Supreme Court of India
State Of Maharashtra vs Rajendra Jawnmal Gandhi on 11 September, 1997
Author: D Wadhwa
Bench: M.K. Mukherjee, D.P. Washwa

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
RAJENDRA JAWNMAL GANDHI

DATE OF JUDGMENT: 11/09/1997

BENCH:
M.K. MUKHERJEE, D.P. WASHWA

ACT:

HEADNOTE:

JUDGMENT:

WITH CRIMINAL APPEAL NOS. 840 & 839 OF 1997 (Arising out of SLP (Crl.) Nos. 2510 /97 Crl. M.P. No.839/97) and SLP (Crl.) No.1773/96) J U D G M E N T D.P. WADHWA, J.

leave granted Rajendra Jawanmal Gandhi (the accused) was convicted by the Sessions Judge, Satara for offences under Section 376 Indian Penal Code (IPC) and Section 57 of the Bombay Children Act, 1948 for having committed rape on a girl of eight years of age and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for six months and for offence under Section 57 of the Bombay Children Act, he was sentenced to undergo rigorous imprisonment for one year and fine of Rs.500/- and in default thereof rigorous imprisonment for one moth. The substantive sentences were ordered to urn concurrently. Maruti car in which the offence of rape was committed was ordered to be forfeited and confiscated to the State. The accused appealed to the Bombay High Court against his conviction and sentence. A Division Bench of the High Court by judgment dated October 4, 1994 upheld the conviction of the accused under Section 57 of the Bombay Children Act and upset the conviction under Section 376 IPC and instead convicted him for an offence under Section 354 IPC and sentenced him to suffer rigorous imprisonment which he had already undergone (which was 33 days in all) and to pay fine of Rs.40,000/-. In default of payment of fine, the accused was sentenced to undergo rigorous imprisonment for three months. It was ordered that our of the fine so realised, a

sum of Rs.25,000/- shall be paid to the complaint who was father of the girl. For an offence under Section 57 of the Bombay Children Act, sentence was reduced to imprisonment already undergone and the accused not required to undergo any separate imprisonment for this offence. The Maruti Car was ordered to be returned to the accused and the order of forfeiture and confiscation was set aside.

The matter did not end at that. Nagrik Kirti Samiti, Kolhapur which had been formed was agitated about the acquittal of the accused for an offence under Section 376 IPC. The Convener of the Samiti Mr. P.D. Hankare represented to the State Government to file an appeal to this Court against the acquittal of the accused under Section 376 IPC. In the meantime, the accused had deposited the fine of Rs.40,000/- as ordered by the High Court and our of this amount a sum of Rs.25,000/- has been withdrawn by the father of the girl. Perhaps this was the consideration for the State Government not to file any appeal in the Supreme Court. Since there was no response from the State Government, Mr. P.D. Hankare, Convener of the Nagarik Kirti Samiti, Kolhapur approached this Court. He was granted permission to file special leave petition against the conviction and sentence on the accused by the High Court and as afore mentioned, after notice of this appeal was served upon the State of Maharashtra and the accused, both filed separate appeals in this Court, while the State of Maharashtra filed appeal against the conviction and sentence of the accused by the High Court praying for his conviction under Section 376 IPC and for enhancement of his sentence of minimum of 10 years, the accused filed appeal against his very conviction and sentence under Section 354 IPC and 57 of the Bombay Children Act.

Since the State itself has filed an appeal praying for conviction of the accused under Section 376 IPC and for his punishment under Section 376(f) as the girl child was less than 12 years of age, leave granted to P.D. Hankare, Convener, Nagrik Kirti Samiti, Kolhapur Loses its significance and we direct that the leave be revoked.

It may be noticed at the outset that the offence was committed at Kolhapur and the accused was to be tried there in the court of Session. But because of public outcry, the plea of the accused that he may not get fair trial at Kolhapur was accepted and the case was transferred to the file of Sessions Judge, Satara.

Before we consider the rival contentions, we may set out the relevant provisions of law under which the accused was tried:

Section 375 and Section 376 in relevant part is as under:

> "375 Rape. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six of following descriptions:- First.- Against her will. Secondly.- Without her consent. Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married Fifthly.- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which shed gives consent.

