IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO. 592 of 2009
With
CRIMINAL APPEAL NO. 720 of 2009
With
CRIMINAL APPEAL NO. 725 of 2009
With
CRIMINAL APPEAL NO. 765 of 2009
With
CRIMINAL APPEAL NO. 767 of 2009
With
CRIMINAL APPEAL NO. 768 of 2009
With
CRIMINAL APPEAL NO. 895 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARMAR MANISHBHAI BABULAL....Appellant(s)

Versus

STATE OF GUJARAT....Opponent(s)/Respondent(s)

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Appearance:
CR.A NO.592/2009, CR.A NO.767/2009, CR.A NO. 768/2009
MR JM PANCHAL, MR KJ PANCHAL,ADVOCATE for the Appellant(s) No. 1
MS MANISHA L SHAH, SPL PP FOR STATE.
MRS SHILPA R SHAH, ADVOCATE for the ORIGINAL COMPLAINANT.

CR.A NO.720/2009
MS MITA PANCHAL, ADVOCATE for the Appellant(s) No. 1
MS MANISHA L SHAH, SPL PP FOR STATE.
MRS SHILPA R SHAH, ADVOCATE for the ORIGINAL COMPLAINANT

CR.A NO.725/2009
ASHWINBHAI CHATURBHAI PARMAR, PARTY IN PERSON.
MS MANISHA L SHAH, SPL PP FOR STATE.
MRS SHILPA R SHAH, ADVOCATE for the ORIGINAL COMPLAINANT

CR.A NO.765/2009
MR AY KOGJE ADVOCATE for the Appellant(s) No. 1
MS MANISHA L SHAH, SPL PP FOR STATE.

CR.A NO.895/2009
MS MANISHA L SHAH, SPL PP FOR STATE.
MR JM PANCHAL, MR KJ PANCHAL, MS MITA PANCHAL,, MR AY KOGJE ADVOCATE for respondent No.2,3,4 AND 6
MR RD MAKWANA, for respondent no.5.
ASHWINBHAI CHATURBHAI PARMAR- PARTY IN PERSON(Accused no.1)

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 29,30/11/2013

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. These appeals arise out of a common judgement of the learned Additional Sessions Judge, Patan, dated 6.3.2009 in Special Atrocity Case No.22/2008. There were in all six accused. They were charged with difference offences, principally for gang rape. By the impugned judgement, all these accused have been convicted for various offences to which we shall refer to later. They have preferred individual appeals challenging their conviction and sentence. All the accused were however, acquitted for offences under sections 376(2)(b) and (c) of the IPC and section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Atrocities Act' for short). The State has therefore, filed Criminal Appeal No.895/2009 challenging the acquittal of the accused for the said offences.

2. Briefly stated, the prosecution version was that Ms. 'A', the prosecutrix was aged about 18 years. She belonged to the Scheduled caste. She was admitted in the two year Primary Training Certificate (PTC) course in Government PTC college at Patan on 24.7.2007. It was an all girls college. This course was offered at an institution called District Institute for Education and Training at Palanpur, popularly referred to as DIET, Patan. All the accused were teachers in the said PTC college.

   2.1. The case of the prosecution is that accused no. 1 to 5 entered into a conspiracy to commit rape of the victim sometime prior to 11.9.2007. Pursuant to such conspiracy, on 11.9.2007 during the recess hours between 1:30 to 2:30, she was called in the ET

(Electronic Technology) room and was raped by accused no.1 to 3. She was there threatened with dire consequences if she revealed the same to anybody. She was also pressurised on account of the internal marks that the teachers would grant her.

2.2. On 13.9.2007, the victim and other students had gone for picnic. About 15 days later, again during the recess hours between 1:30 to 2:30, she was called in the laboratory and accused no.2, 3 and 5 subjected her to sexual intercourse and committed gang rape. Accused no.4 subjected her to gross physical abuse. Since the precise date could not be ascertained, this event is referred to as that of 28.9.2007 and for the sake of convenience that is how we would refer to this incident also.

2.3. Between 31.12.2007 and 12.1.2008, the victim and other students had gone to village Kimbuva for a workshop where on 1.1.2008 at around 8 pm, she was called in a separate room where accused no.2 and accused no.5 committed rape on her. Accused no.4 subjected her to gross physical abuse.

2.4. Once again on 11.1.2008, still at Kimbuva village the victim was called late at night and again subjected to sexual intercourse by accused no.2 and 5 and gross physical abuse by accused no.4.

2.5. On 25.1.2008, at 4:30 in the afternoon, accused no.6 the computer teacher called the victim in the computer

room and committed rape on her.

2.6. On 30.1.2008, according to the prosecution the prosecutrix informed her friend Bela Chaudhary PW-2 about the incidents. For a while Bela did not inform anybody else about it. But on 31.1.2008 during the prayer hours in the assembly hall, the victim fainted on seeing the five out of six accused teachers together. She was taken to a psychiatrist Dr. Kantibhai Patel PW-3 by a lady teacher Bhartiben PW-5 and students, Bela Chaudhary and Jinal Patel. Bela at this point of time confided in Bhartiben and informed her in brief about the plight of the victim.

2.7. Upon returning from the hospital the principal K.T. Poraniya PW-20, who had taken charge of the college on 14.9.2007 spoke to Bela and other students in presence of Bhartiben. He thereupon sensing that something serious had happened called the girls and asked them to give their complaints. He collected the complaints and asked Bhartiben to give report. Along with the complaints and the report, he went to the Director of Education, Gandhinagar on 1.2.2008. The Director was not available but he spoke to him on phone. He told Shri Poraniya that the complaints did not carry signatures and that he should come with full report. Shri Poraniya therefore, returned to the college and talked to the victim in detail on the same day and took further complaints.

2.8. On 2.2.2008, once again Shri Poraniya went to

Gandhinagar and met the Director, personally this time. He was told that all the girls may be gathered on 4.2.2008 when a team would visit from Gandhinagar. 3rd February 2008 was a Sunday and a day for the parents to meet their children. It appears that during such meeting, word spread about what was brewing up in the college. On 4.2.2008 therefore, many parents of the students gathered at the institution. When the accused professors arrived, there was a pandemonium. A scuffle took place and the police arrived. It was at this point of time that the complaint of the victim was recorded by the police on 4.2.2008.

3. All the accused except accused no.6 were charged with offences under section 120B as also section 376(2)(g) of the IPC. Case of the prosecution is that accused no.4 because of his physical disability was unable to commit the act of sexual intercourse with the victim despite his best efforts. He instead, satisfied his lust by oral sex and also committed several other indecent acts on the girl. He was accused of unnatural offence punishable under section 377 of the IPC. Rest of the accused were charged with the said offence with the aid of section 120B of the IPC. Accused no.6 was charged with offence of rape punishable under section 376 of the IPC.

3.1. From the computer room, the investigating agency collected 16 hard discs from the computers lying there. It was revealed that some of these PC's carried traces of pornographic material and the proof that pornographic sites were visited through such computers. Hundreds of

pornographic photographs were downloaded. Accused no.6, the computer teacher, was charged with offence punishable under section 292(2)(a) of the IPC on this count.

3.2. The charge was also framed under section 3(1)(xii) of the Atrocities Act against accused no. 3 to 6 (accused no. 1 and 2 belonged to scheduled caste community) on the premise that all the accused held the position of dominance over the victim and had used such position to ensure that she was subjected to the sexual act which she otherwise would not have.

3.3. In addition to these provisions, all the accused were charged with offences punishable under section 376 (2) (b) and (c) of the IPC read with section 120-B thereof. They were also charged with the offences punishable under section 342, 354 and 506(2) of the IPC.

4. We may refer to the gist of the evidence on record. The victim girl Ms.'A',PW-1 was examined at exh.66. She deposed that she was born on 11.12.1989 and belonged to Hindu Chamar community and was therefore, a member of the scheduled caste. The caste certificate was produced before the Court. She was admitted in Patan college in the PTC course on 24.7.2007 after completing 12th science. All the accused were lecturers there. The college time was between 11 to 5 during which there would be a recess between 1:30 to 2:30. On 11.9.2007, when in the classroom she was alone and doing her homework during the recess time, Ashwin Parmar (accused no.1) called her

in the ET room. At that time, Manish Parmar (accused no.2) and Mahendra Prajapati (accused no.3) were present. Ashwin Parmar closed the door of the room. All the three forcibly made her to lie on the floor. Manish Parmar covered her face and Ashwin Parmar removed her clothes. First Ashwin Parmar forcibly had intercourse with her and raped her. Thereafter, Mahendra Prajapati and Manish Parmar in turn committed rape on her. Manish Parmar forced her to swallow some pills. She did not know what these pills were. Manish Parmar threatened her that if she informed this to anyone, she would be killed and they would ensure that she did not pass internal exams. They would destroy her future.

4.1. On 13.9.2007, the students and the teachers, had gone for a picnic to Idar. About 15 days after this when she was in the classroom during recess time doing her homework, Mahendra Prajapati (accused no.3) called her in the laboratory. When she went there, Suresh Patel (accused no.5) and Kiran Patel (accused no.4) were present. Mahendra Prajapati closed the door. She was forcibly made to lie on the table. Her clothes were forcibly removed and Mahendra Prajapati committed rape on her. Thereafter, Suresh Patel committed rape. At that time Manish Parmar (accused no.2) also arrived. He also raped her. During such time Kiran Patel fondled her body parts. Like other accused, he also slept on her and tried very hard to insert his organ in the private parts, but failed because of his physical defect. He therefore, forcibly inserted his organ in her mouth and satisfied his lust. All the four accused then threatened

her that if she ever informed anybody about it, she would be killed and she would be failed in the internal exams. She therefore, did not inform anybody about such incident. Because of such repeated instances, she would sometimes become unconscious.

4.2. Between 31.12.2007 to 12.1.2008, there was an internship programme at village Kimbuva in Patan district where about 50 girl students with three professors namely, Suresh Patel (accused no.5), Kiran Patel (accused no.4) and Manish Parmar (accused no.2) had gone. Girls would stay on the first floor of a primary school. The professors were occupying the principal's room. The activities involved going in the morning at 7 O' clock in a tractor to village Adhar where they would be involved in educational activities with the children between 7 to 12 in the morning. There would be a recess between 12:00 to 2:00. Between 2:00 to 5:00, they would be engaged in adult education and return to Kimbuva after 5:00. On 1.1.2008, at 8 O'clock night, Suresh Patel(accused no.5) called her to make the beds. She therefore, went to the principal's room, where all the three accused Suresh Patel, Manish Parmar(accused no.2) and Kiran Patel (accused no.4) were present. There were three beds made. Manish Parmar spread a shawl on the bed. He thereafter, committed rape on her after locking the door. Thereafter, Suresh Patel raped her. Kiran Patel committed the indecent acts of the worst kind on all parts of her body. He inserted his organ in her mouth and satisfied his lust. She lost consciousness. She

regained her senses at 12 in the night. Manish Parmar again forced her to consume some pills and sent her out of the room. She went into her room and went to sleep. These people had threatened to kill her and therefore, she did not inform anybody about the incident. Next day, when she went to the bathroom she saw that her pubic hair were removed the previous night. Between 2.1.2008 to 10.1.2008, the accused were torturing her mentally. Kiran Patel (accused no.4) even misbehaved with her in the public while travelling in a tractor.

4.3. On 11.1.2008, the cultural programme went on between 9:30 to 2:30 at night. After the programme got over, Suresh Patel (accused no.5) called her in the principal's room to give account of the money received for distributing amongst the children for the cultural programme. When she went there Suresh Patel closed the door and Manish Parmar (accused no.2) spread the shawl on the bed. All the three accused forcibly made her to lie down. They drew lots to decide who would rape her first. According to the lots, Manish Parmar got the first turn and he raped her. Thereafter, Suresh Patel raped her. Kiran Patel (accused no.4) once again played with her body parts and satisfied his lust by putting his organ in her mouth. There also she was given some pills. She was threatened that she would be killed and that she would be failed in the internal marks, if she informed anybody about it. Because of such threats, as also the prestige of her institution and her parents, she did not inform anybody about the said incident.

4.4. On 12.1.2008, the girls returned to the college which was followed by Uttarayan vacation. She went home and returned on 18.1.2008. When she returned, threats of harming her and failing her in the examination continued.

4.5. On 25.1.2008, the rehearsal for 26th January programme was being done. The girls had gone to the ground for flag hoisting programme. She had gone to the office of the principal Vaghela inquiring about her scholarship where Manish Parmar (accused no.2) was present. Atul Patel (accused no.6) who was the computer teacher called her in the computer room. When she went there, after threatening her and closing the door, he removed her clothes against her wish and committed rape. He threatened her that if she revealed, she would be failed in the computer internal exam. She would also be harmed. She therefore, did not inform anybody about this.

