IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL No.409 OF 2018

Ashok s/o. Mahadev Kannake,
Aged – 43 years, Occupation Mason work,
R/o. Tembhi, Tq. Kelapur,
District Yavatmal.
(At present District Prison, Amravati) : APPELLANT

...**VERSUS**...

State of Maharashtra,
Through Police Station Officer,
Police Station, Pandharkawada,
District – Yavatmal. : RESPONDENT

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Shri A.K. Bhangde, Advocate for Appellant.
Shri S.S. Doifode, Additional Public Prosecutor for Respondent-State.
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Coram: M.S. Sonak And
Smt. Pushpa V. Ganediwala, JJ.
Date: 26th October 2021.

ORAL JUDGMENT : (Per: M.S. Sonak, J.)

1. Heard Shri A.K. Bhangde, learned counsel for the appellant, and Shri S.S. Doifode learned Additional Public Prosecutor for the respondent-State.

2. This appeal is directed against the judgment and order dated 4.8.2017 made by the Special Judge and Additional Sessions Judge, Kelapur in Special Case No.28/2015 convicting the appellant for offenses punishable under Section 376, 376(2)(f)(i) and (n), 354-A, 323, 506 of the Indian Penal Code and for the offenses under Sections 4,6,8,10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (in short, "POCSO Act") and imposing various sentences, including life imprisonment for the remainder of his natural life and fine.

3. The charge framed against the appellant on 3.3.2016 alleged that the appellant on 21.8.2015 and for a period of 7 to 8 months before said date, raped his minor daughter of 14 years and thereby committed various offenses, including offenses under Section 376 of the Indian Penal Code and Sections 4,6,8,10 and 12 of the POCSO Act. The charge was read over and explained to the appellant in vernacular and he denied the same. The prosecution examined 13 witnesses including PW 13 as a Court witness. The appellant was questioned under Section 313 of the Criminal Procedure Code and despite the opportunity, the appellant neither examined himself nor led any defense evidence in the matter. By the impugned judgment and order the appellant was convicted and sentenced as aforesaid. Hence, the present appeal.

4. Mr. Bhangde, learned counsel for the appellant submitted that the learned Special Judge has failed to appreciate the evidence on record in its correct perspective. He submitted that there is evidence about the enmity between the appellant and his wife, who was living separately from the appellant for the last several years. He submitted that a false charge was foisted on the appellant by his wife involving their minor daughter. He submits that the prosecution version is inherently improbable and this aspect has not been appropriately considered by the learned Special Judge.

5. Mr. Bhangde, submitted that there is an unexplained delay in recording the First Information Report. Mr. Bhangde further submitted that there is no medical evidence to sustain the charge of rape against a minor. He submitted that no injuries were noticed on the private parts of the minor. He submitted that there is a dispute about the age of the minor. He submitted that the brother, who was staying along with the appellant and his minor daughter was not examined as a witness by the prosecution. He submitted that an adverse inference was liable to be drawn on account of such non-examination. He submitted that all these vital and relevant aspects were ignored by the learned Special Judge and the conviction is, therefore, required to be reversed.

6. Mr. Bhangde, submitted that even the Court witness PW 13 did not support the prosecution version of having witnessed the incident of rape or at least part of the incident. He submits that even this aspect has not been appropriately considered by the learned Special Court and, therefore, the conviction warrants interference.

7. Mr. Bhangde, submitted that the Special Court, without specific reference has purported to rely on the presumption under Section 29 of the POCSO Act. He, however, submits that in this case, the prosecution had failed to establish the foundational facts in the absence of which the presumption under Section 29 of the POCSO Act was not at all available. He submits that that even this aspect has not been considered by the learned Special Court and the conviction recorded warrants interference.

8. Mr. Bhangde, submitted that even the sentence awarded is quite harsh and disproportionate. He submits that the provisions which were not in force on the date of commission of offense have been taken into account by the learned Special Court thereby violating the provisions of Article 20 of the Constriction of India.

9. Mr. Bhangde relied on State vs. Pritan Kumar (Major) 2020(1)Mh.L.J. (Cri.) 480, Mohd. Zakir Habib Khan vs. State of Maharashtra 2021(2)Mh. L.J. (Cri.) 201, Mohan Ambadas Meshram vs.