Sixthly.- With or without her consent, when she is under sixteen years of age.

Explanation.- Penetration is sufficient to constitute the sexual inercourse necessary to the offence of rape.

Exception.- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. Punishment for rape.-(1) whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. (2) Whoever, -

(a) .....

(b).....

(c).....

(d) .....

(e) .....

(f) Commits rape on a woman when she is under twelve years of age; or

(g) ..... shall be punished with rigorous imprisonment for a term which shall not be less than ten year but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less

than ten years."

Section 57 of the Bombay Children Act, 1948 is as under:

"57. Whoever seduces or indulges in immoral behaviour with a girl under the age of eighteen years shall, on conviction be punished with imprisonment of either description for a term which may extend to two years or with fine which may extended to one thousand rupees or with both."

"Immoral behaviour" is defined under Section 4(j) of this Act and it includes any act or conduct which is indecent or abscene.

The accused was charged for having committed rape on a girl of 8 years of age in a Maruti car of chocolate colour on a road leading to Ragala Park at Kolhapur at about 9.30 A.M. on September 24, 1986, thus committing offences punishable under Section 376 IPC and 57 of the Bombay Children Act.

In support of the charge the prosecution examined as many as 24 witness. The material witness would, however, be (1) the complainant Shrikant Desphande, father of the girl, (2) prosecutrix, (3) Police Inspector Labde who initially investigated the case, (4) Dr. Mrs. Sahastrabuddha (family doctor of the complainant), (5), Dr. Gunda (Medical Officer, Civil Hospital, Kolhapur), (6) Dr. Hoshing (Civil Surgeon, Kolhapur), (7) Vishakha Kulkarni (who gave the registration number of the Maruti car of chocolate colour), (8) Parashuram Jadhav (earlier registered owner of the car but had sold the same to the company of which accused was a Director), (9) Meena Bornvankar (Additional S.P., Kolhapur) and (10) Police Inspector Katambale (Investigating Officer).

The prosecutrix, a student of 4th class, had gone for tuition at 8.15 A.M. on September 24, 1986 to a private teacher in the colony where she was living with her parents. After her private tuition which was from 8.15 a.m. to 9.15 a.m. she was coming back to her home and then go to school with other children in a cycle rickshaw hired for the purpose. When the prosecutrix was going on the colony road at the intersection of this road and a bye-lane, which was a secluded spot, the accused caught-hold of her on the pretext that her assistance was required for pulling either the pipe or the wires in the Maruti car which was standing there. The girl was pushed inside the car. At that time she was wearing a midi-frock and a nicker. The accused pulled down her nicker and laid her on the seat in the car. She did try to resist by saying that she should be allowed to go and that she would be late in reaching home. The accused then opened the zip of his pant and started pressing his penis on her private part. When the girl cried that she would be late in reaching home, the accused said `wait', `one second'. According to her, thereafter the accused urinated. She felt wetness on her private part. After the girl was released she came home weeping. She embrached her father and narrated the whole incident to him. The parents of the girl examined her private part and the garments and noticed the sticky substance (semen) on some part of the midi-frock as well as on the nicker. There was redness on her private part. The girl described the person who committed such bashful act on her. Shrikant Deshpande, the father of the girl, took her on his scooter and came to the spot where the incident took place but there was no body. They returned home. The mother of

the girl gave her bath and she went to her school as usual. Deshpande, however, did not stop at that and he made more enquiries. He went to the sport again and there then he was told by Vishakha Kulkarni, a college student, who was living in the vicinity that a Maruti Car of chocolate colour was seen there which bore registration No. MGR-942. Deshpande went to RTO and came to know that the car was registered in name of Parashuram Jadhav. Thereafter he me Meena Bornvankar, Additional S.P. who at the relevant time was holding the charge of S.P. Kolhapur. She sent him to the police station to lodge of formal complaint. Parashuram Jadhav was traced. From his interrogation, it transpired that the Maruti car had been sold by him and further investigation revealed that at the relevant time it was in the possession of the accused.

