with dire consequences she was afraid to reveal the incidents to anybody.

34. P.W.1 in her evidence admitted that she used to accompany the first accused for cassette recording for advertisement announcements. According to P.W.1 in the first week of April, 2008 she was taken from the house by accused No.1 on the pretext of recording of announcements. When they were waiting for a bus at Irikkoor Bridge, a car stopped near them. Accused No.1 told P.W.1 that the recording on the day had to be done for the person in the car. Accused No.1 revealed his name as Skaria and that his wife's house is at Kurari. Believing accused No.1, P.W.1 get into the car. They reached Thai Resort at Parassinikadavu. The first accused took room No.101 on rent and all three of them went to that room. A short while thereafter first accused left the room. Short while thereafter food was brought in and P.W.1 had food with others in the central room of the hall. After taking food, accused No.2 took her to room No.101. According to P.W.1, when accused No.2 tried to remove her dress, she cried and tried to resist. She was overpowered and raped by him. P.W.1 says that when accused No.1 returned, accused No.2 was seen giving him money. Thereafter, accused No.2 dropped P.W.1 and accused No.1 near their house in the same car. P.W.1 says that on another day, accused No.1 came to the place where P.W.1 was learning

tailoring and told her that they had to go for recording. P.W.1 would say that since there were others in the shop, she could not respond then. When she reached the house, she initially refused to go along with accused No.1. Accused No.1 then persuaded her that he was taking her for recording and for no other purpose. Though she got ready to leave along with accused No.1, since the vehicle did not come, they could not go on that day. On the next day, under the pretext of recording, accused No.1 took P.W.1 along with him. While they were standing near the Bridge at Irikkoor, accused No.2 came in his vehicle. Accused No.1 then told P.W.1 that by going in that car they could save the bus fare. Believing accused No.1, P.W.1 got into the car. The car went to Thai Resort and room No.101 was taken by accused No.2. What happened on the earlier occasion was repeated. When accused No.1 returned, he was paid and they returned home. P.W.1 says that during the last week of May, P.W.1 was told that they had to go to Thai Resort for recording. Accused No.1 also told that he wanted to get a vehicle and had to go to Tellicherry. She was taken to Thai Resort. There she happened to see accused Nos. 5 and 12. Accused No.12 brought food for them. P.W.1 says that accused No.12 told that P.W.1 shall not be left alone in the room and she may sit in the reception counter. After sometime, she was asked to go to the room. When accused No.1 and P.W.1 went into the room, accused No.1 left and cautioned her not to open the door unless she was sure that it was he who was at the door. A short while thereafter accused No.1 returned with accused No.3. P.W.1 would say in her evidence that she had seen accused No.3 in the company of accused No.1 earlier. P.W.1 then narrates the rape by accused No.3. They stayed in the night in Thai Resort and accused No.1 returned only on the next day. Accused No.3 was seen paying accused No.1. They returned home in the car of accused No.3. P.W.1 would say that on two or three days thereafter she was again taken to Thai Resort on the pretext of cassette recording. They reached the resort by about 7 p.m. She happened to see accused Nos.5, 12 and a few others at the Resort. She overheard accused No.12 telephoning and saying "come immediately, commodity has arrived". She would then say that she was taken to room No.104 by accused Nos.1 and 5. When she reached the room she saw accused No.9 inside. Accused Nos.1 and 5 left the place. P.W.1 would say that accused No.9 asked her how she got associated with a person like accused No.1.

She then replied that she used to go for announcement for a long time and she was brought there for recording. P.W.1 says that she was taken from the central hall to the room by accused No.9 and there he raped her. Even though accused No.9 paid her money she did not receive it and accused No.9 left the room keeping the money in the room itself. Soon thereafter accused No.1 came and counted the money and kept it underneath the bed. When accused No.1 had left the place, accused No.5 entered the room and took the money. Accused No.1 returned and searched for money. It was found missing. P.W.1 was asked about it. P.W.1 replied that money had been taken by accused No.5. That infuriated accused No.1 and she was scolded and beaten by him. As soon as accused No.1 left the room, accused No.8 entered the room and raped her. When accused No.8 left the room, accused No.5 came in and raped her. When accused No.5 left the room, accused No.1 entered the room. By that time, P.W.1 says that she was completely exhausted and she went to sleep. However, she remembers accused No.1 having raped her. Next day morning accused No.8 again returned and tried to rape her, which she resisted. Accused No.8 left the room. Two or three days thereafter accused No.1 took P.W.1 along with him on the pretext of cassette recording. They went to a petrol pump at Peruvalath. Accused No.1 wanted to meet accused No.4 first. Since accused No.4 was not there, they returned home. Next day, accused No.1 left the house early morning. A short while thereafter a phone call came from accused No.1 asking P.W.1 to come near Irikkoor bridge and they had to go for recording. She went near the bridge and did not find accused No.1 there. When she was about to mount an autorickshaw, accused No.1 came in another autorickshaw and asked her to get in and as soon as they crossed Irikkoor bridge, she saw a car lying there and she was forced to get into the car. Accused No.4 was inside the car. she was taken to the Resort. On the way, accused No.1 had cautioned her that she should obey accused No.4 and should not reveal what is going to transpire to anybody. All three of them went to a room in Thai Resort and accused No.1 left the room. From the central hall she was led to room No. 104 by accused No.4 where she was raped by him. A short while thereafter when accused No.4 tried to repeat the act, he received a phone call from accused No.1 stating that he was at Mayyal. Accused No.4 took P.W.1 to Mayyal in his car. From Mayyal accused No.1 also mounted the car and accused

No.4 dropped them near Irikkoor bridge. Even though accused No.4 gave cash to P.W.1, it was snatched by accused No.1. They returned home. A few days thereafter, accused No.1 again took her on the pretext of recording and when they reached near Irikkoor bridge, accused No.3 was seen coming in a car. She was forced to get into the car and taken to the Resort. When the car reached Thai Resort, accused No.1 remained in the car and accused No.3 and P.W.1 went inside the Resort. When they were in the central hall of the Resort accused No.1 came there with a bottle of liquor. Accused No.12 brought water for them. They had drinks. A short while thereafter accused No.1 is stated to have said that he felt that there was something wrong in the place and they will have to leave immediately. Accused No.3 then told him that accused No. 1 may take his car since he does not intend to leave the place and they may return the next day morning. The next day morning when they reached the Resort, accused No.3 was seen waiting outside the Resort. He got into the car and they reached Sreekandapuram where they were dropped and at the time of leaving, accused No.3 paid cash to accused No.1. P.W.1 says that she and accused No.1 returned home in an autorickshaw. Two or three days thereafter again, under the pretext of recording, she was taken in a bus and they dismounted near the School at Nayattupara. Soon accused No.4 reached there in his car. She was taken to the Resort and in room No.104 she was raped by accused No.4. Accused No.1 and P.W.1 were taken back to the house by accused No.4 in his car. Two days thereafter, accused No.1 informed P.W.1 to get ready and he is coming in an autorickshaw, P.W.1 was picked up by accused No.1 in the autorickshaw and taken to Thai Resort. Accused Nos.5 and 12 were present in the reception counter of the Resort. She was taken to room No.104. She saw two persons inside and one of whom was accused No.6. The other person was introduced to her as an employee of a fancy store. He was accused No.10. She was told that the recording was to be done for the fancy store. Saying so, accused Nos.1 and 5 left the room. While accused No.6 was waiting in the central hall, accused No.10 raped her. After accused No.10 left the room, accused No.6 raped her and followed by accused No.5. When accused No.5 left the room, accused No.1 came with a bottle of liquor and kept it on the table in the room. Accidentally, she happened to knock down the bottle and broke it, which infuriated accused No.1,