State of Maharashtra 2018 ALL MR (Cri) 4362, Sadhu w/o. Motilal Turra vs. State of Maharashtra 2019 ALL MR (Cri) 342 and Vanita Vasant Patil vs. The State of Maharashtra and another 2019 ALL MR (Cri) 1188 in support of his contentions. Mr. Bhangde, based on the aforesaid submitted that the impugned judgment and order convicting and sentencing the appellant may be set aside and the appellant be acquitted of the charges leveled against him.

10. Mr. S.S. Doifode, learned Additional Public Prosecutor defended the impugned judgment and order based on the reasoning reflected therein. He submits that the deposition of the minor daughter of the appellant is quite cogent, clear, and credible. He submits that the same was quite correctly relied upon by the learned Special Court. He submits that in such matters not only there is a presumption in terms of Section 29 of the POCSO Act but further minor variations and discrepancies here and there are required to be ignored. He submits that the medical evidence supports the prosecution version and in any case, if there is any conflict between medical evidence and ocular evidence, it is the latter that ought to prevail. He submits that the evidence on record has been properly appreciated by the learned Special Court and there is no case made out to interfere with the impugned judgment and order. He, therefore, urges that this appeal be dismissed.

11. The rival contentions now fall for our determination :

12. In this case the allegations against the appellant are that he raped his minor daughter for a period of over 7 to 8 months taking advantage of the fact that his wife was residing with her mother in a different village (Karanji) because the relationship between the couple was strained. The daughter was about 14 years old at the time of the incident and there is no serious dispute on the aspect of age though, some dispute was attempted to be raised before the learned Special Court as also this Court. In a matter of this nature, the testimony of the victim is crucial. It is well settled that if the testimony of the victim inspires confidence then, a conviction can be based on the same even if there is no detailed corroboration. Besides, in a matter of this nature, the issue of consent becomes quite irrelevant once it is established that the victim was under 16 years of age.

13. The first issue is to be considered concerns the age of the minor victim daughter of the appellant. The prosecution, in this case, relied upon the medical evidence that refers to the age of the minor victim- daughter as around 14 years. However, even if this evidence is not relied upon, reliance can safely be placed on the deposition of PW 7- Baliram Atram, the Head Master of the Zilla Parishad High School,

Tembhi in which the minor victim daughter was studying at the relevant time.

14. The Head Master, has produced documentary evidence to establish that the victim was indeed a student of the school of which he was Head Master and further, he is also produced a school transfer certificate based on which she was admitted to Zilla Parishad School at Tembhi. This transfer certificate indicates that the minor's date of birth is 22.3.2001. This means that on the date of the incident, the minor was around 14 years old. Significantly, there was no serious cross-examination of the prosecution witnesses on the aspect of the minor's age. Therefore, in this case, the learned Special Court was quite justified in holding that the minor's age was around 14 years at the time of the incident.

15. Since the prosecution has established the age of the appellant's minor victim daughter was around 14 years at the time of the incident, the issue of consent would be quite irrelevant. So also, there can be no dispute about the applicability of POCSO. Such dispute about the applicability of POCSO was never even raised by the appellant before the learned Special Court in this matter.

16. In this case, the prosecution examined the minor's maternal grandmother Sakhubai Sidam as PW 2. She deposed that the appellant

was married to her daughter Rekha and were residing along with their two children at Mandwa. She deposed that the appellant used to consume liquor and tortured her daughter Rekha, and therefore, Rekha, along with children used to reside at Mandwa. Thereafter, Rekha along with PW 2 proceeded to Maregaon where they got a job to work in a girls hostel and at that time the appellant took the custody of two children and went to Tembhi.

17. PW 2 deposed that on 21.8.2015 her brother Waman contacted her and Rekha and informed them that the appellant's daughter and the witness's granddaughter was crying and he called them to his home at Kolgaon. On 22nd August 2015 between 7 to 8 A.M. PW 2 and her daughter Rekha reached Kolgaon and found the victim crying bitterly. PW 2 deposed that the victim informed them that the appellant, her father, closed the door of the house removed her clothes, and raped her. The victim also stated that she was threatened by the appellant that he will kill her and himself by administering/ consuming poison if she informs anyone about this. The victim also informed that on 21.8.2015, the appellant raped her.

