



NISHA

Digitally signed by NISHA  
SANDEEP CHITNIS  
Date: 2024.03.01  
11:57:43 +0530

apeal.365.2016.(j).doc

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

***CRIMINAL APPEAL NO.365 OF 2016***

Mehandi Kasim Jenul Abidin Shaikh  
@Mehandi Kasam Shaikh @Bangali Baba  
Age 37 years, residing at  
Mariam Tower, R.No.12, Pydhonie,  
Mumbai 400 003.

...Appellant  
(Accused)

Versus

The State of Maharashtra  
(through Sir J.J. Marg Police Station,  
Mumbai in C.R. No.197/2010).

...Respondent

Mr. Kartik Garg, Advocate Appointed a/w Ms. Aashka Shell, for the  
Appellant.

Mr. V. B. Konde-Deshmukh, Addl.PP for the Respondent – State.

Mr. Sumant R. Deshpande, for the Original Complainant.

***CORAM : REVATI MOHITE DERE &***

***MANJUSHA DESHPANDE, JJ.***

***DATE : 16<sup>th</sup> - 22<sup>nd</sup> JANUARY 2024***

***ORAL JUDGMENT (Per Revati Mohite Dere, J.) :***

1. This is a classic case of exploitation of six young girls by  
the appellant because of the blind faith of their mothers (three sisters)

that their daughters would beget intellectually challenged male children, as there was a history of the same from the victim girls' maternal side. The mothers of the victim girls were also financially exploited by the appellant, a baba/tantric, who had assured them that he would give treatment to their daughters so that they do not beget intellectually challenged male children.

2. The prosecution case, in a nutshell, is as under:

The four sisters i.e. PW19, PW28, 'X' and 'Y' lived with their respective husbands and children. As far as PW19 is concerned, her husband (PW30) was running a STD Booth and a Mobile Store at 'A' Mumbai. The couple i.e. PW19 and PW30 had two girls i.e. PW1 and PW2 and an intellectually challenged son. PW28 was living with her husband (PW29), who was working in the Merchant Navy. The couple had three daughters i.e. PW3, PW4 and PW6 and two sons, both who were intellectually challenged. The third sister i.e. 'X's husband (PW31) was a doctor (Naturopathy) working in Mumbai. The couple had two daughters i.e. PW5 and one another. The fourth sister

i.e. 'Y' was living in London. All the victim girls at the relevant time were between the age group, 5 years to 16 years. The period of sexual assault by the appellant on the six girls was between the period 2004-2005 to 2010. It is also the prosecution case, that apart from the six victim girls, another lady i.e. PW25, a maid working with PW28 and PW29 was also sexually assaulted by the appellant.

According to the prosecution, the appellant by representing himself to be a 'Maulvi', entered the house of the victim girls to teach them Quran and Arabic and as such, became close to the ladies (victim girl's mothers) in the family. It is further the prosecution case that when the appellant learnt from the mothers of the victim girls about begetting intellectually challenged male children from their maternal side and there apprehension that, their daughters, too had a chance of getting intellectually challenged male children, the appellant told them that he would cure/treat the girls. Pursuant thereto, the appellant administered some water to the victim girls and stated that he would treat the girls, so that they do not beget intellectually

challenged children. Thereafter, the sordid saga started. The appellant called the victim girls to the places, where he was residing during the period 2005 to 2010, where they were sexually assaulted and threatened not to disclose the same to each other. According to the prosecution, when the girls were fed-up of the sexual exploitation on them by the appellant, they informed PW30 (PW1's and PW2's father) of the exploitation, pursuant to which a trap was laid and the appellant was apprehended in the intervening night of 27<sup>th</sup> and 28<sup>th</sup> November 2010. Initially a '0' FIR was registered with the MRA Marg Police Station, which was immediately transferred to J.J. Marg Police Station, Mumbai, where the FIR was registered vide C.R. No.197 of 2010, for the offences punishable under Sections 465, 466, 471, 292, 323, 376, 312, 313, 314 r/w 416, 506 and 420 of the Indian Penal Code, Section 3 of the Passport Act (Entry in India), Order 1950 and Section 3(1) of Foreigners Order 1948 r/w 14 of Foreigners Act.

During the course of investigation, the statements of the witnesses including that of victims were recorded; some articles were

recovered from two houses, where the appellant was residing i.e. jewellery and cash of Rs.1 crore odd and several other items.

After investigation, charge-sheet was filed as against the appellant in the Court of the learned Metropolitan Magistrate, Mazgaon, Mumbai. As the offences were triable by the Court of Sessions, the case came to be committed to the Court of Sessions, for trial.

Charge was framed as against the appellant, to which he pleaded not guilty and claimed to be tried.

The prosecution in support of its case examined as many as 37 witnesses i.e. PW1, PW2, PW3, PW4, PW5 and PW6, all victim girls who were minor at the time of the incident and PW25, the seventh victim i.e. the maid who was working with PW28 and PW29's family, at the relevant time. The parents of the victim girls were also examined i.e. PW19 and PW30 (parents of PW1 and PW2); PW28 and PW29 (parents of PW3, PW4 and PW6) and PW31 (father of PW5).

To corroborate the evidence of the victim girls, the prosecution examined three doctors i.e. PW16, PW22 and PW33. Witnesses were also examined to show the places where the appellant resided during the said period i.e. the landlords in whose premises the appellant was residing. The said witnesses are PW8, PW9, PW10, PW11, PW14, PW23, PW24 and PW35. Panchas were also examined with respect to seizure of articles including cash and jewellery from the residence of the appellant i.e. PW7 and PW27. The investigating officers were also examined.

The defence of the appellant was that of denial and false implication. According to the appellant, he was falsely implicated because of the family dispute between PW19 and PW30 and as PW30 was suspecting that his wife (PW19) had some relations with the appellant. The appellant did not examine any witness, in support of his defence.

After hearing the learned counsel for the parties and after considering the evidence of the witnesses recorded during the course of the trial, the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay, vide judgment and order dated 7<sup>th</sup> April 2016, passed in Sessions Case No.290 of 2011 convicted and sentenced the appellant as under:-

- for the offence punishable under Section 376 of the Indian Penal Code ('IPC'), to suffer imprisonment for life i.e. remainder of his life and to pay a fine of Rs.50,000/-, in default, to suffer 2 months imprisonment;
- for the offence punishable under Section 354 of the IPC, to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.1,000/-, in default, to suffer 5 days imprisonment;
- for the offence punishable under Section 313 of the IPC, to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.20,000/-, in default, to suffer 15 days imprisonment;
- for the offence punishable under Section 323 of the Indian Penal Code, to suffer imprisonment upto 1 year;

- for the offence punishable under Section 506 of the IPC, to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.2,000/-, in default, to suffer 15 days imprisonment;
- for the offence punishable under Section 420 of the Indian Penal Code, to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/-, in default, to suffer 2 months imprisonment;
- All the aforesaid sentences were directed to run concurrently.
- As far as offences punishable under Sections 465, 466, 471 and 292 of the IPC; Section 3 of the Passport Act (Entry in India) Order 1950; and Section 3(1) of the Foreigners Order 1948 r/w 14 of Foreigner's Act, were concerned, the appellant came to be acquitted of the said offences;
- As far as the amount recovered from the appellant during the course of the investigation, it appears that the said amount of Rs.1,37,69,499/- was deposited with the State Bank of India. Out of the said amount Rs.90,30,000/- was recovered at the instance of the



appellant. Accordingly, the said amount of Rs.90,30,000/- was directed to be disbursed to the victims i.e. between PW1 to PW6 equally after the appeal period is over. In addition, compensation of Rs.50,000/- was awarded to each of the victim girls i.e. PW1 to PW6 and PW25, from the amount which was deposited in Fixed Deposit with the State Bank of India, after disbursing the amount of Rs.90,30,000/-.