At about 7.30 P.M. on the same day Deshpande too her daughter to a family Dr. Mrs. Sahastrabuddha for examination as after returning from the school the prosecutrix was complaining of plain in her private part. Dr. Mrs. Sahastrabuddha had been informed in the morning of the incident of rape. She noticed inflammation of labium minus (labia-minora). It appears, as held by the Sessions Judge, that this doctor did not fully examined the prosecutrix for when she was apprised that Deshpande had lodged a report with the police she advised him to get the girl examined by the Civil Surgeon as it was a medico-legal case. Dr. Gunda was the Medical Officer at Civil Hospital, Kolhapur and he examined the prosecutrix at 9 P.M. on September 24, 1986 itself. This he did on the basis of police `yadi'. On examination he found:

> "i) Labia-minora was inflammed and reddened.
>
> ii) External urethral meatus was reddened and swollen.
>
> iii) Hymen was intact.
>
> iv) P.V. examination was not possible. he therefore took the swab from introitus (opening of the vigina) and not from inside the vigina."

He, however, did not issue the medico-legal certificate on the same day. On October 2, 1986, he issued the certificate and under the head "Chief complaints" he had written : "Complains of burning micturition since afternoon today". Then on the followed day he certified that rape was committed with the following report:

> "Conclusion - Committed rape.. This conclusion I have drawn after clinical examination of the girl."

Report about the incident appeared in the newspaper of the town on the following day, i.e., September 25, 1986 and there was an immediate outcry in the public and `morchas' taken out.

Dr. Hoshing was the Civil Surgeon, Kolhapur, who, it would appear under intense public pressure, formed a panel of three private doctors to again examine the prosecutrix. The panel examined her on September 29, 1986. This panel consisted of Dr. Naganonkar, M.d. in Gynecologist, Dr. Kudalkar and Mr. Malakar, both senior doctors and the result of their examination is as under:

"i) Labia-minora inflammed.

ii) External urethral meatus inflammed.
iii) Fourchette showed abrasions with signs of inflammation.
iv) Infected linear vertichi teat

on right para-urethral region, and

v) Tear of hymen at 3' O'Clock position."

The midi-frock and the nicker of the prosecutrix were taken into possession in the course of investigation and so also the underwear, T-shirt and pant which the accused was wearing at the time he was taken into custody. The semen stain of Blood Group B were found on the nicker of the prosecutrix. The semen stain of blood group B were also found at the spot where the penis of the accused was touching his underwear. The blood group of the accused is of Group B.

It may be noticed that the Trial Court came heavily on the conducts of Dr. Gunda, the Medical Officer in his not submitting the medical report at the earliest and also to an extent of Dr. Houshing, the Civil Surgeon. It justified the medical examination of the prosecutrix on 29.91986 by panel of private doctors.

The Trial Court also noticed the following observations in the commentary on Medical Jurisprudence:

> "more redness of the labia minors is not indicative of recent sexual activity and it may no more than an indication of a lack of personal hygine, especially in young girls."

After examination the evidence and considering the arguments advanced, it came to the conclusion that it was the accused who indulged in sexual intercourse with the prosecutrix and that there was penetration. The Court, therefore, held that the accused was guilty of an offence of having committed rape on the prosecutrix. The Trial Court also found that it was proved that the accused indulged in immoral behaviour with the prosecutrix. It, therefore, convicted the accused and sentenced him as aforesaid.

The accused appealed to the High Court. It did not agree with the trial Court that considering the statement of the prosecutrix, examination of the cloths she was wearing and the medical evidence, any offence of rape within the meaning of Section 375 IPC was committed. The High Court noticed the medical examination of the prosecutrix in the following words:

> "The girl was taken to the family doctor Shashikala Sahastrabudhe (P.W.7) by her father in the evening at 7.30 p.m. who clinically examined her and found her private part has become reddish. In the night of 24th September, 1986 at about 9 p.m., `X' was examined by Dr. Gunda (P.W.140 - Medical Officer, Civil Hospital. He has also

> deposed that the case papers are at Ex. 56. He says that on internal examination of `X', both labia-minora were found inflammed (reddened) and external ursthral meatus was reddened and swollen. Hymen was intact."