18. Mr. Bhangde pointed out certain omissions and improvements in the testimony of PW 2. We have perused the so-called omissions and improvements but find that the same are trivial and not

at all sufficient to discard the testimony of PW 2. Merely because PW 2 may not have used the word "Balatkar" in her statement to the Police or indicated the precise time of the incident that took place on 21st August 2015, it cannot be said that the evidence of PW 2 is not creditworthy.

19. The minor victim-daughter has deposed in this matter as PW 5. Before administering of oath to the victim learned Special Court posed her some questions to ascertain whether she was aware of the consequences of deposing on oath. Only after she gave satisfactory answers, her evidence was recorded on oath. Even otherwise, PW 5 was about 14 years old at the time of the incident and about 16 years old at the time of her deposition. From her deposition, it is quite apparent that she was aware of the consequences of deposing on oath. Her testimony is quite clear and cogent and inspires confidence.

20. PW 5 has deposed the relations between her father (appellant) and her mother were not cordial and, therefore, her parents were living separately. She has deposed that she was staying along with her father (appellant) at Tembhi. She has also deposed that her brother was residing at Tembhi but in the home of their paternal aunt. In her cross-examination, she clarified that her brother used to stay with the paternal aunt during the night time, but thereafter returned in the

morning. There is evidence that her brother was younger than PW 5 and was possibly aged about 12 years at the time of the incident.

21. PW 5 has deposed that the appellant was working as a mason and used to drink liquor. She deposed that for a period about 7 to 8 months before 21st August 2015, the appellant used to close the doors of the room in which they were staying, remove her clothes and have sexual intercourse with her. She has deposed that she attempted to resist, but the appellant used to beat her and forced himself upon her. She has deposed that the appellant used to threaten her by saying that if she disclosed these things to anybody else, then he will kill her by administering her poison. She deposed that the appellant used to also state that he will himself consume poison and commit suicide. She has deposed that the last incident took place on 21.8.2015 at about 8.00 a.m. when the appellant closed the doors of the room, removed her clothes, and had sexual intercourse with her.

22. PW 5 deposed initially that this incident of 21.8.2015 was watched by her friend Sonika Bawane. But in the next line, she stated that Sonika had seen the appellant while wearing the trouser on her person and she asked her about the same. PW 5 then deposed about how she went to see her mother at Maregaon but because her mother was not there, how she went to Kolgaon at her maternal grand-parents

house where she met her maternal uncle. PW 5 then deposed how his maternal uncle contacted her mother and grandmother on phone and how she narrated this incident to her mother and grandmother weeping at that time.

23. PW 5 has then deposed about how she along with her mother and grandmother made a report to the Police Station and how, thereafter, she was referred to the hospital for examination. She has identified her signatures on various documents produced on record by the prosecution through her.

24. PW 5, in the course of her cross-examination candidly accepted that for the last 7 years her parents were residing separately since their relationship was not cordial. She explained why she did not inform the incident of rape to her brother by stating that the relationship with her brother was also not very cordial. According to us, no dent was made to the crucial aspects of the victim's testimony, and based upon some trivial and inconsequential omissions or improvements, no case is made out to discard the clear and cogent testimony of PW 5.

25. Mr. Bhangde points out the words "Dar Band Karun", "Aai Alyavar Mi Khup Radat Hoti" are not mentioned in the statement given by PW 5 to the Police. Such omissions, if at all, can be regarded as

trivial and inconsequential. Based on the same, there is no case made to discard clear and cogent testimony of PW 5.

26. Thereafter, in the cross-examination, only suggestions were put to PW 5 concerning the allotment of hutment in the name of the appellant or that PW 5 was not doing household and cooking duties and, therefore, the appellant got angry with her and how PW 5 along with her mother and grand-mother lodged a false report. Some suggestions were also put as to how the appellant had not maintained the victim's mother and, therefore, the mother required PW 5 to lodge a false complaint against the appellant. PW 5 withstood the cross-examination and there is no dent made to clear and cogent deposition on material aspects. This was sufficient to convict the appellant herein for offenses punishable under Section 376 and various other sections of POCSO amongst others.

27. In this case, the F.I.R. was lodged on 22.8.2015 soon after the latest incident of rape that took place on 21.8.2015. Mr. Bhangde, however, contended that since the prosecution case is that the appellant used to rape the victim for about 7 to 8 months before 21.8.2015, there is a delay in lodging of F.I.R. According to us, there is no merit in this contention. PW 5 has explained why she suffered the sexual abuse for a period of 7 to 8 months by pointing out that the appellant was her own

father, who had threatened to kill her as well as himself if she disclosed the instances of abuse to anybody else. PW 5 was a girl of hardly 14 years and had to suffer sexual abuse by her own father. The delay, if at all, having regard to such special circumstances is fully explained.