- As far as the remaining amount of Rs.3,75,000/- was concerned, the same was to be equally distributed between PW1 to PW6 and PW25 as compensation.

- As far as muddemal articles are concerned, which were seized during investigation, the valuable articles i.e. Article 4 colly i.e. ornaments gold chain, gold haar, neckless of yellow metal studded with diamonds, diamond ring identified by PW19 (mother of PW1 and PW2) as that of her sister PW28, the same was directed to be returned to the daughters of PW28 i.e. PW3, PW4 and PW6. Nose

pin, one pair of ear top belonging to the daughters of PW19 was directed to be returned to PW1 and PW2. 13 gold taveez of yellow metal were directed to be returned to the victim girls i.e. PW1 to PW6, after the appeal period is over.

- As far as other valuables were concerned i.e. Article 1 – DVD player, Article 2 – the Laptop kept in leather bag and Article 5 colly – Sony Ericson mobile along with a Charger, Ear Phone, Battery etc. Article 5A – Micro Max mobile, Article 5B colly – Black Berry Mobile with charger and accessories, Article X colly Micro Max Mobile and Cash of Rs.1030/-, Unmarked Article - L.C.D. T.V. given by the mothers of the victim girls were to be handed to the victims i.e. PW1 to PW6, after the appeal period is over.

- As far as photographs, albums, negatives and documents (Article 12 colly Article 13 colly, Article 15 colly, Article 20 colly) of the victim girls and their families related to the victim girls were to be returned to the victim girls i.e. PW1 to PW6, after the appeal period is

over.

- Other directions with respect to other articles were also given.

3. Mr. Kartik Garg, learned counsel appointed for the appellant submits that the prosecution case if considered in its entirety, cannot be believed for the following reasons; (i) that if the alleged sexual assault was going on for 5 to 6 years, it is highly impossible and improbable that no complaint would be made by any of the victim girls to any person in their family, friends or to the residents staying in the building; (ii) that none of the victim girls have spelt out the dates, months or year when the alleged sexual assault took place and have only mentioned the approximate period when the sexual assault took place on them; (iii) that although, it is alleged by the prosecution that sometime in 2007-2008, a raid was conducted at Yusuf Chambers, the appellant was not found. He submits that the police had come to Yusuf Chambers and that despite the victims

having an opportunity to disclose the same to the police, failed to disclose, the sexual assault on them by the appellant, to the police; (v) that the victim girls have spoken about their mothers giving money to the appellant from time to time, however, it is most unlikely that the victim girls would not disclose to their mothers about the abortion which allegedly took place. According to Mr. Garg, learned counsel for the appellant, it appears from the evidence on record that the statement of the victim girls were recorded at MRA Marg Police Station and later, at J.J. Marg Police Station, however, the statements recorded before the MRA Marg Police Station have not been produced or brought on record by the prosecution and as such the possibility of the appellant being falsely implicated after due deliberations and discussion, at the behest of the fathers of the victim girls cannot be ruled out, considering that the appellant was the bone of contention, between the couples. Mr. Garg further submits that the conduct of the victim girls who were studying in school and who hailed from good families is unusual, inasmuch as, despite several opportunities to disclose the incident of sexual assault, had failed to do so. He submits

that even the victim girls *inter se* had not disclosed to each other about what was happening with them i.e with respect to sexual assault on them. Mr. Garg further submits that the evidence of the victim girls and the parents suffers from several omissions, contradictions and improvements and as such implicit reliance cannot be placed on their evidence. According to Mr. Garg, the prosecution has failed to explain from where the money/jewellery/cash was given by the victims mother to the appellant. He submits that PW19 (mother of PW1 and PW2) has identified the laptop/mobile, only during the course of the recording of her evidence and not prior thereto. He further submits that the evidence of the landlords would show that the cash payment was being made by the appellant and not by the victims mother, as alleged by them. Thus, according to the learned counsel for the appellant, it is clearly evident that the appellant has been falsely implicated in the said case.

4. In the alternative, Mr. Garg submits that the conviction under Section 376 of the Indian Penal Code being under the old

Section, the minimum sentence be awarded i.e. under the old Section 376, the sentence for the said offence could range between 7 years upto imprisonment for life. He submitted that the appellant has been subjected to the maximum sentence i.e. life imprisonment and that too for the remainder of his life, which is contrary to the Constitutional Bench Judgment of the Apex Court in the case of *Union of India v/s V. Sriharan @Murugan and Others*<sup>1</sup>. He submitted that the trial Court could not have awarded the aforesaid sentence. He submitted that hence in the alternative, the appellant having undergone 14 years, he be released on undergone sentence.

5. Learned Additional Public Prosecutor opposed the appeal. He submitted that no interference was warranted in the impugned Judgment and Order convicting the appellant for the offences as stated aforesaid. Mr. Konde-Deshmukh, learned Additional Public Prosecutor submits that six minor girls aged between 5 years to 16 years were sexually exploited by the appellant, a tantric/baba by gaining the confidence of their mothers, that he would cure the defect in the

---

1 2016 (7) SCC 1

victim girls, so that they do not give birth to boys who were intellectually challenged. He submitted all the seven victims i.e. six victim girls and their maid (PW25) have in detail spelt out the manner in which they were sexually assaulted by the appellant. He submits that out of seven victims, four victims had to undergo abortion and that there are documents to show the same. He submits that the evidence of PW16 clearly shows that all the victim girls were sexually exploited and that the same is fortified by the medical case papers of the victim girls. He further submits that the evidence of the victim girls itself would disclose, as to why the young girls had not disclosed that they were sexually assaulted by the appellant i.e. because of the threats extended by the appellant to them. He submitted that when it became unbearable for the girls, they disclosed the same to PW30, who thereafter contacted the police, pursuant to which, the appellant was apprehended. Learned Additional Public Prosecutor does not dispute the fact, that the trial Court could not have awarded a sentence of imprisonment for life, to mean for the remainder of the appellant's life, in view of the Constitutional Bench Judgment. He states that what

could have been awarded by the learned Judge is life imprisonment. He however states that the facts, warrant a sentence of life imprisonment i.e. for remainder of the appellant's case by this Court, considering that the appellant had sexually exploited six minor girls and PW25. He further submits that the evidence will also show that the victims mother had given jewellery/cash to the appellant, from time to time and have also taken flats on rent for the appellant and as such the trial Court had rightly returned the jewellery/cash to the victim girls. He submits that the prosecution has duly proved its case by leading legal, admissible and cogent evidence and as such no interference was warranted in the conviction of the appellant.