who abused and beat her. On the next day, they returned to Sreekandapuram. From the market, accused No.1 purchased provisions for the house and they returned home. P.W.1 says that she was informed by accused No.1 that on 6.8.2008 there will be recording and she should remain prepared for the same. On that day, accused No.1 telephoned his mother's younger sister, who is residing in the first floor of the house and informed her to ask P.W.1 to come near Irikkoor Bridge. When the message was conveyed to P.W.1, P.W.4 sent P.W.1's brother along with P.W.1. When they reached Irikkoor Bridge accused No.1 was seen waiting there. They mounted a bus and reached Sreekandapuram, accused No.1 took P.W.1 and her brother to a hotel. While they were taking food, accused No.1 went out. A short while thereafter accused No.1 returned and paid for food. They then left the hotel. When they came out, accused No.7 was seen waiting outside. Accused No.7 gave a mobile phone to accused No.1. Accused No.1, P.W.1 and P.W.1's brother returned home. No sooner then, they reached home, accused No.1 asked P.W.1 to change her dress and come along with him for recording. P.W.1 refused. Accused No.1 created a scene in the house and literally dragged P.W.1 along the road. On the way, when someone asked where the daughter was being taken, accused No.1 abused him. P.W.1 would say that at that time accused No.1 was drunk. From near Irikkoor bridge, they mounted a bus and reached Kannur. At Kannur accused No.1 telephoned accused No.7 and accused No.7 soon arrived at the place. All the three of them had food and reached Kannur Railway Station in an autorickshaw. Accused No.7 informed him that the next train is only at 3 p.m. and they then went to bus station. They reached Kasaragode at 6 p.m. Accused No.7 is alleged to have bought a pair of dress for P.W.1. Then they went to Kasaragode Railway Station. In the Railway Station, accused Nos.1 and 7 left her there and they went outside. A short while thereafter they returned. Thereafter accused No.1 telephoned home and informed that they were in Tellicherry and as the recording could not be completed, they would be returning only on the next day. P.W.1 claims to have overheard P.W.4 telling accused No.1 to bring back P.W.1 home. Accused No.1 switched off the phone then. Though accused No.7 suggested them to return home, but accused No.1 refused and said that they will return on the next day. They mounted a train and reached Mangalore. At Mangalore they went to Shalimar Hotel. When they reached the

hotel, accused No.7 stated that one more person had to arrive and thereafter they will have food. Soon accused No.11 arrived in the hotel. All the four had food. Thereafter, P.W.1, accused Nos.1 and 11 took an autorickshaw and went to the railway station. At the railway station, accused No.11 has stated that one more person has to come. A person by name Shameer arrived at the place. Accused No.1 joined them. Accused No.11, Shameer and accused No.1 got into one autorickshaw and P.W.1 and accused No.7 mounted in another autorickshaw. They went to Sidhartha Lodge. Two rooms were hired, namely, room Nos.308 and 309. Room No.309 was occupied by accused Nos.1, 11 and Shameer and room No.308 was occupied by accused No.7 and P.W.1. P.W.1 would say that on that night she was raped twice by accused No.7. The next day morning accused No.1 came to the room and said that they had to leave. Accused No.7 then said that they could leave by 10 a.m. and accused Nos.1 and 7 went out of the room. No sooner they have left the room, accused No.11 came in and caught hold of her. P.W.1 would say that she managed to wriggle out of the clutches of accused No.11 and took shelter in the bathroom. Some time later she came out and accused Nos.1 and 7 reached the place. They left from Mangalore and got down at Kannur Railway Station. P.W.1 says that accused No.7 was seen paying accused No.1. From there accused No.1 and P.W.1 hired an auto and reached home by about 5.30 p.m.. To their utter surprise, they saw a lot of people had gathered in the house. No sooner than they had alighted from the autorickshaw, accused No.1 was taken aside by a few people and questioned. In the meanwhile, P.W.4 took P.W.1 to the neighbourhood and asked where she had been taken by accused No.1. P.W.1 would say that initially she did not answer and she kept silent. But due to the persistence and insistence of P.W.4, she had to reveal the entire story. P.W.1 would say that thereafter she, P.W.4 and mother's younger sister went to Mattannoor Police Station and furnished Ext.P1 First Information Statement. P.W.1 would say that after her statement was taken, she was sent for medical examination. She says that police had taken her to various places in connection with the investigation of the case. She identified all the accused in court as she had done in the identification parade conducted during investigation. She also stated that her statement was recorded by the Magistrate.

35. P.W.4 is the mother of P.W.1. She says that they were residing at Ayipuzha at the relevant time. She had married accused No.1 in 1991 and P.W.1 was born to them on 10.12.1992 at Shemy Hospital in Thalassery. She would say that P.W.1 studied upto VIIth standard in a school at Ayipuzha. P.W.4 has asserted that at the time of admission in the school and Ayipuzha, accused No.1 and she had gone together to the school and the date of birth of P.W.1 was furnished by P.W.4. P.W.4 says that accused No.1 used to take drinks quite often and create trouble in the house. She would also say that he used to take P.W.1 to various places under the pretext of cassette recording. Whenever P.W.4 used to take objection to taking P.W.1 out, she would be beaten up by accused No.1. The last occasion when P.W.1 was taken by accused No.1 was on 6.7.2008. P.W.4 would say that in the morning when P.W.1 was about to leave, she asked the brother of P.W.1 to accompany her. P.W.1 and her brother went together and a short while thereafter they returned home. She would say that immediately thereafter, at about 11 a.m. P.W.1 was taken away by accused No.1. Even though P.W.4 had objected to accused No.1 taking P.W.1 along with him and P.W.1 had refused to go along with him, both of them were beaten up by accused No.1 and P.W.1 was compelled to go along with him. By about 6.30 p.m. on 6.7.2008 she received a call from accused No.1 stating that recording had not been completed and they would return only on the next day. P.W.4 would say that she then asked accused No.1 to bring back P.W.1 home and at that time accused No.1 switched off the phone. Going by the evidence of P.W.4, when P.W.1 did not return the next day morning she became anxious and informed the neighbours. By about 5.30 p.m. on the next day accused No.1 and P.W.1 returned. By that time people had gathered in the house. P.W.4 would say that she took P.W.1 to the nearby house and enquired about their whereabouts on the previous day. First P.W.1 did not say anything, but later revealed the entire incident. She also narrated the acts done to her by accused No.1 and also that accused No.1 had threatened her with dire consequences if she revealed the incidents to anybody. She mentioned about having gone to the police station and P.W.1 having furnished statements to the police. She too says that her statement was recorded by the Magistrate.

36. It needs to be noticed that her knowledge about the incidents are only hearsay but her evidence is sufficient to show that on 6.7.2008 accused No.1 had taken

P.W.1 forcibly from the house inspite of the strong resistance put up by P.Ws.1 and 4.

