

# State By Nandini Layout Police vs Nos.1 A1: N.Lokesh on 31 August, 2017

BEFORE THE CHILD FRIENDLY COURT,  
BENGALURU URBAN DISTRICT.

Dated this the, 30th day of August, 2017  
Present: SMT.YADAV VANAMALA ANANDRAO., B.Com. LL.B.[Spl.]  
LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55]  
Sitting in CHILD FRIENDLY COURT,  
BENGALURU URBAN DISTRICT

SPL CC NO.98/2015

COMPLAINANT: State by Nandini Layout Police,  
Bangalore City.  
(By Learned Public Prosecutor)

-Vs -

ACCUSED NOS.1 A1: N.Lokesh,  
AND 2: Son of Late. Narasimhaiah,  
Aged 23 years,  
Residing at No.515, 5th Cross, 2nd Main,  
Kanteerava Nagar, Nandini Layout,  
Bangalore-96.

[Accused No.1 is reported to be dead.  
Hence, case against accused No.1  
stands abated]

A2: Manoj.G,  
Son of Govind Raj,  
Aged 19 years,  
Residing at No.49, 2nd Cross, 5th main,  
Krishnananda Nagar, Nandini Layout,  
Bangalore-96.

[Accused No.2: By Advocate  
Sri.K.H.Manjunatha Swamy]

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Spl CC No.98/2015

1.	Date of commission of offence	09.12.2014
2.	Date of report of occurrence of the offence	10.12.2014
3.	Date of arrest of accused No.2	10.12.2014
4.	Date of release of accused No.2	17.07.2015

[bail]

- |     |   |  |
|-----|---|--|
| 5.  | Period undergone in custody by the accused No.2 | 07 Months and 07 days.   |
|     |   | Since accused No.2 remained absent before this court from 15.4.2017, NBW was issued against him. On 11.7.2017, the Learned PP submitted that, accused No.2 is in J.C in Cr.No.194/2017 of Basaveshwara Nagar P.S and to issue body warrant against accused No.2. So, body warrant was issued against accused No.2. |
| 6.  | Date of commencement of evidence                | 27.6.2015  |
| 7.  | Date of closing of evidence                     | 07.12.2016   |
| 8.  | Name of the complainant                         | Smt.Kamakshi- Mother of the victim girl  |
| 9.  | Offences complained of                          | Secs. 376(2)(g) r/w Sec.34 of IPC and under Sec.5(g)(h) and Sec.6 of POCSO Act, 2012   |
| 10. | Opinion of the Judge                            | As per the final Order<br>Spl CC No.98/2015  |

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#### JUDGEMENT

The Police Inspector, Nandini Layout police station filed charge-sheet against accused Nos. 1 and 2 for the offences punishable under Sec.376(2)(g) r/w Sec.34 of IPC and under Sec.5(g)(h) and Sec.6 of POCSO Act, 2012.

2. Gist of the prosecution case is that:

The daughter [CW2/victim girl] of CW1 being not interested in education, was working and on 9.12.2014 when she [victim girl] went in the morning to the work, and was returning back during the night by walk on the road, near Rajeev Gandhi Park at 8 P.M., at that time, accused Nos. 1 and 2 restrained the victim girl and threatened her holding knife [the deadly weapon] and forcibly took her into the park and when she tried to shout, the accused persons gave life threat pointing the knife and pulled her to the area of the backside of Shani Mahatma Temple and against her

will, they have committed gang rape [aggravated penetrative sexual assault] on her and hence, complaint was lodged by the complainant/mother of the victim girl. So, a case was registered by the complainant police in Cr.No.231/2014 and FIR was sent to the court and copy of the same was sent to the higher officer and thereafter, the Investigating Officer has undertaken investigation and during the course of investigation, the Investigating Officer has arrested accused Nos. 1 and 2 and collected materials and as there were materials indicating the participation of the accused persons in the alleged crime, he [Investigating Officer] filed charge-sheet against the accused persons for the offences punishable under the said penal provisions of IPC and POCSO Act, 2012.

3. After appearance of accused persons, the copies of the prosecution papers [charge-sheet] was given to the counsel on behalf of the accused persons in-compliance with Sec.207 of Cr.P.C.

4. After hearing the learned Public Prosecutor and the learned counsel for the accused, my learned Predecessor-in- office has framed the Charge on 11.5.2015 after considering the materials on record and dispensing HBC and Charge was read over to the accused Nos. 1 and 2 in the language known to them. The accused persons pleaded not guilty and claimed to be tried. Therefore, the case was proceeded with for recording of the evidence of the prosecution witnesses. Accused No.1 was alive till recording of evidence. Thereafter on account of his death, case was abated against accused No.1 and hence, case was proceeded against accused No.2 only and that, since from the date of his arrest, accused No.2 is in the judicial custody.

"NOTE:- The date of incident was on 9.12.2014. But, the amendment to Sec.376 of IPC came into force was on 3.2.2013. Charge was framed by my predecessor-in-office referring Sec.376(2)(g) of IPC i.e., earlier provision. But, gist of the charge framed has covered the offence punishable under Sec.376(D) of IPC of the amended provision, which was prevailing and hence, at this stage, only the provision to be rectified, in the interest of justice, as it is mandatory to be implemented by court of Law. Accordingly this provision i.e., Sec.376(D) of IPC for gang rape is duly considered as point for consideration in place of Sec.376(2)(g) of IPC. Law shall prevail, that was in force during the year 2014. Apart from this, prosecution has adduced evidence attracting the penal provisions of POCSO Act, 2012 as well as the offence of gang rape, coming within the purview of Sec.376(D) of IPC [as amended]."

5. To prove the case, prosecution examined in all PW1 to PW16 and relied upon the documents at Exs.P1 to P21 and MOs-1 to 7 are got marked.

6. After completion of prosecution evidence, the statement of accused No.2 as contemplated under Sec.313 of Cr.P.C is recorded. Accused No.2 has denied the incriminating evidence given against him by the prosecution witnesses. He [accused No.2] did not chose to adduce evidence and hence, the case was proceeded to hear arguments.