6. Mr. Deshpande, learned counsel for the Original complainant, supports the submissions advanced by the learned Additional Public Prosecutor. He submits that PW19 has identified the jewellery given by them to the appellant. He further submits that infact, there is evidence of cash given to the appellant, by the mothers of the victims, and that the same has not been challenged



by the appellant, and as such, the prosecution has duly proved that money was given by the victims mothers to the appellant. He submits that the appellant has not explained from where he got such a huge amount considering that he was not doing any business and work and in these circumstances the learned Judge has rightly passed an order with respect to handing over of the jewellery and cash to the victim girls.

7. Before we proceed to discuss the evidence on record, we would like to note, that the aforesaid appeal was filed, by Advocate Ms. Anjali Patil. On 1<sup>st</sup> July 2022, when the Interim Application No.806 of 2022 filed by the appellant seeking early hearing of his appeal and Criminal Application No.1304 of 2016 filed by the appellant for return of gold ornaments/articles, came up for hearing before this Court, this Court rejected the prayer for early hearing of the appeal. In paras 2 and 3 of its order, this Court observed, as under;

*“2. The perusal of record further shows that the office raised an objection that the appellant failed to make the necessary parties to whom compensation is awarded. This objection was raised by office on 9<sup>th</sup> November 2020. The*

*record further show that prior to this objection, an application namely the Application No.1304/2016 is filed in this Court at the instance of those prosecution witnesses in whose favour the compensation was awarded. Learned Counsel Shri Deshpande represents these applicants. The perusal of the record further shows that the appellant filed Application No.671/2016 for grant of bail. When the appeal was listed before this Court on 9<sup>th</sup> December 2016, the Counsel for the applicant-appellant submitted before the Court that she is not pressing the application for bail and instead liberty was sought for to prepare private paper-book. Accordingly, the order was passed by the Division Bench on 9<sup>th</sup> December 2016. Then another application was filed namely Application No.806/2022 for early hearing of the appeal. As the Division Bench was of the opinion that no case was made out for early hearing of the appeal, application was rejected. Then the Appeal alongwith applications was listed before this Court on 20<sup>th</sup> April 2022. Perusal of the order shows that the Counsel for the Applicant in Interim Application No.806/2022 and Application No.1304/2016 was present before this Court, the Counsel for the Appellant was not present before this Court. As such the Appeal was adjourned. As stated above, the Appeal is filed in the year 2016 and paper-book is already prepared in the matter. The prosecution witnesses to whom compensation is awarded are before this Court but today also the Counsel for the Appellant is not present in this Court. As such to give a last opportunity to the Counsel for the Appellant, the Appeal is adjourned for two weeks. In case on the next date, the Counsel for the Appellant does not remain present before this Court, the absence of the Counsel would be treated as the Counsel is not interested in prosecuting the Appeal and this Court may pass an order appointing the Counsel for the Appellant through Legal Services Authority.*

*3. List the Appeal and Application for further consideration on 15<sup>th</sup> July 2022.”*

8. On 22<sup>nd</sup> July 2022, when the aforesaid appeal came up before this Court alongwith the Applications, this Court, after observing what was stated in the order dated 1<sup>st</sup> July 2022 and after observing that none appeared for the appellant on 22<sup>nd</sup> July 2022, appointed Mr. Kartik Garg, Advocate who is on the panel of advocates of the High Court Legal Services Committee, Mumbai, to espouse the cause of the appellant. Pursuant thereto, Mr. Garg has very ably advanced submissions before us and has also submitted a short synopsis of the case and judgments, in support of his submissions.

9. The evidence relied upon by the prosecution is as under:-

PW1, the victim girl, was aged around 14 to 15 years, at the relevant time, her date of birth being 9<sup>th</sup> November 1990. PW1 has also deposed to with respect to the composition of her family and her aunts' family; of the sons born to her aunts and about having mentally retarded brothers. The said witness i.e. PW1 had spoken about monies being given by her mother (PW19) and aunts, so that he

would cure her brothers. The period when PW1 was sexually assaulted by the appellant is, between 2004-2005 to 2010. According to PW1, she was residing at 'A', Mumbai, with her father (PW30), mother (PW19), brother and sister (PW2). She has stated that four years prior (prior to her evidence), her parents started residing separately and that in the year 2010, she was studying B.A., (2<sup>nd</sup> year) in a College and her sister (PW2) in 2010 was studying in Standard 12<sup>th</sup>. According to PW1, her father was running a STD booth and a Mobile Store at 'A', Mumbai. She has stated that she had three maternal aunts; i.e. PW28, who was living at 'B'; 'X' (mother of PW5), who was living at 'C' and 'Y', another aunt who was living in London. She has stated that when she used to go to her aunt's house at 'C' the appellant would come there on the pretext of removing evil spirit; that the appellant would bring taveez with him; that whenever they visited their aunt at 'C', the appellant would give them water to drink and would ask them not to tell their father; that the appellant would tell them how the children in their family were intellectually challenged and that he would give them water to drink and taveez, so

that in the future they would not beget intellectually challenged children like their mother; that they would visit the aunt's house at 'C' once a week, only for this purpose, for about a year. According to PW1, her other aunts and mother would also remain present alongwith them, at that time. PW1 has stated that her aunt i.e PW28 had three daughters, PW3, PW4 and PW6 and two sons, who were intellectually challenged. According to PW1, after a few days the appellant found it difficult to come to her aunt's house at 'C' and asked them to buy a house for him. She has stated that the appellant would speak to her aunt on phone and that her mother and all her aunts collected money by selling their gold jewellery and gave money to the appellant from which the appellant took a house on rental basis at Dongri. PW1 has stated that she alongwith others started visiting Dongri, where the appellant would give them taveez and water and that the same continued for atleast a year. She has stated that after a year, the appellant represented that the house at Dongri was not safe for him and therefore he needed another house, pursuant to which, her mother and aunts again collected money by selling their jewellery

and gave the amount to the appellant for taking a house, pursuant to which the appellant took a house at Chunabhatti. She has stated that the Dongri house had only 1 room, whereas the Chunabhatti house had 3 to 4 rooms. She has stated that PW5's father (PW31) was a doctor and PW28's husband was a Captain on the Ship. According to PW1, once in a year, her aunt from London would visit Mumbai and that her aunt also had an intellectually challenged son. She has stated that they would go to the Chunabhatti House where the appellant was staying once a week and sometimes the appellant would ask them to bunk school and to come over, so that their father would not have any doubt.