4.6. She further deposed that such instances happened repeatedly due to which her physical and mental condition deteriorated. Initially, there were three people thereafter, four and lastly six accused got together. She could not bear it any more and felt that if she continued to suffer other girls would also have to suffer. Therefore, on 30.1.2008 she confided in her friend Bela Chaudhary, PW-2. On 31.1.2008, in the assembly hall during the prayer time, all the accused, except Atul Patel (accused no.6), were present. On seeing them, she lost consciousness. She regained the senses sometime

later. Bhartiben PW-5 told her that Bela PW-2 had informed her about the incidents. She was taken to the hospital of Dr. Kantibhai Patel PW-3 by Bhartiben along with Jinal Patel and Bela Chaudhary. They returned to the college in the afternoon. Bhartiben informed the principal Shri K.T. Poraniya PW-20 about the incident who called all the girls for a meeting where Bhartiben and rector Jashodaben Joshi were also present. The girls were given separate papers and told by Shri Poraniya that they need not worry about the internal marks and they may write whatever their complaints were. The girls therefore, got some courage and wrote down their unpleasant experiences. She also in brief wrote down what had happened to her. At 2:30 at night on 31.1.2008, she became very ill. Shri Poraniya took her to a hospital but since no hospital was open, they came back. In the chamber, she narrated the incidents to him. The girls had informed their parents about the happenings. Therefore, on 4.2.2008 parents had come to the college campus. When the professors arrived, there was a scuffle between the professors and the parents upon which the police arrived and her FIR was recorded which was produced at exh.67.

4.7. She further stated that when she was taken to Civil Hospital at Patan, she had given the history to the doctor who had examined her. Her statement was recorded by the Magistrate on 7.2.2008 which was produced at exh.68. The police had recorded further statements on 7.2.2008, 15.3.2008 and 19.3.2008.

4.8. In the cross examination, she agreed that there was a DySP office at Patan, but she did not know where it was situated. She was asked detailed questions about the locations of different places where the alleged incidents took place inside the college in order to establish that the ET room, the laboratory and the computer room were surrounded by other rooms usually occupied by the students, teachers and staff members during the day. It is not necessary to refer to such detailed cross examination on the precise locations of these rooms. Suffice it to record that admittedly all the three rooms were situated inside the college and were surrounded by other rooms such as classrooms, teachers' room and staff room etc.

4.9. When asked whether she had shouted for help when Ashwin Parmar (accused no.1) was closing the door, she stated that she was extremely scared and therefore, could not shout. She agreed that during the successive rapes, her mouth was not covered continuously, however, clarified that she was too scared to shout for help. She admitted that after being raped she met the students and the teachers but never informed them about the incident. During the holidays, she would go to her house. During the college days, her parents would also visit her at the hostel. At none of these occasions she ever informed her parents about the incidents. During Navratri time, she had gone to her native place but did not inform anybody about her unfortunate experiences. During Uttarayan vacation also she had gone home but never informed her parents or relatives.

During the Diwali vacation also she had spent entire time at home but did not inform anybody.

4.10. She agreed that she shared her room in the hostel with 10 other girl students who were her friends. She had good relations with them. Every morning the girls would assemble for prayers where even the lady rector would be present. During such time, she did not complain to anybody.

4.11. About the second incident, she stated that the same took place about 15 days after 13.9.2007 but could not give the precise date of the incident. Regarding the incident in the laboratory, she agreed that a portion of the room had glass panel but clarified that it was covered with curtains.

4.12. She admitted that when the accused teachers were visiting the class, she did not lose her consciousness. She had gone to Maharashtra on tour where the accused had also accompanied. During such tour also she had not fainted.

4.13. About the Kimbuva incident, she stated that she went to the room upon being instructed by the teacher since she had to follow the teacher's instruction.

4.14. She agreed that once she was taken to her parents home for three days because her physical condition was not good. After returning from her village, she stayed in the college for four to five days. During

such time, her physical and mental condition was not good. The college authorities therefore, once again called her father who took her away. She stayed at the village for three days. During her stay at her village, she did not inform her parents about the incident. She could not state whether for the subject of Social Science, there were any internal marks or not.

4.15. With respect to Kiran Patel (accused no.4) she agreed that in the complaint she had not stated about him having fondled her body parts and satisfying his lust by putting his organ in her mouth, after having failed to perform sexual act.

4.16. In the FIR she had also not mentioned about the three accused drawing lots to decide the order in which they would commit rape on her. In the complaint however, she had stated that Kiran Patel had fondled her body parts but not committed rape on her. She clarified that in her opinion, Kiran Patel was incapable of doing so.

4.17. When she was taken to Dr. Kantibhai Patel on 31.1.2008, when she had fainted in the assembly hall, she had not informed the doctor about the rape. She had only told him about the bad dreams and stated in short about the sexual exploitation. She denied that she gave complaint as instructed by Bhartiben. When asked why she did not resist when Kiran Patel was trying to rape her, she stated that she had no strength to put up any resistance.

4.18. She agreed that in her complaint given to the principal, she had not given details as given in the FIR.

5. Bela Chaudhary PW-2, exh.93, was the friend of the prosecutrix and was studying in the same college. She was admitted in the college in the year 2006. She was also residing in the hostel. She deposed that Kiran Patel (accused no.4) used to tell dirty jokes. Manish Parmar (accused no.2) would sit next to her and make lewd remarks. All the accused used to threaten the students that if they did not keep relations with them, they would not be given proper internal marks.

5.1. The prosecutrix Ms. 'A' used to fall sick frequently. She would ask her about the cause. She would faint. On 30.1.2008, she once again asked her about her problem. In privacy she told her that the professors of the college had raped her. The witness then narrated the different incidents of rape on the victim as informed to her by the prosecutrix.

5.2. She thereupon decided to do something about it the next day. Next day in the assembly hall, the victim fainted upon seeing the accused. Bhartiben PW-5 was also present. They took the prosecutrix to the psychiatrist Dr. Kantibhai Patel PW-3. She told Bhartiben in brief about the incidents. When the victim and Bhartiben spoke to the doctor, she was sitting outside. She further deposed that after returning from the hospital, she informed the rector and the principal

Shri Poraniya PW-20 in brief. Shri Poraniya called the girls in the hall and asked them to give it in writing if there was any indecent behaviour by the professors. The girls did not know about the experiences of the victim. They narrated their experiences on paper and gave it to Shri Poraniya. On 2.2.2008, she along with Bhartiben and others took the victim to the hospital of Dr. Varshaben. After returning from there, other girls were informed about the incidents which had happened with the victim. Next day being a Sunday was a day for the parents to visit the students. Some of the girls informed their parents about the events. Therefore, on the next day i.e. on 4th, many parents came to the college and had a quarrel with the teachers. The police arrived and recorded the complaint of the victim. Her statement was recorded by the Magistrate on 14.2.2008 which was produced at exh.94. She identified the complaint given by her in writing which was produced at exh.96.

5.3. In the cross examination, she agreed that the rector of the hostel did not assign any internal marks. She also agreed that the victim never informed her rector about her experiences. She and other girls however, had informed the rector about their problems. She had not informed her parents about such events though they would sometimes visit her at the hostel.

5.4. She agreed that the details given by her in para.3 and 4 of the deposition (referring to the details of the incidents involving the victim) were not mentioned in her police statement. She denied that she had involved

the accused at the instance of Bhartiben.

5.5. She admitted that in the complaints exh. 96 to 99 there were certain details of misbehaviour by the computer teacher Atul Patel (accused no.6) which she narrated in her deposition, was not given.

6. Dr. Bhartiben Bhanjibhai Patel, PW-5, exh.119, joined the PTC college at Patan on 5.9.1997. Previous to that she was at Palanpur. She deposed that she knew the victim who was studying in the college. She had fainted during the prayers on 31.1.2008. Shortly, thereafter, she gained consciousness but she was extremely scared and again fainted. She was therefore, taken to the hospital of Dr. Kantibhai Patel PW-3. Bela and Jinal accompanied her. On the way, Bela informed her about the rape of the victim. She gave details of such incidents. She narrated what had happened at the hospital of Dr. Kantibhai, where the victim complained about the indecent behaviour by the computer teacher. The doctor informed her that the victim has suffered mental trauma because of the treatment by the teacher. He gave some medicines and prescribed injections. Upon returning from the hospital, she informed the principal about the experiences of the victim. To ascertain whether other students have also suffered similarly, the principal called all the students in the hall in the afternoon and told them to disclose orally or in writing any experience without any fear. She had given a report to the principal on 1.2.2008 which was produced at exh.120. On 1.2.2008, she had taken the victim to Dr. Varsha since she complained of pain in the abdomen. The doctor gave

her a tube for relief. On 4.2.2008, at quarter to ten in the morning when she was at the institute, there was a crowd of parents of the students. When the six accused arrived, the parents roughed them upon which the police arrived and started their procedure.

6.1. She produced the appointment letters of all the six accused teachers issued by the Government. She gave the details of course design of PTC course. She pointed out that in such course in the first year, total 350 internal marks would be assigned by the teachers. 250 marks were for practicals. The practical exams would be conducted by the PTC teachers and experienced primary teachers. External written examination carried 700 marks. Thus in the first year, there would be a grand total of 1300 marks to the students. In the second year, internal marks had weightage of 300 to be assigned by the teachers of the college. The practicals carried 300 marks. External written examination had 900 marks. In the second year, therefore, grand total of marks was 1500. PTC was a two year integrated course.

6.2. She further deposed that the PTC students were taught computer in the college computer room. The course included theory and practicals. In January 2008, Atul Patel (accused no.6) was in-charge of the computer room. He was the lecturer of Electronics and Technology and was teaching computer to the students. The students would have to maintain a journal which would be kept by the computer teacher in the college. One Rakesh Thakor took the charge of the computer room on

25.1.2008.

6.3. She deposed that the assessment of the tutorials by the students in the primary school would be done by the PTC teachers. Every tutorial would carry 50 marks. In all, 20 such tutorials would make grand total of 1000 marks. Such marks would carry 60% weightage in the internal assessment. This would also be done in the next year. Every time a student would complete the tutorials, marks would be assigned to her and total would be done at the end of the year.

6.4. She deposed that the marks of the students in the computer subject also form part of the internal assessment. 25% weightage was for internal marks, 25% for practical marks and 25%(perhaps wrongly stated for 50%) for the theory examination. The assessment of practicals and internal marks would be done at the end of the year by the computer teacher.

6.5. She stated that Ashwin Parmar (accused no.1) taught psychology, Suresh Patel (accused no.5) taught Environment and Social Science and Teaching Learning Material and health education, Mahendra Prajapati (accused no.3) taught Life Sciences and Science, Kiran Patel (accused no.4) taught mathematics and evaluation, Atul Patel (accused no.6) taught computers and Manish Parmar (accused no.2) was a drawing teacher. She produced at exh.136, the extracts of the attendance register of the professors.

6.6. In the cross examination, she admitted that at the time of the incident, Kiran Patel (accused no.4) was the class teacher of the victim.

6.7. She denied that 350 internal marks had to be assigned by the senior lecturers and the principal, and that junior lecturers had no role in it. She emphatically denied that in the internal marking system merely the suggestions of the junior lecturers are called and marks are assigned by the senior lecturers and the principal.

6.8. She admitted that she had the LLB degree and was aware that if a serious offence takes place, the police should be informed immediately. She agreed that the details given to her by the victim (on 31.1.2008 in the Sanidhya hall) were not mentioned in the report.