37. The question as to whether her evidence regarding the statements made to her by P.W.1 can be used as corroborative items of evidence will be considered later.

38. Next is the evidence furnished by P.W.9 regarding the incident. He is related to the first accused. He resides in the first floor of the tarwad house at Ayipuzha where accused No.1 and family were residing on the ground floor. P.W.9 says that accused No.1 goes for advertisement announcements. He also speaks about accused No.1 taking P.W.1 for the said purpose. P.W.9 says that he had occasion to see the incident which took place on 6.7.2008. According to him, he happened to see that P.W.1 was very reluctant to go along with accused No.1 on the said date. He says that he had occasion to see accused No.1 quarreling with P.W.4 and forcibly taking away P.W.1. P.W.1 and accused No.1 returned only on the next day by about 5.30 p.m. When they arrived, a lot of people gathered in the house. He says that when P.W.1 did not return in the evening on 6.7.2008, P.W.4 expressed her anxiety to the neighbours about the whereabouts of P.W.1. He would also say that on the next day P.W.1 and accused No.1 arrived at the house, some of the persons questioned accused No.1.

39. P.W.2 is the doctor, who had examined the unfortunate victim and had furnished Ext.P3 certificate. Her evidence is to the effect that the victim was subjected to frequent sexual intercourse. Going by the evidence of P.W.2, the victim was first seen by Dr.Asha Rani, Civil Surgeon, District Hospital, Kannur. Later the victim was attended to by P.W.2. In Ext.P3 the history is seen to be given by P.W.4. Criticism is levelled against P.W.2 in not making certain entries in Ext.P3 certificate. On going through the evidence of P.W.2 and Ext.P3, one finds no reason to discard the medical evidence in this regard. It is true that no external injuries are noticed by P.W.2. But it is not necessary that in all cases of rape, there should be external injuries. In the case on hand, P.W.1 had to meekly submit due to the threat meted out to her by the first accused. There is nothing to show that she could offer any physical resistance on the relevant occasions. But the medical

evidence is clear to the effect that she was subjected to sexual intercourse.

40. True, the evidence regarding the incident or the acts of rape is furnished only by P.W.1, the victim. The victim of rape has been equated to the status of an injured witness and it is well settled by now that if the evidence of an injured witness is creditworthy and acceptable, a conclusion can be drawn on the basis of such evidence. Corroboration in such cases is not a rule of law but only a rule of prudence. The issue as to whether there needs to be any corroboration in such cases is considered in the decision reported in *Rameshwar Kalyan Singh v. State of Rajasthan* (AIR 1952 SC 54). There, the evidence of incident consisted of the solitary evidence of the victim and her statement to her mother who spoke about the same in court.

41. Considering the question regarding the necessity for corroboration, it was held as follows:

"16. Now a woman who has been raped is not an accomplice. If she was ravished she is the victim of an outrage. If she consented there is no offence unless she is a married woman, in which case questions of adultery may arise. But adultery presupposes consent and so is not on the same footing as rape. In the case of a girl who is below the age of consent, her consent will not matter so far as the offence of rape is concerned, but if she consented her testimony will naturally be as suspect as that of an accomplice. So also in the case of unnatural offences. But in all these cases a large volume of case law has grown up which treats the evidence of the complainant somewhat along the same lines as accomplice evidence though often for widely differing reasons and the position now reached is that the rule about corroboration has hardened into one of law. But it is important to understand exactly what the rule is and what the expression "hardened into a rule of law" means.

17. In my judgment, this branch of the law is the same as in England and I am of opinion that the lucid exposition of it given by Lord Reading, the Lord Chief Justice of England, in *The King, v. Baskerville*, (1916) 2 K. B. 658, cannot be bettered.

18. In that case, Baskerville had been convicted of having committed acts of gross indecency with two boys. (There the boys were accomplices because they were freely consenting parties and there was no use of force.) The learned Chief Justice says at p. 663 :"

There is no doubt that the uncorroborated evidence of an accomplice as admissible in law ... But it has long been a rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices and in the discretion of the judge, to advise them not to convict upon such evidence; but the judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence...

This rule of practice has become virtually equivalent to a rule of law, and since the Court of Criminal Appeal came into operation this Court has held that, in the absence of such a warning by the judge, the conviction must be quashed ...

If after the proper caution by the judge the jury nevertheless convict the prisoner, this Court will not quash the conviction merely upon the ground that the accomplice's testimony was uncorroborated.

"That, in my opinion, is exactly the law in India so far as accomplices are concerned and it is certainly not any higher in the case of sexual offences. The only clarification necessary for purposes of this country is where this class of offence is sometimes tried by a judge without the aid of jury. In these cases, it is necessary that the judge should give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case. I am of opinion that the learned High Court Judges were wrong to thinking that they could not, as a matter of law, convict without corroboration.¹⁹ There is a class of cases which considers that though corroboration should ordinarily be required in the case of a grown up woman it is unnecessary in the case of a child of tender years. *Bishram v. Emperor*, A. I. R. (31) 1944 Nag, 363, is typical of that point of view. On the other hand, the Privy Council has said in

Mohamed Sugul Esa v. The King, A. I. R. (33) 1946 P. C. 3 at p. 5, that as a matter of prudence a conviction should not ordinarily be based on the uncorroborated evidence of a child witness. In my opinion, the true rule is that in every case of this type the rule about the advisability of corroboration should be present to the mind of the judge. In a jury case he must tell the jury of it and in a non-jury case he must show that it is present to his mind by indicating that in his judgment. But he should also point out that corroboration can be dispensed with if, in the particular circumstances of the case before him, either the jury, or, when there is no jury, he himself, is satisfied that it is safe to do so. The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, and in jury cases, must find place in the charge, before a conviction without corroboration can be sustained. The tender years of the child, coupled with other circumstances appearing in the case, such, for example, as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.²⁰ I turn next to the nature and extent of the corroboration required when it is not considered safe to dispense with it. Here, again, the rules are lucidly expounded by Lord Reading in Baskerville's case, (1916) 2, K. B. 658 at p. 664 to 669. It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence charged. But to this extent the rules are clear.

21. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says: "Indeed, if it were required that the accomplice should be confirmed in every detail of the crime,

his evidence would not be essential to the case, it would be merely confirmatory of other and independent testimony." All that is required is that thereto must be "some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it."

42. In the decision reported in *State of Rajasthan v. Narayan* (AIR 1992 SC 2004) it was held as follows:

"5.In *State of Maharashtra v. Chandra Prakash Kewal Chand Jain*, (1990) 1 SCC 550: (AIR 1990 SC 658) this Court had emphasised that a woman who is a victim of rape is in the same position as an injured witness and her evidence should receive the same weight. This is what this Court observed in that case (para 16 of AIR): "A prosecutrix in a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly as competent witness under Section 118 and her evidence -must receive the same weight as is attached to an injured in cases of physical violence."