7. The learned Public Prosecutor and the learned defence counsel have put-forth their arguments. The learned Public Prosecutor has also relied on the following decisions:

(1) AIR 2013 SC 3077 [Md.Iqbal & Anr. Vs. State of Jharkhand] (2) 2009 Cri.L.J 4133 [Rajinder @ Raju Vs. State of HP] (3) 2014 (4) Crimes 226 (Ori) [Santhosh Bhoi Vs. State of Orissa] (4) AIR 2006 SC 381 [State of Himachal Pradesh Vs. Asha Ram] (5) 2000 Cri.L.J 1417 [Ranadhir Basu Vs. State of West Bengal] (6) 2001 SCC (Cri) 1504 [Chandrasekhar Sureshchandra Bhatt & others Vs. State of Maharashtra] (7) 2016 (4) Crimes 424(SC) [State of Himachal Pradesh Vs. Sanjay Kumar @ Sunny] (8) AIR 2001 SC 2075 [ State of Himachal Pradesh Vs. Gian Chand] (9) AIR 2004 SC 1497 [Aman Kumar and another Vs. State of Haryana] (10) 2010 Cri.L.J 3880 [ Bipin Kumar Mondal Vs. State of West Bengal] (11) 2004 Cril.LJ 1399 [Aman Kumar and another Vs. State of Haryana] (12) AIR 2013 SC 3008 [Ganga Singh Vs. State of Madhya Pradesh] (13) 2012 Cri.L.J 468 [Pritam Singh Vs. State of H .P] (14) 2015 (4) Crimes 531 [SC] [Satish Kumar Jayanti Lal Dabgar Vs. State of Gujarat]

8. I have perused both oral and documentary evidence and record on hand and that with due consideration of arguments placed by the learned Public Prosecutor and the learned defence counsel and said case laws, the following are the Points formulated for consideration of this case:

1. Whether the prosecution has proved beyond all reasonable doubt that, on 9.12.2014, at about 8 P.M., near Rajeev Gandhi Nagara Park when the victim girl/CW2 was returning back to her house, accused No.2 and the deceased accused No.1 in furtherance of their common intention, restrained the victim girl and threatened her with a knife, as deadly weapon, if she makes noise and that forcibly took her behind Shani Mahatma Temple situated inside the said park and committed gang rape on her one after another, knowing that the victim girl was minor and thereby committed an offence punishable under Sec.376D r/w Sec.34 of IPC?

2. Whether the prosecution has further proved beyond all reasonable doubt that, accused No.2 and deceased accused No.1 with a common intention at the same time and place forcibly took the victim girl behind Shanimahatma Temple, Rajiv Gandhi Nagara Park with sexual intent and threatened her by showing the knife as deadly weapon, as against her resistance of their criminal acts on her person committed aggravated penetrative sexual assault, which falls under Sec.5(g) and (h) of POCSO Act, 2012 and thereby accused No.2 has committed offence punishable under Sec.6 of POCSO Act, 2012 r/w Sec.34 of IPC?

3. What Order?

9. My findings on the above points are as under:

Point Nos.1 and 2: In the AFFIRMATIVE Point No.3: As per the final order, for the following:

## REASONS

10. POINTS-1 AND 2:- As these Points are inter-linked with each other, hence, they are taken up for common consideration to avoid repetition of facts, as the prosecution case against accused No.2 and deceased accused No.1 is that, on 9.12.2014, at about 8 P.M., near Rajeev Gandhi Nagara Park when the victim girl/CW2 was returning back to her house from her work place, accused No.2 and the deceased accused No.1 with a common intention restrained the victim girl in the manner, picking up her vanity bag and made her to follow them near the park and it is when she bent down to get it, they took her inside the park forcibly by tying her hands with veil, and threatened her with a knife as deadly weapon, if she makes noise; and forcibly took her behind Shani Mahatma Temple situated inside the said park and committed gang rape on her one after another, by putting her under dire consequences by using knife and tying her to a tree.

11. The complainant-Smt.Kamakshi, is the mother of the victim girl i.e, CW1 deposed as PW12, supporting her daughter- CW2, who is the victim girl. Her evidence is as PW13. It is narration of incident by her [PW13] to her mother PW12. CW9- Palani-father of the victim girl deposed as PW16. Of course, his evidence is hear-say evidence regarding the incident. He too had informed about the incident that was taken place at the said spot. Therefore, their evidence is considered to be natural and reliable evidence.

12. PW15 (CW3) Rajesh is the person who wrote the complaint-Ex.P16 as stated by PW12. The complaint was signed by CW1-PW12. This witness arrayed as seizure mahazar witness also. Another mahazar witness is examined as PW9 i.e. CW4-Shivakumar. The seizure was knife-MO-7 as per Ex.P14. CW4-Shivakumar who happens to be the panch witness in respect of recovery of knife from the deceased accused No.1 as per Ex.P14 [Seizure mahazar]. The knife was marked as MO-7. .

13. PW8-Venkatesh and PW11-Nitin [CW7 and CW8 respectively] are the spot mahazar witnesses at Ex.P10 i.e., photographs of the spot [Exs.P11 to P13] and presence of witnesses, victim girl, complainant at the spot are visible at Exs.P11 to P13. [Photographs]. These photographs were taken at the spot during Ex.P10, conducted by the Investigating Officer.

14. PW14 [CW5]- Santhosh happens to be the panch witness in respect of the spot shown by the accused persons and mahazar conducted as per Ex.P19.

15. PWs-1 to 3 are the witnesses who have issued Certificates regarding the date of birth of the victim girl, deceased accused No.1 and accused No.2 respectively.

(a) PW1-Manjulatha, Head Mistress of Government Higher Primary School, Krishnanda Nagar, Chandra Layout, Bangalore, has referred the Certificate issued by her at Ex.P1 and also the School Students Register Book of the year 2005-2006, which is marked as Ex.P4. The particular entry at Sl.No.117/2005-2006 is marked at Ex.P4(a), its certified copy is marked at Ex.P4(b) regarding the date of birth of the victim girl as 1.5.1999.

(b) PW2-N.Byregowda, School Master, Veena Teachers Education Society, Kannada Higher Primary School, Bangalore, has referred the Certificate showing the date of birth of deceased accused No.1 as 4.1.1993. Deceased accused No.1 studied upto 7th standard in their school and Certificate is at Ex.P2. Since case is abated against deceased accused No.1, much discussion is not necessary in this regard, as no rebuttal evidence has been placed disputing the date of birth of deceased accused No.1 and thus considering his [deceased accused No.1] age, he was not below the age of 18 years and he was considered to be an adult.

(c) PW3-G.Sudarshan, Head Master, St.Philomena High School, Shankaranagar, Rajajinagar, Bangalore, has referred the T.C-Ex.P3 regarding the date of birth of accused No.2 as 3.9.1996 and accused No.2 studied from 8th standard to 10th standard in their school and he [PW3] has also identified accused No.2 during the cross-examination as student of his school St.Philomena high School, Shankaranagar, Rajajinagar, Bangalore. There is no rebuttal evidence placed by accused No.2 during the cross-

examination of this witness [PW3] to disprove his date of birth and the status of this accused No.2 as a student of the said school and veracity of this witness. He [PW3] is a competent person representing the school as Head Master and he has issued T.C on the basis of the school records as per Ex.P3, as he has deposed that, the original TC was handed over the student, i.e., accused No.2, hence, he [PW3] was unable to issue original TC to the Investigating Officer at the time of investigation. However, there is no serious dispute regarding the date of birth of accused No.2 and on considering his date of birth as referred above, he [accused No.2] too was an adult at the time of the said fatal incident.

16. PW4 [CW13]-Dr.Jessica who has medically examined the victim girl and also gave opinion and issued Medical Certificate as per Ex.P5 with reference to the victim girl and collected Material Objects i.e., articles from the victim girl i.e., MOs-1 to 6.

17. The other witnesses are official witnesses. PW5 [CW17] Bhagawan- Head constable deposed that, he had taken the deceased accused No.1 and accused No.2 to M.S.Ramaiah hospital for medical examination and reported the same as per Ex.P6. Another witness CW19 S.Lingegowda who has deposed as PW6 has apprehended the accused persons as per the directions of the Investigating Officer.