10. According to PW1, she met the appellant in the year 2004 at her aunt's house at 'C' and that they visited Chunabhatti's house only on 3-4 occasions. She has stated that thereafter, the appellant started residing in the hotels at Mumbai Central and Nagpada area. She has deposed the names of the hotel where the appellant stayed. She has stated that her sister and all her cousins (also victims) would

visit the said hotel and that their mothers used to leave them at the said hotels. She has stated that they had stayed in the said hotels for 10 days, one week and five days, during their vacation and even on weekends. According to PW1, during their stay, the appellant would give them taveez, a paper on which there was something written and that he would ask them to burn the paper on which something was written and that if they did not follow his directions, he would assault them with the charger wire, bamboo stick and wooden spoon. She has stated that she complained to her mother but her mother told her that he was doing something good i.e. removing the evil so that they would not have problems in their future lives. She has stated that during this period her father found some taveez in the house and questioned her mother. She has further stated that they also used to read some mantras at home, which her father heard and as such her father became suspicious about her mother when she did not disclose anything. She has stated because of this, her father divorced her mother, after which her mother shifted to 'D'. She has further stated that the appellant told her mother that he needed a flat, pursuant to

which her mother gave money to the appellant, pursuant to which the appellant took a flat in Yusuf Chamber at Byculla i.e. a 2 bed room, hall, kitchen flat. She has stated that they used to go to the said flat and would go to college from the said flat. She has stated that her aunt had kept a servant there, to cook food for them and sometimes her mother used to cook food for them and thereafter go back. She has stated that she lived in the said flat for about 2 – 3 months, after which they returned to their respective house. She has stated that they used to visit Yusuf Chamber, Byculla on weekends. She has stated that during vacation, the appellant would call them and that all the sisters would sleep in one line and that the appellant would take them i.e. one at a time to another room; that the appellant touched her breast and put oil on it; and that he would also put oil in her private part and would kiss her and remove her clothes. She has stated that if she objected, he would assault her and if she tried to resist him, he would tell her that she had to do the same, so that she would not beget intellectually challenged son. She has further stated that he would rape her and that whenever she stayed with the



appellant, he would do the said act. She has further stated that she gave a hint to her father, when the appellant was residing in Yusuf Chamber, and that her sister also informed her father from a PCO booth, pursuant to which her father alongwith her uncle and police came to Yusuf Chamber; that when they knocked on the door, the appellant sensing trouble, asked her mother to take her and her sister from the house and thereafter, the appellant shut the door, so that nobody was able to come inside. She has stated that the fire brigade came to the spot and that the persons from the fire brigade opened the door of the house, however, they were unable to find the appellant. She has stated that when they returned to the flat, she saw the appellant coming from behind the water tank; that the appellant on seeing them, started shouting at them including her mother and aunts and also assaulted them. She has further stated that the appellant asked her mother and aunts to provide one burkha, so that he could escape, since police were around the place and he could not step out, pursuant to which, her mother and aunts provided a burkha to the appellant. PW1 has stated that after wearing a burkha, the appellant

went away alongwith her cousins and stayed in some hotel. She has stated that for one year, he was staying in different hotels and that her mother and aunts would leave her, her sister and her cousins to the said hotels. She has stated that in one particular year, her mother and all her aunts collected Rs.5 lakhs for the appellant to arrange a new residence for him and that from the said money the appellant took a flat on rental basis at Agripada, where he stayed for one year. She has stated that her mother and aunts had kept one servant for them and as usual, they used to leave her and her cousins at the door of the appellant's flat, pursuant to which they stayed at the appellant's flat during vacation and weekends. She has stated that the appellant would assault her and also sexually abuse her.

11. According to PW1, from Agripada again the appellant changed his house and started staying in nearby hotels and that she and her sisters used to reside with him in the hotel as usual, where again he would give them magic water to drink and would give them taveez. She has stated that there also the appellant abused them

sexually one by one. She has further stated that after one year, the appellant took a house in Amina Apartment and that the funds for buying the said house was provided by her mother. She has stated that the appellant stayed there for one year and that all the sisters used to visit the said premises and the appellant would behave in the same manner with all of them. She has stated that whenever they told the appellant that they wanted to go to their house, he would assault them.

12. PW1 has further stated that thereafter the appellant took a house at Mariam Apartment at Pydhonie, which was also funded by her mother. She has stated that the appellant would assault her mother and aunts when they told him that they all wanted to go back to their house. She has stated that even in the said premises the appellant sexually abused them. According to PW1, the appellant took her to Dawood Nursing Home, to Dr. Shirin Khoja, as she had missed her periods. She has stated that he even took her to Habib Hospital for abortion, where the doctor gave her tablets, pursuant to which her periods started. She has stated that the appellant told the

doctor, that he was her (PW1's) uncle. According to PW1, after one year, the appellant took her, her mother, sisters and brother at her aunt's residence at 'C', Mumbai; that the appellant had come to her aunt's house in a burkha; that the appellant started assaulting them saying that she (PW1) was blackmailing him and reporting to her father. According to PW1, at about 3:00 a.m. when somebody knocked on the house, her mother opened the door, pursuant to which the police apprehended the appellant, when he was trying to escape. She has stated that thereafter, they went to MRA Marg Police Station where her complaint was recorded i.e. Exhibit – 26. She has admitted the contents therein. She has further stated that the police registered a 'O' FIR and thereafter the case was transferred to J.J Marg Police Station. She has further stated that the police sent her, her sisters and cousins to Nagpada Hospital for medical examination and that the police of J.J Marg Police Station recorded her further statement and that she showed the police the premises at Amina Apartment, Mariam Apartment and the premises at Dongri, where they were staying with the appellant. It appears from the evidence of PW1, that the police

seized taveez, bottle of oil, lemons and bamboo sticks from Mariam Apartment.

13. PW1 was cross-examined at length. Considering the cross-examination and the manner in which it was recorded i.e the omissions we were constrained to see the 161 statement, and found that there are infact no omissions as far as what was deposed to, by PW1 with respect to the sexual assault on her, as stated by her in her evidence. Omissions have been recorded, when infact there were no omissions. It was the duty of the prosecutor and incumbent for the learned Judge recording the evidence to ensure that cross is properly recorded.

14. Although, suggestions were made to PW1 that because of the dispute between her parents, she falsely implicated the appellant, the said suggestion has been categorically denied by PW1.

15. PW2 is the sister of PW1. She was at the relevant time was aged about 12 years, her date of birth being 31<sup>st</sup> January 1993. She has stated that she was paralytic on the right side, since childhood and

that her parents were divorced. She has deposed to with respect to her aunts and their children and that her eldest aunt had 2 intellectually challenged sons and that her mother had one as well. PW2 has also stated how she came into the contact with the appellant i.e. he came to teach Arabi to children. She has stated how the appellant lured her aunt that he could cure the defect in her aunts i.e. since they had intellectually challenged boys and that he would even help the girls from begetting intellectually challenged children. PW2 has also stated that how the appellant used to give them water to drink; give taveez; burn dhoop etc. She has stated where they stayed at Dongri and what happened at Dongri i.e. that although it was a one room tenement there was a partition in between; that on one side of the partition, all sisters would stay and on the other side the appellant; that late at night, the appellant would call them, one by one, on his side of the partition; would give water to drink and burn dhoop; would give them something sweet to eat; that after eating the sweet and after burning the dhoop, they would feel heaviness in their head, after which, he would touch them inappropriately. PW2 has deposed that

the appellant kissed her; removed her clothes and thereafter applied oil on her private part and inserted his finger in her private part. She has further stated that if she resisted or tried to shout, he would gag her mouth and would threaten her with dire consequences, if she informed about the same to anyone; that he would also threaten her, to destroy the entire family. She has further stated that on one occasion when the appellant was residing at Dongri, he asked her to come at 9:00 p.m. on the pretext of giving treatment, pursuant to which he sexually assaulted her again. She has stated that although she did not want to do the same, the appellant threatened her.