43. In the decision reported in *Visveswaran v. State* (AIR 2003 SC 2471) the approach to be made with regard to the appreciation of evidence in such cases was considered at length. It was held as follows:

"12. Before we notice the circumstances proving the case against the appellant and establishing his identity beyond reasonable doubt, it has to be borne in mind that approach required to be adopted by Courts in such cases has to be different. The cases are required to be dealt with utmost sensitivity, Courts have to show greater responsibility when trying an accused on charge of rape. In such cases, the broader probabilities are required to be examined and the Courts are not to get swayed by minor contradictions or insignificant discrepancies which are not of substantial character. The evidence is required to be appreciated having regard to the background of the entire case and not in isolation. The ground realities are to be kept in view. It is also required to be kept in view that every defective investigation need not necessarily result in the acquittal. In defective investigation, the only requirement is of extra caution by Courts while evaluating evidence. It

would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of prosecution when it is otherwise proved."

44. The issue was again considered in the decision reported in *State of Himachal Pradesh v. Shree Kant Shekari* (AIR 2004 SC 4404), wherein it was held as follows:

"21. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the Court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would suffice.

22. The victim has categorically stated that she was afraid of the accused who was her teacher and the threats given by him to the extent that she would be put to physical harm if she spoke about the incident to anybody. The stand of the accused that he was falsely implicated because brother of the victim was not successful in the examination and therefore, his family had grudge against the accused is too swallow to be accepted. The incident which involved the accused and mother and brother of the victim took place about a decade back. There is not even remote possibility of the same being the foundation for false implication. In any event no girl of a tender age and her parents would like to jeopardize her entire future by falsely implicating a person alleging forcible sexual intercourse."

45. In the decision reported in *Dinesh v. State of Rajasthan* (AIR 2006 SC 1267), it was held as follows:

"6. Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity - it degrades and humiliates the

victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by this Court in *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty* (AIR 1996 SC 922), the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of the Constitution of India, 1950 (in short the 'Constitution'). The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.....

9. The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery.....

11. In the Indian Setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not

an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in *Rameshwar v. The State of Rajasthan* (AIR 1952 SC 54) were:

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...".

46. In the decision reported in *State of U.P. v. Chhoteylal* (AIR 2011 SC 697) it was held as follows:

"19.But, before we do that, we state, as has been repeatedly stated by this Court, that a woman who is victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that court may look for some corroboration so as to satisfy its conscience and rule out any false accusations. In *State of Maharashtra v. Chandraprakash Kewalchand Jain*, this Court at page 559 of the Report said:

"A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice

incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant 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. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."20. In *State of Punjab v. Gurmit Singh and Ors.*, this Court made the following weighty observations at pages 394-396 and page 403:

"The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.... The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.... Seeking corroboration of her statement before replying upon the same as a rule, in such cases, amounts to adding insult to injury.... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. The courts should examine the

broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

"21. In *Vijay @ Chinee v. State of Madhya Pradesh*, decided recently, this Court referred to the above two decisions of this Court in *Chandraprakash Kewalchand Jain*⁵ and *Gurmit Singh* and also few other decisions and observed as follows : "Thus, 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.

"22. 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 levelling 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. This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court. The observations made in the case of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* deserve special mention as, in our view, these must be kept in mind invariably while dealing with a rape case. This Court observed as follows :

"9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross- examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focused on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical....."This Court went on to observe at page 225:

".....Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an

exception or two and that too possibly from amongst the urban elites. Because (1) A girl or a woman in the tradition- bound non- permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred.

(2) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours.

(3) She would have to brave the whole world.

(4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered.

(5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family.

(6) It would almost inevitably and almost invariably result in mental torture and suffering to herself.

(7) The fear of being taunted by others will always haunt her.

(8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo.

(9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy.

(10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour.

(11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the

cross-examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent."

47. In the decision reported in *Radhu v. State of Madhya Pradesh* ((2007) 12 SCC 57), it was held as follows:

"6. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a 'rape', if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrist, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case."

48. The law is clear on the point that the victim of rape cannot be treated as an accomplice. While it may not be possible to take the view that the version of the victim cannot always be taken as gospel truth, at the same time it is to be borne in mind that it is not to be looked into with suspicion. Each case depends upon the facts of the particular case. It is not necessary in law to look for corroboration to accept the version given by the victim in a rape case. Indeed a certain amount of

care and caution has to be exercised while considering the evidence of the victim. One shall not forget that it is seldom that one gets corroboration in support of the version given by the victim in such cases.

49. Much of the efforts of the accused persons was focused on the age of the victim. The attempt of accused No.1 at the time of cross examination of the victim, apart from vilifying her, was to show that by April, 2008 she had attained the age of 16 and the acts, if at all any, were done were with the volition of the victim.

50. Unfortunately for the accused persons, there is overwhelming evidence to show that the victim was born on 10.12.1992. P.W.4, the mother of the victim would submit before court that the marriage between her and the first accused was in 1991 and P.W.1, their eldest child was born on 10.12.1992 at Shamy Hospital at Thalassery. This categorical assertion by P.W.4 is not challenged in cross-examination. P.W.4 also stated that it was she along with the first accused who had gone to the school at Ayipuzha for getting admission of P.W.1 in the School. She would also say that it was she who had given the date of birth in the school as 10.12.1992. This version of P.W.4 is also not challenged in cross-examination. When questioned under Section 313 Cr.P.C., accused No.1 had a different story which is not substantiated at all.

51. P.W.25, the Registrar of Births and Deaths, Thallaserry, has produced Ext.P43 document. The said document shows the date of birth of the victim as 10.12.1992. It is contended on behalf of the accused persons that no reliance can be placed on the said document, since the application as per which the entries had been made in the register had not been produced. One shall at once remember that the entries shown in Ext.P43 came into existence at a time when there was no dispute at all. The Register of Births is an officially kept document. The entries in the relevant register are entered into in the ordinary course of business and the presumption under Section 114 of Evidence Act is attracted. If the accused had a case that the entries in Ext.P43 is not correct, it is for them to establish the said fact. It is by now well settled that the entries in the register maintained by the Registrar of Births and Deaths is an authentic document to show the date of birth and date of death of the person concerned. Apart from Ext.P43, P.W.32, the

Headmaster of Govt. U.P.School, Ayipuzha, where the victim was first admitted has produced Ext.P56 extract of the School Admission Register. That too shows that the date of birth of P.W.1 is 10.12.1992. P.W.33, the Headmaster of K.P.C. School, Mattannoor produced Exts.P57 and P58 which also show the date of birth as 10.12.1992. It is therefore clear that the prosecution has succeeded in showing that in April, 2008 and till the date of lodging of FIS, i.e. Ext.P1, the victim had not completed the age of 16.

52. What then requires to be considered is the contention that inspite of several opportunities to revolt, P.W.1 did not do so and simply went along with accused No.1 knowing fully well what was in store for her. It was contended that on the first occasion she might have been led into a trap. But on subsequent occasions, even when she could have tried to keep away, she did not do so. Nothing prevented P.W.1 from narrating her plight to her mother especially when she has stated that she had narrated her agony to her close friend. She went repeatedly with her father knowing fully well the consequences thereof. Much was commented upon her association with other boys and the neighbour by name Ummer.

53. True, it may look slightly odd that after the first incident at Thai Resort, P.W.1 did not realize the intention and motive of repeatedly taking her to that place. But a close reading of the evidence of P.W.1 will show how she was overpowered by accused No.1 and how she happened to be a helpless tool in his hand. Apart from the threat meted out to her, the evidence of P.W.1 shows that she was severely mandhandled by accused No.1 on several occasions. A girl of tender age of 15 years could not possibly resist the wrath of her father and might have been subdued by the possible consequences of a revolt.