7. Shri Kantidas Tulsidas Poraniya, PW-20, the principal of the college was examined at exh.240. He deposed that he was the principal of the said college between 14.9.2007 to 22.3.2008. He also gave details of the internal marking system. He deposed that on 31.1.2008 when the morning prayers were going on, the victim who was sitting in the first row, fainted. She was immediately taken to the hospital by Bhartiben along with Bela Chaudhary and Jinal. Later when he was sitting in his chamber, Bhartiben came and called him in the hostel where in presence of the victim, Bela and some three other students and the rector, Bela and Bhartiben informed him about the incidents which had taken place with the victim. The girls were therefore, called in Sanidhya hall in presence of Bhartiben

and the rector. He told the girls to give the complaints in writing. The girls gave the complaints but some of the girls did not sign. He told Bhartiben to study the complaints and give a report. Next day along with the complaints, he went to Gandhinagar to meet the Director. The Director was not present but spoke to him on telephone and told him to get the signatures on the complaints and to come with full report. He thereupon returned to Patan. After reading the statement of the victim, he thought it was a serious matter. In presence of other girls, he therefore, called her and asked her to narrate what had happened to her. Ms. 'A' narrated her experiences and told him about the rapes. Further statement of Ms. 'A' was taken the next day. On 2.2.2008, once again he went to Gandhinagar along with the applications, the report of Bhartiben and his forwarding letter. He met the Director who told him to go back and instruct the staff and Bhartiben to assemble on 4.2.2008 when Jyotiben, convener of Women's Cell along with a male employee would visit the institute. On 3.2.2008, being a Sunday, many parents came to meet their children. Next day, he came to the institute at 8:30 in the morning. There was a big crowd of parents at the gate. Some press people were also present. Upon their request, he took the parents inside for a meeting. The atmosphere was surcharged. The students were angry. Finding that the atmosphere was tense he called the Collector and thereafter, the control room. There was some scuffle by the parents when the accused lecturers arrived. The police came and took control of the situation and thereafter, took down the complaint of the victim. Being an educational institution, he had not filed the FIR without consulting the

head office.

7.1. In the cross examination, he agreed that the senior lecturers would moderate the assignment of internal marks. Before 31.1.2008, no senior lecturers had made any report about the internal markings. He denied that the victim girl was tortured continuously from 9:30 to 11:30 before she started talking.

7.2. He stated that Manish Parmar (accused no.2) was a drawing teacher. He denied that drawing examination included only the external exam and there were no internal exams in the said subject. In the year 2007 at Patan PTC college, no student had failed due to internal marks. He agreed that he had studied the reports of Bhartiben dated 1.2.2008 and 2.2.2008 but clarified that reports were to be made for all the students and not only about the victim.

7.3. He denied that in the subject of Life Science, there are no internal marks. The subject carried internal marks of 100 in each year. He agreed that on the basis of applications given by the students on 31.1.2008, which he had carried to the Gandhinagar, it was not possible to suspend the teachers. He had therefore, taken another application (exh.84) from the victim. He agreed that the victim had not mentioned about rape by accused no.4 Kiran Patel to him.

8. We may recall that upon Ms. 'A" fainting in the morning of 31.1.2008, she was taken to Dr. Kantibhai Patel by

Bhartiben and other co-students. Dr. Kantibhai Patel, PW-3 was examined at exh.107. He deposed that he had a hospital at Patan for psychiatric patients since 23 years. On 31.1.2008, the victim was brought to her at 11 O' clock by her teacher and two friends. At that time she was semi unconscious. He examined her and revived her. He asked her about her problem. She seemed to be in extreme tension. She was restless. She told him that she had become a psychiatric patient and was unable to sleep and many thoughts keep coming in her mind. When asked about the nature of such thoughts, she stated that thoughts were about the behaviour of her teacher. She immediately fainted again. She was again revived. When further asked she disclosed that her teacher did not behave properly with her. She was called alone. The teacher would make gestures and try to touch her in the computer room which she did not like at all. She again fainted. She was again revived. He thereupon, spoke to the victim in presence of the teacher requesting the two friends to go out. He told the teacher that the patient wants to say many things but is unable to say. She should be taken home and if taken into confidence she would reveal many things. He had prepared the case papers and prescribed certain medicines. He produced his hospital register, extract of which was exhibited at exh.108, which gave details of treating the victim on emergency basis. He clarified that when a person is subjected to gang rape, she could experience extreme tension and become restless. When the tension exceeds certain limits, she would faint. This condition is called Hysterical Convulsing Reaction.

8.1. In the cross examination, he agreed that the fact that the patient was brought in semi unconscious condition was not recorded anywhere. He agreed that there could be many causes for extreme mental tension. He agreed that in his police statement he had not stated that the victim of rape can develop such symptoms or that a victim of gang rape would be under tremendous tension and if this tension exceeded, would faint. He agreed that in the register, history of the patient or the ailment were not recorded. He clarified that such details are not required to be mentioned in the register.

9. Dr. Abidhussen Mansuri,PW-4, exh.114, was the medical officer at Patan civil hospital on 4.2.2008 when the victim girl was brought for physical examination. He recorded the history and proceeded to conduct the examination in presence of gynecologist Dr. Parulben Jani PW-23 and a lady constable. He found the hymen torn and the vagina permitted entrance of two fingers easily. He collected the vaginal and cervical swabs, etc. of the victim and sent them to Forensic Science laboratory.

10. Dr.Parulben Jani, PW-23 was examined at exh.302. In her opinion possibility of sexual intercourse could not be ruled out. She produced at exh.115 and 118, the certificate of the examination of the victim and the case papers.

11. We may refer to the deposition of various students of the college.

11.1. Sushma Chaudhary, PW-6, exh.162, deposed

that she passed out from the PTC college, Patan DIET in the year 2008. The accused were her teachers. For 12 days programme, they had gone to Kimbuva village for internship and also to Untwada. Professors Kiran Patel (accused no.4), Manish Parmar (accused no.2) and Suresh Patel (accused no.5) had accompanied the students. On 1.1.2008, Suresh Patel had called the victim at about 8:30 to make the beds. At that time she seemed short of sleep. She wanted to say something but could not say it. Once she had fainted. They returned from the internship on 12.1.2008. Thereafter, on 31.1.2008 she had fainted and was taken to hospital by Bhartiben, Jinal and Bela. After they returned, Shri Poraniya called the students in the Sanidhya hall where Bhartiben and the rector were also present. Shri Poraniya told them to give complaint in writing without fear. She had also written the complaint which was produced at exh.163. She referred to the behaviour of Kiran Patel (accused no.4) and lewd remarks by Mahendra Prajapati (accused no.3). She stated that the teachers often told dirty jokes.

11.2. Urvashi Gamiti, PW-11, exh.196, also passed out from the same PTC college in the year 2008. She identified the accused as her teachers. She knew the victim who sang well. During December/January 2007-2008, she had also gone to Kimbuva village for internship. According to her Kiran Patel (accused no.4) and Manish Parmar (accused no.2) were also there. They would call Ms.'A' every day for making the bed. On 11.1.2008, during the cultural programme, Manish

Parmar had called Ms.'A' for making the bed and to give the account of money. The girls had gone to sleep. Ms.'A' returned later. On 31.1.2008, Ms.'A' fainted in the prayer hall. She also referred to Shri Poraniya calling the girls and asking them to give written complaints if they had any to make. She had also given complaints which were produced at exh. 197, 198 and 199.

In the cross examination, she denied that all the three applications given by her were later on created by Bhartiben and Shri Poraniya.

11.3. Rita Patel, PW-12, exh.203, also passed out from the same PTC college in the year 2008. She identified the accused as her professors. She also referred to the internship tour to village Kimbuva. According to her, there were 50 girl students and three lecturers namely, Kiran Patel (accused no.4), Manish Parmar (accused no.3) and Suresh Patel (accused no.5) in their group. Once accused Manish Parmar had come inside the room when she was alone. She got scared. She also referred to the dirty talks by accused Kiran Patel. She knew the victim and recalled that she had fainted on 31.1.2008 during the prayers. Upon being assembled by Shri Poraniya, she had also given a complaint which was produced at exh.204.

11.4. Jaimini Patel, PW-13, exh.205, had also passed out from the same PTC college in the year 2008. She referred to the tour of Untwada (near Kimbuva village as was also pointed out by Sushmaben Chaudhary, PW-6)

during the period between 31.12.2007 to 12.1.2008. According to her, 50 lady students had gone. Mahendra Prajapati (accused no.3) and Ashwin Parmar (accused no.1) also accompanied them. She stated that Kiran Patel (accused no.4) used to tell dirty jokes in the class. On 31.1.2008, she had also given complaints which are produced at exhs. 133 to 135.

11.5. Jayshree Makwana, PW-17, exh.233, also passed out in the year 2008 from the same PTC college. She referred to the field trip to Kimbuva village where professors Suresh Patel (accused no.5), Manish Parmar(accused no.2) and Kiran Patel (accused no.4) had accompanied the girls. She deposed that Ms. 'A' used to sleep in her room. The professors would call her every day to make the beds. On 31.1.2008, Ms.'A' had fainted in the prayer hall during the prayers. She was taken to hospital. She had also given the complaint which was produced at exh. 234.

11.6. Nilam Parmar, PW-18 was examined at exh.235. She was the first year student in the year 2007 in the same PTC college. She had given complaint to Shri Poraniya which was produced at exh.236. She referred to an incident involving Shri Manish Parmar on a tour to Nashik by bus where the said teacher had sat next to her and put his leg touching hers.

11.7. Payal Patel, PW-19, exh.237, had also passed

out PTC from the same college. She was admitted in the year 2006. She also referred to Ms. 'A' fainting on 31.1.2008 and giving complaint to the principal later on the same day which was produced at exh.238. She deposed that though she was not subjected to sexual harassment, Kiran Patel (accused no.4) used to tell dirty jokes and he and Manish Parmar (accused no.2) would sometimes use bad words. She had gone to Kimbuva village for internship between 31.12.2007 to 12.1.2008 along with 50 girl students and professors Suresh Patel, Manish Parmar and Kiran Patel where professors used to call Ms.'A' every day to make the beds. On the day of the cultural programme, Ms.'A' had returned late at night. She had gone to sleep after eating.

In the cross examination, she agreed that in her police statement she did not mention about Kiran Patel telling dirty jokes and Kiran Patel and Manish Parmar using bad words. She denied that at Kimbuva village the girls used to sleep locking the door. She clarified that the door would be kept ajar.

12. Hiteshbhai Sanghvi,PW-24,exh.306, was the scientific officer at the Forensic Science Laboratory, Gandhinagar. He deposed that he along with a team of scientific officers had visited the college on 18.2.2008 and collected samples from ET room and the laboratory. They thereafter, went to the computer room where 16 computers were kept. He collected hard discs from these computers. After returning to the office he analysed by connecting them to computer forensic hardware with the aid of computer forensic software encash. He gave the keyword

"pornography" and prepared a CD of the pornographic images which emerged. He produced his reports in this respect at exh. 287 and 288. The remaining hard discs were again subjected to analysis and report thereof was produced at exh.289. In the hard discs, 531 pornographic web pages were found to have been visited. More than 2000 pornographic pictures were found.

12.1. In the cross examination, he denied that he had never visited the college for collection of hard discs and that such hard discs were produced before him by the investigating officer. Importantly, he had maintained the record of time when internet was used on the computers. During his examination it was found that the computers were being used frequently between 5 O' clock in the evening till 12 at night. He could not say who had made such use.

13. Satischandra Khandelwal, PW-25, exh.313, was the Deputy Director of FSL. He deposed that a parcel containing three CDs and one DVD was sent to him which he had analysed. It was found that 258 video clippings in these discs were obscene. He had prepared report to this effect which was produced at exh.314.

14. Raghvendra Vats, PW-21, exh.253, was the Investigating Officer who had conducted the initial investigation. He was the DySP in-charge of Patan district and he was holding the regular charge of ASP Siddhpur at the relevant time. He stated that since the case pertained to atrocity and since in the Patan District, there was no

DySP he himself had taken the charge of the investigation. He gave detailed account of the steps taken by him during the course of investigation of recording the statements of witnesses and collecting the evidence.

14.1. In the cross examination, he clarified that possibly since the victim may not have given full details in the complaint, he recorded her further statement.

14.2. Through this witness, the defence established that there were certain statements in the deposition of the witnesses which were not found in the police statement. In particular, in case of Dr. Kantibhai Patel in his police statement, he had not mentioned that the victim girl had fainted twice before him during the examination.

15. Parikshita Rathod,PW-22,exh.279, had completed the investigation once it was entrusted to the CID Crimes. At the relevant time, she was the DySP CID Crimes, Gandhinagar. She gave the detailed steps taken by her and deposed that upon receipt of the report from the FSL, Gandhinagar of the pornographic contents from the computers of the college, she made a report for adding section 292(2)(a) of the IPC.

15.1. In the attendance register there was no signatures of Atul Patel (accused no.6) between 25.1.2008 to 31.1.2008. She therefore, called for further information from the principal of the college and found that due to work load though the said teacher was

present, he had not signed the register. She verified the worksheet of the computer class and found that said teacher had signed it. Evidence was also collected of the witnesses having met said Atul Patel during the said period. Atul Patel was given full salary for the month of December. She had made further report for adding section 377 of the IPC. Finding that there was sufficient evidence against the accused, she filed charge-sheet on 9.4.2008.

15.2. In the cross examination, she admitted that for the purpose of section 292(2)(a) of the IPC, it was not possible to ascertain from whose possession the said material was found.