The High Court then referred to the cloths which the prosecutrix was wearing at the time of the crime and it was found that there were two semen stains on her under- garments. The High Court also examined the cloths of the accused and it found that the semen stains found on the under-garments of the prosecutrix and underwear of the accused were of the same blood group `B' which was the blood group of the accused. One semen stain on the underwear of the girl was about two centimeter diameter near the waste band of her under-garment. From the examination of the evidence, the High Court also came to the conclusion that it was the accused who indulged in the perpetration of the crime which was committed on September 24, 1986 at about 9.30 a.m. was the charge laid by the prosecution. On the question, if it was a rape or an offence under Section 354 IPC outraging the modesty of a woman, the High Court referred to the statement of the prosecutrix and that of her father, Deshpande who lodged the FIR. As to what the FIR recorded, we may refer to the following observations of the High Court:

> "In the FIR, Ex.26 filed by the father, it is mentioned that the girl informed that the accused slept her on seat and then he slept on her body and began to struggle with her. The accused then pulled away her under-pant and pulled the chain of his pant and took out his male organ and put it on her private part and pressed it. Her private part was then aching. After some time to be passed his urine on her private part and her rubbed his organ to her frock. Then she took her under-pant upwards and came home running. However, the C.A. report, Ex.82, shows that there was no semen found on the frock. The evidence of the girl, her father and the FIR show that the legs of the accused were on the road. The nicker of the girl was only pulled and not removed. This is also clear the from the C.A. report Ex.82, that her nicker was having two stains of semen. If the nicker would have been removed then there would have been no stains as it is not the case of the prosecution that it was used by the accused for wiping his organ. Her legs were neither separated nor lifted. The evidence shows that be took out his organ and pressed it against her body and within seconds he discharged."

The High Court then noticed that the girl was given a bath and she went to school and that she only complained of some pain or burning sensation and that if there was anything serious noticed by the parents on examination, they would not have allowed her to go to school and rather taken her immediately to doctor. When the parents examined her private part, they found only reddishness. Her father took her to the family Doctor Mrs. Sahastrabudde at about 7.30 p.m. on the same day and doctor only noticed some portion of her private part had become red. No blood was noticed. Them the girl was examined by Dr. Gunda at about 9.00 p.m. on that very day. After examining the report of Dr. Gunda, the High Court concluded that clearly ruled out the actual rape. The High Court disapproved the constitution of the panel of doctors which it held was done under pressure from the public and that Dr. Houshing, civil surgeon succumbed to that pressure. The High Court was critical of the statement of Dr. Nagavkar who was member of the panel. High Court referred to the fact that

at the time of examination by the panel of three doctors neither Dr. Sahastrabuddha nor Dr. Gunda was called. Dr. Nagavkar stated that some respectable citizens of Kohlapur had approached him with a request to come for examination of the girl. No reason was recorded as to why it was necessary to re-examine the girl. High Court noticed that Dr. Nagavkar was evasive when he was asked whether he could say that the injuries noticed by the panel were present on September 24, 1986. He however, admitted that if tear was beyond the superficial layer, then it was bound to bleed. As there was no bleeding it was an abrasion involving superficial layer. He admitted that such abrasion was possible due to scratching. He also agreed that rupture of hymen was almost invariably accompanied by bleeding and that bleeding was brisk, immediate and visible. Dr. Nagavkar also agreed with the proposition that cloths put on immediately would have blood stains. High Court commented that Dr. Nagavkar was "required to make various acrobatics just to support the opinion and that while so he virtually admitted that there was not rape." The High Court held that there was no rupture of hymen and the girl was virgin. The accused was also examined and there was no injury to his private part. It noticed the statement of Dr. Nagavkar where he agreed with the opinion in Medical Jurisprudence quoted above and further that "exercisation of this type is common in young children as a result of poor local hygiene, scratching due to worm infection". For all these reasons the High Court rejected the conclusion arrived at by the panel of doctors. As to the conduct of Dr. Gunda which we have noticed above, the High Court was of the opinion that is seemed that he was required to bow before public pressure and the internal official pressure. it, therefore, rejected the opinion given by him on 3.10.1986 which certified that the rape was committed. The High Court said that a great disservice had been done to the little girl because of public agitation and which tended to make the future of the girl bleak. The Court, therefore, held that there was no rape as contemplated by Section 375 committed or proved. Then the High Court concluded that in its opinion, the evidence on record would, at the most, show that the accused attempted to commit rape. But then added that "however, as the evidence shows that her nicker was not completely removed, her legs were not separated or lifted and the act was sought to be done standing on the road, we hold that the act of the accused would fall within Section 354 of IPC and that he used criminal force as covered by Section 350 of IPC knowing full well that it would cause injury to the girl. He knew that it would thereby outrage the modesty of the girl. He pulled down her nicker and opened his pant and laid himself on her and discharged. The girl suffered pain. Therefore, we find that the accused guilty under Section 354 of IPC." On the question if an offence under Section 57 of the Bombay Children was committed, the High Court held that similarly as in the case of the offence under Section 354 IPC, the offence of the accused would also fall under Section 57 of that Act. The Court, therefore, held that the accused acted indecently and was thus guilty under Section 57 of the Bombay Children Act, 1948.