54. An indication of displeasure of accused No.1 when P.W.1 refused to toe in line with accused No.1 is evident from the incident which took place on 6.7.2008. P.W.1 apart from stating that on several earlier occasions though she had expressed her unwillingness to go along with accused No.1, accused No.1 managed to make her believe that she is being taken for cassette recording. As regards the incident which took place on 6.7.2008, the evidence of P.W.1 is to the effect that she had strongly resisted the attempt of accused No.1 to take her. In

this regard, she gets sufficient support from the evidence of P.Ws. 4 and 9 also. The statements given by P.Ws.1, 4 and 9 regarding the resistance offered by P.W.1 also shows that she was literally dragged from the house by accused No.1. These aspects spoken to by P.Ws.1, 4 and 9 are not seen challenged in cross-examination. It is significant to notice that in the morning of 6.7.2008, when on request by accused No.1, P.W.1 had got out from the house, P.W.4 had sent the brother of P.W.1 along with her. Shrewd as he is, accused No.1 saw the trap and had P.W.1 and her brother returned home soon thereafter. Then he goes out and gives a phone call to P.W.1 and then came to the house to take her with him. A reading of the evidence of P.W.1 would clearly show that she was mortally afraid of accused No.1 and did not have the courage to resist his misdeeds. When P.W.1 was aged less than 16 years, in law the question of consent does not arise at all in view of Clause Sixthly of Sec.375 IPC.

55. It will be adding insult to injury to say that P.W.1 was a consenting party. P.W.1 of tender age, was a helpless and hapless tool in the hands of accused No.1. The various incidents spoken to by P.W.1 show that accused No.1 used to threaten her and also that on a few occasions she was beaten up. The fact that she was beaten up even in the Resort as spoken to by her speaks volume about the reason for inhibition on the part of P.W.1 to disclose the deeds of accused No.1 and others to anybody especially to her mother. Mere passive attitude on the part of P.W.1 in the circumstances of the case cannot be taken as an indication of her willingness for the activities of her father. The evidence is clear to the effect that P.W.1 had been threatened and coerced by the first accused and if P.W.1 felt that revealing the incident to anyone and raising a hue and cry about it, she alone would stand to lose, she could not be found fault with. She would become an object of ridicule and taunt by people. The consequences as far as she is concerned will be disastrous. By exposing the incidents, she and her family alone stood to suffer. Further, she would have been bewildered and shocked by the act of her father, accused No.1, which would have been incomprehensible to P.W.1 even in her widest dreams. Caught in such a situation, if P.W.1 remained confused, frightened and undecided, she could not be found fault with. One has to remember that even her father did not spare her. How embarrassing and agonizing it would be for a daughter to accuse her father of rape on her? Under

those circumstances, if she chose to suffer in silence resiling to her fate, it could not be taken as an act of acceptance of the misdeeds of accused No.1 and her willingness to go along with him.

56. It is here one has to remember the principle laid down in the various decisions already referred to. As already noticed, there is a very remote possibility of getting corroborative evidence in such cases. Especially so, in this case when the perpetrator of the misdeeds is none other than the father of the victim. P.W.4 in her evidence stated about the incident narrated to her by her daughter. In the decision reported in Rameshwar Kalyan Singh's case (supra) the evidence given by the mother in such circumstances was taken as supportive of the evidence of the victim. It is too difficult to believe that a daughter as well as a wife would accuse the father or husband respectively of having committed such acts on the daughter which no father would think of. By making the incidents public, permanent damage would be done to the family and more so to P.W.1. She is affected both physically and mentally. The trauma undergone by her and the agonizing experience which she had undergone will never disappear from her memory and mind. It always continue to haunt her. In a society where victim of rape instead of being looked upon with sympathy, is looked as an object of ridicule and humiliation, it is highly improbable and inconceivable that P.W.1 and P.W.4 would level unfounded allegations against the first accused and other accused regarding the acts done on P.W.1.

57. The mere fact that the victim, namely, P.W.1 did not raise her voice or subjected meekly to the atrocities committed on her, in the facts and circumstances of the case cannot be taken as a token of consent and there is no ground to reject her version regarding the incident.

58. The contention that P.W.1 meekly submitted herself to the agonizing acts means that she was a consenting party cannot be countenanced. First of all, P.W.1 had not completed the age of 16 at the relevant time. Again, the circumstances under which she remained passive and meekly submitted will have to be appreciated. Section 90 of IPC reads as follows:

"90. Consent known to be given under fear or misconception.- A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.- if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.- unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."A mere reading of Section 90 IPC will show that the so-called consent alleged by the defence cannot be accepted. Consent means an act as a result of deliberation after having considered the good and evil on each side. Consent must be free. Every consent involves submission, but the converse is not true. Mere submission to an act either due to fear, misrepresentation or misconception does not amount to consent at all. To quote Rathanlal and Whingfield on Law of Crimes, 23rd Edition at page 1401 stated as follows:

"The mere act of helpless resignation in the face of emanable compulsion quiescence, non-resistance or passive giving in when volitional faculty is either crowded by fear or vitiated by duress cannot be treated as consent as understood in law."Therefore submission as a result of fear or terror cannot be treated as consent. In fact in the case on hand, the question of consent does not arise since the victim has not completed the age of 16 as on the date of commission of the offence. In the decision reported in Dileep Singh v. State of Bihar (AIR 2005 SC 203) it was held as follows:

"Penal Code does not define 'consent' in positive terms but what cannot be regarded as consent under the Code is explained by S. 90. Consent given firstly, under fear of injury and secondly, under a misconception of fact is not 'consent' at all. That is what is enjoined by the first part of S. 90. These two grounds specified in S. 90 are analogous to coercion and mistake of fact which are the familiar grounds that can vitiate a transaction under the jurisprudence of our country as well as other countries. The factors set out in the first part of S. 90 are from the point of view of the victim. The second part of S. 90 enacts the corresponding

provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied."

59. In the decision reported in *Pradeep Kumar v. State of Bihar* (2007(4)K.L.T. 41) it was held as follows:

"There are two grounds specified in S.90 which are analogous to coercion and mistake of fact which are the familiar grounds that can vitiate a transaction under the jurisprudence of our country as well as other countries. The factors set out in first part of S.90 are from the point of view of the victim and second part of S.90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the Court has to see whether the person giving the consent has given it under fear or misconception of fact and the Court should also be satisfied that the person doing the act i.e. the alleged offender is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of S.90 which is couched in negative terminology. A promise to marry without anything more will not give rise to 'misconception of fact' within the meaning of S.90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making or promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of S.375 clause second."Thus viewed from any angle, on principles or on the basis of precedents, the fact that P.W.1 did not

divulge her agony to anybody or that she did not resist or revolt does not mean that she has consented to the various misdeeds of her father since both on account of her age and the circumstances under which she had to undergo the trauma cannot amount to consent at all.

