

IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH
DR. H.B. PRABHAKARA SASTRY; J., ANIL B. KATTI, J.
CRIMINAL APPEAL No.200058/2014; 27 OCTOBER, 2022

The State through Grameen Police Station, Gulbarga
versus

Sharanu @ Sharanappa @ Sharanabasappa

Appellant by Sri Prakash Yeli, Additional State Public Prosecutor

Respondent by Sri. Ameet Kumar Deshpande, Senior Counsel For Sri. Suresh C. Tengli, Advocate)

This Criminal Appeal is filed under Section 378 (1) and (3) of the Code of Criminal Procedure, 1973, praying to grant leave to appeal against the judgment and order dated 18.11.2013 passed by the I Additional Sessions Judge, Gulbarga, in Sessions Case No.335/2012, thereby acquitting the respondent/accused for the offence punishable under Sections 450, 376 and 506 of the IPC; set aside the judgment and order of acquittal dated 18.11.2013 passed by the I Additional Sessions Judge, Gulbarga, in Sessions Case No.335/2012 for the offences punishable under Sections 450, 376 and 506 of IPC and to convict the respondent/accused for the offences punishable under Sections 450, 376 and 506 of IPC, in the interest of justice and equity.

This Criminal Appeal having been heard through Physical Hearing/Video Conferencing Hearing and reserved for judgment at Kalaburagi Bench, on 28-09-2022, coming on for pronouncement at the Principal Bench at Bengaluru, this day, Dr.H.B. Prabhakara Sastry J. delivered the following:

J U D G M E N T

The State has filed this appeal under Section 378 (1) & (3) of the Code of Criminal Procedure, 1973, (hereinafter for brevity referred to as "the Cr.P.C."), challenging the judgment of acquittal dated 18-11-2013 passed by the learned I Additional Sessions Judge at Gulbarga (hereinafter for brevity referred to as "the Sessions Judge's Court") in Sessions Case No.335/2012, acquitting the accused of the offences punishable under Sections 450, 376 and 506 of the Indian Penal Code, 1860 (hereinafter for brevity referred to as "the IPC").

2. The summary of the case of the prosecution in the Sessions Judge's Court was that, the accused, who was a married person having wife and two children and a resident of the village of the complainant/victim, was asking her to have sexual intercourse with him and was always following her and used to threaten her. In the month of December 2011, on a day in the afternoon, when the other members of the family of the victim girl had been to their agricultural land for work, noticing that the complainant/victim was alone in her house, the accused barged into her house and caught hold of her, closed her mouth with the help of a cloth and assaulted her and committed rape upon her. Further, the accused threatened her of killing her in case if she revealed about the incident to anyone.

It is further the case of the prosecution that, subsequently, on many occasions, the accused had sexual intercourse with the complainant by putting her under life threat. He used to further threaten her that in case if she reveals the same to anyone, he would take her to Mumbai and sell her to others. Due to such repetitive acts of rape by the accused upon her, the complainant (victim girl) got pregnant, which fact she had not disclosed to

anyone. However, when she had been to the house of her aunt situated at a place called Honnakiranagi village, she developed severe pain in her stomach. Her aunt took her to the Hospital, where, after examination, the Doctor told her that the complainant/victim girl was pregnant of two and a half months. Later, at the request of her aunt, the Doctor medically terminated the pregnancy of the complainant. However, the parents of the victim girl came to know about the said fact of she becoming pregnant and the fact of medical termination of her pregnancy. Thereafter, the parents of the victim convened a Panchayat in the village. Though the accused did not attend the said Panchayat, but his parents, who attended the Panchayat, before the elders in the village, agreed to perform the marriage of the victim girl with their son, i.e. the accused - Sharanu @ Sharanappa. It was also agreed that their marriage to be registered in the Office of the Registrar of Marriages at Kalaburagi (then Gulbarga). However, the accused failed to come to Kalaburagi and failed to marry her. On the other hand, the accused threatened the victim girl and her family members stating that, he would burn them by setting their house on fire. It is on the above lines, the complainant/victim girl lodged a complaint with the appellant - Police on the date 03-04-2012. After registering the same, in their Station Crime No.104/2012, for the offences punishable under Sections 448, 376 and 506 of the IPC, the appellant - Police conducted the investigation and filed charge sheet against the accused for the offences punishable under Sections 448, 376 and 506 of the IPC.

3. In order to prove the alleged guilt against the accused, the prosecution got examined in all fourteen (14) witnesses as PW-1 to PW-14 and got marked documents from Exs.P-1 to P-15(a) and produced Material Objects MO-1 to MO-6. From the accused's side, neither any witness was examined nor any documents were marked as exhibits.

After hearing both side, the learned Sessions Judge's Court, by its judgment dated 18-11-2013, acquitted the accused of the offences punishable under Sections 450, 376 and 506 of the IPC. Challenging the same, the State has preferred the present appeal.

4. The respondent/accused is being represented by his learned counsel.

5. The Sessions Judge's Court records were called for and the same are placed before this Court.

6. Heard the arguments from both side. Perused the materials placed before this Court including the memorandum of appeal, impugned judgment and the Sessions Judge's Court records.

7. For the sake of convenience, the parties would be henceforth referred to as per their rankings before the learned Sessions Judge's Court.

8. After hearing the learned counsels for the parties, the points that arise for our consideration in this appeal are:

[i] Whether the prosecution has proved beyond reasonable doubt that the accused on a day in the month of December 2011, in the afternoon committed the house trespass of the house of the complainant/victim at Keroouru village, within the limits of the complainant Police Station, with an intention to commit rape on the victim which is an offence punishable with imprisonment upto for life and thereby committed the offence punishable under Section 450 of the IPC?

[ii] Whether the prosecution has proved beyond reasonable doubt that, the accused on the date, time and place mentioned above committed rape on the victim

girl/complainant and thereby committed an offence punishable under Section 376 of the IPC?

[iii] Whether the prosecution has proved beyond reasonable doubt that, the accused had threatened to the life of the victim girl and her parents i.e. CW-4 - Sri. Subhash and CW-5 - Smt. Siddamma with an intention to cause alarm to them and thereby has committed the offence punishable under Section 506 of the IPC?

[iv] Whether the judgment of acquittal under appeal warrants any interference at the hands of this Court?