16. According to PW2, around 2006 the appellant started staying in the hotel and that the payment of the hotel charges were borne by her mother and aunts; that all sisters used to visit the said hotel, where the appellant carried out the same activities. She has stated that the appellant had raped her, and continued to rape and threaten her with dire consequences.

17. She has further stated that even in Amina Apartment, she lived with her sister, cousins and servant (PW25), for about six months. She has stated that even in the said premises, the appellant would take each one of them in a separate room one by one and would do similar things. She has stated that in Amina Apartment, the appellant had raped her on her on 5 – 6 occasions. According to PW2, although the appellant permitted them to attend the school, their mother was not permitted to visit them. She has stated that in about 2009, the appellant shifted to Mariam Tower and stayed in the said premises for about one year. She has stated that the funds for the said flat were collected from her mother and her aunts. She has stated that even at Mariam Tower, the appellant under the pretext of treatment, would do similar things with her and that in the said premises the appellant raped her on several occasions. She has stated that few months prior to November 2010, all cousins stopped visiting the appellant. She has stated that the appellant thereafter asked them to come and stay at ‘C’, at her aunt’s house, pursuant to which they stayed at ‘C’, for about a week, however, PW1, her sister did not



wish to stay in the said house and hence they returned back to their 'D' House. She has stated that after their return to 'D' one day, the appellant came to their house at 1:00 a.m. and started assaulting all of them and asked them to return to 'C' i.e. aunt's House. She has further stated that even on 27<sup>th</sup> and 28<sup>th</sup> November 2010, the appellant came to their house and started shouting; that prior thereto, PW1 had contacted her father on phone and narrated to him what had happened, pursuant to which a trap was laid and the police visited their house at 3:00 a.m., pursuant to which the appellant was apprehended.

18. As far as PW2 is concerned, she too was cross-examined at length, however, no material omissions have been elicited in her cross-examination, so as to disbelieve or discredit her testimony. The tenor of the cross-examination of PW2 was to the effect that the appellant was falsely implicated because of the dispute between PW1 and PW2's parents, as PW1 and PW2's father felt that his wife was having an affair with the appellant. The said suggestion has been denied by the

said witness.

19. It is pertinent to note that the appellant has not denied knowing of the victims family or the relations *inter se* between the parties. His only defence is, that of denial and of false implication. The said evidence of PW1 and PW2 is duly corroborated by PW19 and PW30, parents of PW1 and PW2.

20. PW19 (mother of PW1 and PW2) has deposed that she had 4 sisters and that all her sisters were married and were having children; that PW28 has 3 daughters (PW3, PW4 and PW6) and 2 sons and that both the sons were special children and that even PW5's mother had one special child, who expired subsequently. She has stated that she has two daughters i.e. PW1 and PW2, and that her another sister who is living in London, also had a special child.

21. As far as the appellant visiting PW28's house and assuring her and her sisters, that he would cure their daughters from begetting

special children in future, is also deposed to, by the said witness. PW19 has also stated how the appellant would give water to drink and taveez to her daughters and her nieces; how he demanded a house from her and her sisters; how she withdrew the amount from the bank and gave it to the appellant and how the appellant purchased a flat in Byculla, in his name; that when she asked for the papers of the flat, the appellant scared them and asked why they need the papers and that they should not ask him the question; that the appellant had taken cash in lakhs from her and her sisters on some pretext or the other and so also gold ornaments. PW19 has further deposed that the appellant had created such an atmosphere that all the sisters (including her) were following his directions and the sisters never disclosed to each other about the appellant's acts. She has stated that whenever they used to oppose the appellant or make any inquiry about the treatment, the appellant would scare them and tell them that he will do black magic and that the condition in the house would become worse. PW19 has deposed that she was not aware what the appellant was doing with her daughters and nieces, till the lodging of the police complaint. PW 19

has also deposed that they paid the rent of the apartments where the appellant was living; how a maid (PW25) was kept as asked for by the appellant; and how they had also provided him a big T.V as per his demand. PW19 has identified the valuable articles seized from the house of the appellant by the police. She has stated that the total amount paid by her and her sisters were about 1 crore cash and ornaments i.e. gold chain, diamond earrings, necklace, etc. She has identified the taveez, which were prepared with the names of the children inscripted on them. She has also identified the jewellery seized by the police, as well as the laptop, DVD player mobiles etc. which were provided by her and her sisters to the appellant, on his demand.

22. Again nothing is elicited in the cross-examination of the said witness to discredit her testimony. Except a suggestion that the witness was falsely deposing because of the strained relations between her and her husband i.e. PW30 and the divorce between them, which has been denied by her, there is no cross examination on the material

aspects, as deposed to, by PW19. She has further stated in her cross-examination, how the appellant had assaulted her in anger with his fist, individually and even in the presence of her children. She has further stated in her cross that the appellant would tell her that bad things will happen with her and that worse would happen to the daughters and hence, she did not take cudgels with the appellant.

23. The said evidence of PW19 is duly corroborated by her husband PW30. PW30 has stated that in the year 2004 when he was staying with his wife and children, he found taveez and hair in his house and also found his wife missing for the whole day on many occasions. He has deposed that he found a cell phone with his wife, and that when he questioned his wife, she told him, that she did not have a cell phone. PW30 has further deposed that he informed his wife's sister's husband and his wife's brother of finding of taveez, hair and pieces of bangles, in the house, after which they gave an understanding to his wife, not to indulge in such things; and that even his wife's brother and wife's sister's husband found taveez, hair and

similar articles, in their house. He has further deposed that when he inquired with his wife as to where she was going, she would tell him that she was going to the teacher, tailor or her sister's husband, pursuant to which a quarrel would take place, because of the same.

24. PW30 has further deposed that PW19 would bring water from somewhere and would give him to drink and some times pour the said water and ash on his head, whilst he was asleep. He has deposed that his wife had an account in the Central Bank and that her father had given her Rs.60 lakhs in 2005 and that she had kept half of the said amount in the bank and half in cash with her. According to PW30, pursuant to the disclosure made by PW1, he informed the MRA Marg Police Station, pursuant to which the appellant was arrested.

25. In his cross-examination, PW30 has admitted that his son was having syndrome 'X' and that there was no cure for the same. Although, suggestions were made to the witness that he was deposing falsely, PW19, he has denied the same.

26. The second set of witnesses are PW3, PW4, PW6, all minor victim girls and their parents ie. PW28 and PW29, as well as PW25, also a victim. PW25 was a maid working with PW28 and PW29, who had also stayed with the appellant, where she was sexually assaulted by the appellant.

27. PW3 at the relevant time was about 8 years of age, her date of birth being 5<sup>th</sup> September 1997. She has deposed that she was studying in a Convent High School at the relevant time and that she has 2 sisters and two brothers and that both her brothers were intellectually challenged and that PW25 was working with her parents i.e. PW28 and PW29. According to PW3, she met the appellant for the first time at her aunt's place at 'C', where he would often come to give taveez. She has stated that her mother had arranged for a house for the appellant at Dongri, pursuant to which he would call her and her sisters to Dongri and that she would go to Dongri alongwith her mother (PW28).

