Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.1068 OF 2018

IN

POCSO SPL. CASE NO.295 OF 2015

Baburao @ Sagar Rupaji Dhuri]
Age: 23 years, Occu: Service,]
R/o. 414, Varsha Building,]
Ganesh Nagar, Diva (W), Thane.]
Presently at Amravati Central Prison] Appellant

Vs.

1. The State of Maharashtra]
(At the instance of Pawai]
Police Station C.R. No.163/15]

2. Miss 'X' through her guardian]
Mrs. Pradnya Pradip Jadhav,]
R/o Sulochanabai Chawl, K.B.M.]
Compound, Saki Vihar Road,]
Powai, Mumbai – 400 072.] Respondents

.....

Mr. Aniket Vagal, for the Appellant.

Mr. S.V. Gavand, for Respondent No.1-State.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 16TH DECEMBER, 2019.

PRONOUNCED ON: 20TH DECEMBER, 2019.

P.C:

By this appeal, the appellant challenges the judgment and order dated 30th June, 2018 passed by the learned Special Judge under the Protection of Children from the Sexual Offences Act, 2012 (for short 'POCSO'), wherein he has been convicted under section 6 of the POCSO Act and is sentenced to suffer rigorous imprisonment for ten years with a fine of Rs.1000/-, in default, to suffer simple imprisonment for 30 days.

2. The appellant has also been convicted of an offence punishable under section 342 of the Indian Penal Code (for short 'I.P.C') and sentenced to suffer rigorous imprisonment for one year.

3. The appellant came to be acquitted of the offences punishable under section 10 of the POCSO Act and under sections 376, 366 (A) of the I.P.C. The appellant has been directed to pay compensation of Rs.25,000/- to the victim as per section 33(8) of the POCSO Act.

4. As per Rule-33 (7) of the POCSO Act, identity of the victim as well as all the family members, relatives, neighbourhood

or any other information by which identity of the victim is revealed is required to be concealed. I, therefore, refer the important witnesses as;

[1]	P.W.1, Informant and mother of the victim as	-	"P"
[2]	P.W.2-Victim as	-	"G"
[3]	P.W.3- Victim's neighbour and an eye witness as	-	'M'
[4]	P.W.4- Panch witness and husband of P.W. 3-M.	-	M.M
[5]	P.W.6, neighbour of the victim and an eye witness as	-	"G.R."

5. The prosecution case, as emerged from the record is as follows:

It was 18th April, 2015 when five and half years old victim residing at Sulochana Bai Chawl, K.B.M Compound, Powai, Mumbai went to play with a small boy namely Babu in the neighbourhood. P.W.3-M is a relative of informant P.W.1-P. The victim is the daughter of the informant "P". P.W.6- G.R. a 16 year old boy asked P.W.3- M to see what the appellant was doing. When P.W.3-M went at the backside of the house of one Sawant and peeped in the house through a space in the door, to her shock, she noticed that the victim was made to lie on the ground in a prone position while the appellant was lying on her person. P.W.3-M suspected some foulplay and, therefore, she knocked the front door and raised shouts by calling the victim's name. The victim

came out after five minutes. P.W.3-M took her to her home and asked as to what the appellant was doing. The victim told P.W.3-M that when she went in search of *Babu* for playing, the appellant took her in the house, bolted the door from inside and then pulled her slacks down and made her lie in prone position on the ground. He put his penis in her anus and was moving it. She further said that the appellant called her on the pretext that he will show her songs on his mobile. The appellant was residing in the house of his maternal aunt namely Mrs. Sawant who is residing in front of the house of P.W.3-M. P.W.3-M immediately asked brother of the victim to call his mother. When victim's mother "P" (informant) came to the house, P.W.3-M narrated the incident to her. The victim had again narrated entire facts to her mother. Someone called the Police who came over there and took away the appellant.

6. F.I.R bearing No.163 of 2015 (**Exhibit 12**) came to be registered at Police Station, Powai against the appellant under sections 377 and 342 of the I.P.C and under sections 4, 8 and 12 of the POCSO Act.

7. P.W.10-Samir Mujawar was attached to Powai Police Station as P.S.I at the relevant time. The informant "P" approached

the Police Station along with the victim. The lady Police Inspector recorded the statement of the informant "P". P.W.10-Samir Mujawar rushed to the spot and drew a spot Panchanama. He recorded the statement of P.W.3- M who had shown the spot. The spot Panchanama is at **Exhibit 16**. The statement of the victim "G" also came to be recorded. Clothes of the appellant were seized under seizure panchanama. Clothes of the victim were also seized under the seizure panchanama.