Both the sessions court and the High Court accepted the prosecution evidence as to how and who committed the crime. They, however, differ on the approach as to what offence was committed. While the trial court holds the accused guilty of an offence under Section 376 IPC, the High Court holds him guilty under Section 354 IPC. Both the courts did not attach any importance to the discrepancies in the statements of the witnesses which were insignificant and did not damage or impair the case of the prosecution. The courts have considered all the relevant circumstances to come to the conclusion that crime was committed and it was the accused who did so. The High Court, however, does say that there was attempt to commit rape which would be an offence falling

under Section 376 read with Section 511 IPC. But by some curious reasoning, the High Court proceeds to hold the accused guilty for an offence under Section 354 IPC. We think that the High Court is right in its approach that from the medical evidence and the statement of the prosecutrix and attendant circumstances, it cannot be said that there was penetration and there was, therefore, no sexual intercourse though the ingredients of attempt to commit offence of rape are there. The High Court had set aside the order of the sessions court confiscating the Maruti Car in which the offence of attempt to rape was committed as the car was owned by a company of which the accused was a Director. Since there is no appeal against this part of the order, we need not go into the scope and intent of Section 452 Cr.P.C. if the court could order confiscation of the car, it having been "used for the commission" of the offence of rape particularly if the car had been owned by the accused.

The circumstances show that the accused intended to commit rape on the girl. In the commission of that crime, he laid the girl on the seat in the Maruti Car and then laid himself over her. He pulled down her nicker and also opened the zip of his pant and took out his male organ. He pressed his male organ on the private part of the girl. But since he discharged, he could not penetrate and was unable to complete the offence of rape. However, it is clear that he did attempt to commit rape.

In Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat [1983 Cr.L.J. 1096] the accused had been convicted for the offence under Section 376 read with Section 511 IPC and was sentenced to two and a half years rigorous imprisonment. He was accused of having committed the offence against girls of 10 to 12 years of age. The Supreme Court said that the accused had behaved in a shockingly and indecent manner. The magnitude of his offence cannot be over-emphasised. The Supreme Court further noticed that the incident occurred some seven years back and the appellant had lost its job in view of the conviction recorded by the High Court. The accused was also having a daughter of the same age at the time he committed the crime. This Court was of the view that the accused must have suffered great humiliation in the society. The prospects of getting a suitable match of his own daughter had perhaps been marred in view of the stigma in the wake of the finding of quilt recorded against him in the context of such an offence. Taking into account the cumulative effect of these circumstances, and overall view of the matter, the Court said that the ends of justice would be satisfied if the substantive sentence imposed by the High Court for the offence under Section 376 read with Section 511 IPC was reduced from one of two and a half years to one of 15 months' rigorous imprisonment.

In 1983, law was amended prescribing more severe punishments for the perpetrators of the crimes of rape and other sexual offences.