16. In addition to such oral evidence, we may briefly refer to some of the relevant documents.

16.1. Exh.67 is the FIR recorded on 4.2.2008 in which the victim had referred to all the five incidents of rape with her. She had also mentioned the specific names of all the accused who were involved in such different acts and briefly stated the nature of their participation.

16.2. In her statement, exh.68 recorded by the Magistrate under section 164 of the Code of Criminal Procedure also she referred to all the five incidents and implicated the accused attributing their different roles in different incidents in the manner stated by her before the Court in her deposition.

16.3. Statement of Bela Chaudhary,PW-2 recorded by the Magistrate under section 164 is found at exh.94 in which she had also narrated the events of 30.1.2008 when the victim had taken her into confidence and described her plight of last few months giving fair bit of details about being repeatedly raped by the accused at different places and time.

16.4. Exh.85 was the first written complaint that the victim girl gave to the principal on 31.1.2008. In this complaint, in brief she stated that in last ten days, Atul Patel (accused no.6) had crossed all limits of physical and mental harassment. She could not describe the incidents which have taken place with her because if anyone else came to know about it she would never be able to live with head held high. She therefore, requested that no inquiry be made about such incidents, her name may not be disclosed. Other accused nos. 1 to 3 and 5 had kept relations with other girls. On the next day, she gave yet another complaint exh.84 in which in addition to repeating her allegations against Atul Patel, she also complained against other five accused stating that against these lecturers she was making a brief reference. They have gang raped her twice in the college and once during internship she had been gang raped. Six professors of the college and one in-service person had raped her several times.

16.5. Several complaints received by Shri Poraniya on 31.1.2008 from the students also form part of the record. It is not necessary to refer to the contents of all

these applications except for noting that many students of college had made written complaints about gross indecent behaviour of the accused persons.

17. Various articles collected during investigation were sent for forensic analysis. The forensic report read with serological report exh. 284 confirmed presence of blood of group 'B' that belonging to her from her underwear. The under-cloth of accused no.1,2,3 and 5 marked presence of semen of their own groups.

17.1. DNA report exh.285 confirmed that the bloodstains on the underwear of the victim belonged to her. Semen or spermatozoa was absent.

18. On the basis of such evidence, learned advocate Shri J.M.Panchal for accused no. 2,5 and 6 led the arguments. He raised the following contentions :

1) The evidence of the victim is full of inconsistencies and improbabilities and it is to be discarded as unbelievable.

2) The victim being the sole eyewitness, her testimony can be accepted without corroboration only if it is of sterling quality. In the present case deposition of the victim does not come across as reliable or believable because of intrinsic and inherent contradictions.

3) There is no corroboration from other sources to the alleged five incidents of sexual exploitation of the victim. He in particular drew our attention to the medical as well as forensic evidence.

4) There was no evidence to establish conspiracy for committing gang rape.

5) With respect to collection of pornographic literature and consequent charge under section 292 of the IPC, counsel contended that there was no evidence to link such material with accused no.6. His conviction for the said offence, therefore, was not justified.

6) Counsel submitted that though by 31.1.2008 both Bhartiben and principal Shri Poraniya knew about the allegations of gang rape, they did not file FIR.

7) With respect to the evidence of the victim, counsel elaborated his submissions as under :

a) There was silence on part of the victim for a long time. She was a major, educated girl . She was staying with her friends and met her family members several times in between. She also met the lady teachers in the college. At no point of time she made any complaint to any one of them. Consequently delay in filing the FIR must be viewed seriously.

b) Places where the alleged incidents took place were not isolated. They were situated in the college itself and in case of Kimbuva village incident, in the school where the girls were housed. At DIET Patan, the places were surrounded by classrooms, teacher's room and staff room. The alleged incidents took place during the recess hours. According to the counsel it was therefore, not possible for the accused to have committed

the offence as alleged.

c) In the complaints, exh. 84 and 85 the victim did not give the details of these incidents.

8) In support of his contentions, he relied on the following authorities :

1) **Dilip and another v. State of M.P.** reported in 2001 Cri. L.J. 4721(1), wherein on facts the testimony of the prosecutrix was not found reliable and on the basis of probabilities the allegations of gang rape were not believed.

2) **Musauddin Ahmed v. State of Assam** reported in AIR 2010 Supreme Court 3813, wherein in the statement of the prosecutrix recorded under section 164 of the Code, it was revealed that she remained with the accused for a very long time and had been roaming in the city by rickshaw and buses. She had gone to the hotel without any protest and accompanied the accused to the room and spent the whole night with him and came out in the morning after checking out from the hotel. She also travelled with the accused in a rickshaw from hotel to Musafirkhana but at no point of time raised any hue and cry or inform anybody that the accused had misbehaved with her in any manner. It was on the basis of such conduct of the prosecutrix the Court refused to accept her testimony observing that the prosecutrix appears to be a lady used to sexual intercourse. She had no objection in mixing up and having free movement with any of her known person for enjoyment. It was on such basis that the conviction was reversed. The said case is

based on its own facts and no ratio which can be applied in the present case has been laid down.

3) **Bhaiyamiyan @ Jardar Khan and Anr. v. State of M.P.** reported in 2011 CRI.L.J. 3577, wherein once again on facts, the testimony of the prosecutrix is found unreliable. She had an old tear in the hymen. She had stated that during the medical examination her vagina had been stitched. No such stitches were found by the doctor.

4) **Krishan Kumar Malik v. State of Haryana** reported in 2011 CRI.L.J. 4274, wherein on various grounds including no injuries on the victim, failure to hold identification parade and description given of the details of the accused did not match his appearance, the Court found it unsafe to rely on the sole testimony of the prosecutrix.

5) **Rai Sandeep alias Deepu v. State of NCT of Delhi** reported in 2012 CRI.L.J. 4119, wherein in order to rely on the sole testimony of the prosecutrix, the Court observed that the 'sterling witness' should be of a very high quality and caliber whose version should therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation.

6) **Narayan alias Naran v. State of Rajasthan** reported in (2007) 6 Supreme Court Cases 465, wherein when the evidence of the prosecutrix the sole eyewitness was not supported by other evidence produced by the prosecution, the Court reversed the conviction of the accused under section 376 and 392 of the IPC.

7) **Sudhansu Sekhar Sahoo v. State of Orissa** reported in (2002) 10 Supreme Court Cases 7432, in which the Court reiterated that the conviction for offence under section 376 of the IPC can be based on the sole testimony of the victim provided it is safe, reliable and worthy of acceptance.

8) **Abbas Ahmad Choudhary v. State of Assam** reported in 2010 Cr.L.R.(SC) 480, in which the Court observed that though in a matter of rape, the statement of the prosecutrix must be given primary consideration, but, at the same time the broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully.

19. Learned counsel Shri A.Y. Kogje appearing for accused no.3 pointed out that the said accused was involved in the two incidents of 11.9.2007 and 28.9.2007. With respect to the incident of 11.9.2007, he contended that it was simply not possible to carry out the offence as alleged by the victim due to the place and time of the incident. He submitted that the incident occurred in the ET room where one side was covered with glass. Such room was close to the class rooms. The alleged incident took place during the recess hours. With respect to the incident of 28.9.2007, counsel drew our attention to the extract of attendance register (exh.135) and pointed out that the said accused was on local duty on 26th, 27th and 28th of September, 2008 and therefore, would not be present in the college.

20. Learned advocate Ms. Mita Panchal for accused no.4 in addition to adopting the arguments of Shri J.M. Panchal submitted that in any view of the matter, accused no.4 had not committed the offence of rape. He had not been part of the conspiracy. The acts alleged against him would not constitute offence punishable under section 377 of the IPC.

21. Accused no.1 pleaded in person and submitted that the victim had made false accusations. He had not committed any offence.

22. On the other hand learned Special PP Ms. M.L. Shah opposed the conviction appeals contending that the evidence of the prosecutrix was reliable and believable. She had no reason to falsely implicate her own teachers. She came from a humble, rural background, was a student barely aged 18 years. Her reluctance to initially make allegations public must be viewed in such light. Mere delay therefore, would not destroy the prosecution case. She contended that there was sufficient corroboration from other evidence including the co-students and the teachers of the college as well as the medical evidence.

22.1. With respect to State's acquittal appeal, counsel submitted that the trial court committed a serious error in acquitting the accused nos. 3 to 6 for offence punishable under section 3(1)(xii) of the Atrocities Act. Drawing our attention to the provisions contained in the said section, she contended that the victim belonged to a scheduled caste. The accused held position of

dominance over her and misused such position to sexually exploit her. Ingredients of section 3(1)(xii) of the Atrocities Act are therefore, made out. She submitted that ingredients of section 376(2)(b) and (c) were also made out. The Court therefore, committed error in acquitting the accused.

22.2. Learned counsel placed reliance on several decisions in support of her conviction. We would refer to such decisions during our conclusion.

23. Our consideration of the issues arising in the appeals would be in three parts :

1) First would be appreciation of evidence in order to ascertain if the accusations made by the victim against the accused stand proved.

2) If so, in the second portion, we would be considering what offences the accused can be stated to have committed.

3) Third part would be the sentencing.

24. Coming to appreciation of evidence, we may first advert to the evidence of the prosecutrix herself. The victim girl Ms.'A', PW-1, in her deposition had given full and complete details of five different incidents of rape. We may recall these five incidents were as follows :

1) On 11.9.2007, when during the recess hours in the afternoon she was alone in the classroom doing her homework,

she was called by Ashwin Parmar (accused no.1) in the ET room. Manish Parmar (accused no.2) and Mahendra Prajapati (accused no.3) were present there. She was subjected to rape by all three of them one after another. After completing these acts, she was threatened with serious consequences if she informed anybody about the incident. She would suffer in the internal marks and her future would be destroyed.

2) Next incident happened on 28.9.2007 when once again in the recess, she was doing her homework, Mahendra Prajapati (accused no.3) called her in the laboratory room. Suresh Patel (accused no.5) and Kiran Patel (accused no.4) were present there. After closing the door she was subjected to rape by Mahendra Prajapati and Suresh Patel. In the mean time, Manish Parmar (accused no.2) also arrived. He also raped her. Accused Kiran Patel tried his best to insert his organ in the private parts of the victim. He however, did not succeed and therefore, satisfied his lust by putting his organ in her mouth.

3) The third incident took place at village Kimbuva when the victim and some other 50 odd girl students had gone for internship for about two weeks. They were accompanied by their professors Suresh Patel (accused no.5), Kiran Patel(accused no.4) and Manish Parmar(accused no.2). On 1.1.2008 at about 8:30 at night she was called by Suresh Patel to make the beds. The teachers were occupying the principal's room in the school. There Manish Parmar and Suresh Patel committed rape on her. Once again Kiran Patel satisfied his lust by inserting his organ in her mouth. According to her, she fainted and unknown to her, her pubic hair were removed which she found out later the next day.

4) The fourth incident took place also at Kimbuva village when on 11.1.2008 after the cultural programme late at night she was called in the principal's room and once again subjected to rape by Manish Parmar (accused no. 2) and Suresh Patel (accused no.5). Kiran Patel (accused no.4) employed the same method to satisfy his lust.

5) The fifth incident took place on 25.1.2008 when the computer teacher Atul Patel (accused no.6) called her in the computer room and raped her. He also threatened her that if she informed anybody, he would fail her in the computer internal exam.

25. In addition to such revelations the victim also deposed that when she could not bear such treatment any longer she narrated the entire version to her friend Bela Chaudhary PW-2 on 30.1.2008. On 31.1.2008, in the prayer hall, five accused, except Atul Patel (accused no.6), were present. On seeing them all together, she fainted. The FIR of the victim was recorded at exh.67 and her statement under section 164 of Code of Criminal Procedure was recorded by the Magistrate on 7.2.2008 which was produced at exh.68.

26. The crucial questions are, is the testimony of this victim reliable and whether there is corroboration available from independent sources?

27. With respect to reliability of this witness, we have not the slightest hesitation in accepting her testimony. Her

version is detailed, specific, consistent and otherwise also reliable and believable. To begin with, she had given such details with fair degree of consistency on all material and crucial aspects in her FIR exh.67 as well as her statement before the Magistrate exh.68. When a victim subjected to such gross abuse over a long period of time by several persons, narrates her plight, there are bound to be minor variations in finer details that may be given by her. Such minor inconsistencies would not destroy her testimony if otherwise found to be reliable and believable.