8. Upon a disclosure statement made by the appellant, a mobile handset was recovered. The appellant was sent for medical examinations and his clothes were sent for chemical analysis. P.W.10-Samir Mujawar arrested the appellant. P.W.8- Dr. Meena Uday Savjani examined as a witness. Before that, one Dr. Vaibhav Khairnare had examined the victim "G" and as per the protocol, it being a case of sexual violence, it was reported to P.W.8-Dr. Meena. After recording the history, this witness examined the victim.

9. Statement of the victim "G" and P.W.3-M under section 164 of the Code of Criminal Procedure (for short 'Cr. P.C.) was recorded by the 65th Metropolitan Magistrate, Andheri,

Mumbai on 8th September, 2015. After investigation, the Investigating Officer laid a charge-sheet in the Court of Special Judge, Mumbai under sections 376, 342, 366A, 377 of the Indian Penal Code r/w sections 6 and 10 of the POCSO Act.

10. The appellant was produced before the learned Special Judge. A charge was framed in terms of **Exhibit 3** against the appellant under sections 376, 342, 366A, 377 of the Indian Penal Code r/w sections 6 and 10 of the POCSO Act. It was read over and explained to the appellant to which he pleaded not guilty and claimed a trial. His defence was denial of the offences alleged. Two defence witnesses had been examined by the appellant in order to show that he had been falsely implicated due to some quarrel.

11. The prosecution examined in all 12 witnesses including the victim "G". The prosecution has also placed reliance upon some documentary evidence. The learned Special Judge after considering the evidence on record and after hearing the prosecution and defence, found the evidence of the prosecution witnesses reliable and acceptable. The Special Judge, therefore, convicted and sentenced the appellant as above. The learned

Counsel has been fair enough to submit that looking to the age of the appellant who is prosecuting his studies, he may be sentenced for the period already undergone by him.

12. Mr. Vagal, learned Counsel appearing for the appellant contended that there is no medical evidence of the victim indicating as to whether she was sexually assaulted or molested by the appellant. Her mother's evidence is hearsay and, therefore, it is contended that it would be inadmissible. The learned Counsel for the appellant drew my attention to the report of Forensic Science Laboratory **Exhibit 6 colly**. He emphasized upon the result of analysis, more particularly, in respect of examination of the blood samples of the victim and that of the appellant. It is vehemently argued by the learned Counsel for the appellant that the said report reveals no male DNA was detected in vulval swab or anal swab of the victim.

13. It is submitted that this is a case which would, at the most, fall under section 7 of the POCSO Act which is punishable under section 8 of the said Act.

14. Per contra, the learned A.P.P, Mr. Gavand strongly opposed the arguments of the learned Counsel for the appellant by contending that the Special Judge had rightly appreciated the evidence of the prosecution witnesses and that there is no need to referring to the medical evidence as the appellant was just stopped when he was about to insert the penis in the anus of the victim. For all purposes, he was about to commit an offence as provided under section 3 of the POCSO Act.

15. The learned Additional Public Prosecutor drew my attention to the testimony of P.W.6-G.R who was the first person to notice the appellant indulging in the said act. My attention has also been drawn to the cross examination of P.W.3-M wherein nothing could be elicited which would render her testimony unworthy of credit. F.I.R is lodged promptly. There was no enmity between the victim and victim's family and that of the appellant. The learned Additional Public Prosecutor has contended that no mother or parents would risk reputation of the family by involving their child risking its future. He further submits that the appellant betrayed trust of the victim in him who used to refer him as '*Dada*' (elder brother). She was in fiduciary capacity with that of the appellant. The learned Additional Public Prosecutor has referred to section 18

of the POCSO Act which is a punishment for attempting to commit an offence. Thus, it is submitted that this is not a case in which leniency is required to be shown to the appellant.