28. Besides, in matters of this nature, the issue of delay in lodging F.I.R. has to be evaluated with a yardstick different from that which is employed in cases concerning offenses that have no sexual overtones. This is more so in the present case when the perpetrator is the victim's own father and the victim was admittedly a minor. This position has been explained by the Hon'ble Supreme Court in the case of Satpal vs. State of Haryana, 2010(8) SCC 714, and such explanation applies with full force to the facts of the present case.

29. Based on the deposition of PW 2 (grand-mother) and PW 5 (minor victim daughter), we do not think that the appellant had succeeded in establishing even on a preponderance of probabilities that the allegation made by PW 5 has any nexus with the strained relationship between the appellant and his wife. This strained relationship was for almost 7 years. PW 5 was admittedly staying almost alone with the appellant during the nighttime at Tembhi. It is only after the incident of 21.8.2015 when the abuse became quite unbearable, PW 5 went in search of her mother and grandmother and

narrated her predicament to them. The mother and grandmother reported the matter to the Police only thereafter. There is absolutely no evidence on record to suggest that PW 5 acted at the behest of her mother or the instigation of her mother. Besides, there is no evidence on record to establish any contact between PW 5 and her mother so that PW 5 could get an opportunity to be tutored by her mother or grandmother.

30. In any case from the deposition of PW 5 we are quite satisfied that PW 5 would not go to the extent of making serious allegations against the appellant, her father on account of the strained relationship between the appellant and his wife i.e. parents of PW 5. Therefore, on this ground, there is no case made out to discard the clear and cogent testimony of PW 5 in this matter.

31. The prosecution, in this case, examined Dr. Garima Arora (PW 8) and Dr. Rama Bajoriya (PW 9) on the aspect of medical evidence. PW 9 stated that on 23.8.2015, PW 5 was brought for examination at the Sub-District Hospital, but she was not quite willing to be examined by him and, therefore, he referred her to a lady Gynecologist at the Government Medical College at Yavatmal. PW 9. however. deposed that he examined PW 5 externally and found that she

had developed secondary sexual character but there was no external evidence of injury over her breast and vaginal area.

32. PW 8, lady Medical Officer at Yavatmal deposed that she noted the history after questioning PW 5. She deposed that on examination she found that her Havel was strong and the possibility of sexual intercourse could not be ruled out. In her cross-examination, she deposed that injury is possible to a girl of 14 years of age if a man of 45 or 50 commits sexual assault on her suddenly. She admitted that she did not find any such injuries on the person of PW 5. She also admitted that if a girl is habitually fingering herself in her private part, then the symptoms mentioned in the report may be possible.

33. Now the evidence in the present case indicates a history of sexual abuse over 7 to 8 months. This is not a case where the appellant is alleged to have suddenly committed a sexual assault on the victim. Therefore, according to us, there is nothing in the evidence of PW 8 or for that matter PW 9 to negate the prosecution version about the appellant having raped his minor daughter PW 5. The evidence of PW 8, to a certain extent, supports the prosecution version.

34. In any case, reference can usefully be made to the decision of the Hon'ble Supreme Court in **Rathu vs. State of Madhya Pradesh, 2007(12) SCC 57**, where it is held that in rape cases the finding of guilt

can be based even on the uncorroborated evidence of the victim and the evidence of the victim should not be rejected based on minor discrepancies and contradictions. The Hon'ble Supreme Court has further held that the absence of injuries on the private parts of the victim will not, by itself, falsify the case of rape nor, can it be construed as evidence of consent. Even the opinion of a doctor that there was no evidence of any sexual intercourse or rape is not sufficient to disbelieve the clear and cogent testimony of a victim. However, the Hon'ble Supreme Court also cautioned that false charges of rape are not uncommon and there may be some rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of rape either to take revenge or extort money or to get read of financial liability.

35. The Hon'ble Supreme Court has held that even where there is some inconsistency between ocular evidence and medical evidence, the former must prevail provided of course the ocular evidence inspires confidence. This principle has been quite correctly invoked by the learned Special Court in the present matter, assuming that there was indeed some conflict between medical evidence and the victim's evidence in the present matter.