60. It has to be conceded that the evidence of P.W.1 is not flawless. To certain questions put by the accused, she remained silent. She had admitted that she had acquaintance with certain boys. The attempt of the defence was her character assassination which was rightly noticed by the court below as illegal and impermissible. As far as certain inconsistencies regarding the first objectionable act on the part of accused No.1 whether it was in the night or in day time, whether the next series of acts were immediately thereafter or later and the slight inconsistencies and contradictions in the narration of various instances are of little significance and consequence. A girl of tender age subjected to surcharged atmosphere in court, confronted with insinuating and humiliating torrent of questions is certainly likely to be confused and may get disoriented to certain extent. In such circumstances, either silence or some stray answers which go in favour of the defence cannot be taken out of context and given undue importance to doubt the version of P.W.1 especially when her evidence read as a whole is found to have a ring of truth.

61. We have in detail referred to the evidence of P.W.1 since that is the solitary evidence adduced by the prosecution with regard to the various incidents both in Thai Resort at Parassinikadavu and at Mangalore. Embellishments and developments are there. But those embellishments and developments pointed out are not sufficient enough to create a doubt in the testimony of P.W.1 or to discard the same in toto.

62. As has been noticed in the various decisions, the court has to be sensitive to such an issue and understand the plight of the victim in such circumstances to call upon to depose in court regarding the horrendous and traumatic experience undergone by her. Having gone through the evidence of P.W.1 carefully and with certain amount of caution, we find no reason to reject the said evidence.

63. Having thus considered some of the common grounds of attack, we now turn to the role played by each of the accused. We have already noticed that except accused Nos.1, 11 and 12, all other accused, except accused No.2, who had absconded, did not seriously appraise this court the finding against them nor do they challenge the conviction and sentence against them since all of them had served out the sentence.

64. Nevertheless since appeals have been filed by them, we shall briefly consider the evidence against each of them reserving our appreciation of evidence against accused No.1 towards the end.

65. As far as accused No.3 is concerned, the evidence of P.W.1 has already been referred to. P.W.4 also says that accused No.3 had come to the house on a previous occasion and she had occasion to see him. The evidence of P.W.1 would show that accused No.3 is quite familiar to her and her evidence shows that he was seen in the company of her father more than one occasion. She then narrates the incident when she was taken to Thai Resort and she was made to wait in a room where later accused No.3 raped her. P.W.1 also speaks about accused No.3 offering to purchase a vehicle for accused No.1 and then she speaks about the incident also. She also says about accused No.3 having paid money to accused No.1. There is no reason to disbelieve the version given by P.W.1 as against accused No.3.

66. P.W.1 then speaks about the frequent visits to Thai Resort at the instance and compulsion of accused No.1 and she speaks about the circumstances and the manner in which she was ravished by accused Nos.6, 8 and 10. She referred to accused No.5 as a room boy of Thai Resort. She mentions that on two occasions he too raped her and on one occasion he took away the money kept under the bed by accused No.1 and the harrowing experience she had when accused No.1 found out that the money had been taken away by accused No.5. Her evidence also shows that she does not disclose to accused No.9 that accused No.1 was her father in view of the fact that he asked her how she happened to gain acquaintance with a despicable person like accused No.1 and she had occasion to hear accused No.1 mentioning to accused No.9 that P.W.1 was his neighbour.

She gives detailed version regarding the acts committed on her by accused Nos.6 and 8 to 10 in two rooms in Thai Resort, namely, room Nos.101 and 104.

67. It is significant to notice that all these persons were identified in all three rounds of identification parade conducted by the Magistrate who is examined as P.W.6 and who had filed Ext.P8 report. Even though P.W.1 might have had only one occasion to see accused Nos.6, 8, 9 and 10 in the light of the fact that they had been with her for quite sometime and she had traumatic experience at their hands and the fact that she could have easily noticed their features infact makes the identification parade conducted during the investigation stage insignificant. It would not have been difficult for P.W.1 to identify the above assailants.

68. A contention was sought to be taken that in case of accused No.8 he is alleged to have committed the objectionable act when the lights were switched off and under the circumstances the identification of accused No.8 cannot be accepted. It is also contended that his name does not figure in Ext.P1 report and the description given by P.W.1 may match any person and it was not proper to fix the liability on accused No.8. True, to some of the questions put on behalf of accused No.8, she did not give answers. However, a reading of the evidence of P.W.1 shows that it is convincing as against accused No.8 also. No acceptable reason is either suggested or established as to why he should be falsely implicated. One must remember that it was accused No.1 who was soliciting persons and therefore it is imprudent to insist that P.W.1 should have all the details about the persons who had committed violation of her body. However, one fact is very clear. Since she was subjected to brutal humiliating acts, in all probability she should have noticed the features of the person and the impression so gained would remain in her mind for a long time.

69. As far as accused Nos. 4 and 7 are concerned, they were in the company of accused No.1 and P.W.1 for quite sometime. Accused No.4 had taken them in the car and so did accused No.7. However, the evidence of P.W.1 discloses that accused No.7 did not commit the objectionable act in Thai Resort. As far as accused No.4 is concerned, P.W.1 speaks about the experience she had with accused No.4 in Thai Resort. The role of accused No.7 in violating the body of

P.W.1 occurred at Mangalore in Sidhartha lodge. One may recollect the evidence of P.W.1 which is to the effect that accused No.7 had brought her a pair of new dress also. P.W.1 also speaks about accused Nos.7 and 4 having paid cash to her father. The evidence of P.W.1 also shows that at Mangalore on 6.7.2008 in the night accused No.7 violated her body on two occasions. The evidence of P.W.1 is clinching as against accused Nos.3 to 10 regarding their role in the violation of her body.

70. Next comes accused No.11. As against the other accused also, the solitary evidence against accused No.11 is also furnished by P.W.1. However, it needs to be noticed that in Ext.P1, which is the earliest and immediate version given by P.W.1, his name does appear and the act committed by him is also made mention of. The evidence adduced by the prosecution would suggest that the presence of P.W.1 at Mangalore was at the instance of accused No.11. Accused No.1, P.W.1 and accused No.7 reached Mangalore and accused No.11 joined them. It is thereafter they go to Sidhartha lodge. Of course, a person by name Shameer had also joined them. The evidence of P.W.1 discloses that on 6.7.2008 in Sidhartha lodge at Mangalore, P.W.1 spent the night in the company of accused No.7. If as a matter of fact she had been taken to Mangalore on demand by accused No.11, it is rather strange that he would have let accused No.7 to have the company of P.W.1 during the night. It also seems slightly odd that the next day morning he has waited for accused Nos.1 and 7 to leave the room and then attempted to commit rape on P.W.1. Whatever that be, the fact remains that accused No.11 was in the company of accused Nos.1 and 7 at Mangalore and going by Ext.P1, accused No.11 had caught hold of her. Ext.P1 only makes mention of accused No.11 having restrained her and does not mention fondling of her breast by him, which statement appears only at the time of evidence. It was probably this fact which had persuaded the court below to come to the conclusion that the offence as against accused No.11 is confined to Section 354 IPC. We find no reason to take a different view. However, it is felt that the sentence imposed on him is disproportionate to the offence committed by him and it is too severe. It is felt that some leniency needs to be shown in this regard.

71. Coming to accused No.12, it cannot be said that the contention raised by him is totally baseless and his name does not figure in Ext.P1. That he was in Thai Resort is clear from the evidence. He is characterized as the Manager of the Resort. In support of the said allegation, the prosecution relies on Ext.P53 and the evidence of P.Ws.30 and 31.