9. Learned Additional State Public Prosecutor for the appellant-State, in his argument, submitted that, as on the date of the alleged offence, the victim girl was minor in her age, as such, her alleged consent, if any, would not be a valid consent in the eye of law. He further submitted that the alleged consent letter/consent deed at Ex.P-14 which has remained undisputed by the accused itself goes to show that the accused has committed rape upon the victim girl/complainant. However, the Sessions Judge's Court erred in observing that the victim girl was major in her age and the sexual act of the victim girl with the accused was a consensual act, as such, it does not amount to rape.

Relying upon few judgments of the Hon'ble Apex Court and also a judgment of the co-ordinate Bench of this Court, the learned Additional State Public Prosecutor for the appellant-State submitted that, when there is School Certificate showing the date of Birth of the victim girl/complainant, the uncertain medical evidence ought not to have been solely relied upon by the Sessions Judge's Court. With this, he submitted to allow the appeal as prayed.

The citations relied upon by the learned Additional State Public Prosecutor would be referred to at the relevant places herein afterwards.

10. Learned Senior Counsel for the respondent/ accused in his argument submitted that, the documents at Ex.P-10 and Ex.P-12 would go to show that, the victim was major in her age as at the time of the alleged incident. Further, the Doctor who examined the victim girl has stated that the victim girl has stated her age to be 19 years before her. Even the alleged victim girl, as PW-3, has also stated that the age shown in the Hospital records are true. Therefore, the Sessions Judges Court has rightly held that, the victim girl was major in her age, as on the date of the alleged incident and that the act of sexual intercourse was a consensual act.

Learned Senior Counsel for the respondent/accused further submitted that the consent deed at Ex.P-14 proves that, it was a sexual consensual act with the consent of the complainant/alleged victim girl. Therefore, Section 376 of the IPC is not attracted.

He also submitted that the alleged threat said to have been given by the accused has not been proved by the prosecution. He further stated that due to political rivalry, a false case has been foisted against the accused.

Finally stating that, the delay in lodging the complaint was not explained by the complainant, learned Senior Counsel also relied upon two judgments of the Hon'ble apex Court in his support and submitted that the impugned judgment does not warrant any interference at the hands of this Court.

The case laws relied upon by the learned Senior Counsel for the respondent/accused would be referred to at the relevant places herein afterwards.

11. Among the 14 witnesses examined by the prosecution, the important witnesses who speak about the alleged incident are mainly the alleged victim girl/ complainant, i.e. PW-

3 (CW-1)- Kum.Lakshmi, PW-2 (CW-4) - Sri. Subhash, PW-4 (CW-5)- Smt. Siddamma, and PW-5 (CW-6)- Smt. Sharanamma.

12. The complainant/alleged victim girl, in her evidence as PW-3 (CW-1) has stated that, she knows the accused who is residing at a short distance from her house in their village. While she was walking in the village, the accused was looking at her with lust in his eyes. He used to follow her, wink at her and pestering her to sleep with him. That being the case, one afternoon, at about 3:00 p.m., in the month of December 2011, while she was alone at her home, the accused entered her house and asked her to fetch some drinking water for him. After entering the house, the accused closed the door of the house and making her to fall on the ground, committed rape upon her. He also threatened her of killing her in case if she reveals about the incident to her parents. About two to three times, the accused has repeated the said act of rape upon her, when nobody used to be there in her house.

The witness has further stated that three months thereafter, to attend a family function in the house of her aunt - Smt. Sharanamma in a place called Honnakiranagi village, she had been there. At that time, she developed pain in her stomach. Her aunt took her to Gowra Hospital at Kalaburagi (then Gulbarga). The Doctor examined her and stated that she was two and a half months' pregnant. Her aunt got her pregnancy medically terminated. Her parents came to know about the same. Later, they summoned the accused and his parents before the elders in the family and got the Panchayat held. In the said Panchayat, the accused agreed to marry her, however, he did not marry her. Since he refused to marry her, she lodged a complaint before the Police against him. Stating so, the witness has identified her complaint at Ex.P-2. She also stated that as shown by her, the Police visited the spot and drew a scene of offence panchanama. They also collected the cloths worn by the accused while she was in the Hospital. The witness has identified those two cloths at MO-1 and MO-2.

This witness was subjected to a detailed crossexamination from the accused's side. In her crossexamination, though several attempts were made to shake the credibility of her evidence given in her examination-in- chief, but the witness adhered to her original version.

However, she admitted a suggestion as true that the details about her name and age mentioned in the Gowra Hospital records are true. She also has given more details about the alleged act upon her and also she lodging the complaint against the accused before the Police.

13. PW-2 (CW-4)- Sri. Subhasha, who is admittedly the father of PW-3 - the alleged victim girl, has stated that, on the date of incident, when both himself and his wife had been to their land, at that time, their daughter (victim girl) was alone at home. Three months thereafter, his daughter had been to the house of her aunt, i.e. the elder sister of his wife Smt. Sharanamma at Honnakiranagi village to attend a family function there. In the said place, his daughter developed pain in her stomach. Her aunt Sharanamma took her to the Hospital, where the Doctor, after examining her stated that, she (victim girl) was pregnant of two months. She got her pregnancy aborted. It was in the very same evening, he (this witness) came to know about the said act of abortion. Then he enquired with his daughter and came to know from her that, on the date when himself and his wife had been to their land and while his daughter alone was at home, the accused, who was a resident of the same village entered their house and committed rape upon her.

The witness has further stated that, thereafter, he went to the house of the accused and informed the parents of the accused about the incident. He brought them to the

Hospital where his daughter was taking treatment. The Doctor also stated that the pregnancy of the girl was aborted. Then they returned to their village and assembling the elders in the village, got a Panchayat conducted and in the presence of Panchayatdaars, the accused agreed to marry his (of this witness) daughter. He also agreed that within eight to ten days, the marriage would be registered in the Office of the Registrar of Marriages. However, the accused did not marry her. Then as per the advise of the Panchayatdaars, he decided to lodge a complaint against the accused. Accordingly, the complainant (PW-3) has lodged a complaint with the Police.

This witness also was subjected to a detailed crossexamination from the accused's side. He has given more information about the incident and the time when he came to know about the incident through his daughter. He also stated that the Police had advised him to compromise the matter with the accused.