The Law Commission of India in his 42nd report on Indian Penal Code submitted in June 1971 suggested amendments to Sections 375 and 376 IPC, expanding the definition of rape and providing for more severe punishment. The Commission also suggested incorporation of other offence relating to sexual offences in the IPC. In its 69th report on the Indian Evidence Act, 1872, the law Commission had also recommended reform in the law. Nothing, however, was done and law not amended. Then the subsequent Law Commission in its 84th report suggested changes in the law on rape and allied offences and amendments to the laws of procedure and evidence. The Commission submitted its report in April 1980 to the Central Government. After that the IPC, Cr.P.C. and

Evidence Act were amended by the Criminal Laws (Amendment) Act, 1983. In the statements of objects and reasons while presenting the Bill, it was mentioned that recommendations of the Law Commission had been examined in consultation with the State Governments and suggestion on the subject received. It was mentioned that the changes proposed in the Bill had been formulated principally on the basis of the following considerations:

> "(1) the law should be made more stringent without jeopardising considerations of fair trial; (2) the definition of rape should be amended to remove certain loopholes and inadequacies and to ensure that consent should be vitiated unless it is real and given out of free choice; (3) minimum punishments for rape should be prescribed;
>
> (4) the prosecutrix should be protected from the glare of embarrassing publicity during the investigatory as well as trial stage and any information leading to identification of the victim should not be disclosed; (5) In the case of rape by a police officer or by a group of persons or by a person having a custodial control by virtue of his special position by virtue of his special position over the victim, once it is proved that sexual intercourse has taken place, the onus should be on the accused to prove that the sexual intercourse was with the consent of the woman."

it will be useful to quote the following passage from the 84th Report of the Law Commission:

> "it is often stated that a woman who is raped undergoes two crises - the rape and the subsequent trial. While the first seriously wounds her dignity, curbs her individual, destroys her sense of security and may often ruin her physically, the second is no less potent of mischief, inasmuch as it not only force her to re-live through the traumatic experience, but also does so in the glare of publicity in a totally alien atmosphere, with the whole apparatus and paraphernalia of the criminal justice system focused upon her.
>
> In particular, it is now well established that sexual activities with young girls of immature age have a traumatic effect which often persists through life, leading subsequently to disorders, unless there are counter-balancing factors in family life and in social attitudes which could act as a cushion against such traumatic effects.
>
> Rape is the `ultimate violation of the self'. It is a humiliating event in a woman's life which reads to fear for existence and a sense of powerlessness. The victim needs empathy and safety and a sense of re-assurance. In the absence of public sensitivity to these needs, the experience of figuring in a report of the offence may itself become another assault. Forcible rape is unique among crimes, in the manner in which its victims are dealt with by the criminal justice system. Raped women have to undergo certain tribulations. These begin with their treatment by the police and continue through a male-dominated criminal justice system. Acquittal of many of facto guilty rapists adds to the sense of injustice.

> In effect, the focus of the law upon corroboration, consent and character of the prosecutrix and a standard of proof of guilt going beyond reasonable doubt have resulted in an increasing alienation of the general public from the legal system, who find the law and legal language difficult to understand and who think that the courts are not run so well as one would expect."

We may now refer to a few cases on Section 376 IPC decided by this Court after the Amending Act of 1983.

In State of Himachal Pradesh vs. Raghubir Singh (1993) 2 SCC 622 (judgment delivered on February 18, 1993) the Supreme Court set aside the acquittal of the respondent by the High Court holding him guilty of an offence under Section 376 IPC for having committed rape on the prosecutrix. Then the Court considered the question of awarding of proper sentence. It noted that the occurrence took place on August, 2, 1982, more than a decade ago and that the Sessions Judge after recording the conviction under Section 376 IPC had sentenced the respondent to suffer RI for five years. The State had not moved the High Court for any enhancement of the sentence. The Court, therefore, felt that the ends of justice would be met if the sentence to be imposed on the respondent was confined to five years RI as was awarded by the Sessions Judge. The Court also then observed as under:

> "We ma emphasise that though for such an offence a more severe sentence would have been desirable but we have restricted ourselves to the maintenance of the sentence as imposed by the learned Sessions Judge for the reason that the States did not seek any enhancement of the sentence by filing an appropriate petition in the High Court or in this Court and for over a period of seven years, while the case has remained pending here, no notice had been issued to the acquitted respondent to show cause as to why in the event of his acquittal being set aside, a more deterrent sentence, than the one imposed by the Sessions Judge, be not imposed upon him and without putting him on such a notice, the Court cannot enhance the sentence. If the notice were to issue now, it would further delay the disposal of the case and we do not consider that to be a proper course to be adopted. The more stringent minimum sentence prescribed for an offence under Section 376 IPC was also incorporated in the Code by an amendment only with effect from December 1983 after the offence in the present case had been committed."