PW7 [CW21]- M.H.Manujanthaswamy- Head constable spoken about taking the articles for FSL. WPC i.e., Roopa.G.N. [CW15] deposed as PW10 had taken the victim girl to M.S.Ramaiah hospital for medical examination as per the directions of the Investigating Officer. Thus, the prosecution has placed evidence on record. However, they are to be scrutinized with reference to the proof, whether the prosecution has brought home the guilt of accused No.2, since accused No.1 dead and case was abated against him. However, it is relevant to consider the entire evidence, as because, the allegation was gang rape under Sec.375 of IPC, punishable under Sec.376D of IPC and under Sec.5(g) and

(h) punishable under Sec.6 of POCSO Act, 2012.

18. The learned Public Prosecutor has referred the age of the victim girl that, she was a minor, at the time of incident and the alleged heinous offence has been committed by accused No.2 and deceased accused No.1. The one of the raising of defence is pertaining to the age of the victim girl. As a proof of age, the prosecution has referred School Records of the victim girl and adduced evidence of Head Mistress of Government Higher Primary School, Krishnananda Nagar, Bangalore, as PW1-Manjulatha. She has stated about her designation and competency to issue the Certificate showing the date of birth of the victim girl, i.e. Ex.P1, wherein she has noted the date of birth of the victim girl as 1.2.1999 and the victim girl studied upto 3rd standard. But, it has been rectified by her on oath during her chief examination that, through oversight, the date of birth of the victim girl is written as 1.2.1999, but, as per the Records, the date of birth of the victim girl was 1.5.1999 and for that reason, Student Register Book has been produced and this witness has referred the same, which is at Ex.P4. According to the said Register, the victim girl was admitted to the school as per Serial No.117/2005-2006 and her date of birth was referred as 1.5.1999. That portion was marked as Ex.P4(a) and its certified copy was marked at Ex.P4(b) and the said Certified copy is available on record supporting the case of the prosecution regarding the age proof of the victim girl as her date of birth as 1.5.1999.

19. The learned defence counsel attacked the evidence of PW1 regarding issuing of Certificate in writing regarding the date of birth of the victim girl; The school record did not support it. This was a material discrepancy; So, it created suspicion etc. But, the School records referred to at Ex.P4(a) is an authenticated document and PW1 has specifically stated about the mistake committed through oversight. In this connection, no rebuttal evidence has been adduced to disbelieve her version and the contents of Registered referred to at Ex.P4(a). Therefore, the arguments put forth by the learned defence counsel that, "because of discrepancies referred to, it creates doubt and her evidence cannot be considered as proof of age of the victim girl holding, that she [victim girl] was minor and hence, benefit of doubt has to be given to accused No.2" etc., do not hold legal force.

20. Apart from this, medical evidence is available on record to be considered. It revealed that, age of the victim girl is shown as "above 16 years and below 18 years". It is also pressed upon by the learned defence counsel regarding the discrepancies in the evidence of CW1-mother of the victim girl, deposed as PW13 and the school records and evidence of PW1 that, the victim girl's mother stated about the education of the victim girl that, she studied upto 4th standard and evidence of PW1 and School records revealing that, the victim girl has studied upto 3rd standard. But, in view of the above School record and also medical evidence and very evidence of PW12 and PW13 regarding the age of the victim girl was below the age of 18 years as on the date of the alleged incident. Therefore, these discrepancies are considered to be not serious in nature and they are not material discrepancies to discard the evidence placed by the prosecution regarding the age of the victim girl. Therefore, the medical evidence and school certificate-Register extract are corroborating the case of the prosecution. The victim girl was below the age of 18 years. It is considered to be "minor". She [victim girl] is coming within the purview of definition of "Child" under Sec.2(d) of Protection of Children from Sexual Offences Act, 2012 [POCSO Act, 2012] and hence, on these grounds placing evidence, prosecution has proved that, the victim girl was below the age of 18 years, as on the date of

the incident. Therefore, the defence on the ground of age proof does not sustain to disbelieve the version of PW1.

21. With reference to the time factor as on the date of the alleged incident, the learned defence counsel has pressed upon the evidence of the victim girl [PW13], her father [PW16] and her mother [PW12]. PW16 has stated that on 9.12.2014, the victim girl went for work in the morning at 7 A.M., and that as the victim girl used to return back home in the evening at 7 P.M., but, PW12 intimated him at 7.30 P.M., on phone that, the victim girl did not return back to home. Specifically during the cross-examination suggestion made to this witness [PW16] is that, normally his daughter/victim girl [PW13] returns back between 7.30 P.M. to 8 P.M., and hence he [Pw16] told his wife [PW12] to trace out her [victim girl] and he would come back to the house. He [PW16] was unaware of the incident till 8 P.M., and in this regard, he gave admission. However, it is his specific answer to the question put to him that, what about the time by the victim girl to return back everyday etc., his answer was that, the victim girl used to return back home between 7 P.M. to 7.30 P.M. and she was not returning late etc. Whereas, PW12 deposed that, the victim girl was going to the work since one week or 10 days prior to the incident and used to leave home at 9 A.M., and used to return back to the house at 7-7.30 P.M. On the date of incident, when she [victim girl] did not return back to the house, the same was intimated to her husband- PW16. Even during the course of cross-examination, she deposed that, the victim girl was going to the work at 8.30 A.M., and she used to return back to the home at 7.3-0 P.M., but, there was no suggestion put to this [PW12] witness regarding the usual time of the victim girl about her return to the home after completion of the work. So, from this what is revealed that, she [victim girl] was leaving the work place after completing the work of the day only at 7 P.M.

22. PW13-very victim girl has deposed about the working hours that, she was going to work at 9 A.M., and used to return back to the home at 7 P.M. During the cross-examination, no- doubt, she [PW13] admitted the suggestion that, if she leaves the home at 9 A.M., she would reach the factory at 10 A.M. and that, if she wants to reach the house, she will leave the factory at 7 P.M., and it will take time to reach her house at 8-8.30 P.M. Therefore, the very victim girl has stated about the manner during which she used to attend the work and leave the factory after 7 P.M., and she used to reach the house in the night only. However, there is no much discrepancy to disbelieve the version of the victim girl and her parents about her [victim girl] returning back to the house from the work place and the discrepancy regarding time factor in this regard is not material to disbelieve the prosecution case that, the victim girl used to return back to the home from the factory after completion of the work in the factory, i.e, she [victim girl] was leaving the work place which was usual time only at 7 P.M., and that, she [victim girl] did not reach home on the incident date in between 7 P.M., to 8.00-8.30 P.M. So, the time factor is proved that, the incident was taken place in between 7.30 P.M., to 8.00 P.M.