The witness denied the denial suggestions made from the accused's side. He further stated that when the Panchayat was held in the presence of the elders, the accused had executed a consent deed which contains his (this witness's) signature. However, neither the accused nor his daughter had put their signatures on the consent letter.

The witness has also denied a suggestion that, due to a political rivalry with respect to an election, a false case has been lodged against the accused. He denied that no alleged incident, as stated by him, has occurred. Thus, except eliciting more details about the incident, the evidence of PW-2 given in his examination-in-chief also could not be shaken in the cross-examination of that witness from the accused's side.

14. PW-4 (CW-5) – Smt. Siddamma, the mother of the alleged victim girl has stated in her examination-in-chief that her daughter, i.e. the victim girl had been sent to her aunt – Smt. Sharanamma's house at Honnakiranagi village to attend a family function. At that time, her daughter developed pain in her stomach. The said Sharanamma had taken her to Gowra Hospital at Kalaburagi (then Gulbarga). On the same day, she (this witness) joined by her husband also had been to Kalaburagi. While they were about to return to their village, they saw the said Sharanamma standing in front of Gowra Hospital. When enquired, she stated that the alleged victim girl had been brought to the Hospital. After visiting their daughter, she (this witness) came to know by enquiring with her daughter that the accused had committed rape upon her, one afternoon of a day, while she was alone at her house, due to which, she conceived and her pregnancy was got medically terminated. The girl also stated before her that, she was put under life threat by the accused, as such, she did not reveal about the incident before her parents.

The witness further stated that, thereafter, after assembling the elders, they got conducted a Panchayat. In the said Panchayat, which also included the elders by name Sadashivappa, Nayeem Khan and Madivalaiah, the father of the accused had attended. Since the father of the accused refused to get the alleged victim girl married to his son, the victim girl went to the Police Station and lodged a complaint.

This witness also was subjected to a detailed crossexamination, wherein she adhered to her original version. However, she stated that she had not attended the Panchayat and that her husband had been to the Panchayat.

This witness denied the suggestion that due to a political rivalry in connection with an election, a false case has been lodged against the accused.

Thus, the evidence of PW-4 also corroborates the evidence of PW-3 and PW-2 about the alleged incident and the alleged act of the accused in committing the alleged offence.

15. PW-5 (CW-6)- Smt. Sharanamma has stated that, her niece i.e. the victim girl had been to her house to attend a family function. At that time, she complained of pain in her stomach. She (this witness) took her to Gowra Hospital at Kalaburagi (then Gulbarga). There, the Doctor, after examining her (victim girl), stated that she was pregnant of two and a half months. When enquired, her niece stated that, while her parents had been to their land and she was alone at home, the accused entered their house and after asking for a cup of water to drink and while she had gone inside, he entered inside and by closing the door, committed rape upon her.

The witness also stated that she got the pregnancy of the victim girl medically terminated in the Hospital. While the victim girl was in the Hospital, when she had come out of the Hospital, to have a cup of tea, her sister (PW-4) and her husband (PW-2) saw her and enquired her as to why she was there. She told them the details. Thereafter, after returning to their village, the parents of the victim girl got conducted a Panchayat, however, the accused did not agree to marry the victim girl. Thus, the victim girl lodged a complaint against the accused before the Police.

In her cross-examination, this witness adhered to her original version, however, she stated that the details of the victim girl about her name, father's name and age of the girl were given to the Doctor by herself (by this witness). She stated that, it was she who has given her consent to the Doctor for medical termination of the pregnancy of the victim girl. She denied the denial suggestions made to her. Thus, the evidence of PW-5 corroborates the evidence of PW-2 and PW-3 that, it was the said PW-5 (this witness) who got the pregnancy of the alleged victim girl medically terminated and accidentally PW-2 and PW-4, noticing PW-5 near the Hospital came to know about their daughter becoming pregnant at the act of the accused. The evidence of PW-5 that it was she who got the pregnancy of the alleged victim girl medically terminated at Gowra Hospital at Kalaburagi was not denied in her cross-examination.

16. PW-6 (CW-8) – Ramji, PW-8 (CW-10) - Madivalaiah and PW-9 (CW-9) - Nayeem Khan were examined by the prosecution as witnesses who speak about the holding of alleged Panchayat at the instance of the parents of the alleged victim girl.

PW-6 and PW-9 in their evidence have uniformly stated that, PW-2 - Yeshwant Jamaadaar got them assembled including PW-8 - Madivalaiah, Sadashivappa and others to hold the Panchayat. The Panchayatdaars suggested the father of the accused that the accused should marry the victim girl. The father of the accused agreed to the same. The marriage was fixed to be held on the date of Ugadi, however, the accused did not marry the victim girl.

In the cross-examination of PW-6, the witness has stated that a consent deed was prepared according to the resolution passed in the Panchayat and after reading out in the presence of all, it was signed wherein he (this witness) also has put his signature.

PW-9, in his cross-examination stated that, to the said Panchayat, the accused and the victim girl did not appear. Both PW-2 - Subhasha and one Yeshwant, the father of the accused jointly stated before the elders that, the accused has committed rape upon the victim girl. The witness admitted a suggestion as true that the consent deed was also written in the Panchayat. He also admitted that in the said consent letter, it was mentioned that since the accused and the victim girl were loving each other, their marriage inter se has to be performed.

By stating so, both PW-6 and PW-9 have made it clear that, as stated by PW-2 and PW-4, a Panchayat was held in the village in connection with the alleged incident.

Further, by suggesting to PW-9, the accused has admitted that a consent deed was executed in the said Panchayat.

17. PW-8 (CW-10) - Madivalaiah, PW-6 (CW-8) - Ramji and PW-9 (CW-9) - Nayeem Khan, stating that, they too were among the Panchayatdaars, have stated that, they have seen the holding of Panchayat with respect to the incident of the accused committing rape upon the victim girl (PW-3). The Panchayatdaars decided that the accused should marry the victim girl on the date of Ugadi, however, the accused did not marry the victim girl.

The witnesses have also stated that in the said Panchayat, a document was also written.

In the cross-examination of PW-8, the witness has also stated that, he was the scribe of the consent deed in the Panchayat. He stated that he has written the consent deed as stated by the Panchayatdaars.

The witness (PW-8) admitted a suggestion as true that as stated by the Panchayatdaars it was shown in the consent deed that the accused and the alleged victim girl were loving each other and as such, their marriage inter se has to be performed.