In State of Punjab vs. Gurmit Singh and others (1996) 2 SCC 384 which was an appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984 against the judgment of the Additional Judge, Special Court, Ludhiana dated June 1, 1985 acquitting the respondents of the charges of abduction and rape, the Court set aside the acquittal and convicted the respondents for offence under Section 363/366/368 and 376 IPC. On the question of sentence the Court observed as under:

> "So far as the sentence is concerned, the court has to strike a just balance. In this case the occurrence took place on 30-3-1984 (more than 11 years ago). The respondents were aged between 21-24 years of age at the time when the years of age at the time

when the offence was committed. We are informed that the respondents have not have involved in any other offence after they were acquitted by the trial court on 1-6-1985, more than a decade ago. All the respondents as well as the prosecutrix must have by now got married and settled down by now got married and settled down in life.

There are some of the factors which we need to take into consideration while imposing an appropriate sentence on the respondents. We accordingly sentence the respondents for the offence under Section 376 IPC to undergo five years' RI each and to pay a fine of Rs.5000 each and in default of payment of fine to 1 year's RI each. For the offence under Section 363 IPC we sentence them to undergo three years' RI each but impose no separate sentence for the offence under Sections 366/368 IPC. The substantive sentences of imprisonment shall, however, run concurrently."

The following observations in the judgment would also be relevant:

"Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. it is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine then broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

In State of Maharashtra vs. Prakash and another AIR 1992 SC 1275 the Court ***** aside the acquittal by the High Court of the respondents for offence under Section 376 read with Section 34 IPC as well as under Section 342 read with Section 34, IPC. The Extra Additional Sessions Judge, Amravati had, however, convicted the respondents and sentenced them to rigorous imprisonment for three years on the first count and for two months on the second count. After having set aside the

acquittal of the respondents the Court on the question of sentence said as under:

> "We are aware that the offence had taken place in the year 1978 and that they were acquitted by the High Court as far back as August, 1981 and we are reversing the acquittal after a lapse of more than 10 years but having regard to the nature of the offence and the circumstances in which it was perpetrated, we are of the opinion that the respondents deserve no mercy. They should suffer for their deed."

In State of U.P. vs. Babul Nath (1994) 6 SCC 29 the Session Judge convicted the respondent for offence under Section 376 IPC for having committed rape on a minor girl aged about 5 years and sentenced him to suffer imprisonment for five years. On appeal by the respondent, the High Court, however, acquitted him of the charge of rape. This Court set aside the acquittal and help respondent guilty of an offence punishable under Section 376 IPC and restored the sentence imposed by the Sessions Judge. It may be noted that the offence was committed in March 1977 and the appeal was decided by this Court in August 1994.

In Madan Gopal Kakkad vs. Naval Dubey and another (1992) 3 SCC 204) the trial court acquitted the respondent for an offence under Section 376 IPC for having committed rape on girl child of 8 years of age. Aggrieved by the judgment of the trial court the State filed an appeal before the High Court challenging the order of acquittal. Father of the child also filed a criminal revision in the High Court questioning the legality of the order of acquittal. It appears one Jay Rao of New York (U.S.A) wrote the report of this incident in a German Magazine called "Der Spiegel" and after visiting Jabalpur sent a petition of grievance addressed to the Chief Justice of India with a copy to the Chief Justice of Madhya Pradesh. On the basis of this petition another criminal revision was also registered. The High Court disposed of the appeal and two criminal revisions by a common judgment, whereby it allowed the State appeal, held respondent guilty of an offence under Section 354 IPC and sentenced him to pay a fine of Rs.3000/- and in default to suffer simple imprisonment for six months. The High Court also directed that a sum of Rs.2,000/- out of the fine amount if realised be paid over a compensation to father of the child who was petitioner in the criminal revision. No separate orders were passed in the two criminal revisions. The State did not prefer any further appeal before this Court. However, the father of the victim girl, who was the complainant and also petitioner in the criminal revision before the High Court, filed criminal appeal in this Court. He felt aggrieved by the judgment of the High Court on the ground that the High Court had erred in finding the respondent guilty of a minor offence under Section 354 IPC when all the necessary ingredients to constitute an offence punishable under Section 376 IPC had been satisfactorily established and that the sentence of mere fine under Section 354 IPC for such a serious offence was grossly inadequate and was not commensurate with the gravity of the offence committed by the respondent. This Court after examining the whole evidence and law on the subject held the respondent guilty of an offence under Section 376 and set aside his conviction under Section 354 IPC. The Court then addressed itself to the quantum of punishment which would meet the ends of justice in the facts and circumstances of the case. The offence in this case was committed in September 1982 and the judgment was delivered in April 1992 by this Court. The Court having regard to the seriousness and gravity of the repugnant crime of rape perpetrated on a girl child of B years of age sentenced the respondent to rigorous imprisonment for a period of seven years and to