23. Regarding place of incident, there is no much dispute. However, prosecution has collected materials which are to be discussed. It is specifically deposed by the victim girl-PW13 that, on the said date of incident, when she was proceedings on the road, on which usually she was using that road, from her work place to her house, i.e, park located in Rajeev Gandhi Nagar and the accused persons attacked her and forcefully taken her to the backside of Shani Mahatma Temple located in



the said park by giving threat of dire consequences, holding knife used as deadly weapon and committed rape on her and at the same time when the mother of the victim girl-PW12/complainant searching her came near the said place, two persons ran away from the place and she [PW12] went to the said spot where the victim girl was gang raped. Thus, PW12 also stated about the said place where she found her daughter. In this connection, it is also important to consider the spot inspection done by the Investigating Officer, as per Ex.P10, as he has secured 2 mahazar witnesses i.e., PW8 [CW7] and PW11 [CW8] who have accompanied the Investigating Officer along with PW12 and PW13[mother and victim girl] to the said spot and the victim girl-PW13 shown the spot of incident and panch witnesses have also identified the photographs taken at the spot, which are marked at Exs.P11 to P13. Thus, the presence of PW8 and PW11 at the time of investigation i.e., while conducting spot mahazar as per Ex.P10 and place of incident was shown by the victim girl-PW13, so also PW12-complainant. The said Mahazar was on 12.12.2014 conducted by the Investigating Officer from 10 A.M. to 11.30 A.M. There is no effective cross-examination to these [PW8 and PW11] witnesses with reference to the Mahazar conducted by the Investigating Officer, as per Ex.P10. The evidence of PW8 and PW11 are supporting the case of prosecution regarding the place of incident. There is no material discrepancy brought on record to discard the contents of Ex.P10 and the Photographs marked at Exs.P11 to P13. Apart from this, the very victim girl has shown the place of incident. So, these materials are sufficient for the prosecution to prove the place of incident. On the other hand, the accused persons specifically accused No.2 has failed to disprove the case brought on record regarding place of incident, by the prosecution. Thus, prosecution has proved the place of incident, linking the accused No.2 regarding committing of offence. .

24. About the incident and participation of accused persons to attract the offence of gang rape and common intention and manner of committing the offence, the prosecution has placed the materials on record in the form of evidence. However, at this juncture, I would like to rely upon the decisions submitted by the learned Public Prosecutor supporting his arguments, with reference to the evidentiary value of the victim girl and other material witnesses in connection with the offence under Sec.375(376 D in particular) of IPC and Sec.5 (Sec.6 in particular), of POCSO Act, 2012 and sole testimony of the victim girl of the incident being not needed corroboration, shall be appreciated to convict the accused persons and the medical evidence and the discrepancies which are not so material, are to be ignored etc. They are as follows:

- (a) AIR 2013 Supreme Court 3077, is with reference to gang rape under Sec.376(2) (g) of IPC and presumption available under Sec.114(A) of Evidence Act:

"Consent is out of question- Version of prosecutrix corroborated by medical evidence showing rupture of hymen and injuries on body- No explanation given by accused why prosecutrix had deposed against them- Failure to hold test identification parade attributable to threat given by accused-Accused cannot be allowed to gain from their wrong. Thus considering the same, conviction order has been upheld".

It is also considered regarding uncorroborated version/testimony of prosecutrix, held to be basis for conviction and also it is impressed upon the version and the position of a victim of sexual crime and the relevant portion is reproduced below that:

"Rape cannot be treated only as a sexual crime, but, it should be viewed as a crime involving aggression which leads to the domination of the prosecutrix. In case of rape besides the psychological trauma, there is also social stigma to the victim. Majority of rapes are not sudden occurrences, but, are generally well planned. Social stigma has a devastating effect on rape victim. It is violation of her right of privacy. Such victims need physical, mental, psychological and social rehabilitation. Physically she must feel safe in the society, mentally she needs help to restore her lost self esteem, psychologically she needs help to overcome her depression and socially, she needs to be accepted back in the social fold. Rape is blatant violation of women's bodily integrity".

(b) 2009 Cri.L.J 4133, it is held that:

"(A) Penal Code (45 of 1860), S.376- Rape-Consent-Absence of injuries on victim-Relevance-Accused taking victim along with him on pretext of showing her to doctor-Victim carried to different places instead of doctor-when it became dark accused took her to lonely place and committed sexual intercourse-Victim, in circumstances, could not be expected to have put resistance-Absence of injuries on person of prosecutrix does not lead to an inference that she consented for sexual intercourse".

It is also pressed upon the testimony of prosecutrix in rape cases that it is sufficient to base conviction and it is not necessary to look for corroboration, except in cases of high improbability and it is specifically held that:

" In the context of Indian Culture, a woman-victim of sexual aggression-would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix".

It is also further impressed upon the testimony of the prosecutrix and its reliability and discrepancies not being so material to disbelieve her version and it is held that:

"Accused taking victim on pretext of showing her to doctor- Committing forcible intercourse by taking her to lonely place-Categorical, clear and unequivocal deposition by prosecutrix that accused committed forcible sexual intercourse with her- Prosecutrix in cross-examination deposing that accused threatened her with dagger on her refusal to go to places other than doctor-Fact neither stated in her statement under Sec.161 Cr.P.C nor in the FIR- Contradiction not sufficient to

disbelieve her evidence".

(c) 2014(4) Crimes 226 (Ori), the important Point to be considered therein that:

" In the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as per rule, is adding insult to injury" .

(d) AIR 2006 Supreme Court 381, it is held that:

"(A) Penal code (45 of 1860), S.376-Rape-Conviction for, can be founded on testimony of prosecutrix alone-Evidence of prosecutrix is more reliable than that of an injured witness-

Minor contradictions or insignificant discrepancies in her statement, immaterial. If there is no compelling reasons for seeking corroboration, such version of the victim alone can be relied upon. The evidence of the victim if inspires confidence, then her evidence considered to be foundation for conviction".

It is also further considered that, "Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law, but, a guidance of prudence under given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise, reliable prosecution case".

(e) 2000 Cri.L.J 1417, it is pertaining to Sec.3 of the Evidence Act, it is held that:

"Inconsistencies/improvements- Some inconsistencies of a minor nature in her evidence can be regarded as natural-Giving more details while deposing before Sessions Court are not improvements of such a nature as would create any doubt regarding her trustworthiness".

(f) 2001 Supreme Court Cases (Cri) 1504, it is held that:

" In connection with appreciation of evidence in criminal trial, marginal variations on certain aspects as between his statement recorded under S.161 Cr.P.C and the testimony given in court, cannot be said to be improvements made with any sinister motive. They are elaborations elicited by the Public Prosecutor during the examination-in-chief. It is the prerogative of the Public Prosecutor to elicit such points from a witness, as he deems necessary for the case. No Public Prosecutor can be nailed to the statement recorded under Section 161 of the Code".

(g) 2016(4) Crimes 424 (SC), wherein it is considered about the testimony of victim in case of sexual offence as vital , unless there are compelling reasons which necessitates to look for corroboration of statement and court can act on testimony of victim of sexual assault for conviction of the accused.

It is also impressed upon that:

" Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury-Deposition of prosecutrix has to be taken as a whole- Victim of rape is not an accomplice and her evidence can be acted upon without corroboration- She stands at a higher pedestal than an injured witness does".