Thus, even by suggesting to this witness also like PW-9, the accused has admitted the execution of the alleged consent deed in the Panchayat said to have been held in their village at the instance of PW-2 - the father of the victim girl. This further corroborates the evidence of PW-2 - the father of the alleged victim girl that after the alleged incident, at his instance, a Panchayat was held before the elders in their village, where a consent deed was prepared.

18. The next witness who speaks about the alleged medical termination of pregnancy of PW-3 - victim girl is, PW-11 (CW-17) - Dr. Annapurna Goura. She has stated that, to her Maternity Home, with the name and style 'Goura Maternity Home' at Gulbarga (now Kalaburagi), on 13-03-2012, PW-5 - Sharanamma brought PW-3 - the alleged victim girl with the complaint of some complication regarding menstruation. After conducting some test, she confirmed that the said victim girl was pregnant of ten weeks and two days. At the request of said PW-5 - Smt. Sharanamma - the aunt of the victim girl, the pregnancy of the victim girl was terminated on the same day. Later on, one day, the Police visited her Hospital and seized the case papers and also obtained a clarification letter from her about the medical termination of pregnancy of the victim girl. The witness has identified the said letter at Ex.P-12.

In her cross-examination from the accused's side, the witness admitted a suggestion as true that, in the consent form, filled up and given by the patient (victim girl), she has stated her age as 19 years. When the girl told her age before her, Smt. Sharanamma was also present. She further stated that in case if the patient is minor, then for termination of pregnancy, she was to take the consent of her parents/guardian.

The said un-denied evidence of PW-11 corroborates the evidence of PW-2, PW-3, PW-4 and PW-5 that, PW-3 the victim girl had become pregnant of two months and her pregnancy was medically terminated at Goura Hospital in Gulbarga (now kalaburagi). Therefore, the evidence of PW-3 that she conceived, which, according to her, was at the act of the accused, stands further corroborated by the evidence of PW-11 - Medical Doctor.

19. The last witness, who speaks about the alleged act of sexual intercourse upon PW-3 is, PW-10(CW-15) – Dr. Neelavati Tambre, who has stated in her evidence that, while working as a Lady Medical Officer on deputation at the District Government Hospital,

Gulbarga, on the date 03-04-2012, she examined PW-3 - the victim girl, who was brought to her by the complainant - Police, through a Woman Police Constable, with the history of sexual assault in the month of December 2012. The mother of the victim girl also had accompanied the victim. The witness stated that, the victim told her that Sharanappa, son of Yeshwant had repeated sexual intercourse with her in the month of December 2012 and that he had been to her house in the afternoon when nobody was present in the house and on the pretext of asking for a cup of drinking water, he went inside and closing the door, had forcible sexual intercourse with her. This witness stated that the girl told to her that though she shouted for help, but nobody came to her rescue. The girl further told to her that the accused used to come to her house on every fifteen to twenty days and threatened her that if she revealed the matter to her parents, he would kill her.

The witness further stated that, as told to her by the victim girl, she became pregnant and as such, she got her pregnancy medically terminated at a Private Hospital in Goura Maternity Home.

The witness further stated that, she subjected the girl to medical examination and after conducting various examinations including blood, ultra sonography, and clinical examination and also getting the patient examined by the psychiatrist - Dr. Amol, she was of the opinion that, age of the alleged victim girl was between 16 years to 18 years and that she was used to the act similar to that of sexual intercourse, however, she did not find any evidence of recent sexual intercourse.

This evidence of PW-10 was not specifically denied in her cross-examination, which further goes to show that, the victim girl had sexual intercourse and had become pregnant, which pregnancy she got medically terminated.

Thus, the evidence of PW-2, PW-3, PW-4, PW-5, PW-6, PW-8, PW-9, PW-10 and PW-11 would go to show that PW-3 - victim girl having been subjected to sexual intercourse, had become pregnant and that her pregnancy was medically terminated.

20. The evidence of PW-3 would further go to show that, it was the accused and accused alone who had sexual intercourse with her. The said evidence of PW-3 is further corroborated by the evidence of her parents i.e. PW-2 (father) and PW-4 (mother) and also the evidence of her aunt i.e. PW-5. Further, even PW-10 - the Lady Medical Doctor has also stated that, the history given by none else than the victim was that, the sexual intercourse upon her was by none else than the accused. The trustworthy evidence of these witnesses would further go to establish that, it was the accused and accused alone who had sexual intercourse with PW-3 - the victim girl, which had resulted in she conceiving and later on getting her pregnancy medically terminated.

21. The evidence of Panchayatdaars i.e. PW-6, PW-8 and PW-9 also would go to show that, a Panchayat in connection with the relationship of the accused and the victim girl was held, wherein the accused was advised to marry the victim girl, by drafting a consent deed, however, the accused did not marry. The said aspect of a consent deed having been drawn in the said Panchayat is admitted by the accused in the cross-examination of PW-8 and PW-9.

No doubt in the said cross-examination, it is shown that the accused and the victim girl were in love with each other, but the evidence of PW-3 (victim girl), PW-2 (victim's father), PW-4 (victim's mother) and PW-5 (victim's aunt) that the accused had forcibly committed the act of sexual intercourse against PW-3, having withstood searching cross-examination becomes trustworthy and more reliable. More importantly, the evidence

of none less than the victim girl (PW-3) that she was subjected to a forcible sexual intercourse by the accused, as such, she was subjected to rape, cannot be disbelieved.

22. In that connection, learned Additional State Public Prosecutor for the appellant - State, relied upon a judgment of the Hon'ble Apex Court, in the case of State of Punjab Vs. Gurmit Singh and others reported in (1996) 2 Supreme Court Cases 384. In the said judgment, while dealing with the offence punishable under Sections 376, 363, 366 and 368 of the IPC, the Hon'ble Apex Court was pleased to observe in paragraph 8 of its judgment as below:

"8 The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable. "

23. In the case of Motilal vs. State of Madhya Pradesh reported in (2008) 11 Supreme Court Cases 20, in a case involving the offences punishable under Sections 375, 376 and 450 of the IPC, wherein also the question of conviction on the sole testimony of prosecutrix for the alleged offence was involved and the medical evidence was not helpful to the prosecution, the Hon'ble Apex Court, in paragraph 12 of its judgment, reiterated its observation made in its previous judgment in the case of Om Prakash vs. State of Uttar Pradesh reported in (2006) 9 Supreme Court Cases 787, wherein it was observed that, it is a settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence, including the evidence of a Doctor. In a given case, even if the Doctor who examined the victim does not find any sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In a normal course, a victim of sexual assault does not like to disclose such offence even before her family members, much less, before public or before the Police. The Indian women have a tendency to conceal such offence because it involves her prestige as well as prestige of her family.