pay a fine of Rs.25,000/- and in default to suffer rigorous imprisonment for 1-1/2 years. It was further directed that the amount of fine of Rs.25,000/- if realised shall be paid to the victim girl who was now a major.

In our opinion, therefore, the High Court after having come to the conclusion that the accused was guilty of an offence under Section 376/511 of the IPC could not have convicted the accused for an offence under Section 354 IPC. Section 511 IPC provides punishment for attempting to commit offence punishable with imprisonment for life or other imprisonment. In this case since the girl was under 12 years of age and the Sessions Judge having found that offence of rape had been committed could not have awarded sentence of 7 years when the law prescribes minimum sentence of rigorous imprisonment for a term not less than 10 years, unless exceptional circumstances existed. However, we find that the State or the complainant did not come up in appeal in the High Court for enhancement of the sentence. Though there was no charge under Section 376 read with Section 511 IPC, under Section 222 of the Code of Criminal Procedure when a person is charged for an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

Having come to the conclusion that the accused committed an offence under Section 376/511 IPC, the question arises as to what sentence should be imposed upon him. It was submitted before us that the time when the offence was committed the accused had also a daughter of 8 years of age. If that be so perversion of mind of the accused does not appear to have any limit. It was submitted that a long time had elapsed since the offence was committed and that in terms of the judgment of the High Court the accused deposited Rs.40,000/- out of which Rs.25,000/- had already been withdrawn by the father of the prosecutrix. It was submitted that if the Court came to the conclusion that the sentence had to be enhanced then amount of fine could be raised. We, however, do not think so. A heinous crime has been committed and the accused must suffer for his consequences. A rapist not only violates the victim personal integrity but leaves indelible marks on the very soul of the helpless female. The girl of 8 years must have undergone an traumatic experience. The question of imposition of sentence after lapse of 11 years of the offence troubled our mind a great deal. Keeping the objects of the amendment of IPC in view and the law as it exists today, the decisions of this Court referred to above on the question of sentence, the message is loud and clear that no person who commits or attempts to commit rape shall escape punishment.

We agree with the High Court that a great harm had been caused to the girl by unnecessary publicity and taking our morcha by the public. Even the case had to be transferred from Kohlapur to Satara under the orders of this Court. There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and he is to be guided strictly by rules of law. If the finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law. While imposing sentence of fine and directing payment of whole or certain portion of it to the person aggrieved, the court has also to go into the question of damage caused to the victim and even to her family. As a matter of fact the crime is not only against the victim it is against the whole society as well. Since late, there has been spurt in crimes relating to

sexual offences.

Considering the whole aspect of the matter, we are of the opinion that sentence of five years rigorous imprisonment and fine of Rs.40,000/- will meet the ends of justice. The fine has already been paid, out of that Rs.25,000/- has been withdrawn by the father of the girl as per direction of the High Court which we uphold. We, therefore, allow the appeal of the State convert the conviction of the accused-respondent from under Section 354 IPC to that under Section 376/511 IPC and sentence him as aforesaid. Since fine has already been paid, no sentence of imprisonment in lieu of payment thereof need be imposed. The conviction and sentence of the accused under Section 57 of the Bombay Children Act as ordered by the High Court shall, however, stand. The sentences shall run concurrently. In this view of the matter, appeal filed by the accused is dismissed. The accused will be taken into custody and would undergo the remaining portion of his sentence.