36. According to us, no adverse inference is liable to be drawn against the prosecution for its failure to examine the victim's minor brother. In the first place, the victim has deposed that her minor brother used to stay at the paternal aunt's place during the night time and secondly, her brother was younger to PW 5 and there was no reason for PW 5 to disclose such matters or discuss such matters with her younger brother. The decision in *Pritamkumar* (supra) relied upon by Mr. Bhangde answers a similar contention raised in the said matter against the accused therein. Based on similar reasoning, therefore, we hold that this was not a case for any adverse inference was required to be drawn against the prosecution.

37. PW 13 was examined as a Court witness. She may not have entirely supported the prosecution version, but at the same time, we do not feel that her version is quite sufficient to demolish clear and cogent depositions of PW 5 in this matter. Even PW 5 stated that PW 13 saw her father i.e. appellant herein wearing trousers on 21.8.2015 and questioned her as to what her father was doing. PW 13 appeared a little confused when questioned about the incident, which, according to us, is quite natural. The Learned Special Judge who had the opportunity of witnessing the demeanor of this witness, has quite reasonably evaluated her testimony. Therefore, based on the testimony of PW 13, we cannot

hold that the prosecution version is either false or that the testimony of PW 5 is doubtful.

38. In this case, we are also unable to accept Mr. Bhangde's contention about inherent improbability. Unfortunately, there is nothing inherently improbable about what was deposed to in clear and cogent terms of PW 5. The testimony of PW 5 finds corroboration from the testimony of other prosecution witnesses like PW 2 her grandmother and PW 8 doctor, who examined her. The matters of this nature, it is difficult to find corroboration regards the actual rape because such an act is rarely performed in the presence of witnesses. The deposition of PW 5, in this case, inspires confidence and since the foundational facts have been established by the prosecution, the presumption under Section 29 of the POCSO was required to be invoked. Even in the absence of such presumption being invoked, we feel that in the present case the prosecution has succeeded in proving the guilt of the appellant beyond a reasonable doubt.

39. In *Pritamkumar* (supra), the Division Bench was concerned with an appeal against acquittal. In the said case, most of the contentions now raised by Mr. Bhangde were rejected by the Court. However, the prosecution in the said case had failed otherwise to prove the guilt of the accused person and this is what was held by the Sessions

Court in the said matter. The Division Bench, therefore, accepted that a plausible view has been taken by the Sessions Court which warranted no reversal having regard to the limited jurisdiction while considering an appeal against acquittal.

40. In *Mohd. Zakir Habib Khan* (supra) another Division Bench of this Court accepted the proposition that conviction under Section 376 of the Indian Penal Code can be based on the sole testimony of the prosecutrix provided of course such testimony inspires confidence. In the said matter, the allegation was that the father had continuously raped his daughter for about 6 to 7 years until she attained the age of 14 years. The Division Bench noted that the father, daughter, step-mother and some others were sleeping in the same room and it was highly improbable that the father raped the daughter for 6 to 7 years and further, the step-mother would not object to such rape or outraging of modesty for 6 to 7 years, but suddenly raised an objection when the daughter attained the age of 14 years. The Division Bench noted that even the paternal grandmother was staying in the same house and it is inconceivable that the daughter would not complain about such continuous sexual assault spread over 6 to 7 years even to her grandmother. Therefore, on facts, the evidence of the daughter was found to be unreliable and the conviction was quashed. The facts in the

present case are not at all comparable and, therefore, the decision in *Mohd. Zakir Habib Khan* (supra) can be of no assistance to the appellant.

41. The decisions of the learned Single Judge of this Court in the case *Mohan Meshram* (supra) and *Sadhu Turra* (supra) turn on their facts where the prosecution had miserably failed to even establish the foundational facts sufficient for invoking the presumption under Section 29 of POCSO. It is in these circumstances that the learned Single Judge held that in the absence of prosecution establishing even the foundational facts, the presumption under Section 29 of the POCSO ought not to be invoked to sustain a conviction. In the present case, the foundational facts have been more than established by the prosecution. Besides, even without invoking the presumption under Section 29 of the POCSO, the prosecution has succeeded in proving the guilt of the appellant beyond a reasonable doubt. The two decisions, therefore, cannot assist the appellant in the present case.