Thus, the evidence of PW-2, PW-3, PW-4, PW-5, PW-6, PW-8, PW-9, PW-10 and PW-11 would clearly go to show that, PW-3 was subjected to sexual intercourse and the

reliable evidence of PW-3 (prosecutrix) would further go to establish that, it was the accused and accused alone who had subjected her to sexual intercourse on more than one occasion, which has resulted in she becoming pregnant.

24. The said act of sexual intercourse between the accused and the victim girl is 'rape', according to the prosecution. However, according to the learned Senior Counsel for the accused, even if the alleged act of sexual intercourse is taken as established, but it was a consensual act with the consent of both the accused and the victim girl, which victim girl was major in her age, as on the date of the alleged act, as such, the accused cannot be held guilty for the offence punishable under Section 376 of the IPC.

25. In this context, the evidence regarding determination of the age of the victim girl (PW-3) plays an important role.

According to the prosecution, the date of birth of the victim girl (PW-3) being 5th August 1996, she was minor in her age as in December 2011, when the incident of alleged rape upon her has taken place. In that regard, it is only in the evidence of PW-3, PW-10, PW-11 and PW-14, we could find some statements referring to the age of the victim girl.

26. PW-3 - the victim girl, in her evidence, while giving the details of her identity, has stated that, she was aged about 14 years. Though she claims to have studied upto VIII Standard Schooling, but no where she has stated her date of birth. However, in her cross-examination, she has stated that, as on the occurrence of the incident in the month of December 2011, it was two years after she leaving her studies in the School. Further, she admitted a suggestion as true that she has seen the medical documents issued by the Doctor at Goura Maternity Home and that the description regarding her name, father's name and her age mentioned there are true. She also denied a suggestion made from the accused's side that, her age was more than 18 years and that her statement that she was 14 years old was not a true statement. Except these details, nothing more has been elicited regarding her age in her cross-examination.

27. PW-10 (CW-15) - the Lady Medical Doctor, who examined the victim girl, at the request of the Police has stated that, the Radiologist of her Hospital had conducted age estimation and reported the age of the alleged victim girl as 16 years to 18 years. Therefore, she opined that, the age of the victim girl was between 16 years and 18 years.

28. PW-11 (CW-17) - Dr. Annapurna Goura, who conducted medical termination of pregnancy upon the victim girl, has stated that, in the consent form filled up and given by the victim girl, she has stated her age as 19 years.

29. In addition to the above, the prosecution got examined PW-14 (CW-18) - Ekadanta, the Head Master of the Government Higher Primary School at Keroor, who has stated that, the victim girl had studied in their School and as per the School records, the date of birth of the victim girl was 05-08-1996. Accordingly, he has issued a date of birth confirmation letter as per Ex.P-6 to the Police.

30. In the light of the above evidence, it was the argument of the learned Additional State Public Prosecutor for the appellant- State that, the victim girl has categorically stated that, she was minor in her age, as on the date of the incident and that her date of birth confirmation certificate issued by the Head Master of the School also mentions that, as on the date of the incident, the victim girl was 15 years 4 months old. Therefore, even if it is taken that she had given her consent for sexual intercourse by the accused, still, it is not a valid consent in the eye of law, as such, the accused be held as guilty for the alleged offences.

In his support, he relied upon a judgment of the Hon'ble Apex Court in the case of Mahadeo S/o. Kerba Maske Vs. State of Maharashtra and another reported in (2013) 14 Supreme Court Cases 637.

31. Per contra, learned Senior Counsel for the accused/respondent, in his argument contended that, the evidence of PW-10 coupled with the documentary evidence at Ex.P-10 would go to show that, the age of the victim girl was 16 years to 18 years. Further, the evidence of PW-11 read with the documentary evidence at Ex.P-12 would go to show that, the victim girl has stated before the Doctor her age as 19 years. Further, the victim girl, as PW-3, in her cross-examination, has admitted as true that her age shown in the Hospital record of Goura Maternity Home is true. The said record shows the age of the victim girl as 19 years. Therefore, the girl was major in her age as on the date of the alleged incident, as such, her consent for sexual intercourse was a valid consent.

He further submitted that the date of birth confirmation letter issued by the school authorities (Head Master) as per Ex.P-6, is not reliable, in the above circumstances.

In support of his arguments on the point, learned Senior Counsel for the accused/respondent relied upon a judgment of the Hon'ble Apex Court in the case of Alamelu and another Vs. State, Represented by Inspector of Police reported in AIR 2011 SUPREME COURT 715.

32. The victim girl, admittedly, had studied upon to VIII standard in a School. Though she has not given her date of birth in her evidence, but even on the date of recording of her evidence in the Sessions Judge's Court, she has shown herself as minor in her age. She categorically denied a suggestion that, she was major in her age, as on the date of the alleged incident, so also on the date of her evidence. If an admission in her cross-examination to the effect that, the entries made in the medical record at Goura Hospital regarding her name and age are true is to be accepted as the sole basis to determine her age, then, her very another statement made at more than one place in her very same evidence as PW-3 that, she was a minor as on the date of the incident also cannot be ignored and the same also to be weighed at par with other statements in her evidence.

Thus, the main argument of the learned Senior Counsel for the accused/respondent that, the medical record of Gowra Maternity Home, Gulbarga (now Kalaburagi) which is at Ex.P-12 shows the age of the girl as 19 years, is the conclusive proof, is not acceptable.

33. PW-11 (CW-17)-Dr. Annapuran Goura, who is the Doctor who issued the medical record at Ex.P-12, in her evidence, has not stated anything about she conducting any test to ascertain and confirm the age of the victim girl. Therefore, admittedly, she has proceeded only believing as to what was said to have been stated before her regarding the age of the victim girl. It cannot be ignored of the fact that, admittedly, the victim girl was unmarried as on the date of medical termination of her pregnancy and which victim girl was taken to PW-11 - Doctor by the maternal aunt of the girl, who some how wanted that the pregnancy of the girl has to be medically terminated. Therefore, there is all the possibility of she stating that, the girl was major in her age, in order to avoid any further complications. Even otherwise also, as observed above, the statement of PW-11 is only based upon the say of the victim girl and her aunt.