28. PW3 has deposed that whilst in Amina Apartment, when she went to stay with her sisters, cousins and one maid (PW25), in the night the appellant would wake her up by shaking her leg and take her to the adjacent room/hall, remove her clothes and rape her. She has stated that the appellant did so 5 to 6 times. PW3 has further deposed that he would threaten her not to disclose the same to any person or he would destroy her family. She has deposed that at Mariam House, where the appellant stayed, they used to stay there for two or three days and even on weekends. She has deposed that the appellant would tell her not to talk to her mother, because she was doing magic. She has further stated that the appellant would tell her that if she did not come, then she will beget mentally retarded children and that he would make her brothers normal and in future they would not get such children. She has further stated that the appellant would write something in yellow on a white paper, dip it in a glass of water and ask them to drink it in the morning. She has further stated that she did not tell about sexual assault as she was scared of the appellant; and, that he used to also tell her not to make any friends. She has also



deposed that the appellant would also not allow them to go for any function.

29. It is pertinent to note that there is no cross examination with respect to the sexual assault on PW3 as deposed to by her, in Amina Apartment. The said evidence of PW3 is also duly corroborated by the evidence of PW4 and PW6, her sisters.

30. PW4 at the time of the incident was around 12 years, her date of birth, being 27<sup>th</sup> April 1993 and PW6 around 15 to 16 years, her date of birth, being 4<sup>th</sup> November 1989. PW4 has also deposed to with respect to the composition of her family. She has stated that her mother and aunt had taken one flat on rental basis. She has stated that whilst at Dongri, when she stayed with her sisters and cousins, the appellant would give her some yellow water to drink, then apply red colour oil on her body by removing her clothes, after which he would make her do whatever he had told her to do. She has deposed that the appellant would make her sleep on a bed, remove his clothes and

would press her breast and thereafter, rape her; and that the appellant had threatened her not to disclose the same to anybody or he would destroy her family. It is pertinent to note that there is absolutely no cross examination with respect to what has been deposed to by PW4 in para 4 of her examination-in-chief, i.e. to the aforesaid.

31. According to PW4, whilst at Dongri, she became pregnant, pursuant to which, the appellant took her to Dr. Rifta Kadiani at Dawood Nursing Home, where her abortion was done. PW4 has deposed that thereafter the appellant again started sexually assaulting her. She has stated that thereafter the appellant moved to Amina Apartment, where they stayed with him for a few months. She has stated that again whilst at Amina Apartment, her 2<sup>nd</sup> abortion took place and the doctor was Shirin Khoja at Habib Nursing Home near Dongri. She has deposed that whenever her periods would stop, he would give her some tablets. She has stated that at Amina house, she was not allowed to talk with her cousins and that whenever he would sexually assault her, on the next day, he would assault her physically,

on some pretext or the other. She has further stated that the appellant also did not allow her to talk to her mother with respect to the same, nor would he allow them to meet their friends. She has stated that in October 2010, they stopped talking with the appellant being fed up and made a plan how to get him apprehended, pursuant to which, the appellant was apprehended. Nothing material has been elicited in the cross-examination of the said witness, so as to disbelief or discredit her testimony.

32. The evidence of PW4 is also duly corroborated by PW6. She too has deposed on similar lines as other witnesses, with respect to the composition of the family and what was disclosed by the appellant to her mother and the maternal aunts, with respect to preventing their daughters from begetting mentally retarded children. PW6 has also deposed to, what was administered by the appellant, about taveez etc. She has further deposed that how her mother and aunts gave him a rental house at Dongri, where the appellant started residing and that the appellant would perform rituals on them at Dongri. She has

further deposed that whilst at Dongri, the appellant would wake her up, chant some mantras, make her lie on the bed, rub oil all over body, start chanting, give her yellow water to drink and thereafter sexually assault her. She has stated that at that time, she did not have the strength, to resist the appellant. She has further deposed that the appellant had also threatened her not to disclose the same to her mother, aunt or father or he would use bad spirit and destroy the family. PW6 has also deposed that the appellant had told her that she would turn mad, if she told the same to anybody. She has further stated that all this continued for a long time . PW6 has also deposed that he took her to Dr. Shirin Khoja at Habib Hospital, where her abortion was done and thereafter again after a few months. She has stated that in the hospital, on both the occasions, PW25's name was registered and that the appellant had disclosed that he was his uncle. She has deposed that the doctor would give her some tablets to eat. According to PW6, the appellant would stop them (sisters/cousins) from speaking to each other, as he feared that they would share whatever had happened with them.

33. PW6 has further deposed that even in Amina Apartment, he performed similar rituals and continued to sexually assault her and that he even physically assaulted her. She has stated that thereafter when the torture became unbearable, she spoke to PW1, after which, they informed PW1's father, pursuant to which, the appellant was arrested.

34. Again there is nothing material which has come in the cross-examination of PW6, so as to discredit her testimony. Her evidence, also stands duly corroborated by the evidence of her sisters i.e. PW3 and PW4, her cousins PW1, PW2 and PW5, her aunt, PW19 and her parents, PW28 and PW29.

35. PW25 is the maid, who had accompanied PW3, PW4, PW6, PW1, PW2 and PW5. PW25 was working with PW28 and PW29, as a maid. She has stated that she was sent to look after the daughters of PW28 and PW29 and the daughters of other sisters, at the appellant's house, when he was staying at Amina Apartment. She

has stated that the girls used to stay there for treatment on the pretext that they should not get lunatic children, considering that the sons born in the family were mentally retarded. PW25, aged 25 years has stated that the appellant would do dirty things with all the girls including herself; that the appellant applied oil in the private parts and insert his finger in the night when others used to sleep; that he would take each one of them, including herself separately in the hall by closing their mouth and would do dirty things with them ; that he sexually assaulted them; that he would give them one tablet and then commit sexual assault; that the appellant would threaten them; would give them water to drink by putting yellow paper in it; that he would give them some sweet to eat and threatened them not to disclose, what had happened or even talk to each other; that he would beat them with a broom and push their head on the ground, if he found them talking to each other. PW25 has deposed that she did not disclose the same, as she was scared that he would kill her parents, or kill her.

36. No doubt, there are few omissions in the evidence of this witness, however, the omissions are not so material, so as to discard her testimony, all together.

37. PW28 and PW29 are the parents of PW3, PW4 and PW6. PW28's evidence is on similar lines as that of PW19. She has stated how she met the appellant and how the appellant convinced her that he would make her sons normal and would ensure that her daughters would not give birth to intellectually challenged children. PW28 has deposed what was disclosed by the appellant and accordingly permitted the appellant to treat their daughters; and that the appellant would write on a paper with saffron and would give water drenched with that paper to all of them, to drink. According to PW28, at Dongri, the appellant would call all her 3 daughters and her nieces, on the weekend. She has stated how the house at Dongri was taken on rent for him, for 11 months and that they were paying the bills. She has stated that she and her sisters were bearing the expenses of the appellant, including the rent. According to PW28, her daughters

stayed at Amina Apartment for about 6 months and that he would not allow them to leave the house and would assault them. She has further stated about how the appellant had influenced the daughters so much that they were not talking with her. PW28 has further deposed how the appellant had tied her with a rope on one occasion in the presence of her 2 sisters and daughters and had forced her to write something. According to PW28, she was not aware of the sexual assault on her daughters, since the same was not disclosed by them to her.