42. *Vanita Patil* (supra) was a case where the medical evidence conclusively ruled out, not only sexual assault but also sexual abuse. The decision turns entirely on facts that are quite peculiar and in no manner comparable to the facts in the present case. Therefore, even this decision, can be of no assistance to the appellant herein.

43. For all the aforesaid reasons, we are quite satisfied that the impugned judgment and order convicting the appellant warrants no interference whatsoever.

44. However, on the aspect of sentencing, we find that the sentence imposed by the learned Special Court under Section 376(2)(f)(i) and (n) of the Indian Penal Code of life imprisonment for the remainder of his natural life is rather harsh having regard to the proved facts and warrants some modification. This is maximum punishment provided under said section and the consequence of this sentence would mean that the appellant herein will have to suffer life imprisonment for the remainder of his natural life, without even aspiring for some remission after completion of the mandatorily prescribed sentence of 14 years. According to us, though, the crime for which the appellant is convicted is very serious, the reformative concept of sentencing cannot be altogether ignored. If the sentence as awarded is maintained then, possibly the jail authorities or the State Government will be deprived of their powers to even consider the pre-mature release of the appellant after completion of a minimum mandatory sentence of 14 years. At least in the facts of the present case, we feel that such a situation might be harsh.

45. Upon consideration of the seriousness of the crime committed by the appellant including more particularly the circumstance that the appellant was the father of a minor victim, in whom she was entitled to and had placed her trust, the ends of justice would be met if the appellant is sentenced to undergo imprisonment for a term of 20 years for offenses under Section 376(2)(f)(i) and (n) of the Indian Penal Code.

46. According to us, the sentence of imprisonment for a term of 20 years will be appropriate in the facts of the present case rather than a sentence for life imprisonment for the remainder of the appellant's natural life. The trauma suffered by the minor victim on account of facts of the appellant is no doubt quite great in this matter and, therefore, we do not think that this is a case where the appellant needs to be sentenced for a term of only 14 to 15 years as was proposed without prejudice on behalf of the appellant. Ordinarily, a sentence for life imprisonment implies a sentence for the remainder of the natural life. But subject to the statutory limitations and guidelines, the government can consider the premature release of a convict.

47. The appellant has already been sentenced to life imprisonment for offenses punishable under Sections 4 and 6 of the POCSO Act. However, there is no dispute that Section 6 of the POCSO

Act before its amendment w.e.f. 16.8.2019 had provided for a sentence of rigorous imprisonment for a term which shall not be less than 10 years but may extend to imprisonment for life and shall also be liable to fine. The explanation that the expression "imprisonment for life" shall mean imprisonment for the remainder of the natural life of that person was introduced w.e.f. 16.8.2019 i.e. much after the date of commission of the offense by the appellant herein.

48. Section 42 of the POCSO Act provides that where an act or omission constitutes an offense punishable under the POCSO Act and also under certain sections of the Indian Penal Code including Section 376 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such an offense shall be liable to punishment under the POCSO Act or the Indian Penal Code as provides for punishment which is greater in degree.

49. Applying the above provision and principle, there may not be a necessity for separate sentencing for the offenses under the POCSO Act, now that we find that a greater penalty was prescribed under the I.P.C. and further, we have sentenced the appellant herein to undergo imprisonment for a term of 20 years thereby making it clear that the appellant will have to suffer imprisonment for a term of 20 years in

accord with the rules and regulations as applicable before his case is considered for release.

50. For all the aforesaid reasons, we dispose of this appeal by making the following order :

ORDER

a) The conviction of the appellant in terms of impugned judgment and order dated 4th August 2017 is hereby upheld.

b) The sentences imposed upon the appellant for various offenses for which he stands convicted are maintained except the sentence for offenses under Section 376(2)(f)(i) and (n) of the Indian Penal Code is modified to rigorous imprisonment of 20 years instead of life imprisonment for the remainder of his natural life.

c) Save as modified as aforesaid. The challenge to the impugned judgment and order is hereby dismissed.

d) The appeal is partly allowed by upholding the conviction but modifying the sentence imposed.

e) **The record shall be returned to the Learned Special Court and all steps must be taken to mask the identity of the minor victim.**

(f) There shall be no order for costs.

(Pushpa V. Ganediwala,J.) **(M.S. Sonak, J.)**

वाडोदे