16. P.W.2-G is the victim whose deposition came to be recorded below **Exhibit 13**. Her evidence came to be recorded in question and answer form after ascertaining as to whether she understood sanctity of oath. Learned Special Public Prosecutor put relevant questions to P.W.2-G. At the time of her evidence, she was aged about eight years. She testified that on the date of the incident, she had been called by *Babu Dada*, her friend. The appellant to whom she referred as "Sagar *Dada*" called her at his maternal aunt's house. She has stated that his maternal aunt is called as "*Sawant Kaku*". She further testified that the appellant bolted both the doors of the room. He then took off her clothes i.e full Shirt and Legging. He took off his clothes. Her evidence further reveals that the appellant inserted his "*Nunni*" (penis) in her "*bocha*" (anus). It was specifically asked as to the meaning of "*Nunni*" to which she answered that it is a place of urination by pointing her finger towards her place of urination. While answering the question as to what is meaning of "*Bocha*", P.W.2-G pointed her backside by stating that it is a place of toilet. She further

testified that *Mothi Mummy* knocked the door referring to P.W.3-M. Thereafter, the appellant put on her clothes and opened the door. There is no dispute about identity of the appellant. P.W.2-G had identified Aboli colour T Shirt and Blue Colour Legging which were on her person at the time of the incident.

17. Despite asking several questions to P.W.2-G during cross by the defence, it has not succeeded in rebutting her version. Several insignificant and irrelevant questions were asked which are not required to be considered, however, P.W.2-G testified that on the date of the incident, her mother dropped her at the house of P.W.3-M and left for market. In fact, the victim had gone to call one *Babu Dada*, another child, with whom she used to play, however, she came to know that Babu Dada was not at home.

18. It is suggested to P.W.2-G in cross that at the instance of P.W.3-M, she had stated that the appellant took her inside the house, bolted the door, took of his clothes and of the victim and then inserted his penis in her anus which she denied. Interestingly, a question was put whether T.V was on when the appellant closed the door to which she answered in the negative. It was also asked whether she shouted when the door was closed, upon which P.W.2-

G answered that she shouted but slowly. This is perhaps because she frightened and scared due to such strange and abnormal act on the part of the appellant.

19. It was asked to P.W.2-G that how much time she was in the room, to which she answered five times she was in the room, perhaps she wanted to convey that for five minutes she was there. To the question put to her to whom she met when she came out of the room, the victim answered she met P.W.3-M. Thereafter, she went to the Police Station directly along with her parents and the witnesses. The defence gave a suggestion that the appellant had not removed her clothes to which P.W.2-G answered in clear terms that the appellant had taken out her clothes. She further reiterated the fact that the appellant had inserted his "*nunni*" in her "*bocha*". She denied the suggestion that she deposed at the instance of her mother P.W.1-P and P.W.3-M.

20. The testimony of P.W.2-G is corroborated in material particulars, firstly by P.W.6-G.R who was the first witness to notice the incident. He was studying in the 9th standard at the relevant time and is resident of the same Sulochanabai Chawl where victim P.W.2-G was staying with her parents and also P.W.3-M and P.W.4-

MM etc. His evidence reveals that on the date of the incident, he washed off urine of his brother Harshad who was suffering from some urine problem and went backside of the house to put the piece of cloth for drying. When he peeped from the space in the house of *Sawantkaku*, he noticed the appellant taking out his pant and also the pant of P.W.2-G. He knew P.W.2 as she was residing in the neighbourhood. He further testified that the door was closed and he could peep through the holes in the door. He did not feel good what he saw inside the room and, therefore, anticipating the foulplay of the appellant, rushed to P.W.3-M and informed her what he saw. Immediately, thereafter P.W.3-M rushed to the said room and she too peeped from the front door only to notice the act being committed by the appellant. P.W.6-G.R further testified that P.W.3-M went towards the front door and gave a call to the victim P.W.2-G by shouting her name. P.W.2-G came out running. She was taken to the home of P.W.3-M and was inquired about the incident. P.W.2 informed P.W.3 as to what had happened.

21. An unsuccessful attempt has been made to rebut the testimony of the P.W.6-G.R by the defence but failed in creating any dent. P.W.6-G.R. is a natural and a chance witness who had no axe to grind against the appellant and there was no reason for him

to give false evidence. As usual, several irrelevant and insignificant questions were put to this witness during his cross-examination. It reveals from his cross that he used to play with P.W.2-G. P.W.1 -P and his mother were acquainted with each other. Relations were cordial but they were not on visiting terms frequently. He denied the suggestion that there used to be quarrels between him and the appellant when they used to play. He has denied the suggestion that P.W.3-M asked him to give a statement to the Police.