38. The said evidence of PW28, is duly corroborated by PW29 i.e. father of PW3, PW4 and PW6.

39. PW29 was working in the Merchant Navy at the relevant time. He has stated that the appellant had come to teach Arabic to his 3 daughters, however, when he saw the appellant sitting close to his eldest daughter, he did not like it and gave him money for that month and asked him not to return. He has further deposed that he would be



away on the ship for about 6 months and that he found some changes in his daughters behaviour, after he returned; that his daughters were earlier friendly with him but when he returned, they were not close to him and that they were wearing burkha while going to school and that they were not having friends and would also refuse to accompany him on vacation; that when he asked about the behaviour of his daughters, his wife (PW28) gave evasive answers; that when he found some articles in his wife's cupboard, he questioned her about the same, but she gave evasive answers. PW29 has further deposed that his wife had withdrawn a lot of money from his account and that his wife's father was a rich person and PW28's father used to give lot of money to PW28 and that she would deposit the same, in her account. He has stated that his wife (PW28) was having a lot of jewellery, however, the same was missing and that when he questioned her about it, she did not reply.

40. PW29 has spoken about the incident which took place at Yusuf Chambers, where the police were taken, however the appellant

was not found and later he learnt from his daughter that the appellant was sitting in the water tank on the top of the building. According to PW29, his wife sold a vehicle and two rooms in one building at Ghodapdeo Road and that she had also borrowed money from his relatives on the ground, that their daughter wanted to take admission for MBBS. PW29 has thereafter spoken about how a trap was laid and the appellant was apprehended.

41. As far as the cross-examination of PW29 is concerned, he has admitted that he has not given any documentary proof to show that he gave his wife the authority to operate his account and the withdrawal of amount from his account or the sale of the Tavera Car. Except the same, the evidence of PW29 stands corroborated with the other evidence that has come on record.

42. The next witness is PW5, another victim, who was aged 4 to 5 years at the relevant time, her date of birth being 1<sup>st</sup> April 2000. PW5 has talked about what happened to her when the appellant was

residing at Mariyam Apartment. She has deposed that the appellant would give lectures during night time; would take her inside the room; make her lie down; close the door and touch her all over her body. PW5 has deposed that the appellant would beat her while teaching Quran; that he would write something on a blank paper, dip the paper in water and make them drink the water; that the appellant also assaulted her with a rolling pin, if they did not drink the taveez water or would not listen to him; that when she had itching in her urinal, the appellant would insert his leg in her urinal; and that whenever she used to go to drink water in the kitchen, he used to follow her; and used to fondle her body and that he also used to beat her with a stick.

43. Nothing is elicited in the cross to disbelieve the testimony of this young minor girl, who was aged 5 years at the relevant time. Since she did not allege rape nor there was medical evidence to that effect, the appellant came to be convicted for the offence punishable under Section 354 of the IPC and not 376 of the IPC having regard to what was deposed by PW5. The said evidence of PW5 is duly

corroborated by her father PW31, with respect to the conduct of his wife and with respect to how the appellatant was apprehended.

44. All the aforesaid evidence of witnesses i.e. 6 witnesses, all minor girls and one major i.e. PW25 is duly corroborated by the evidence of PW16 – Dr. Pratap Daya Anand, attached to Nagpada Police Hospital.

45. PW16 examined PW1, PW2, PW3, PW4, PW5, PW6 and PW25 and accordingly noted the history as disclosed by them, to him.

46. The history given by **PW1** to PW16, reads thus;  
“Victim girl states that Mr. Mehendi Kasam Shaikh, one Mantrik Baba did sexual intercourse many times during last five years, against her will. She gives history of taking some medicines for missed periods.

Her Examination shows that her hymen was torn.”

The history given by **PW6** to PW16, reads thus;

“Victim girl states that Mr. Mehendi Kasam Shaikh, Mantrik Baba did sexual intercourse many times since year 2005 against her will. She gives history of abortion at Private Hospital once.

Her Examination shows that her hymen was torn.”

The history given by **PW3** to PW16, reads thus;

“Victim girl states that Mr. Mehendi Kasam Shaikh, Mantrik Baba did sexual intercourse many times during last one year against her will. She has not given history of any abortion.

Her Examination shows that her hymen was torn.”

The history given by **PW2** to PW16, reads thus;

“Victim girl states that Mr. Mehendi Kasam Shaikh, Mantrik Baba did sexual intercourse with her many times since year 2005 against her will. She has not given any history of abortion.

Her Examination shows that her hymen was torn.”

The history given by **PW25** to PW16, reads thus;

“Victim girl states that Mr. Mehendi Kasam Shaikh did sexual intercourse many times during last five years against her will. She gives history of abortion in year 2006 at Private Hospital.

Her Examination shows that her hymen was torn.”

The history given by **PW4** to PW16, reads thus;

“Victim girl states that Mr. Mehendi Kasam Shaikh Mantrik Baba did sexual intercourse many times during last four years against her will. She gives history of abortion in year 2006 at Private Hospital.

Her Examination shows that her hymen was torn.”

The history given by **PW5** to PW16, reads thus;

“Victim girl states that Mr. Mehendi Kasam Shaikh tried to do sexual intercourse 4-5 times during last two years against her will at Amina Apartment, Nalbazar.

Her Examination shows that her hymen was intact.”

The said medical case papers are exhibited as Exhibits - 86 (colly) to 92 (colly).

47. PW22 – Dr. Sohel Dawood Shaikh, was attached to Dawood Nursing Home, at the relevant time. He has deposed that in 2010, the police from J.J. Marg Police Station had come to the Nursing Home to make inquiry of 2 names; i.e. PW25 and PW4 and that they wanted the patients details from the year 2006 – 2007. PW22 has deposed from the record that PW25 was operated in 30<sup>th</sup> January 2006 for MTP by Dr. Shirin Khoja. (According to the prosecution and witness, PW25's name was mentioned in place of PW6); that the record shows that PW25 was brought by her spouse Mehendi Hasan (appellant). PW22 handed over the papers to the police. PW25's papers were marked as Article X-3. The letter seeking information was marked as Exhibit – 107. The Nursing Home reports show that MTP was performed on PW25 (infact PW1 and PW6), by Dr. Shirin Khoja on 30<sup>th</sup> January 2006, 3<sup>rd</sup> May 2006 and 29<sup>th</sup> May 2007 and PW4's MTP was done on 20<sup>th</sup> February 2007.

48. Considering the evidence of the victims, which is duly corroborated by PW16 – Dr. Pratap Anand, it is evident that the victim girls PW1, PW2, PW3, PW4, PW6 and PW25 were sexually ravished by the appellant and the same is duly supported by the medical case papers, which have been duly proved by the prosecution.