It is further considered that:

"To insist on corroboration, except in rarest of rare cases, is to equate one who is a victim of 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 case of an accomplice to a crime".

(h) AIR 2001 Supreme Court 2075, it is held that:

"(B)- Penal Code (45 of 1860), S.375- Rape-Appreciation of evidence-Minor inconsistency as to place of occurrence-Found in corroborating statement of mother of prosecutrix who was not an eye-witness-Held, would be immaterial and insignificant when overall narration of incident by her was found to be natural and trustworthy".

Further, it is held that:

"(C)- Penal Code (45 of 1860), S.375-Rape-Proof-

Non-examination of material witnesses- Effect- Prosecutrix aged about 5 years at time of incident-Accused, a relative of in-laws of mother of prosecutrix- Non-examination of other girls belonging to families of such in-laws who were playing with prosecutrix soon before the incident-Cannot be a ground for drawing adverse inference against prosecution".

"(D)- Penal Code (45 of 1860), S.375-Rape-Proof-Medico Legal examination of prosecutrix by doctor-Clearly shown that prosecutrix was subjected to rape-Suggestion made in cross-examination of doctor that injury of the nature found on hymen of prosecutrix could be caused by fall-Held, not fatal to prosecution case in absence of any other material to support the suggestion".

(i) AIR 2004 Supreme Court 1497 and 2004 Cri.L.J 1399, it is held that:

" {A} Penal Code (45 of 1860)-S.375- Rape- Prosecutrix's evidence- Needs no corroboration-She stands at higher pedestal than injured witness- Her testimony if doubtful-Court may search for assurance short of corroboration".

It is further considered that:

"To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Sec.376, IPC".

(j) 2010 Cri.L.J 3880, it is held that:

"(D) Evidence Act (1 of 1872), S.134- Penal Code (45 of 1860), S.300- Solitary witness-Testimony-If wholly reliable -Can be sufficient to convict the accused"

(l) AIR 2013 Supreme Court 3008, it is held that:

"(A)- Penal code (45 of 1860), S.376- Rape-Prosecutrix- Is victim of crime-Not accomplice-her evidence needs no corroboration-

her evidence has to be given same weight as is given to injured witness".

It is considered further that:

"(E) Evidence Act (1 of 1872), S.3-Penal Code (45 of 1860), S.376- Appreciation of evidence-Defects in investigation-Unless they cast reasonable doubt on prosecution case-Cannot be ground to acquit accused".

(m) 2012 Cril.L.J 468, it is held that:

"(A)- Penal code (45 of 1860), S.354-Outraging Modesty-Proof of-Considering facts subordinate courts have convicted accused-Plea of a- cannot be accepted that father will use his daughter's image to take out personal vengeance-In Indian society, no woman will be used by person for purpose of wreaking personal vengeance-Conviction valid".

It is further considered that:

"(B) Probation of Offenders Act (20 of 1958), S.4-Conviction under Sec.354 of Penal Code-Reduction of punishment- Convict will be stigmatized and in case he is sentenced, his life will be ruined-Convict belonged to respectable and peace loving family- He has to marry and settle in life- Sentence of imprisonment imposed upon is set aside on deposit of additional amount of Rs.25,000/-

(n) 2015(4) Crimes 513 (SC), it is held that:

" (b) Indian Penal code, 1860-Section 375 -Prosecutrix less than 16 years of age at the time of incident-Consent, even if given, in-consequential- So called consent cannot be treated as mitigating circumstance"

Further it is considered the Important Points:

(1) Consent of a minor to sexual intercourse, even if existing, is of no consequence (2) Sentence should also be deterrent".

With due respect to these decisions, the legal aspects and facts and circumstances are duly considered for appreciation of evidence of the victim girl and other material witnesses in this case. The very case itself is based on direct evidence as victim girl herself has narrated the incident stating on oath in the witness box. So, also her mother-PW12 also supported the case of the prosecution. The very victim girl-PW13 specifically deposed that, during the year 2014, she was 15 years of age and she was in the house and she studied upto 4th standard and her mother-PW12 was doing tailoring work in the garments and her father-PW16 was doing coolie work in RMC yard and during the year 2014, she was doing packing of Pepper and allied things in an establishment and she was going by walk to her work place and used to return back to her home from her work place at 7 P.M. and on the said date of incident, when she was proceeding towards her house, after completing her work at 7 P.M., left the work place and when she was proceeding through Nandini Layout on the road, nearby the park, at that time, 2 persons came on 2 wheelers and put hand on her shoulders and snatched her bag and by leaving their vehicle there only, they started to run and she followed them, requesting to return back her bag and they went towards the temple nearby the park and thrown her bag; when she went to take her bag, at that time, they pulled her veil and tied her hands back and closed her eyes. At that time, she noticed the faces of those persons and because of that, she was able to identify those 2 persons as accused Nos. 1 and 2. It is material to note that, during the course of chief examination, she has specifically identified both the accused persons [at the time of her evidence, accused No.1 was alive].

25. PW13/victim girl further has specifically stated about the manner in which she was raped at the said place, that, the accused persons pulled her into the park and tied her to a small tree by lying her down on the ground and firstly a fat person had raped her and thereafter the lean person had raped her. At this juncture, during her evidence by explaining the features of the assailants, she has specifically identified the assailants/accused Nos.1 and 2 who were present before the court at the time of her chief examination on 31.8.2015 that, firstly she was raped by accused No.2 who was identified as a fat person and thereafter, deceased accused No.1 who was identified as a lean person had raped her. She deposed further that, she came to know about their names, when they were talking to each other by calling their names as Manoj and Loki. Apart from this, deceased accused No.1 was the resident of the same area, where the victim girl was residing and he was moving around nearby her house and hence, she was knowing deceased accused No.1. Even she has specifically stated that, she noticed the accused persons, when they were tying her with veil. In connection with the time factor, she has specifically stated that, when she reached the park, it was about 7.30 P.M., and it was about 8 P.M., when the accused persons raped her. Even she has stated that, she shouted for her rescue. The accused persons by keeping kerchief into her [victim girl]

mouth, pointing knife [MO-7] at her stomach, threatened her not to shout, otherwise, they would stab her and committed gang rape on her person by removing her chudidhar pant at that place of incident. At that time, her [victim girl] mother and grand-mother shouting by taking her name came to the said spot and on hearing their sound, the accused persons ran away from the spot and her [victim girl] mother and grandmother came near her and her mother put on her [victim girl] the chudidhar pant and brought her[victim girl] back to the house and that, one person who was the resident of near to her [victim girl] house i.e., PW15 was present at the spot and he phoned to the police intimating the incident and the police came to the spot and her[victim girl] mother gave complaint to the police and they went to the police station Thereafter, the police sent her [victim girl] to the hospital for medical examination and her mother accompanied her and the doctor examined her and taken her [victim girl] clothes i.e., MOs-1 to 6 i.e., chudidhar top, veil, pant, slip, brassiers and underwear respectively. Even she [victim girl] has identified the knife used at the time of the incident to threaten her, which is at MO-7. She has identified the signature on the Medical Report as per Ex.P5(b). She has stated about giving of statement before the Learned Magistrate as per Ex.P18. She further deposed that, two days after lodging the complaint, the police- Nandini Layout police came to the spot and she [victim girl] showed the spot of incident, during which, her mother [PW12], and panch witnesses were present and she has identified the photographs taken by the Investigating Officer during the investigation at that time, on the spot, which are at Exs.P11 to P13. The spot mahazar is at Ex.P10. Even she [victim girl] has identified the tree, to which the accused persons tied her, which is visible in the photograph at Ex.P12, that PW13 pointing at the place and the small tree to which she was tied..