28. The victim had no axe to grind against any of the accused. There was no previous familiarity, no scope for animosity, none is even alleged. She was a young student barely 18 years of age. She came from a rural humble background. She belonged to scheduled caste community. Higher education in the family was not very common. She came to Patan DIET PTC college to pursue PTC course and hoped to be a teacher one day. She had no reason whatsoever to falsely involve her own teachers that too as many as six of them for offences as serious as gang rape and gross and perverted physical abuse. Quite apart from the extreme seriousness of the allegations, in the Indian condition and the social context, she would be exposing herself to great deal of adverse publicity. Perhaps for the rest of her life, she would be referred to as “that girl”. Even if it was not her fault at all, she would be subjected to acute social attention for years together. From the evidence on record, we simply find no good reason why the victim would have exposed herself to such possibilities. Vague and general suggestion that she involved the accused

falsely at the instance of her teacher Bhartiben and the principal Shri Poraniya, would simply not be enough. The defence had not even suggested any reason for such persons to use the prosecutrix as a tool to settle their scores. No animosity was shown between them and the accused. In any case there was no reason for the victim to oblige Bhartiben or Mr. Poraniya.

29. The prosecution had produced on record attendance registers of the college for the relevant period. Except for one instance of 28.9.2007 with respect to accused no.3, no contention was raised before us that any of the accused professors was absent on the days mentioned by the victim. We would refer to Shri Kogje's contention with respect to the incident of 28.9.2007 a while later. Keeping such contention aside, what would therefore, emerge is that on every single day of the five incidents narrated by the victim, all the accused were present and this was reflected on record by the college attendance register. When the victim gave details of the three incidents which took place in the college involving various accused, she did not have access to the college attendance register. If her accusations were false, she ran a high risk of being contradicted by the documentary evidence establishing that one or more of the persons she involved in a serious offence of rape were proved to be absent and away from college. The fact that on all such days, when the accused involved these different professors for having physically abused her in the college during college time, they were all shown to be present in the college attendance register, is a crucial factor in our opinion. As many as six accused were

involved in three different incidents which took place in the college. If the victim had cooked up the stories as alleged by the defence and if randomly the teachers of the college were accused of raping the victim in the college, surely, somewhere the attendance register would have falsified the victim's version. We may recall the incidents spanned over a period of several months. The victim therefore, could not have relied entirely on her memory about the presence or absence of the professors concerned to make such allegations and in two out of three cases with specific dates and the persons involved in each individual incident.

30. Two clarifications with respect to attendance of the professors. With respect to incident of 28.9.2007, the contention of Shri Kogje that accused no.3 was away for outdoor duty on the said date and therefore, falsely involved, cannot be accepted for the following reasons:

i) To begin with insofar as only one out of five incidents, the witness was not specific about the date and it was 28.9.2007. At the outset we had recorded that she referred to this incident as what happened about 15 days after she and other students had gone to picnic to Idar on 13.9.2007. Reference to 28.9.2007 of this incident therefore, is a matter of approximation. Accused no.3 was on local duty on 26th, 27th and 28th September 2007 as per the college register. This does not automatically absolve him. Further, merely because he may have performed the local duty would not mean that he could not be present in the college in the recess hours also.

ii) It has also come on record through prosecution witness

that local duty need not necessarily mean presence of teacher away from the college.

31. Second clarification is with respect to Mahendra Prajapati (accused no.3). From the deposition of the Investigating Officer Parikshita Rathod, PW-22, it has come on record that between 25.1.2008 to 31.1.2008 Mahendra Prajapati had not signed the attendance register but that he was present all through out and only because of heavy work load, the signature was not put. It was also revealed that for the said month of December 2008, he received full pay. No contention was raised before us and no stand was taken during trial that he was absent during the said period.

32. It is by now well settled that in cases of rape, if the evidence of the prosecutrix; the sole eyewitness is found reliable and believable, conviction can be recorded on the basis of such testimony without insisting on corroboration. In case of **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat** reported in AIR 1983 Supreme Court 753, the Apex Court observed that too much importance cannot be given to minor discrepancies and the discrepancies which do not go to the root of the matter and shake the basic version of the witnesses cannot be annexed with undue importance. It was further observed that for offence of rape, corroboration is not a sine-quo-non for conviction. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. The Court elaborated in the Indian context a girl or a woman

bound by the tradition of non-permissive society, would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being obstracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. She would have to brave the whole world. If she is unmarried, she would apprehend the difficulty to secure an alliance with a suitable match in future. She would also otherwise be extremely embarrassed.

In case of **Pramod Mahto and others v. State of Bihar** reported in 1989 Supp (2) Supreme Court Cases 672, the Apex Court rejected the contentions of false accusation of gang rape due to communal feeling observing that it is inconceivable that an unmarried girl and two married women would go to the extent of staking their reputation and future in order to falsely set up a case of rape on them for the sake of communal interests.

In case of **State of Kerala v. Kurissum Moottil Antony** reported in AIR 2007 SC(Supp) 1828, the Apex Court observed as under :

"7. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. A similar view was expressed by this Court in Rafiq v. State of U.P. (1980 (4) SCC 262) with some anguish. The same was echoed again in Bharwada Bhogiabhai and Hirjibhai v. State of Gujarat (AIR 1988 SC 753). It was observed in the said case that in the Indian setting refusal to act on the testimony of the victim of

sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity or dignity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in Rameshwar v. The State of Rajasthan (AIR 1952 SC 54) were, "The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...".

8. To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars as in "the case of an accomplice to a crime". See State of Maharashtra v. Chandra Prakash Kewalchand Jain (1990 (1) SCC 550). Why should be the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance."

In case of **Childline India Foundation & Anr. v. Allan John Waters & ors.** reported in 2011 CRI.L.J. 2305, the

Supreme Court reiterated the above noted observations of the Apex Court in case of **State of Kerala v. Kurissum Moottil Antony**(supra).

33. The question is, would the conduct of the prosecutrix of not informing her friends, parents or the teachers about her plight make her testimony unreliable and whether the delay in lodging the FIR would be fatal to the prosecution.

34. Addressing the first issue first, it is undoubtedly true as clearly emerging from the record that the victim lived with other co-students in the same hostel. During the span between 11.9.2007 till 31.1.2008, she visited her parents on various occasions and stayed with the family as well during the Diwali break and other holidays. The fact that despite such opportunities, she had not revealed her plight to her family members or co-students must be seen in light of the facts and attendant circumstances emerging from the record. The victim came from a humble rural background. As observed by the learned trial Judge in the impugned judgement, out of five siblings, she was the first one to pursue education beyond higher secondary level. She relied on her scholarship. She came from scheduled caste community. The PTC course meant much to her. This degree for her was window of better future. If being subjected to gross physical abuse by her own teachers twice her age completely stunned her into silence and made her to suppress her feelings by internalising them, it cannot deflect from the truthfulness of her deposition. Under such circumstances, which person would react in

which manner is impossible to standardise. There cannot be a stereotype reaction to such experiences in life. Depending on the socio-economic background, the manner and the method of being subjected to abuse, the position of perpetrator vis-a-vis the victim and most importantly, the person's own nature and tendencies would be some of the many factors which would decide her ultimate reaction.

35. From the evidence of Bhartiben PW-5, the prosecution had brought on record the nature of internal marking system. In both years the students were subjected to internal assessment for which marks would be alloted. In the first year, the internal marks represented 350 out of total 1300 marks. Likewise, in the second year also the students were subjected to internal assessment and allotment of marks. It is not even the case of the defence that on the basis of internal marking, a student could not be failed. Though suggestions were put to Bhartiben PW-5 that essentially the task of allotting the internal marks rested with the principal and the senior lecturers, such suggestions were declined. She was specific that junior lecturers awarded the internal marks. It is true that the principal Shri Poraniya PW-20 did agree that senior lecturers would supervise the task of allotting such marks, the fact however, would remain that the victim was subjected to internal assessment on performance basis substantially, if not solely on the discretionary allotment of marks by the teachers. We may recall the internal marks included practicals and the performance of the student during teaching assignments. By the very nature of things, such marks would be highly discretionary. There would be

hardly any written record to justify awarding excessively high or extremely poor ratings. In short, the victim depended solely on the discretion of her teachers in awarding the internal marks. At will they could give her high marks or fail her. This was a pressure point leveraged by the teachers to ensure the subjugation of the victim to their lustful desires. We may recall that after every successive case of rape, the teachers threatened her that if she ever revealed these details to anyone, they would ensure that her future is destroyed. She would be failed in internal marks.

36. Whether the teachers would have eventually carried out the threat is not important for us to find out. What is sufficient is a girl student aged 18 years belonging to a Dalit community coming from rural and humble background for the first time perhaps, staying away from the family in confines of a hostel, would certainly be under considerable pressure, if as many as six of her teachers ganged up against her and subjected her to physical abuse by threatening her with such dire consequences. If therefore, for as long as she could bear this mental and physical torture, trauma and humiliation, she did not inform anyone including her friends and parents and other relatives about her ignominy, the same need not be looked at as her unnatural conduct.

37. These very factors and observations would apply with equal force for delay in filing the FIR. If we believe as we have that because of enormous pressure and trauma, the victim was unable to confide even to her friends and

family about her plight, the fact that there was some time gap in lodging the FIR stands immediately explained. In case of **Viswanathan and others v. State Represented by Inspector of Police, Tamil Nadu** reported in (2008) 5 Supreme Court Cases 354, the Apex Court observed that there was some delay in lodging the FIR, keeping in view the trauma suffered by the victim, her version that she regained her composure only in the evening cannot be disbelieved. On such basis the Court refused to throw out the prosecution case only on the ground of delay in lodging the FIR.

38. We may recall that the victim fainted on 31.1.2008 in the assembly hall when she could not bear the pressure any more. There is absolutely no doubt or dispute about this incident. She collapsed in front of several witnesses including her friend Bela Chaudhary PW-2 and other students, teacher Bhartiben PW-5 and principal Shri Poraniya PW-20. She was immediately taken to hospital by Bhartiben to Dr. Kantibhai Patel PW-3. He examined her and found her suffering from extreme mental disturbance. The witnesses have come forward and deposed that the victim had bouts of such lapsing into unconscious since sometime. All these factors would indicate that the victim was bearing the brunt of gross physical abuse and mental and physical torture as long as she could bear it without consulting anyone else.

39. The law being well settled, corroboration to the evidence of the prosecutrix of rape case, when evidence is otherwise reliable and believable, is not necessary.

However, we may examine whether there is corroborative evidence on record. In our view there was ample corroboration on various aspects emerging from the deposition of the victim. To begin with, her own statement was recorded by the Magistrate under section 164 of the Code of Criminal Procedure on 7.2.2008. In such statement also, the victim had given a very similar version on all material aspects. As per the victim on 30.1.2008 when she could bear no more, she narrated the entire version to her friend Bela PW-2. Bela herself also deposed before the Court to this effect. Her statement under section 164 of the Code of Criminal Procedure was also recorded by the Magistrate. When the victim fainted on 31.1.2008, Bela finally informed their teacher Bhartiben who also in her deposition gave a similar account. Bela's version would be a corroborative piece of evidence in view of section 157 of the Evidence Act which provides that in order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place or before any authority legally competent to investigate the fact may be proved. In case of **Ramratan and others v. The State of Rajasthan** reported in AIR 1962 Supreme Court 424, the Apex Court observed that to apply section 157 of the Evidence Act, two things are essential. The first is that a witness should have given testimony with respect to some fact. The second is that he should have made a statement earlier with respect o the same fact at or about the time when the incident took place or before any authority legally competent to investigate the fact.

40. The events of 31.1.2008 and the mental condition of the victim bear the testimony from the evidence of Dr. Kantibhai Patel, PW-3. The victim was immediately taken to him when she fainted in the assembly hall. Dr. Kantibhai examined her and found her to be under extreme mental disturbance. She was restless and told the doctor that she was unable to sleep. During the brief examination by this doctor, the victim was unable to give further details of the cause of her restlessness but did mention that she kept thinking about the bad behaviour of the computer teacher. The doctor advised Bhartiben to take the girl into confidence and make further inquiries.

41. The co-students of the college also throw much light on the prevailing atmosphere in the college. We need not refer to the details of the deposition of these witnesses since we have already in brief recorded their testimony earlier. For a brief reference, however, we may refer to Urvashi Gamiti PW-11 exh.196, Rita Patel PW-12 exh.203, Jaimini Patel PW-13, exh.205, Jayshree Makwana PW-17 exh.233, Nilam Parmar PW-18 exh.235 and Payalben Patel PW-19 exh.237. Two things are common. First, they were the students of the same college at the time the incidents took place. Some of them were in the first year, some in the second year. Second, they all referred to the indecent behaviour of the teachers. They had given complaints in writing to the principal Shri Poraniya on 31.1.2008. Such outburst of the girls was spontaneous and could not have been stage managed by the principal.