49. No doubt, Dr. Khoja, who performed the abortion has not been examined by the prosecution, for reasons best known, the fact remains that the girls have categorically deposed to PW16 in their history of the abortion done and of sexual assault and there is no reason to disbelieve their testimony. The medical evidence clearly reveals that the girls were sexually assaulted.

50. Apart from the aforesaid evidence, there is recovery of gold ornaments and money, at the instance of the appellant. The prosecution has examined PW7 and PW27 to prove the said recovery. PW7 is the panch, who has deposed with respect to the recovery of 3



1/2 lakhs and the articles from Dongri. PW27, panch has deposed with respect to the recovery of Rs.87,50,000/- and gold ornaments from a house in Kalyan, where the appellant was staying.

51. The prosecution has also examined PW8, PW9, PW10, PW11, PW14, PW23, PW24, PW35 and other witnesses to show that the appellant was staying at the said places at the relevant time. Although some of the rental agreements are executed with the appellant, it appears from the evidence on record that the money was paid by the victim's mother, for the rental agreement. It is pertinent to note that the appellant has in his 313 not disclosed with respect to how the money was paid, or his occupation. As far as PW8 – Farhana Koradia is concerned, the owner of Mariyam Apartment occupied by the appellant is concerned, it appears that the said agreement was executed between one of the victim's mother and the landlord. The fact remains that the appellant was residing at the said places i.e. at Mariyam Apartment, Dongri, Amina Apartment, Yusuf Chambers, Ali Towers, at different times.

52. In the facts, we are satisfied that the prosecution has duly proved through the evidence of the victims and their parents, the complicity of the appellant vis-a-vis sexual assault on the victims. The evidence of the victim girls inspires confidence and is also duly corroborated by the medical evidence that has come on record. There is nothing on record, so as to disbelieve the testimony of any of the victim girls or the doctor who examined the victim girls. The victim girls were all young, aged between 5 to 16 years who were sexually exploited by the appellant on the pretext of curing them, so that they do not beget intellectually challenged children/special children. The appellant, a tantric/baba, on the pretext of curing the victim girls, sexually exploited them. It is an unfortunate reality of our times, that people, at times knock on the doors of so called tantrics/babas, for a solution to their problems and that these so called tantrics/babas, take advantage of the vulnerability and blind faith of these people and exploit them. The so called, tantrics/babas not only exploit their vulnerability, by extracting money from them, but also many a times, sexually assault the victims, under the guise of providing solutions.

This is one such bizarre case of blind faith. It is extremely unfortunate that 7 young girls, 6 minors and 1 maid were sexually exploited by the appellant, as the 6 minor girls' mothers feared that the girls would beget intellectually challenged boys. The appellant took full advantage of the apprehension of the victims mothers and by manipulating their fears, assured to cure the girls and in the process, also financially exploited them. The 6 victim girls all came from good families, and were economically well off and yet because of the fear of their mothers became victims of the appellant. With the 6 minor victim girls, PW25, a maid was sent. The appellant also exploited her. Keeping in mind the evidence on record, we find that the prosecution has proved its case as against the appellant beyond reasonable doubt and as such confirm the conviction of the appellant for the offences punishable under Sections 376 and 354 of IPC. There is direct evidence of these witnesses corroborated by medical evidence.

53. As far as sentence is concerned, Mr. Garg, learned appointed advocate for the appellant submits that the case is of the

year 2005 – 2010 i.e. prior to the amendment of 2013 and as such the sentence under Section 376, would range from a minimum of 7 years to a maximum of Life Imprisonment. Mr Garg, vehemently submits that the appellant be let off on undergone sentence, which is about 14 years. He further submits that the sentence awarded by the trial Court i.e. imprisonment for life i.e. for remainder of his life, is contrary to the decision of the Apex Court in the case of ***Narendra Singh @ Mukesh @ Bhura v/s The State of Rajasthan***<sup>2</sup>.

54. Learned Addl.PP does not dispute the said judgment and the legal position, that the trial Court could not have awarded a sentence of life imprisonment, ‘which shall extend to remainder of his life’, having regard to the decision of the Apex Court in the case of ***Narendra Singh (Supra)***.

55. We have perused the decision of the Apex Court in the case of ***Narendra Singh (Supra)***. In the said decision the Constitutional Bench judgment delivered in the case of ***V. Sriharan @***

---

2 Special Leave to Appeal (Crl.) No.7830/2021 decided on 28.02.2022

*Murugan (Supra)* has been relied upon.

56. Thus, the sentence only to that extent awarded by the trial Court i.e. imprisonment for life, ‘which shall extend to remainder of his life’, is quashed and set aside.

57. Now, the only question is, what is the sentence to be awarded and whether we in exercise of our appellate jurisdiction, can direct that the life imprisonment, would be for the remainder of an accused’s life.

58. The Apex Court in *Gauri Shankar v/s State of Punjab*<sup>3</sup>, whilst setting aside the order of trial court imposing life imprisonment for the remainder of life, in exercise of its appellate jurisdiction, proceeded to award the same sentence considering the facts of the case at hand, it was held, particularly in para 15, as follows;

*“15. On the legal principles, the learned counsel for the appellant appears to be correct, but we have taken note of the*

---

3 AIR 2021 SC 1064

*prosecution case in totality with motive of the crime that he was living in a relationship with the complainant Anju who had two children from the previous marriage, and had taken away the life of two minor innocent children at the very threshold of their life and murdered in a brutal manner by administering celphos to them has been established. It is true that the punishment of remainder of natural life could not have been imposed by the learned trial Judge but after looking into the entire case, we consider it appropriate to confirm the sentence of imprisonment for life to mean the remainder of natural life while upholding the conviction under Section 302 IPC.”*

*(emphasis supplied)*

59. Considering the facts and having regard to the evidence on record, we do not find it a case to award a sentence, lesser than imprisonment for life, having regard to the manner in which, the appellant sexually assaulted 7 girls i.e. 6 minor girls and one another girl. This is not a case where sentence should be reduced to undergone. The facts are gross, and the girls too many, and as such the sentence must be commensurate with the acts committed. Infact, after setting aside the sentence to the extent aforesaid, in the facts and for the reasons hereinabove, we deem it appropriate to re-impose a sentence of imprisonment for life, which shall be till the remainder of

his life.

60. Accordingly, we also direct the Sessions Court to take steps for return of the articles/money to the victim girls, as awarded by the trial Court in its Judgment and Order dated 7<sup>th</sup> April 2016.

61. We would like to record a word of appreciation for the able assistance provided and the efforts taken by Mr. Kartik Garg, as an appointed advocate for the appellant, in arguing the aforesaid appeal. The matter was heard post admission every day for the last 7 – 8 days. Mr. Garg, has taken great pains in making submissions, submitting synopsis as well as compilation of Judgments, on which reliance was placed.

62. Accordingly, we direct the High Court Legal Services Committee to award fees of Rs.30,000/- for the services rendered by the learned Appointed Advocate, as per Rules.

63. A copy of this judgment be furnished to the appellant, who is lodged in Nashik Central Jail, through the Superintendent of Nashik Central Jail.

All concerned to act on the authenticated copy of this judgment.

*MANJUSHA DESHPANDE, J.*

*REVATI MOHITE DERE, J.*