26. So, also PW12 being the mother of the victim girl has specifically deposed regarding their family status and the incident on the fatal day, that, the victim girl did not return back to the house till 7-7.30 P.M. and she made enquiry with one Kousalya, who was one of the co-worker with the victim girl, who returned back home as usual after completing the work and who was residing nearby the house of the victim girl and said Kousalya stated that, she came along with her uncle and the victim girl was coming behind. She [PW12] waited for sometimes. When the victim girl did not return back to the house, she [PW12] again went to the house of said Kousalya, for enquiry, why the victim girl did not return back; but, said, Kousalya and her mother told that, they did not know anything about the victim girl and such things could not be enquired with them and thereby said Kousalya and her mother refused to entertain her [PW12] in this regard. At this juncture, it is relevant to appreciate the evidence of PW12 and to discard the defence that, said Kousalya was not cited as a witness and it is fatal to the case of the prosecution. But, it is not disputed that, said Kousalya was nearby resident to the house of PW12 and was going to work place with victim girl. Apart from this, it is not the case of the accused persons, that no person residing in the locality of victim's house and she never went to work with PW13;

Nor rebut the evidence of PW12 in that regard. But, the manner in which the response of said Kousalya and her mother refused to entertain PW12, itself, sufficient to uphold the duty of the Investigating Officer that said witness, in this case, is not so material to cite her as a witness. So, the defence of non-citing of this person Kousalya is fatal to the prosecution case, does not sustain. From this it reveals that, PW12 as responsible mother made efforts to search her minor daughter/victim girl without any inordinate delay that, she [PW12] went in search of her daughter/victim girl along

with her mother at one place and her husband went for search of his daughter/victim girl in another place. When PW12 coming nearby the said park, it was dark and one person pouring water to the plants asked them [PW12 and her mother] as to what has happened, and her mother stated that the victim girl was not seen and when they were standing outside the park gate, at that time, by hearing their voice, the deceased accused No.1 came out of the park and when he noticed them, he went back immediately into the park and that along with him, another person ran away from the spot. She [PW12] too referred the deceased accused No.1 as he was moving nearby her house and hence she was knowing about deceased accused No.1 and she has specifically identified accused No.1 (accused No.1 was alive at the time of her [PW12] evidence) in the open court hall during her chief examination dated: 17.8.2015. She [PW12] has further deposed that, because of such behaviours of the assailants suspecting them, she went inside the park and she noticed that the hands of the victim girl was tied to a tree with the help of duppatta and her mouth was closed with clothes and there was no chudidhar pant on her [victim girl] lower part of her body and she [PW12] relieved the victim girl from the tied hands and when she made enquiry with the victim girl, the victim girl narrated the incident, as referred above, [while discussing the evidence of PW13,] the manner in which, the accused persons had committed aggravated penetrative sexual assault on her [victim girl] person by putting her under threat by showing a knife (MO-7) by pointing it at her stomach and that, after hearing the voice of PW12, the accused persons ran away from the spot. She [PW12] further deposed that, at the spot when they were weeping, PW15 whose office was nearby the park, came there and asked as to the happening and she [PW12] narrated the said incident to him. She told him that the assailants ran away from the spot and he sent for his persons to catch hold the assailants and he informed the incident to the police on phone. Thereafter they [Pw12 and her mother] took the victim girl to the house and the police came to her house and as she [PW12] was unable to read and write, she requested PW15 for preparing the complaint and as per her [Pw12] narration, he [PW15] wrote Complaint as per Ex.P16. She [PW12] has stated about attending the police station and taking the victim girl to the hospital for medical examination. In the hospital, clothes of PW13 were given in the hospital. She [PW12] has also stated that, she was present at the time of spot mahazar. Apart from this, she gave statement as per Ex.P17 before the learned Magistrate under Sec.164 of Cr.P.C. It is also supporting the prosecution case linking accused Nos. 1 and 2 regarding the offence punishable under Sec.376D of IPC and under Sec.6 of POCSO Act, 2012. She has identified her signature on the Medical Report [Ex.P5] and statement Ex.P7. She has also identified the Material Objects at MOs-1 to 5 [clothes of PW13] and also spot mahazar and photographs at Exs.P11 to P13. Thus, she [PW12] corroborated the version of PW13.

27. It is also necessary to consider the evidence of one of the material witness regarding the complaint and also spot mahazar i.e, PW15, [CW3-Rajesh]. His evidence is that, he wrote the complaint, as PW12 told him to write, as she was not knowing Kannada language to write and it was at the spot, when PW15 was at the park in between 7 P.M., to 8 P.M., and hence, he went along with them to the house of PW12 and he wrote Ex.P16 and it is clear and unequivocal evidence that, PW12 told that, the accused persons had committed gang rape on her daughter/victim girl. He [PW15] too also went to the police station along with them. However, he was treated as partial hostile witness with due permission of the court. The learned Public Prosecutor abled to bring on record the material admissions from the mouth of PW15 that on the said date, when he was proceeding by walk nearby the said park at about 8.30 P.M., he heard some sound and went to the spot of incident [the



area behind the said Temple], he noticed that, PW12 and PW13 were weeping. However, he [PW15] denied that, the incident was narrated to him at that time and place by PW12. In this regard, one has to consider the escaping nature of such witnesses, when they attend and assisting the victim and her family members, etc., to observe that, "why he [PW15] denied this fact of narration when such a person wrote the complaint', and it is a material aspect to be noted; it may be for the reasons best known to him. However, there is no rebuttal evidence to disbelieve the prosecution case that, PW15 was being present after the incident at the spot and hence about the fact narrated at the spot being admitted about the fact narrated at the spot by PW12", cannot be ignored. Apart from this, PW15 under unequivocal terms admitted about Ex.P16 written by him as per the briefing by Pw12 and he [PW15] went to the police station on the day of the incident after writing the complaint along with PW12 and PW13. Therefore, his evidence in this connection is material and relevant linking the material fact of the said incident to bring home the guilt of the accused persons, specifically accused No.2.