42. Evidence of the principal Shri Kantidas Poraniya,

PW-20 is also crucial. He had taken charge only on 15.9.2007. He was unaware about the happenings at the institute. Only on 31.1.2008, when the victim collapsed in the assembly hall and later on when Bhartiben called him and narrated the event that he learnt about some serious, sinister events taking place. On his part he immediately called the girls. Assuring full protection, he asked them to give complaints either oral or in writing. Out of bunch of complaints received, one (exh.85) was by the victim herself. He requested Bhartiben to examine such complaints and make a report. Next day, he carried the complaints and the report to Gandhinagar to consult the Director of Education. The Director was not available but on phone the Director advised that some of the complaints did not contain signatures and that a further and fuller report would be necessary. The principal therefore, returned to the college and took further complaint of the victim (exh.84). He carried further material and fresh report to the Director on 2.2.2008. On 2.2.2008, the Director met him and instructed that students should remain present on 4.2.2008 when a team including Jyotiben the convener of the Women's Cell would visit the institute. 3rd February being a Sunday, parents of many students came to visit them. The news leaked like wild fire. Therefore, on 4th February, before the team from Gandhinagar could arrive, parents of the student who had gathered there since morning created a ruckus. Police had to be called. FIR of the girl was immediately recorded.

43. Thus on various aspects emerging from the deposition of the victim, there is ample corroboration. As

observed earlier, the victim's version was corroborated by Bela PW-2 as being informed to her by the victim on 30.1.2008. The victim's condition was established by the evidence of Dr. Kantibhai Patel PW-5. He confirmed that the victim was suffering from extreme mental pressure resulting from trauma. Such pressure could occur if a person was subjected to gang rape. The deposition of various co-students established the kind of atmosphere prevailing in the institute. We may recall that it was an all girls college with compulsory boarding. The girls were housed in a hostel. Majority if not all were male teachers. Accused were frequently and publicly in presence of the girls using vulgar language and cracking dirty jokes, often indulging in taking physical liberties. We have not the slightest doubt in our mind about the veracity of the accusations made by the victim against all the accused. Their involvement as alleged by the victim stands firmly established.

44. The accused in their statements under section 313 of the Code of Criminal Procedure took the stand of total denial. No stand was taken during the trial, no arguments were advanced before us that the acts of sexual intercourse were consensual.

45. We would however, need to dispel certain doubts raised by the defence. Firstly, merely because the forensic evidence lent no further support would not mean that we should discard such other overwhelming evidence which support the accusation from various angles. The FIR was lodged on 4.2.2008. The last incident of rape had occurred

on 25.1.2008 in the computer room. After such gap surely, the victim and the accused would have had their baths on number of occasions, changed and washed their clothes. If therefore, from the body of the victim or her clothes, no further evidence was found by forensic scientist or DNA experts, the same would not shake our faith in the other evidence on record.

46. Much was sought to be made out of the contents of complaints exh. 85 and 84 made by the victim on 31.1.2008 and on the following day respectively. It was argued with a degree of emphasis that these complaints did not include specific allegations. We must view the contents of these complaints from the background of the victim's mental condition. On 31.1.2008 in the morning itself she had collapsed and had to be taken to the hospital for treatment. If later that day the principal asked her to write down what had happened to her and if the victim did not give full details in writing, surely, this cannot be a factor to discard her otherwise reliable testimony duly corroborated by other evidence on record. Till then Bela PW-2 was the sole person she had confided in and that too only the previous day. She had braved all the torture without being able to speak to anyone at all about it. On 31.1.2008, it was too much to expect her to open the floodgates and give in writing the full details of her sufferings. Physically and mentally she could not be expected to go through such grind. On the next day, when she lodged another complaint exh.84, she was more elaborate. Even here if she did not give the finer details of being subjected to rape, the same was hardly surprising.

Till then, she had not even been able to speak to her parents about the incident. She had perhaps not even made up her mind to lodge a formal complaint. Had she not collapsed in full public view on 31.1.2008, one does not know how long her ordeal would have lasted. In the complaint exh.85 though she was very brief, she did say that she was subjected to such events; that if made public, she would never be able to walk with her head held high. She requested that her identity may not be revealed. She also mentioned other accused besides Atul Patel (accused no.6) as the notorious characters. Her complaint therefore, need not be viewed as absolving any of the accused. In complaint exh.84, she made specific disclosure of gang rape and involved other five accused besides Atul Patel. She also referred to Atul Patel as a monstrous character. These applications were not meant to be formal complaints to the police. Even otherwise, a person who the other day was subjected to extreme physical abuse and mental trauma and was under constant tension and fear by as many as six of her own teachers holding dominant position, cannot be overnight expected to be free from such fear merely because the principal Shri Poraniya told them to be free from any pressure.

47. It was also argued that though the teacher Bhartiben PW-5 and the principal Shri Poraniya PW-20 came to know about the gang rape on 31.1.2008, took no steps to lodge a formal FIR. It was highlighted that Bhartiben was a law graduate herself. Merely because till 4.2.2008, no FIR was lodged despite these two senior teachers coming to know about the experiences of the victim, need not destroy the

entire prosecution case. Our reasons are as follows :

i) Firstly merely because these teachers took no action would not in any manner deviate from the truthfulness of the victim herself.

ii) Secondly, the allegations were explosive. If as a principal of the educational institute that too a Government organisation, the principal thought of acting with a degree of caution, the same can at best be attributed to his Governmentalisation. The incidents span over a period of time and related to few months prior to the time when they were revealed to these teachers. The principal therefore, thought it wise to collect further material and to consult the head office. This can at best be attributed to his habit of working under hierarchical set up. The Director on his side upon examination of the report prepared a team to visit the institute a day or two later. In the meantime, the events took over and the presence of agitated parents and Press required presence of the police and promptly the FIR was recorded.

48. It was argued that the places where rape took place were inside the college itself, making it impossible to believe the allegations. To our mind it would be archaic to think that in every case of rape the victim must scream and shout, put up physical resistance and suffer injuries. When a young girl is subjected to forced sexual intercourse, what would be her reaction cannot be a subject matter of standardisation. When, as in this case, the girl is gang raped by three or at times four of her own teachers much older to her, it is not necessary that she must put up physical resistance. It is not always necessary

that the resistance of the girl can be broken only by brute physical force. Deceit, blackmail, threats, dominance are some of the many weapons with which same result can be achieved. In our case the teachers held complete sway over the girl due to internal assessment.

49. This brings us to the second part of our inquiry namely, under the circumstances, what offences the accused could be stated to have committed.

50. Insofar as accused no.1,2,3 and 5 are concerned, offence of gang rape punishable under section 376(2)(g) of the IPC is writ large on the face of the record. On 11.9.2007, the victim was subjected to gang rape by accused no.1 to 3. On 28.9.2007, she was subjected to gang rape by accused no.2,3 and 5. Likewise at Kimbuva on 1.1.2008 and 11.1.2008 she was raped by accused no.2 and 5.

51. Insofar as Kiran Patel (accused no.4) is concerned, despite his best efforts, he could not achieve penetration. By himself therefore, he had not raped the victim. Question is, is the theory of conspiracy and therefore, offence under section 120B of the IPC is established against all the accused and consequently can accused no.4 Kiran Patel be also punished for offence under section 376(2)(g) with the aid of 120B of the IPC?

52. It is well settled that by the very nature of things, direct evidence of conspiracy is unlikely to be available on record. It is equally well settled that the conspiracy can as

well be established through proved circumstances.

In case of **Mohd. Hussain Umar Kochra etc. v. K.S. Dalipsinghji and another etc.** reported in AIR 1970 Supreme Court 45, the Apex Court observed that the conspiracy may develop in successive stages and there may be a general plan to accomplish the common design by such means as may from time to time be found expedient. It was held that offence under section 120B of the IPC is a separate offence and punishable separately from the main offence.

This was also so held in case of the **State of Andhra Pradesh v. Kandimalla Subbaiah and another** reported in AIR 1961 Supreme Court 1241.

53. Adverting to the facts of the present case, the sequence of events and as they unfolded certainly suggest a certain prior design and commission of acts in furtherance of such design on part of the accused, except Atul Patel (accused no.6). The modus operandi, the tools used and the manner of commission of offence on four occasions twice at college in September 2007 and twice at Kimbuva village in January 2008 indicated a common thread of subjecting the victim to rape under force, threat, and to silence her with a mighty tool of internal marks. The conclusion of the trial Court that the conspiracy of committing gang rape was proved on record is thus perfectly just. Participation of accused no.4 during such events, his own active role, his desperate attempts to have sexual intercourse with the victim and upon failing, to satisfy his lust through other means equally establishes

his full participation in the conspiracy. Under the circumstances, all the accused, except Atul Patel (accused no.6) were rightly convicted for the offence of gang rape and also for conspiracy to commit such offence as punishable under section 120B of the IPC.

54. The next question is, whether the actions of Kiran Patel (accused no.4) would amount to offence punishable under section 377 of the IPC?

55. Section 377 of IPC prescribes punishment for unnatural offence and reads as under :

"377. Unnatural offences.-- Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

56. Section 377 of the IPC thus makes punishment for a voluntary act of a person of carnal intercourse against the order of nature. Question is whether the acts of Kiran Patel would fall within such description? Before taking note of the law as it developed in India, we may briefly summarise the actions of Kiran Patel.

57. As per the prosecutrix on 28.9.2007 Kiran Patel was present when she was raped by others in the laboratory room. Kiran Patel thereafter, himself tried to commit sexual intercourse, but failed. He thereupon forcibly shoved his

organ in her mouth and satisfied his lust. This also happened at Kimbuva village on 1.1.2008 and 11.1.2008. After the other two accused present there i.e. Suresh Patel and Manish Parmar raped her, Kiran Patel shoved his organ in her mouth and satisfied his desire. On the incident of 28.9.2007 the prosecutrix had stated that while others were raping her, Kiran Patel was fondling her body parts. Even on 1.1.2008, according to her Kiran Patel had played with her body parts in the worst possible manner. On 11.1.2008 also Kiran Patel had played with her body parts.

58. The parameters of unnatural offence punishable under section 377 came up for consideration many years back in case of **Khanu v. Emperor** reported in 1925 SIND 286. It was observed that section 377 punishes certain persons who have carnal intercourse against the order of nature. It was observed that if the act committed was one of carnal intercourse, it is clearly against the order of nature because the natural object of intercourse is that there should be the possibility of conception of human beings, which in the case of coitus per os is impossible. The Court however, cautioned that we must not allow our disgust at the perpetrators of such acts to blind us.

In case of **Lohana Vasantlal Devchand v. State of Gujarat** reported in 1968 GLR 1052, learned Single Judge of this Court considered at a considerable length the parameters of section 377 of the IPC. It was a case in which a young boy was subjected to oral sex. It was in this background that it was observed as under :

"In the instant case, there was an entry of a male penis in the orifice of the mouth of the victim. There was the enveloping of a visiting member by the visited organism. There was thus reciprocity; intercourse connotes reciprocity. It could, therefore, be said without any doubt in mind that the act in question will amount to an offence, punishable under section 377 of the Indian Penal Code."

In case of **Rawal Channalal Shivram v. State of Gujarat** reported in 2002(40 GLR 3050, learned Single Judge convicted the accused under section 377 who was found guilty of forcible penetration of his male organ into the mouth of 12 year boy.

In case of **State of Kerala v. Kundumkara Govindan and anr.** reported in 1969 CRI L J 818, the learned Single Judge of Kerala High Court observed as under :

> "21. Unnatural offence is defined in Section 377 of the Penal Code; whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal commits unnatural offence. The act of committing intercourse between the thighs is carnal intercourse against the order of nature. Therefore committing intercourse by inserting the male organ between the thighs of another is an unnatural offence. In this connection, it may be noted that the act in Section 376 is "sexual inter, course" and the act in Section 377 is carnal intercourse against the order of nature."

22. The position in English law on this question has been brought to my notice. The old decision of Rex v. Samuel Jacobs (1817) Russ & Ry 381 CCE lays down that penetration through the mouth does not amount to the offence of sodomy under English law. The counsel therefore argues that sexual

intercourse between the thighs cannot also be an offence under Section 377 of the Penal Code. In Sirkar v. Gula Mythien Pillai Chaithu Maho. mathu, 1908 TLR Vol XIV Appendix 43 a Full Bench of the Travancore High Court held that having connection with a person in the mouth was an offence under Section 377 of the Penal Code. In a short judgment, the learned Judges held that it was unnecessary to refer to English Statute Law and English text books which proceeded upon an interpretation of the words sodomy, buggery and bestiality; and that the words used in the Penal Code were very aim pie and died enough to include all acts against the order of nature. My view on the question is also that the words of Section 377 are simple and wide enough to include any carnal intercourse again tithe order of nature within its ambit. Committing intercourse between the thighs of another is carnal inter, course against the order of nature.