22. The testimony of this witness is corroborated in material particulars by P.W.3-M to whom P.W.2-G used to call as Mothi Mummy. As per the version of P.W.3-M on 18th April, 2015, P.W.6-G.R came to her and asked her to see what the appellant was doing. When she went at the backside of Sawant's house and peeped inside through the space in the door, she observed that P.W.2-G was lying in a prone position and the appellant was lying on her person in a prone position. The witness realized that something obnoxious or in her words "not good" was going on and, therefore, she came towards the front door and knocked the same by shouting in the name of the victim. After five minutes, P.W.2-G came out. This witness took P.W.2-.G to her house and

asked about the incident. P.W.2-G had stated that when she went to see *Babu* for playing, the appellant took her in the house and bolted the door from inside. He pulled her slack down and made to sleep her in prone position. He thereafter put his penis in her anus and was moving (shee chya jaget nunni takun halvat hota). Evidence of P.W.3-M further reveals that as per version of P.W.2-G, the appellant called her on the pretext that he will show her songs on his mobile. Admittedly, the appellant was residing in the house of his maternal aunt namely Mrs. Sawant who was residing in the neighbourhood of P.W.3-M. This witness, therefore, asked P.W.2-G's brother to call his mother. However, she herself gave a call to P.W.1-P. People gathered over there and someone had called the Police. The Police arrived at the scene and took away the appellant.

23. During her elaborate cross-examination by the defence, nothing could be elicited which would render the testimony of P.W.3-M unbelievable. Most of the questions asked to the witness in the cross are either insignificant or irrelevant. Strangely enough, in her cross-examination, it has been reiterated or rather the prosecution case has been fortified when this witness stated that she recollected the exact words uttered by P.W.6-G.R

when he asked her to see what the appellant was doing with P.W.2-G. Those words were; sister see what Sagar is doing with the victim. It appears that it was a frantic call given by P.W.6-G.R to P.W.3-M as P.W.6- G.R must have anticipated some untoward incident in respect of P.W.2-G. The cross further substantiates the fact that this witness immediately rushed to the back door of the Sawant's house and saw through the space in the door. She has reiterated that she had not shouted loudly but she did shout and then knocked the front door of Sawant's house which was opened by P.W.2-G. It has also been surfaced in her cross-examination that the appellant did not run away after the incident which re-affirms the fact that both the appellant and the victim P.W.2-G were very much present in the said room at the relevant time coupled with the fact that both P.W.6-G.R and P.W.3-M noticed the abominable act being committed by the appellant with P.W.2-G. P.W.3-M denied that there was a quarrel between her and Mrs. Sawant and that she had threatened Mrs. Sawant that she would drive her out of the locality and, therefore, the appellant was made a scapegoat.

24. P.W.1-P is the mother of P.W.2-G. She testified that on 18th April, 2015, P.W.2-G was at home when she went to the

market around 4.30 p.m. When she received a telephone call of P.W.3-M at about 5.00 p.m, she immediately returned home. Several people had gathered at her house. P.W.2-G was scared and crying. P.W.3-M informed P.W.1-P about the incident and what she witnessed from the space of the door. P.W.2-G had also told her mother that the appellant had removed her slacks, made her to lie on the floor and thereafter, he was putting his penis in her vagina. This cannot be said to be a material contradiction in the sense that there is no medical evidence of sustaining any injuries either to the anus or vagina of P.W.2-G. I shall discuss the evidence of P.W.8-Dr. Meena in that respect in the subsequent paras. The appellant, in fact, attempted to commit penetrative sexual assault upon P.W.2-G.

25. Since, P.W.1-P did not witness the incident, yet her evidence is quite relevant in view of section 6 of the Indian Evidence Act, 1872. She had promptly lodged a First Information Report with the Police which, per say, may not be the substantive evidence, yet it had set a criminal law into motion and without wastage of time, the Investigating Officer could immediately nab the appellant and collect material evidence *qua* the incident in question including referring the appellant and P.W.2-G for medical

examination. It is pertinent to note that the statement of P.W.2-G and P.W.4- M.M also came to be recorded under section 164 of the Cr. P.C by the Metropolitan Magistrate which is in consonance with their testimonies in the box. As such, if the testimonies of P.W.2-G, P.W.3-M and P.W.6-G.R are juxtaposed, they are quite consistent in respect of time, venue and manner of occurrence. There are absolutely no omissions or contradictions on record. It is also not in dispute that P.W.2-G was born on 26th October, 2009 and, therefore, was a child which fact has been buttressed by her birth certificate at **Exhibit 33**.