Even though the husband of PW-11 - Doctor was a Radiologist practicing in the very same Hospital, however, no attempt was made to ascertain the age of the victim girl by PW-11 - Doctor, in her Hospital. Therefore, the mere statement of PW-11 - Doctor, which, in turn, based upon the oral information said to have been given to her by the victim girl and her maternal aunt, cannot be the sole basis to determine the age of the victim girl.

The other evidence available to ascertain the date of the victim girl is to be analysed.

34. PW-10 (CW-15) - Dr. Neelavati Tambre, the District Government Hospital Doctor, Gulbarga, who examined the victim girl, after registration of the FIR, has stated that, the Radiologist in their Hospital has assessed the age of the victim girl, according to whom, the girl was aged between 16 years and 18 years.

Admittedly, even the opinion of the Government Doctor (PW-10) is based upon the report of the Radiologist, who, in turn, appears to have based his opinion on an X-ray report. Admittedly, no Ossification Test has been conducted in the matter. Further, it also cannot be ignored that, the medical opinion based upon the Radiologist's opinion does not specifically say that, the victim girl was major in her age, i.e. above 18 years of age as on the date of her examination. He says that it may be some where between 16 years to 18 years.

35. In the case on hand, the medical opinion alone cannot be the main criteria to decide or infer the age of the victim girl, for the reason that the prosecution, in order to prove the age of the victim girl, as she was a minor as on the date of incident, has examined PW-14 (CW-18) – Ekadanta, who, undisputedly, is the Head Master of the School where the victim girl studied. The said witness has stated that according to the records maintained by their School, the date of birth of the victim girl was 05-08-1996.

In that regard, he has given a date of birth confirmation letter also as per Ex.P-6.

36. Learned Senior Counsel for the accused / respondent, contending that, the said evidence of PW-14 - Head Master, is not to be relied upon, has referred to the judgment of the Hon'ble Apex Court in Alamelu's case (supra). In the said judgment, wherein also, the question of determination of the age of the prosecutrix in a case involving an offence punishable under Section 376 of the IPC was involved, the Hon'ble Apex Court, in paragraph 38 of its judgment, was pleased to observe that the Transfer Certificate issued by the Government School duly signed by the Head Master though would be admissible in evidence under Section 35 of the Indian Evidence Act, however, admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which age was recorded. The date of birth mentioned in the Transfer Certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.

37. Admittedly, in the aforesaid case, the Head Master had not been examined, whereas in the case on hand, the Head Master, who has issued the date of birth confirmation certificate as per Ex.P-6 was examined as PW-14 and that the accused also has cross-examined him. His evidence clearly goes to show that, he has given the true account of the date of birth of the victim girl as has been recorded in the records maintained by the School. No suggestion was made to the said witness in his cross-examination that the said date of birth recorded in the School records as '05-08-1996' was incorrect or a false date of birth. Merely because PW-14 was not working as Head Master, as on the date of admission of the victim girl into their School, it cannot be held that he cannot issue the date of birth confirmation certificate based on the records maintained by the School in his capacity as Head Master as on the date of issuance of the certificate at Ex.P-6. It is so, particularly when no attempt has been made from the accused's side at least to suggest to the witness that the said entry of date of birth as '05-08-1996' as the date of birth of the victim girl was incorrect or not true. Therefore, the judgment relied upon by the accused in Alamelu's case (supra) would not enure to his benefit in the facts and circumstances of the present case.

On the other hand, in the judgment relied upon by the learned Additional State Public Prosecutor in the case of Mahadeo S/o. Kerba Maske Vs. State of Maharashtra and another (supra), our Hon'ble Apex Court was pleased to observe in paragraph 12 of its judgment that, in the light of the statutory rule in the form of Juvenile Justice (Care and Protection of Children), Rules 2007 (hereinafter for brevity referred to as "the J.J. Rules"), prevailing for ascertaining the age of a juvenile, it is their opinion that the same yard stick could be rightly followed by the Courts for the purpose of ascertaining the age of the victim as well.

The above said Rule 12 (3) of the Juvenile Justice Rules, reads as below:

"12. Procedure to be followed in determination of Age.-

(1) xxx

(2) xxx

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;"

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case, shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, recorded a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause(b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

In the case of Jarnail Singh Vs. State of Haryana reported in (2013) 7 Supreme Court Cases 263 also, which had also involved the question of determination of age of a minor girl in an offence punishable under Section 376(2)(g), 366, 120B of the IPC, in paragraph 23, it was observed by the Hon'ble Apex Court as below:

"23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime...."

Applying the above said principle to the case on hand, it has to be held that, the date of birth confirmation letter/certificate issued by PW-14 which is at Ex.P-6, depicting the date of birth of the victim girl as entered in her School records has not been specifically denied. No where in the evidence of PW-14, it is suggested to the witness that, the said entry showing the date of birth involved of the victim girl as '05-08-1996' either was incorrect or false. PW-14 has withstood the cross-examination from the accused's side and has stood by the date of birth confirmation letter/certificate issued by him at Ex.P-6.

38. There is nothing to suspect or disbelieve that the date of birth of the victim girl was not correctly shown in the said certificate at Ex.P-6, which in turn, was an extract of the records maintained by the School authorities. As per Rule 12 (3)(ii) of the J.J. Rules, the date of birth confirmation certificate from the School stands on a higher priority than the medical opinion of a Doctor.

39. As per Rule 12(3)(b) of the J.J. Rules, it is only in the absence of the matriculation or equivalent certificates or the date of birth certificate from the School or a birth certificate given by a Corporation or a Municipal authority or a panchayat, the medical opinion would be sought from a duly constituted Medical Board, which will declare the age of the juvenile or the child.

40. In the instant case, since the certificate issued by the School as per Ex.P-6, which is based upon the records maintained by it, is placed by the prosecution, the author of Ex.P-6 who is the Head Master of the said School has also been examined as its witness (PW-14), the medical opinion of PW-10, which, in turn, was based upon a Radiologist's report and admittedly, when the said Radiologist also was not examined, cannot be relied upon, as such, the age of the victim girl has to be necessarily held as 15 years 4 months as in the month of December 2011.