In case of **Kartar Singh v. State of Delhi** reported in 1993 Cri LJ 1483, learned Judge of Delhi High Court confirmed the conviction of the accused for offence under section 377 of the IPC. He was found to have subjected a six year old girl to oral sex. It was observed as under :

"(4) To my mind none of the authorities cite at the bar on behalf of the petitioner apply to the facts of the present case. So far as the charge under Section 377 Ipc is concerned, it consists in a carnal intercourse committed against the order of nature or in an un-natural manner by one with another person. The act of the petitioner of inserting his penis into the mouth of these two tender girls prima facie is brutish, beastly, barbarous, defrayed and lustful. Learned counsel for the petitioner also contended that after the petitioner is alleged to have discharged semen in the mouth of Anuradha, be could not have been capable of committing any type of intercourse with the other girl and, therefore, qua the other girl i.e.Divya alias Gullu no offence can be said to be made out. It is difficult to agree with this

contention also because the second act attributed to the petitioner is also of the same nature as the one allegedly committed by him with Anuradha. He is alleged to have discharged urine in her mouth, which act, if true, is equally carnal. The statement of Anuradha prima facie seems to inculpate the petitioner with an offence under sections 376 read with 511-IPC because he made an attempt to penetrate his penis into the private parts of these two girls after fingering them."

Division Bench of Delhi High Court in case of **Naz Foundation v. Government of NCT of Delhi & ors** reported in 2010 Cri. L.J. 94, considered the Constitutional validity of section 377 of the Penal Code in context of homosexuality between two consenting partners. The Court noted various actions which would possibly fall under section 377 of the Penal Code as under :

"22. Then there is a reference to 'Bangalore incident, 2004' bringing out instances of custodial torture of LGBT persons. The victim of the torture was a hijra (eunuch) from Bangalore, who was at a public place dressed in female clothing. The person was subjected to gang rape, forced to have oral and anal sex by a group of hooligans. He was later taken to police station where he was stripped naked, handcuffed to the window, grossly abused and tortured [WP(C)7455/2001] Page 19 of 105 merely because of his sexual identity. Reference was made to a judgment of the High Court of Madras reported as Jayalakshmi v. The State of Tamil Nadu, (2007) 4 MLJ 849, in which an eunuch had committed suicide due to the harassment and torture at the hands of the police officers after he had been picked up on the allegation of involvement in a case of theft. There was evidence indicating that during police custody he was subjected to torture by a wooden stick being inserted into his anus and some police personnel forcing him to have oral sex. The person in question immolated himself inside the police station on 12.6.2006 and later succumbed to burn injuries on 29.6.2006. The

compensation of Rs.5,00,000/- was awarded to the family of the victim. Another instance cited is of a case where the Magistrate in his order observed that the case involved a hidden allegation of an offence under Section 377 IPC as well, thereby stretching the reach of Section 377 IPC to two lesbian adult women who were involved in a romantic relationship with each other while the initial accusation was only under Section 366 IPC. An affidavit of a gay person is also filed on record. The person was picked up from a bus stand at about 10 p.m. by the police, who accused him of being a homosexual. He was physically assaulted with wooden sticks, taken to police post where he was subjected to sexual and degrading abusive language. During the incarceration in the police post over the night, four police [WP(C)7455/2001] Page 20 of 105 men actually raped and sexually abused him including forcing him to have oral and anal sex. The respondent No.8 has relied upon several other instances of fundamental rights violation of homosexuals and gay persons. The material on record, according to the respondent No.8, clearly establishes that the continuance of Section 377 IPC on the statute book operate to brutalise a vulnerable, minority segment of the citizenry for no fault on its part. The respondent No.8 contends that a section of society has been thus criminalised and stigmatized to a point where individuals are forced to deny the core of their identity and vital dimensions of their personality."

In para.67, the Court observed that there is almost unanimous medical and psychiatric opinion that homosexuality is not a disease or a disorder and is just another expression of human sexuality. In the ultimate conclusion, the Court declared section 377 of the IPC insofar as it criminalises consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution. It was however, provided that " the provisions of section 377 IPC will continue to govern non-

consensual penile non-vaginal sex and penile non-vaginal sex involving minors."

59. We are in the present case not examining the validity of section 377 of the Penal Code as was examined by the Delhi High Court in case of **Naz Foundation**(supra). This case is referred to for noting that with passage of time the standards of tolerance of the society change. Even while considering that homosexuality is not a disease, but a sexual expression or preference, the other cases which would fall under section 377, under the expression unnatural offence, were left untouched.

60. From the judgements noted above, a clear trend emerges. In India, the events of unnatural offences are not confined to sodomy, buggery and bestiality. On the basis of language used in section 377 of the IPC, variety of instances are covered as unnatural offence. We have noticed that many of the above cases pertain to oral sex with young boys.

61. Section 377 as noted includes voluntary act of carnal intercourse against the order of nature with a man, woman or animal. Significantly, here requirement of no consent as would be necessary for offence of rape under section 376 of the IPC is absent. In other words, therefore, even consensual act of carnal unnatural intercourse would amount to an offence under section 377 of the IPC. The

requirement of the said section however, is of commission of carnal intercourse against the order of nature. The fact that the acts of accused Kiran Patel were against the order of nature is not difficult to derive. Under natural conditions, expression of love even of desire is through penetration. Ordinarily mouth is not in natural course considered a place for penetration. Nevertheless, between two consenting partners of opposite sex the same would not amount to a carnal intercourse. The term carnal intercourse has not been defined under the IPC. We may therefore, refer to the dictionary meaning of this term. Word 'carnal' has been explained in the Living Webster Encyclopedic dictionary of the English language as pertaining to the body, its passions and appetities; not spiritual; fleshly; sensual; lustful and impure. In Webster's Third New International Unabridged Dictionary, word 'carnal' has been described as marked by sexuality that is often frank, crude and unrelieved by higher emotions; unspiritual; relating to or given to crude bodily pleasures; fleshy; sensual.

62. In context of section 377 of the IPC, therefore, the term carnal would mean fleshy, lustful and impure. If the act of the person is within categories as fleshy, lustful and impure and therefore, carnal and if the act is one of intercourse and is also against the order of nature, all the ingredients required for section 377 of the IPC would be established. In this context, we may evaluate the action of Kiran Patel (accused no.4). He had tried to rape the victim but ended up forcibly inserting his organ in her mouth and that is how satisfied his lust. When others raped the victim

he would fondled her body parts and as stated by the victim on some occasions crossed all limits of vulgarity. When he was committing these acts, other accused were present. Consensual act of oral sex between consenting partners of opposite sex may be an expression of extreme eroticism. With changing times, the society does not view it as a perversion. It is also an expression of extreme closeness between the consenting parties. But when done forcibly it becomes an expression of utter humiliation and degradation. Coupled with other acts of vulgarity that too in full view of other male members, such act must qualify as fleshy, lustful and impure. Such carnal intercourse being unnatural would therefore, fall within the parameters of section 377 of the IPC. Conviction of accused no.4 for offence under section 377 was therefore justified.

63. From the impugned judgement, we notice that though charge under section 377 read with 120B was framed against accused no. 1 to 5, it was only accused no.4 who was convicted for the said offence. The State could have argued that such conviction should have been awarded against all the accused with the aid of section 120B and not only accused no.4 Kiran Patel. However, the State appeal is confined to the acquittal of the accused for offences under sections 376(2)(b) and (c) of the Penal Code and section 3(1)(xii) of the Atrocities Act as is apparent from the below mentioned portion of the appeal memo of the State Appeal :

"4. The State of Gujarat desirous of preferring appeal against the respondents-accused so far as they have been acquitted for the offences under section 376(2)(b)(c) and 120-B (for accused

no.6) of IPC and section 3(1)(xii) of the SC and ST (Prevention of Atrocity) Act, on the following main amongst other grounds"

We have proceeded on such basis.

64. In case of conviction of Atul Patel accused no.6 for offence under section 292 of the IPC however, we find no direct evidence to link him with the pornographic literature. From the 16 hard discs of the computers lying in the computer room of the college, upon forensic analysis, pornographic photographs and websites were found to have been visited. Much of these activities took place after 5 in the evening. No evidence was brought on record to show in whose custody the lock and key to the computer room was. Ordinarily, it would remain with the peon doing the cleaning work and usually closing the office at the end of the day. If Atul Patel was in the exclusive custody of the lock and key, same has not been brought on record. It would not have been difficult for the prosecution to examine some witnesses to suggest that it was this accused either alone or in company of some other persons who used to visit the computer room after the college hours. It is also not known whether there was any user name to the computer and password needed to access the internet. Even this evidence would not have been difficult to collect and produce. Being in charge of the computer room, during the period when number of computers showed signs of visiting pornographic websites, it would be too much of a temptation to pin down this accused for such acts. However, criminal justice is not a matter of conjectures or suspicion. We need the proof that the computers could have been during the period in question

used only by him. The exclusive possession of the room or access of the computer were the requirements which the prosecution failed to establish. Section 292 (2)(a) of the IPC pertains to a person who sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation or for purposes of sale, hire distribution, public exhibition or circulation, makes produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object. Ingredients of the said offence therefore, in view of the evidence discussed about are not established. Conviction of accused no.6 for offence under section 292 of the IPC therefore, must be reversed.

65. Coming to the State Appeal there are two elements. First is with respect to offences under section 376(2)(b) and (c) of the IPC and other is with respect to offence under section 3(1)(xii) of the Atrocities Act. In both cases, the accused have been acquitted. Hence, the State appeal.

66. Section 376 of the IPC prescribes punishment of rape. Sub-section(2) thereof provides for punishment for aggravated form of rape when committed under certain circumstances. Section 376(2)(b) and (c) read as under :

"(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or
(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women' s or children' s institution takes advantage of his official

position and commits rape on any inmate of such jail, remand home, place or institution; or"

67. For offence punishable under section 376(2)(b) what is required is that a public servant takes advantage of his official position and commits rape on a woman who is in his custody as such public servant or in the custody of a public servant subordinate to him. Section 376(2)(c) would apply when a person being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women' s or children' s institution takes advantage of his official position and commits rape.

68. In the present case, both the clauses are inapplicable. Though the accused teachers being Government servants may be treated as public servants, the victim cannot be stated to be a woman in their custody. Merely because she was a student in the college and residing in a hostel provided by the college, she does not become a person in custody of the teachers of the said college. In case of **Omkar Prasad Verma v. State of Mahdya Pradesh** reported in AIR 2007 Supreme Court 1381, the Apex Court held that the teacher of a Government school though would be a public servant, the student cannot be said to be in his custody. It was observed as under :

"12. We will assume that the appellant being a teacher of the government school was a public servant. But all the students of the school, only thereby, were not in the custody of the appellant. The expression "custody" implies guardianship. A custody must be a lawful custody. The same may arise within

the provisions of the statute or actual custody conferred by reason of an order of a court of law or otherwise."

69. Insofar as clause(c) of section 376 of the IPC is concerned, same is inapplicable for obvious reasons. Accused were not on the management or on the staff of a jail, remand home or other place of custody established by or under any law, or of a women's or children's institution. The college was obviously not a jail, remand home or place of custody established by law. It also cannot be stated to be a women's institution. Though it was a girls college, it nevertheless, remained a college and not a women's institution. The terms used are women's or children's institution. They would take colour from each other and expression would include those institutions which are meant specially for the care or protection or upliftment of the said sections. The college in question though all girls college, would not be covered under the term women's institution. Acquittal of the accused for the said offence is therefore, upheld.

70. Section 3 of the Atrocities Act prescribes punishments for offences of atrocities. Various atrocities on scheduled caste and scheduled tribe described in the said section have been made punishable. Such offences can be committed only by members not belonging to either member of scheduled caste or scheduled tribe. Clause(xii) of sub-section(1) of section 3 of the Atrocities Act provides as under :

"3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

xxxx

"(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;"

71. Ingredients of section 3(1)(xii) of the Atrocities Act therefore, are that

i) the accused should not be a member of scheduled caste or scheduled Tribe.
ii) he should be in a position to dominate the will of a woman who belonged to either scheduled caste or scheduled tribe and
iii) he uses that position to exploit her sexually to which she otherwise would not have agreed .

72. For better understanding of this provision, we may also refer to clause(v) of section sub-section(2) of section 3 of the Atrocities Act :

"3(2)Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

xxxxx

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine."