26. P.W.8-Dr. Meena was In-charge of Gynecology Department and sexually assaulted cases. Though she did not examine P.W.2-G who, in fact, was examined by Dr. Vaibhav Khairnare, P.W.8-Dr. Meena testified that papers of the examination report were placed before her by Dr. Vaibhav Khairnare as, due to protocol, all cases of sexual violence were reported to her.

27. As per her testimony, history given by P.W.1-P was about the incident of molestation of P.W.2-G by the appellant, who after removing the clothes of P.W.2-G and himself made her lie in

a prone position. There was no history of peno-vaginal, peno-anal, peno oral intercourse given by the patient. In criminal terminology and as per the history given by the patient, there would be no question of penetration. Nevertheless, as per the legal definition, one has to see as to whether there was any such act which was construed as an offence either in view of section 4 or section 5 or for that matter, section 7 of the POCSO Act.

28. It would also be essential to consider the evidence in view of the presumption provided under section 29 of the POCSO Act. It is testified by P.W.8-Dr. Meena Saujani that there is no history of any external bleeding P.V. (per vaginal), P.R. (Per rectum). The medical expert had duly obtained consent of the victim's mother P.W.-P before her examination. Though there were no physical signs of injuries, yet the history of touching and fondling was sufficient to constitute the offence. It is pertinent to note that the clothes of P.W.2-G were changed, she had passed urine and rinsed her mouth. There were no signs of abnormality after examination of vagina. Blood group and swab were collected from vulva and the anus. The certificate is proved at **Exhibit 23**. Admittedly, the reports of the medical analysis at **Exhibit 6 colly** and C.A report in respect of swab reveal that no men D.N.A was

detected on vulva and anal swab which necessarily means that there was no ejaculation of seminal fluid. The guidelines and protocols in respect of medico legal care for survivors/victims of sexual violence issued by MoHFW are annexed at **Exhibit 23**. An unsuccessful attempt has been made by the defence to shatter the testimony of P.W.8-Dr. Meena.

29. Since the results of examination report issued by the Director of Forensic Science Laboratory at **Exhibit 6 Colly** are negative, this evidence would be insignificant so also evidence of P.W.8-Dr. Meena in assisting the prosecution for establishing a guilt against the appellant. Even otherwise, the evidence of an expert coupled with report of chemical analysis is a technical evidence which would always be used as a corroborative piece of evidence and not substantive evidence. C.A. Report, medical history and the evidence of the medical expert is of no consequences to the prosecution.

30. P.W.4-MM was summoned to act as a Panch witness obviously for the reason that he is a resident of the same chawl and was part of the crowd which had gathered at the scene. He came to know that P.W.2-G was sexually assaulted at that place. However,

nothing had been seized by the Police in his presence who had prepared a spot Panchanama which is at **Exhibit 16**. He being the husband of P.W.3-M was suggested that because of quarrels between his wife and Vaishali Sawant, at the instance of his wife, he had put his signature over the Panchanama which he had denied.

31. P.W.5-Anita Shinde was summoned as a Panch witness in whose presence, Investigating Officer had seized clothes of P.W.2-G comprising peach coloured full T Shirt and a slack by Panchanama **Exhibit 18.** The evidence of this witness is formal in nature. There is no effective cross-examination of these two witnesses.

32. Baburao Pulare had testified as P.W.7, in whose presence, the Investigating Officer had seized clothes on the person of the appellant at the time of commission of the offence. It comprises full shirt with inscription "TORES", white dirty baniyan, Grey coloured underwear of Scott company and black jeans. All these clothes were wrapped in a paper by affixing labels. Panchnama to that effect is drawn which is at **Exhibit 21.** The witness has identified those clothes in the box. His evidence remained intact in the cross-examination.

33. Interestingly, despite examining two defence witnesses, the appellant has not succeeded in creating any dent in the testimonies of P.W.2-G, P.W.3-M and P.W.6-G.R so also in respect of his so called false implication in the instant case due to a quarrel which had occurred long back.