28. With reference to the seizure mahazar, PW15 turned hostile to the prosecution case that, police took his signature in the police station, which is on Ex.P14 and unable to say what are the contents of Ex.P14. It is recovery of Knife [used in the incident specifically by deceased accused No.1], which is at MO-7. It is material to note that, it is clearly admitted regarding arrest of accused No.1 and accused No.2 by the Investigating Officer on 10.12.2014 during the investigation and he [PW15] saw accused Nos. 1 and 2 in the police station and he had duly identified them [accused Nos. 1 and 2]. However, he [PW15] denied that, he gave statement before the police as per Ex.P20 and it is the specific admission of this witness that, on 10.12.2014 in between 4.10 P.M., to 5 P.M., the police called him along with PW9 [CW4] to the police station, but, he denied the suggestion about conducting of recovery of MO-7 by showing arrested accused Nos.1 and 2 and that deceased accused No.1 admitted the incident that, he took out MO-7 from the pocket of his pant and it was seized as per Ex.P14. In this connection, the evidence of another material witness, who happens to be the recovery panch witness i.e. PW9 has also duly identified accused Nos. 1 and 2, (who were arrested by the Investigating Officer) and they were in the police station. He admitted conducting of mahazar as per Ex.P14 for having recovered MO-7 [Knife] from deceased accused No.1 and he [PW9] put his signature on Ex.P14. But, he [PW9] denied that he knew the contents of Ex.P14. But, his firm evidence on record is that, the police have seized MO-7 from the accused persons. He [PW9] was treated as hostile with due permission of the court and the learned Public Prosecutor has taken him for cross-examination, during which, this PW9 clearly gave admission about the recovery of knife from deceased accused No.1 and under what circumstances, it was in the custody of deceased accused No.1 and about the incident that, deceased accused No.1 took out MO-7 [knife] from his pocket of the pant and produced before the police saying that, it was used for committing of the said offence on the person of the victim girl, by threatening her that, if she shouted, they [accused Nos. 1 and 2] would stab her with the knife [MO-7] and committed gang rape on her. Mahazar was conducted in his [PW9] presence, MO-7 [knife] was seized from the custody of deceased accused No.1 and seizure Mahazar was conducted as per Ex.P14. However, he [PW9] showed his ignorance of presence of PW15 [Rajesh] as witness and put his [PW9] signature on Ex.P14. There is cross-examination to this witness [PW9] by the learned counsel for accused No.1, during which, this witness had given admission for the suggestion put to him that, the police did not give notice to panch witnesses and he saw deceased accused No.1 only before the court on the specific day of his

cross-examination i.e., on 25.11.2016. He admitted the suggestion that, no materials seized in the police station in his presence from deceased accused No.1 and the deceased accused No.1 did not give confessional statement that, by using MO-7 putting her [victim girl] on threat, he committed rape and that deceased accused No.1 on the said date of Ex.P14, he did not produce the button knife [MO-7] which was used for commission of the said offence etc. But, suggestion in particular, reads thus:

"1£ÀÉÃ DgÉÆÃ|AiÀÄÄ vÀ£Àß ¥ÁâAn eÉÃ©AzÀ PÀÈvÀâPÉÌ §¼À¹zÀ §l£ĩ  
ZÁPÄÄª£ÀÄß £À£Àß ,ÀªÄPÀªªÄ ºÄdgÄÄ ¥Àr¹®è JAzÀgÉ ,Àj."

Which is nothing but, the suggestion in the form of admission regarding user of MO-7 [knife] by the accused persons specifically by deceased accused No.1. With reference to the cross-examination by the learned counsel for the accused No.2, to this witness [PW9] is concerned, it is only in the form of denial and he too suggested that, the witness-PW9 noticed accused No.2 only before the court on 7.12.2016, during his cross-examination before the court, which is generalized question. No elaborate cross-examination was done securing material things as material defence to discard the version of CW9. Apart from this, there is adopting cross-examination of learned counsel for the accused No.1, which is supporting the case of the prosecution etc., Therefore, it indicates that, accused No.2 was also certainly involved in the said alleged offences and participant in using MO-7 [knife] for putting the victim girl under threat and committing of gang rape on her. The offence was committed by both the accused persons and though deceased accused No.1 used it, threatening the victim girl, it is considered to be committing of such offence by both the accused persons, under Sec.376(D) and Sec.5(g) and (h) of POCSO Act, 2012.

29. It is also pertinent to note about the admission of PW15 regarding signature on the slip affixed to MO-7, by the Investigating Officer during the investigation, i.e., at the time of conducting seizure mahazar as per Ex.P14. He [PW15] denied that, he gave statement in this regard before the Investigating Officer, as per Ex.P21. Thus, he [PW15] though partially turned hostile to the prosecution, but, he supported the material facts of the incident linking the accused persons to believe that, immediately, before his arrival to that place, the unfortunate event was taken place. As because this witness [PW15] while in his cross-examination by learned defence counsel for accused No.1, has responded to a suggestion that, on 10.12.2014 in between 4.10 P.M., to 5 P.M., he was not in the police station nor the contents of Ex.P14 were read over to him. Whereas in the cross-examination of PW15 by the learned defence counsel for accused No.2, it was brought on record that, his [PW15] office is situated nearby the said park and the park is kept for the public having a road on 4 sides of the park and the said Shanishwara Temple was located on the north-east corner adjoining to the road and there is a watchman shed about 10 feet distance from the said temple; and there was waiting place for public nearby the said temple and thereafter, about 20 feet distance, from the said waiting place; there are residential houses and a road proceedings on the western side of the park and there is an electric pole; and thereafter there are residential houses; and there were electric poles nearby the watchman shed and residential houses; and one can hear the sound, if anybody shouts at the place behind the said temple; and the public of the locality were using the park during the evening and night hours for walk; The persons walking in the park and seated persons in the park were visible to the persons who were moving on the road adjoining the

park; and the street lights would be on from 6 P.M., to the next day 6 A.M. etc. No-doubt he [PW15] admitted these facts. But, there is no specific suggestion put to this witness to disbelieve his evidence pertaining to the incident narrated to him by PW12 to write Ex.P16 and same has been written in therein. Even nothing was brought on record that, on that date and time i.e., in between 7.30 P.M., to 8 P.M., there were street lights and reaching the spot of the incident and that people were on the road, or that people were in the temple or near by the temple or in the park walking, who could see the spot of the incident, during the said period and that for that reason, the incident could not have been taken place and that a false case has been created against accused persons etc., as of defence, raised by the defence side for accused No.2. So, when such being the situation, only inference that could be drawn is and it probabilises that, the said place considered to be remote and beyond the reach of people, so that they could be seen the incident or hear the sound of screaming from that place of incident. Apart from this, there was threat to the victim girl-PW13, with deadly weapon and she was put under threat, from shouting and was made her to lie on the ground by tying her hands. The act of such type of offence taken place in that place, keeping the victim girl under threat, would clearly indicate that, it was well-planned and in-furtherance of common intention of accused Nos. 1 and 2 to commit gang rape on the victim girl, which falls within the purview of Sec.5(g) and (h) of POCSO Act, 2012 and Sec.376D of IPC. .

30. Now, coming to the medical examination of the victim girl and the accused persons, and relevant reports for discussion are taken up for discussion. The learned defence counsel for accused No.2 has specifically argued that, PW4-Dr.Jessica has issued Medical report with reference to the victim girl and the very Medical Report at Ex.P5 does not support the prosecution case, as no injuries found on the body of the victim girl and on examination, PW4 found external genital were normal and as per the opinion expressed by PW4 under Ex.P5, there was no evidence of recent sexual intercourse and hence, benefit of doubt has to be given to accused No.2 that, no such incident was taken on that particular day, time and place, as per the case made out by the prosecution.