41. In addition to the above, when the evidence of the very same victim girl is once again looked into, it can be noticed that the prosecutrix, as PW-3, has stated that, at the time of the incident in December 2011, it was already two years from she being a dropped out student from the School. According to her, she had studied upto VIII standard. For the said schooling from I Standard to VIII Standard, she has spent eight years. After she became a drop-out from the School, there was two years' gap till the date of the incident. Thus, from the date of her initial schooling till the date of the incident, the time period was ten years. For a Government Schooling, the students would be admitted at the minimum age of six years. If it is taken that, she was admitted to the School at the earliest age of six years, still, as on the date of the incident in December 2011, her age would be, at the maximum, 16 years. As such also, the age of the victim girl remains to be 16 years, as on the date of the first incident of rape and under no stretch of imagination, her age can be 18 years and above. Therefore, the victim girl remained to be a minor as on the date of the incident and at his alleged repetitive sexual acts.

Therefore, the argument of the learned Senior Counsel for the respondent/accused that, PW-3 - the victim girl was major as on the date of the incident, is not acceptable.

42. Further, it can be seen that the accused has not categorically denied or disputed his act of sexual intercourse with the victim girl. On the other hand, it is his contention that, such an act was a consensual act. Though stray suggestions were made to PW-2 (the father of the victim girl), in his cross-examination that, the accused had never sexual intercourse with the victim girl, but the said suggestion was denied by the witness.

On the other hand, as noticed above, PW-6, PW-8, PW-9 have spoken about the Panchayat held in their village in connection with accusation made against the accused by the parents of the victim girl. They have also stated about the consent deed being entered into in the said Panchayat as per Ex.P-14. No doubt in the said consent deed, there is no mention about the accused having sexual intercourse with the victim girl, but it is shown that there was love between the accused and the victim girl. Though execution of the consent deed was denied in the cross-examination of PW-2, however, it was specifically admitted by the accused in the cross-examination of PW-9 - the panchayatdaar to the said Panchayat. It was specifically suggested to the said witness that, at the time of Panchayat, a consent deed was also written and the witness has

admitted the said suggestion as true. The very same witness in his very same cross-examination has stated that, it is not only the father of the victim girl i.e. PW-2, but also the father of the accused by name Yeshwant, both of them jointly stated before the Panchayat that the accused has committed rape upon the victim girl. The said statement made by the panchayatdaar (PW-9) in his cross-examination by the accused's side has not been further denied or disputed from the accused's side. As such also, it can be inferred that even though it was revealed before the Panchayatdaars that the accused has committed rape upon the victim girl, however, while putting it down in writing in the form of a document, they did not call it as a rape or sexual intercourse but they shown it only as a love affair between the accused and the victim girl, since it was a document to be put in writing in a public Panchayat and that the very intention of the parties was to see that the accused and the victim girl marries each other.

43. Even according to the prosecution, as has come out in the evidence of PW-2, PW-3 and PW-4, since the accused refused to marry the victim girl within the time fixed in the consent deed, after the expiry of the time, the very same panchayatdaars suggested, asking the father of the victim girl to go to the Police and lodge a complaint. Accordingly, PW-3 - the victim girl, lodged a complaint against the accused before the Police. Therefore, the contention of the accused that, the victim girl was a major in her age, as on the date of the alleged incident and that it was a consensual sexual act between the accused and the victim girl, is not acceptable.

44. Assuming for a moment that, since the victim girl (PW-3) suffered the alleged sexual intercourse by the accused on more than one occasion and did not reveal about the same, even to her parents, till they themselves came to know from PW-5 by chance, when the girl was taken for medical termination of pregnancy by her aunt (PW-5), then, whether a consensual act prevents from holding the accused guilty for the offence punishable under Section 376 of the IPC ?, is to be seen.

45. Learned Senior Counsel for the respondent/ accused, submitting that a consensual act by the parties for sexual intercourse would not amount to 'rape', relied upon a judgment of the Hon'ble Apex Court in the case of Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others reported in 2019 CRL.L.J. 1169. In the said case, wherein also Section 375 of the IPC and the question of rape and a consensual sex was involved, the Hon'ble Apex Court in paragraph 20 of its judgment was pleased to make a distinction between 'rape' and 'consensual sex' in the following words:

"20. Thus, there is a clear distinction between rape and consensual sex. The Court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC."

The above judgment, though would go to show that, there is a clear distinction between 'rape' and 'consensual sex', but the facts of the said case goes to show that, the alleged 'consensual sex' was between two persons who were major in their age.

46. In the instant case, since it is established that the victim girl (PW-3) was minor in her age, at the time of the alleged incident, her consent would be invalid in the eye of law, as such, the question of the accused having consensual sex with her after obtaining her consent would not arise. Thus, the act of the accused in the present case in having sexual intercourse with the victim girl is necessarily to be held as an act of rape punishable under Section 376 of the IPC.

47. The alleged act of the accused against the victim girl of subjecting her to rape is stated by none else than the victim girl herself. The evidence of other material witnesses including her parents (PW-2 and PW-4) her aunt (PW-5) are only based upon the information given to them by none else than the victim girl herself, as such, whether the sole testimony of the prosecutrix can be fully believed? is also one of the aspects to be looked into.

48. Our Hon'ble Apex Court, in the case of Vijay alias Chinee v. State of Maharashtra reported in (2010) 8 Supreme Court Cases 191 wherein also the question involved was proof of the offence punishable under Section 376(2)(g) of the IPC, after referring to several of its previous judgments, was pleased to hold in paragraph 14 of its judgment that the law that emerges on the issues is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix.

49. Similarly, same view was again reiterated by the Hon'ble Apex Court in the case of Phool Singh v. State of Madhya Pradesh reported in 2021 SCC OnLine SC 1153, in which case, the Hon'ble Apex Court after referring to its various previous judgments in different case including its judgment in Vijay @ Chinee's case (supra), was pleased to observe in paragraph 24 of its judgment that, applying the law laid down by the Court in several of its previous cases discussed in the judgment to the facts of the case before the Court, the Court saw no reason to doubt the credibility and/or trustworthiness of the prosecutrix which was found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix was held to be sustainable.