73. Section 3(2)(v) of the Atrocities Act prescribes

punishment for offences under the IPC punishable with imprisonment for a term of ten years or more, committed by a member not being a scheduled caste or scheduled tribe against a person or property on the ground that such person is a member of a scheduled caste or a scheduled tribe or such property belongs to such member. It was in this context that the Apex Court in case of **Dinesh Alias Buddha v. State of Rajasthan** reported in (20060 3 Supreme Court Cases 771, in case of offence of rape observed that :

"15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine."

74. However, when we come to section 3(1)(xii) of the Atrocities Act, this crucial requirement of the offence being committed because the person belonged to scheduled caste or scheduled tribe is missing. What section 3(1)(xii) of the Atrocities Act makes punishable is an act of sexual exploitation of a woman belonging to a scheduled caste or a scheduled tribe by a person in position to dominate the will of the woman by using that position. It is therefore, not necessary that such offence must have been committed because the women belonged to scheduled caste or scheduled tribe. This is not the requirement of section 3(1)

(xii) of the Atrocities Act. Nevertheless, like in other offences of penal nature, mensrea is an essential ingredient. In absence of any mensrea, the offence cannot be stated to have been made out.

75. We are not oblivion to the fact that criminal jurisprudence recognises certain offences which do not require mens rea. It is equally true that in some of the cases not requiring mens rea, the statute creating the offence is silent on this aspect. We must therefore, judge the requirement of mens rea on the basis of various factors such as the offence under consideration, the penalty prescribed and the purpose for creation of the offence. In the Indian Penal Code by Ratanlal & Dhirajlal referring to Halsbury's laws of England, three categories of cases are recognised where the mens rea may not be required.

"Crimes, not requiring legal fault on the part of the accused may be classified into three categories. First acts that are not criminal in any real sense but are of a quasi-criminal nature and are prohibited in public interest under a penalty. This category includes cases of public welfare offences, for instance, special social and economic offences, offences relating to foods and drugs, weights and measures, licencing, road traffic, revenue offences etc. Secondly, cases of public nuisance, libel and contempt of Court etc. Thirdly, cases in which although the proceeding is criminal, it is really a mode of enforcing a civil right, for example cases of violations of municipal laws and regulations etc."

Offences under section 3(1)(xii) would not fall under any of these categories. Section 3(1)(xii) of the Atrocities Act is an

independent offence. Section 3(2)(v) on the other hand is not an independent offence but merely prescribes higher punishment for IPC offences under certain circumstances.

76. The preamble to the Atrocities Act provides that it was enacted to prevent the commission of ofences of atrocities against the members of the scheduled castes and the scheduled tribes, to provide for specific Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. Statement of objects and reasons provide that despite various measures to improve the socio-economic conditions of the scheduled castes and scheduled tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons. It is further provided that existing law like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these crimes. A special legislation to check and deter crimes against them committed by non-scheduled Castes and non-scheduled Tribes has, therefore, become necessary. To achieve such object the Act was enacted.

77. From the preamble and the objects and reasons to enact the Atrocities Act, it follows that the prime object was to prevent serious offences being committed against members of such communities. In this context, at-least

bare minimum knowledge on part of the accused that woman who is being subjected to sexual exploitation belongs to such community would be necessary. In absence of any such knowledge, which can be attributed to the accused, necessary mensrea for offence under section 3(1)(xii) would be wholly missing.

78. In the present case, there was no evidence that the concerned accused nos. 3 to 6 were aware that victim belonged to scheduled caste. In the Indian context, surname of a person may reveal many things. Nevertheless, there are surnames which cut across caste sections and are often found in different castes and communities and therefore, merely because last name of the victim was known to the accused, cannot be a ground to establish that they were aware about the scheduled caste status of the victim. It would not have been difficult for the prosecution to bring such bare minimum material on record to establish that accused were aware about such status of the victim. In that view of the matter in our opinion offence under section 3(1)(xii) of the Atrocities Act was not established. Acquittal of the accused for such offence was justified.

79. Coming to the sentencing part, learned counsel for the accused and accused no.1- party in person pleaded for leniency and submitted that maximum punishment was not required in the present case. In case of **Shyam Narain v. (The) State of NCT of Delhi** reported in 2013 (2) GLH 380, the Supreme Court in context of rape of a young girl aged about eight years while confirming life sentence,

discussed the aspects of sentencing at length after referring to various judgements on the point. We may reproduce relevant portion of this judgement at some length.

"10. Presently, we shall proceed to deal with the justification of the sentence. Learned counsel for the appellant, would submit that though Section 376(2) provides that sentence can be rigorous imprisonment for life, yet as a minimum of sentence of ten years is stipulated, this Court should reduce the punishment to ten years of rigorous imprisonment. It is urged by him that the appellant is a father of four children and their lives would be ruined if the sentence of imprisonment for life is affirmed. Mr. Paras Kuhad, and Mr. B.V. Balram Dass, counsel for the State, submitted that the crime being heinous, the sentence imposed on the accused is absolutely justified and does not warrant interference. It is also canvassed by them that reduction of sentence in such a case would be an anathema to the concept of just punishment.

11. Primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is

obligatory on the part of the Court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

12. In this context, we may refer with profit to the pronouncement in Jameel v. State of Uttar Pradesh [2010] 12 SCC 532, wherein this Court, speaking about the concept of sentence, has laid down that it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

13. In Shailesh Jasvantbhai and another v. State of Gujarat and others[2006] 2 SCC 359, the Court has observed thus:

"Friedman in his Law in Changing Society stated that: "State of criminal law continues to be - as it should be -a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration".

14. In State of M.P. v. Babulal AIR 2008 SC 582, two learned Judges, while delineating about the adequacy of sentence, have expressed thus : -

"19. Punishment is the sanction imposed on the offender for the infringement of law committed by him. Once a person is tried for commission of an offence and found guilty by a competent court, it is the duty of the court to impose on him such sentence as is prescribed by law. The award of sentence is consequential on and incidental to conviction. The law does not envisage a person being convicted for an offence without a sentence being imposed therefore.

20. The object of punishment has been succinctly stated in Halsbury's Laws of England, (4th Edition: Vol.II: para 482) thus:

"The aims of punishment are now considered to be retribution, justice, deterrence, reformation and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion to the offence and to punish the offender for his wrong conduct. The concept of justice as an aim of punishment means both that the punishment should fit the offence and also that like offences should receive similar punishments. An increasingly important aspect of punishment is deterrence and sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation, but judicial opinion towards this particular aim is varied and rehabilitation will not usually be accorded precedence over deterrence. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided".

(emphasis supplied)"

15. In Gopal Singh v. State of Uttarakhand 2013(2) SCALE 533, while dealing with the philosophy of just punishment which is the collective cry of the society, a two-Judge

Bench has stated that just punishment would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self- adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors.

16. The aforesaid authorities deal with sentencing in general. As is seen, various concepts, namely, gravity of the offence, manner of its execution, impact on the society, repercussions on the victim and proportionality of punishment have been emphasized upon. In the case at hand, we are concerned with the justification of life imprisonment in a case of rape committed on an eight year old girl, helpless and vulnerable and, in a way, hapless. The victim was both physically and psychologically vulnerable. It is worthy to note that any kind of sexual assault has always been viewed with seriousness and sensitivity by this Court.

17. In Madan Gopal Kakkad v. Naval Dubey and another(1992) 3 SCC 204, it has been observed as follows:-

"... though all sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. This is due to the reasons that children are ignorant of the act of rape and are not able to offer resistance and become easy prey for lusty brutes who display the unscrupulous, deceitful and insidious art of luring female children and young girls. Therefore, such offenders who are menace to the civilized society should be mercilessly and inexorably punished in the severest terms."

18. In State of Andhra Pradesh v. Bodem Sundra Rao AIR

1996 SC 530, this Court noticed that crimes against women are on the rise and such crimes are affront to the human dignity of the society and, therefore, imposition of inadequate sentence is injustice to the victim of the crime in particular and the society in general. After so observing, the learned Judges had to say this: -

"The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's crime for justice against such criminals. Public abhorrence of the crime needs a reflection through the Court's verdict in the measure of punishment. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment."

19. In State of Punjab v. Gurmit Singh and others AIR 1996 SC 1393, this Court stated with anguish that crime against women in general and rape in particular is on the increase. The learned Judges proceeded further to state that 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 of the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. Thereafter, the Court observed the effect of rape on a victim with anguish: -

"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 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."

20. In State of Karnataka v. Krishnappa (2000) 4 SCC 75, a three-Judge Bench opined that the courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years and respond by imposition of proper sentence. Public

abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. It was further observed that to show mercy in the case of such a heinous crime would be travesty of justice and the plea for leniency is wholly misplaced.

21. In Jugendra Singh v. State of Uttar Pradesh (2012) 6 SCC 297, while dwelling upon the gravity of the crime of rape, this Court had expressed thus: -

"Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu."

22. Keeping in view the aforesaid enunciation of law, the obtaining factual matrix, the brutality reflected in the commission of crime, the response expected from the courts by the society and the rampant uninhibited exposure of the bestial nature of pervert minds, we are required to address whether the rigorous punishment for life imposed on the appellant is excessive or deserves to be modified. The learned counsel for the appellant would submit that the appellant has four children and if the sentence is maintained, not only his life but also the life of his children would be ruined. The other ground that is urged is the background of impecuniousity. In essence, leniency is sought on the base of aforesaid mitigating factors. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence

may be extended upto life. The legislature, in its wisdom, has left it to the discretion of the Court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilized society. The age old wise saying "child is a gift of the providence" enters into the realm of absurdity. The young girl, with efflux of time, would grow with traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilized norm, i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is

aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court. The mitigating factors put forth by the learned counsel for the appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court."

80. In case of accused no.1 to 5, they have been convicted for gang rape. They were the teachers of a young girl aged about 18 years who was mandatorily required to reside in a hostel of a all girls college. Most of them were twice of her age. They exploited their position of dominance and committed gruesome acts of extreme depravation to such an extent and tormented the girl to the extent that the traumatised girl developed bouts of frequent fainting. The incident came to light only when she fainted in the assembly hall in full public view. This certainly is a case where no leniency would be justified. The maximum punishment prescribed under the law and as handed down by the trial Court requires confirmation.

81. Case of accused no.6, however, stands on slightly different footing. He was not a part of previous incidents of gang rape. He was involved in a single incident of rape of the woman on 25.1.2008 in the computer room. He of-course is a teacher as much as others are. He also used his superior position of influence and power and exploited his pupil. Nevertheless, despite best efforts by Ms. Manisha Shah Special PP for the State, we are not convinced that this is a case where maximum punishment prescribed under the law should be awarded. Accused no.6 is convicted for offence under section 376 of the IPC which though prescribes maximum punishment of life, provides that except for special and adequate reasons to be recorded in writing, such punishment shall not be less than seven years. Considering the facts and circumstances of the case, in our opinion, sentence of 10 years of rigorous imprisonment to accused no.6 would meet the ends of justice. This by itself is a strong punishment.

82. No separate discussion is necessary for section 342, 354, 506(2) of the IPC as we are confirming the same because the learned Judge has not awarded any separate sentence for the said offence.

83. In the result, conviction and sentence of Parmar Ashwinbhai Chaturbhai (accused no.1), Parmar Manishbhai Babulal (accused no. 2), Mahendrabhai Virambhai Prajapati (accused no.3), Patel Kiranbhai Ambalal (accused no.4), Patel Sureshbhai Govindbhai (accused no.5) for offence under section 376(2)(g) of the

IPC is confirmed. Their conviction and sentence for offence under section 120B of the IPC are also confirmed.

Conviction and sentence of Patel Kiranbhai Ambalal (accused no.4) for offence under section 377 read with section 120B is confirmed.

Direction for running the sentences concurrently contained in the impugned judgement shall operate as it is.

Conviction of Patel Atulbhai Manilal (accused no.6) for offence under section 376 of the IPC is confirmed, however, his sentence is reduced from that of life imprisonment to 10 years of rigorous imprisonment. Conviction of accused no.6 for offence under section 292(2)(a) of the IPC and consequential sentence are set aside.

Direction for payment of fine as well as compensation remain unchanged.

Criminal Appeal Nos. 592/2009, 720/2009, 725/2009, 765/2009, 767/2009 are dismissed.

Criminal Appeal No.768/2009 is allowed in part and disposed of accordingly.

Criminal Appeal No.895/2009 filed by the State is dismissed.

(AKIL KURESHI, J.)

(Z.K.SAIYED, J.)

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