34. The first defence witness is Mr. Dattaguru Parab who is the brother-in-law of the appellant (sister's husband). According to this witness, after receiving a phone call from his aunt namely Vaishali Sawant informing about the arrest of the appellant, he went to Powai Police Station and requested the Police to inform as to what had happened. He was asked by a Police man to bring clothes of the appellant and, therefore, on 25th April, 2015, he had handed over clothes of the appellant to the Police. He also took out mobile hand set from the cupboard and handed it over to the Police. He had not uttered a single word about incident in question or anything to say about false implication of the appellant due to some rivalry.

35. Similarly, D.W.2- Rajshree Sawant who is the aunt of the appellant (mother's sister) testified that ever since P.W.1-P and and she came to reside in Sulochanabai Chawl in 2008. There used

to be quarrels between them on account of work. This witness along with P.W.1-P and one more woman used to go for work as a house maid. It is testified that P.W.3-M and P.W.1-P used to sit together and threaten this witness that they would drive her from the locality. This is nothing but a well thought story concocted by this witness. Had there been some substance in the said evidence, she could have stated the same immediately when the appellant was arrested by the Police.

36. In her cross-examination by the learned Special Public Prosecutor, she admits that she did not lodge a report against P.W.3-M or P.W.1-P. Thus, defence evidence, even on the ground of probability, does not even remotely reveal false implication of the appellant in this case.

37. P.W.9-Kadir Shaikh is a witness in whose presence, according to the prosecution, the appellant made a voluntary statement to the effect that he would show his mobile. Accordingly, a memorandum Panchanama **Exhibit 27** was drawn and thereafter he led the Police team along with this witness and panch witness in a vehicle to Tunga Gaon, Powai. The appellant thereafter took out a mobile from the mezzanine floor. It was a

black coloured Nokia company's hand set which was sealed in an envelope and recovery panchanama **Exhibit 27-A** was drawn. The prosecution case did not go further except seizure of the said mobile hand set sans any evidence to indicate that it was a mobile which was shown to P.W.2-G for playing songs and on that pretext, she was lured and molested by the appellant.

38. As can be seen from the aforesaid discussion of facts and evidence on record, the victim P.W.2-G called the appellant as *Dada,* meaning thereby, she had full faith and respect towards the appellant to that of an elder brother. The appellant betrayed her trust by molesting her. It is also apparent from the aforesaid discussion that the appellant was about to commit aggravated penetrative sexual assault upon P.W.2 but due to intervention of P.W.3-M, he could not succeed in his nefarious design and, therefore, the act was in fact about to be accomplished by him since he had already started movements of his penis over the posterior part of P.W.2-G. Section 18 of the POSCO Act provides punishment for attempt to commit an offence.

> *"18. Punishment for attempt to commit an offence._ whoever attempt to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any*

description provided for the offence, for a term which may extend to one-half of the imprisonment of life or as the case may be, one-half of the longest term of imprisonment provided for that offence or which fine or with both".

39. The appellant, in fact, did an attempt towards an act of committing aggravated penetrative sexual assault and, therefore, the learned trial Court has rightly appreciated all the circumstances and facts on record by passing appropriate sentence of imprisonment.

40. In case of **Madan Gopal Vs. Naval Dubey, AIR 1992 SCW, 1480,** it is held thus,

"...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".

The dicta is loud and clear as to how such offences are required to be dealt with who are menace to the civilized society and,

therefore, they should be mercilessly and inexorably punished.

41. In the case of **Shyam Narain Vs. State of NCT of Delhi, 2013 Cri L J 3009,** the Hon'ble Supreme Court has made following observations which are quite relevant in the given set of facts and circumstances. It would be apposite to quote paragraph 11 of the judgment which reads thus;

> *"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".*

42. This is a case in which there is no question of reformation of the appellant as he was quite a grown up male who

knew the consequences of his act.

43. The learned trial Judge has elaborately and succinctly discussed each and every aspect of the case by correctly appreciating the evidence on record and reached a finding which does not warrant interference in the appeal. As such, the appeal is devoid of merits and, therefore, needs to be dismissed.

: **O R D E R** :

[1] The Appeal stands dismissed.

[2] The Muddemal Property shall not be disposed of until the appeal, if preferred by the appellant is decided by the Supreme Court.

[PRITHVIRAJ K. CHAVAN, J.]