50. In the instant case, the evidence of PW-3 - the victim girl as well the evidence of her parents i.e. PW-2 and PW-4 clearly goes to establish that, in December 2011, when both the parents of the victim girl had been to their work to their agricultural land, the accused entered their house while PW-3 was alone in the house and on the pretext of asking for a cup of drinking water, he went inside the house and closed the door of the house. According to PW-3 - victim girl, he made her to fall on the ground and then closed her mouth with a piece of cloth and committed rape upon her. Thus, the said evidence of PW-2 and PW-4 and more particularly PW-3 the victim girl which has successfully withstood the cross-examination by the accused proves beyond reasonable doubt that the accused had an intention to commit rape upon the victim girl which offence of rape was punishable with an imprisonment extendable upto imprisonment for life and thus has committed the offence of house trespass in order to commit the offence punishable with imprisonment for life, as prescribed under Section 450 of the IPC.

51. The evidence of PW-3 -the victim girl also establishes that the accused had put life threat upon her that, in case if she reveals about the incident to her parents or anybody else, he would kill her. The said trustworthy evidence of none else than the victim girl

proves beyond reasonable doubt that, the offence committed by the accused is punishable under Section 506 of the IPC.

52. As observed above, the evidence of PW-3 - the victim girl since has withstood the thorough and searching cross-examination and could not be shaken in any manner and since she has given all required details about the incident, which fulfills the ingredients of Sections 450, 376, 506 of the IPC, the same is believable and since her evidence is further corroborated by the evidence of other material witnesses, including the evidence of PW-2, PW-4, PW-5, PW-6, PW-8, and PW-9 and the medical evidence of PW-10 and PW-11, without any hesitation, it can be held that the prosecution has proved the alleged guilt of the accused for the alleged offences beyond all reasonable doubts.

53. Even though the prosecution could able to place sufficient materials to prove the alleged guilt against the accused, however, the Sessions Judge's Court has erred in appreciating the materials placed before it in their proper perspective. The Sessions Judge's Court mainly relied upon the consent deed at Ex.P-14 and called that the said admitted document showed that it was a love affair between the accused and the victim girl and that it was not an act of rape. Further, giving no valid reasons, they disbelieved the date of birth confirmation certificate issued by the Head Master of the School at Ex.P-6 and further observed that the accused had not put his signature to the consent deed at Ex.P-14.

54. Further more, the learned Sessions Judge's Court adopted its own methodology of calculating the age of the victim girl, based upon the statements made by her mother about the length of her married life and also birth of the victim girl during the said period. When there was sufficient evidence, both oral and documentary, to determine the age of the victim girl, which has been analysed above, such an exercise by the Sessions Judge's Court of finding out new method of calculating the age of the victim girl based upon her mother's married period was uncalled for, in the facts and circumstances of the present case.

55. It is these reasoning given by the Sessions Judge's Court, which is now proved to be not a proper reasoning, has led it to pronounce the impugned judgment of acquittal against the accused. Since the said finding of the Sessions Judge's Court is now proved to be erroneous and since the prosecution has proved the alleged guilt of the accused for all the alleged offences beyond reasonable doubt, the impugned judgment passed by Sessions Judge's warrants interference at the hands of this Court and the criminal appeal deserves to be allowed.

Accordingly, we proceed to pass the following:

ORDER

- [i] The present Criminal Appeal No.200058/2014 stands allowed;
- [ii] The judgment in Sessions Case No.335/2012 dated 18-11-2013 passed by the I Additional Sessions Judge, at Gulbarga, acquitting the accused of the offences punishable under Sections 450, 376 and 506 of the Indian Penal Code, 1860, stands set aside;
- [iii] The Accused - Sharanu @ Sharanappa @ Sharanabasappa, S/o. Yashwant Jamadar Age: 26 years, Occ: Coolie R/o. Kerur, Tq & Dist: Gulbarga, is convicted for the offences punishable under Sections 450, 376 and 506 of Indian Penal Code, 1860;

HEARING ON SENTENCE

56. Immediately after the pronouncement of the judgment, as desired by both side, heard both side on the order on sentence.

57. Learned Senior Counsel for the respondent/ accused submitted that the accused being a married person with dependents has got greater responsibility towards his family, further more, he had the benefit of judgment of acquittal in the Sessions Judge's Court, as such a lenient view may be taken in the matter.

58. Per contra, learned Additional State Public Prosecutor for the appellant -State submitted that since the offence committed by the accused against the victim girl being a heinous one, maximum punishment prescribed under the Indian Penal Code be ordered against the accused.

59. It is the sentencing policy that the sentence ordered must be proportionate to the gravity of the proven guilt. It shall be neither exorbitant nor for the name-sake.

Hence, keeping the above principle of the sentencing policy and considering the facts and circumstances of the case on hand, we proceed to pass the following:

ORDER ON SENTENCE

[i] The accused - Sharanu @ Sharanappa @ Sharanabasappa, S/o. Yashwant Jamadar Age: 26 years, Occ: Coolie R/o. Kerur, Tq & Dist: Gulbarga, is sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of `5,000/- (Rupees Five Thousand Only), in case of default of payment of fine, to undergo rigorous imprisonment for a further period of two months, for the offence punishable under Section 450 of the Indian Penal Code, 1860.

[ii] The accused - Sharanu @ Sharanappa @ Sharanabasappa, is further sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of `20,000/- (Rupees Twenty Thousand Only), in default of payment of fine, to further undergo rigorous imprisonment for a period of six months for the offence punishable under Section 376 of the Indian Penal Code, 1860.

[iii] The accused - Sharanu @ Sharanappa @ Sharanabasappa, is also sentenced to undergo rigorous imprisonment for a period of three years for the offence punishable under Section 506 of the Indian Penal Code, 1860.

[iv] All the sentences shall run concurrently.

[v] The accused is entitled for the benefit of set-off under Section 428 of the Code of Criminal Procedure, 1973.

[vi] The accused shall surrender before the learned Sessions Judge's Court within forty five (45) days from today and serve the sentences as ordered above by this Court.

[vii] A free copy of this judgment be furnished to the accused immediately by the Registry.

Registry to transmit a copy of this judgment along with Sessions Judge's Court records to the concerned Sessions Judge's Court immediately, for doing needful in the matter.