72. Even going by the evidence of P.W.30, P.W.31 and his mother became owners of Thai Resort in the year 2008. Ext.P53 is dated 4.8.2005 and is seen to have been issued by P.W.31. When P.W.31 and mother of P.W.30 became the owners of Thai Resort only in 2008, one fails to understand as to how P.W.31 could have issued Ext.P53 dated 28.4.2005. There is absolutely no evidence to show that prior to becoming owners in 2008, P.W.31 had anything to do with the Resort. At any rate, there is nothing to show that P.W.31 had any authority or occasion to appoint accused No.12 as the Manager of Thai Resort prior to 2008.

73. Here one has to notice the contention taken by accused No.12. He says that he had raised a dispute with the mother of P.W.30 regarding the wages and it ultimately resulted in his termination. He had drawn the last salary on 1.4.2008. Prosecution has produced Ext.P54 series to show the payment vouchers issued by accused No.12. There is nothing in those documents to show that accused No.12 has received the amounts as Manager of the Resort. It is significant to notice that Ext.P53 does not make mention of the salary to be paid to accused No.12. More significant is the fact that last among the series of Ext.P54 is dated 1.4.2008. The prosecution has not produced any voucher of subsequent dates to show that the claim of accused No.12 that he had received the last salary on 1.4.2008 is untrue. When the specific contention of accused No.12 was that he was not the Manager of the Resort and he had nothing to do with the Resort after 1.4.2008, the prosecution ought to have produced something to show that he was actually the Manager of the Resort and received salary in that capacity.

74. The prosecution takes the aid of Ext.P51 series of guest cards and Ext.P55 ledger and Ext.P55(a) entries in Ext.P55 to nail accused No.12. The evidence of P.W.1 also shows the presence of accused No.12 on few occasions when accused No.1 had taken her to Thai Resort. But the question is whether mere

presence, even assuming accused No.12 continued to work in Thai Resort even after 1.4.2008, is sufficient to bring him within the ambit of Sections 120B and 109 I.P.C.

75. At the outset itself it has to be stated that the offence under Section 120B IPC will not lie as against accused No.12. In the charge framed by court, the only allegation is that accused No.12 conspired with accused No.1 and hence accused No.12 is guilty of the offence punishable under Section 120B I.P.C. There is no corresponding charge against accused No.1 nor is there an allegation that accused No.1 and accused No.12 conspired together and in furtherance of the conspiracy, accused No.1 had taken P.W.1 to Thai Resort. In other words, the allegation of the offence of conspiracy is only against accused No.12. For the offence of conspiracy, there must be atleast two persons. Since there is no charge of conspiracy as against accused No.1, one cannot uphold the finding against accused No.12 alone for the offence of conspiracy.

76. Even otherwise, on the evidence adduced by the prosecution, it is difficult to come to the conclusion that there is a conspiracy between accused No.12 and accused No.1. As rightly pointed out by the counsel for accused No.12 neither P.W.30 nor P.W.31 say that they are familiar with the handwriting and signature of accused No.12 and the entries in Ext.P55 register marked as Ext.P55(a) are in the handwriting of accused No.12 nor do they say that the signature found in Exts.P51 and P51(a) are that of accused No.12. One of the modes of proving the handwriting and signature is by examination of a person who is familiar with the disputed handwriting and signature. One can also seek expert opinion. Unfortunately in the case on hand Exts.C1 and C2 were marked as court exhibits which are opinions regarding the handwriting and signature examined by the expert. However, the report furnished by the Forensic Lab is inconclusive. Strangely enough, the court take recourse to Section 73 of the Indian Evidence Act and found that the handwriting found in Ext.P55(a) and the signature found in Ext.51 series of documents are that of accused No.12. The approach made by the court was quite unwarranted in the circumstances of the case. When the prosecution has examined persons who are familiar with the handwriting and signature of accused No.12 and they have not spoken that the entries in the

register are in the handwriting of accused No.12 and the signature is that of accused No.12 and Exts.C1 and C2 go against the prosecution, the course adopted by the court below in comparing the signature taking aid of Section 73 of the Evidence Act was improper. Of course the court is empowered to do so. But that is only in exceptional circumstances. The Apex Court had occasion to consider the application under Section 73 of the Evidence Act and in fact has even held that for taking recourse under Section 73 of the Act, the court should give reasons as to why it finds that the signature or the handwriting are similar. Therefore the conclusions drawn by the court below based on the comparison of the signature cannot be accepted.

77. Equally doubtful is the version given by the prosecution that accused No.12 was the employee of the resort. Reference has already been made to P.W.53 so also Ext.P51 series of documents and Exts.P55 and P55(a). Here, one has to notice the anxiety on the part of P.W.30 to save accused No.5. P.W.30 says that accused No.5 was the domestic servant and he rarely used to go to the resort. This is belied by the evidence of P.W.1 which has already been referred to in detail. On almost all occasions when she was taken to Thai Resort she had occasion to see accused No.5 there and she was raped twice by accused No.5. On one occasion, he took away the money kept under the bed by accused No.1 so that P.W.1 has to face the wrath of accused No.1. The version of P.W.30 therefore cannot be taken as true and trustworthy and so is the case with P.W.31. Further, the evidence of D.W.6 taken along with Exts.D7 and D8 to a great extent belie the version given by P.W.30 that he had nothing to do with the resort. The telephone installed in Thai Resort going by the evidence of D.W.6 and Exts.D7 and D8 show that it is in the name of P.W.30. Moreover P.W.30 betrayed himself when he, in his evidence, stated that when the investigating officer, P.W.35, had seized the registers and documents from Thai Resort, accused No.12 telephoned him and conveyed the message to him. If as a matter of fact, P.W.30 had nothing to do with the Resort, it was unnecessary and improbable that accused No.12 would have been anxious enough to inform P.W.30 about the seizure. On the basis of the materials now available, the evidence of P.Ws.30 and 31 to the effect that accused No.12 is the manager of the resort is open to serious doubt.

78. Apart from the above facts, all that accused No.12 is alleged to have done is to serve food and water to accused No.1, P.W.1 and others who came to the Resort to meet P.W.1. Almost on all occasions accused No.5 was also present. If he was a room body, it is he who had to serve food and water to the guests. Merely because accused No.12 served food for the guests or provided rooms for accused No.1 does not lead to the conclusion that there was either conspiracy between accused Nos.1 and 12 or accused No.12 had abetted in the acts committed by accused No.1. True, P.W.1 has stated that she overheard accused No.12 saying over telephone "the thing has arrived". But there is nothing to show that he had solicited any person to come to the Resort and take advantage of P.W.1. There is nothing to show that he had any active or passive role in the activities designed and carried out by accused No.1. May be that he was aware of what was going on in the rooms in Thai Resort. But merely because he did not object to the said conduct, that could not lead to the inference that he has abetted the offence. In order to become an abettor, he should have to do one of the things that fall under Section 107 of IPC. Section 107 reads as follows:

"107. Abetment of a thing.- a person abets the doing of a thing, who-First.- Instigates any person to do that thing; orSecondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; orThirdly.- Intentionally aid, by any act or illegal omission, the doing of that thing.Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."Clause 2 has no application. As far as clause 1 is concerned, there is absolutely no evidence at all to show that accused No.12 had instigated accused No.1 to commit the objectionable acts. Nor there is anything to show that it was at the instance of accused No.12 that accused No.1 had committed the acts. As far as clause 3 is concerned, it takes within its ambit a commission or omission. Providing of room on demand by accused No.1 and merely serving food cannot by themselves taken as instances of commission or omission on the part of accused No.12 of intentionally aiding the commission of the illegal act. Instigation involves active suggestion or stimulation by some other

means. It in fact means to provide or undertake to do a particular act. There is nothing to show or brought out in evidence by the prosecution to establish that either accused No.1 or anyone of the other accused had acted at the instigation of accused No.12. It is well settled that mere acquaintance does not mean instigation. No positive act is proved on the part of accused No.12 to show that he was an abettor to the offence. In the decision reported in *Ranganayaki v. State* (AIR 2005 SC 418) it was held as follows:

"The instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Further, the act abetted should be committed in consequence of the abetment or in pursuance of the conspiracy as provided in the Explanation to Section 109 IPC. Under the Explanation an act or offence is said to be committed in pursuance of abetment if it is done in consequence of instigation, conspiracy or with the aid of constituting abetment. Instigation may be in any form and the extent of the influence which the instigation produced in the mind of the accused would vary and depend upon facts of each case."As far as the offence of abetment is concerned, a reading of Section 107 of IPC taken along with the principle laid down in the above decision, it is extremely difficult to hold that accused No.12 was an abettor to the offence. The finding of the court below in this regard cannot be accepted.

79. Now coming to accused No.1, the less said the better. The evidence of P.Ws.1, 4 and 9 stares in his face. The conduct of accused No.1, to say the least is most disturbing and disgusting. His role in the various incidents have been spoken to elaborately by P.W.1. She has also given her reasons as to why she did not disclose her trauma to anybody and how ultimately she had to confess before her mother, namely, P.W.4. The explanation offered by the first accused when being questioned under Section 313 Cr.P.C. is most unconvincing. His attempt even at the time of cross-examination of P.Ws.1 and 4 was to stigmatize them with unfounded and baseless allegations. He very stoutly disputed the date of birth of P.W.1. His anxiety was to establish that she was over the age of 16 when taken to Thai Resort. His endeavour was to establish that P.W.1 was a consenting and

willing party to various incidents that took place in Thai Resort and the incidents at Mangalore. The attempt, to say the least, is most reprehensible. The reasons given as suggested by the first accused for accusing him of what he has done are not established. It is true that P.W.1's evidence would show that she had relationship with certain persons which had come to the notice of accused No.1. Even assuming it to be true, it is beyond comprehension that P.W.1 would go to the extent of falsely accusing the first accused of rape on her and taking her to Thai Resort and Mangalore for prostitution. There is no challenge to the evidence of P.W.1 to the effect that she was frequently taken to Thai Resort on the pretext of cassette recording and she was forced to undergo illicit intercourse with others. His claim that unable to put up with the stern warning given to P.Ws.1 and 4 about their loose way of life was the reason for falsely implicating him in the case on hand to say the least is ridiculous. His another suggestion to P.Ws.1 and 4 is political vendetta.

80. True, the evidence of P.Ws.1 and 4 show that certain organizations did support them and aided them. But that by itself is insufficient to come to the conclusion that the accusations against accused No.1 are false and manipulated.

81. At the risk of repetition, one may observe that it is extremely difficult to believe that P.Ws.1 and 4 would mount such an allegation against her father and husband respectively without any basis at all. There is nothing to show that the evidence of P.W.1 as against accused No.1 is suspicious or baseless. It is inconceivable that by raising false allegations against accused No.1, who is none other than the father of P.W.1 and the husband of P.W.4, they will intentionally put their life in jeopardy and ridicule. After all, accused No.1 had nothing much to lose. Even though the evidence of P.W.1 suffers from insignificant and inconsequential infirmities, her evidence as against accused No.1 is so glaring that the role of accused No.1 in the various episodes is clearly established.

82. One has to necessarily appreciate the deplorable and agonizing situation in which P.W.1 was placed. One has to put oneself in her position. The situation of a hapless and helpless young girl ripped and raped by her own father and then her father taking her from place to place offering her to persons with the intent of

making money is indeed pitiable. A person, who is to safeguard, protect and ensure the wellbeing of his children, has turned out to be otherwise. None of the contentions raised on behalf of the first accused is tenable or acceptable.

83. The evidence of P.Ws.1, 4 and 9 are sufficient to show the complicity of accused No.1. Apart from the fact that the evidence of P.W.1 shows that accused No.1 had committed sexual assault on her, her evidence is also sufficient to show that the necessary ingredients to invoke Section 366A are attracted. In order to bring the guilt under Section 366A IPC, the prosecution has to establish the following ingredients:

(i) The minor girl was induced by the accused.(ii) That she was induced to go to a place.(iii) She was induced to do so or to do any act in which she was likely to be forced and subjected to have intercourse with another person.To recall the evidence in this case, P.W.1, as already noticed, had not completed the age of 16 as on the date of the incident at Thai Resort as well as at Mangalore. She was forced to go along with him both under threat and coercion and in the pretext that she was being taken for cassette recording. The rest has already been stated. The first accused was rightly found guilty for the offence under Sections 366A and 376 IPC.

84. As regards of the offence punishable under Section 120B is concerned, we are unable to uphold the finding of the lower court as against accused No.1. It has already been noticed that there is no specific charge as against accused No.1 for the offence of conspiracy. The issue has been considered while dealing with the case of accused No.12 and need not be repeated. The conviction and sentence as against accused No.1 for the offence under Section 120B IPC cannot stand.

85. As rightly noticed by the court below, no leniency needs to be shown to the first accused at all. The sentence imposed by the court below also seems justified.

86. We are, however, unable to support the views expressed by the lower court against Adv.P.K.Sajeevan which are quite uncalled for. The court has to keep its composure and shall not be overcome with emotion. However reprehensible the conduct of counsel may be, the court should restrain itself from making such

observations about a counsel. We therefore expunge the remarks made by the court below as against Adv.P.K.Sajeevan. These appeals are disposed of as follows:

(i) Crl.Appeal No.134 of 2010 filed by the first accused is partly allowed and his conviction and sentence for the offence under Section 120B IPC is set aside and he stands acquitted for the said offence. However, his conviction for the offences punishable under Sections 366A and 376 are confirmed and so also the sentences awarded to him for the said offences. He will be entitled to set off as per law in case appropriate authority seeks to exercise power under Sections 432 and 433 Cr.P.C.(ii) Crl.Appeal Nos.881, 885, 886, 893, 918, 925 and 930 of 2009 are dismissed confirming the conviction and sentence as against the respective appellants for the offence punishable under Section 376 IPC.(iii) In Crl.Appeal No. 899 of 2009 filed by accused No.11, while confirming his conviction for the offence under Section 354 IPC, the sentence awarded against him is set aside and instead his sentence is modified as to sentence of imprisonment for the period already undergone by him.(iv) Crl. Appeal No.1952 of 2009 filed by accused No.12 is allowed and it is found that he is not guilty of the offences punishable under Sections 109 and 120B IPC. The conviction and sentence passed against him for those offences are set aside and he stands acquitted of the said offences. If he has paid the fine amount as awarded by the court below, the same shall be refunded to him.

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