31. However, the learned Public Prosecutor has tried to make it clear through the Doctor [PW4] asking PW4 about the explanation regarding such type of opinion under Ex.P5. Of- course, objections raised are over-ruled by my learned predecessor-in-office during the evidence of PW4 and in this connection, this witness [PW4] has specifically given answer to a question about the meaning of " No evidence of recent sexual intercourse". PW4 answered that, "She [victim girl] could be used to an act like that of sexual intercourse". During the cross-

examination of PW4, by the learned defence counsel for accused No.2, what is revealed is that, it is stated about the estimation of age of the patient and procedure in that regard. PW4 has specifically stated that, the age will be estimated on the basis of teeth examination, x-ray of jaw, shoulder elbow, wrist etc. However, at this stage, it has no relevance, as because the prosecution has proved the status of the victim girl as a "Child", below the age of 18 years. In connection with the opinion expressed by PW4, by giving answer to the learned Public Prosecutor, it was asked, on what basis, PW4 had stated that, the victim girl was used to an act like that of sexual intercourse. PW4 specifically and firmly stated that, in view of old healed tear at 8 'O' clock and 4 'O' clock position in the hymen. Thus, the evidence of PW4 is firm in-connection with the fact that, the victim girl was used to an act like that of sexual intercourse, which is supporting the committing of offence on the

person of the victim girl, falling within the purview of Sec.375(and specifically under Sec.376D) of IPC and under Sec.5(g) and (h) of POCSO Act, 2012.

32. Apart from this , it is also material to note that, learned defence counsel for accused No.1 has brought on record through the mouth of PW4 regarding the material aspects, which reads thus:

"After sexual intercourse if the said lady or girl has passed the urine or washed it by water, then spermatozoa will not be found. Suppose in case of coitus interrupts this semen will be not be deposited in the vagina canal."

However, PW4 expressed opinion that, there was no evidence of recent sexual intercourse. It is also stated by PW4 that, "meaning of old "recent" means 48 hours prior to the examination of the victim girl". But, from the said sentences nothing can be gathered what the witness intended to say and what purpose it was secured from the mouth of PW4 by learned defence counsel for accused No.1. However, evidence on record as discussed above, is proof of the sexual assault committed on the person of the victim girl. The direct evidence of PW13 is supported by PW12 and other circumstantial witnesses as discussed above, regarding the fatal incident. It is nobodies case that, PW13 was subjected for said offence other than accused Nos. 1 and 2.

33. Apart from this, on registering the complaint, the Investigating Officer took up investigation by arresting the accused persons and he recorded the voluntary statements of the accused persons. No-doubt, the voluntary statements of the accused persons cannot be considered as proof pertaining to the incident. However, their voluntary statements disclose the place of incident and corroborates the version of the victim girl-PW13. It is also pertinent to note that, as the victim girl has deposed about the commission of heinous offence on her person, by threatening with deadly weapon i.e, knife and the accused persons raped her one after another, which is amounting to gang rape and the materials referred above are supporting the case of the prosecution. Therefore, the serious defence raised by the learned defence counsel for accused No.2 that, the prosecution has not adduced the evidence of the Investigating Officer does not sustain. It is not fatal to the prosecution case, since, the evidence of material witnesses supporting the direct evidence of PW13-victim girl is reliable. As discussed above, it was held that, at that time and place, being lonely place, the victim girl alone could say what was happened on her person and what was her position [as helpless] and that, unable to rescue. Threat by MO-7 was eminent. Hence, her sole evidence has to be believed, even in the absence of corroboration. Thus, the prosecution has proved the said fatal incident.

34. Apart from this, the law itself provides for statutory presumption under Sec.29 of POCSO Act, 2012, which contemplates that:

"Sec.29 of POCSO Act, 2012- Presumption as to certain offences:- Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections. 3, 5, 7 and 9 of this Act, the Special Court shall presume that, such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved".

The alleged offences certainly fall within the purview of Sec.5(g) and (h) of POCSO Act, 2012. Therefore, from the above discussions and materials placed by the prosecution, specifically the version of the victim girl, which is direct evidence, the prosecution has proved the offence committed by accused No.2 and deceased accused No.1 upon her [victim girl] person, in the manner as discussed above coming within the purview of Sec.5(g) and (h) of POCSO Act, 2012, which reads thus:

Sec.5(g): Whoever commits gang penetrative sexual assault on a child:

Explanation: When a child is subjected to sexual assault by one or more persons of a group in-furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone".

"Sec.5(h)- Whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance".

35. I would like to express and refer certain aspects pertaining to Respect For Womanhood in the book written by Justice Sri.Rama Jois, Former Judge of the Hon'ble High Court of Karnataka and Former Chief Justice of Punjab and Haryana High Court, titled as 'DHARMA'-The Global Ethic, Chapter-IV- "Values of life based on Dharma" while considering certain basis values of life, that: "These values were intended to ensure the good and happiness of all, not only in this land but in the entire world. This culture constitute our rich heritage and wealth which is more valuable than all the material wealth of the world. Further, it is this culture which has established unity in diversity and it is this cultural bond which was welded the people of this Land into a Nation" and I respectfully reproduce one of the Nobel Values observed pertaining to woman [inclusive of girl child] and some portions of such observations are as follows:

#### RESPECT OF WOMANHOOD:

"Respect for women was another most cherished value of life from times immemorial in Bharat. Women were not considered as an object of physical pleasure by man. Every woman and even small girls are addressed as Ma, Amma etc., which means mother. This value appears to have been created and cultivated assiduously as an antidote to the sexual propensity of man, for, once the value that every woman is mother is ingrained in the heart of an individual, sinful thoughts of committing any offence against woman gets destroyed. There can be no doubt that inculcating such a value in the hearts of individuals is the greatest protection against the immoral sexual desires of man. By nature womanhood is tender and requires protection. There are many situations in which the women/girls require greater care protection and security. It is such a difference flowing from the nature of women, who are vulnerable to various kinds of onslaughts when left unprotected which is the basis for the above verse of Manu Smriti. It does not mean that woman must be kept without freedom.

Such an interpretation runs counter to the verse, which says that the house in which women are insulted and shed tears gets destroyed. The above true meaning of the verse becomes more clear when it is read with another provision in Manu in which the highest respect is required to be given to women. So, the real meaning is, the women should be honoured and protected. It is a humane and a duty-oriented provision, the mandate to provide security. This should not be misunderstood as making her life insecure. She should not be left open to attack by men with evil propensities, it does not mean her freedom should be jeopardized".

So also, it is important to consider the Enactment came into force i.e, POCSO Act, 2012, with aim and objectives to protect child and childhood that Article 15(3) of Constitution of India inter alia empowers the State to make special provision for children, as the Government of India has acceded on 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of Standards, to be followed by all State Parties. The object and essence of Special Act [POCSO Act, 2012] is as follows:

"It is necessary for the proper development of the child that his or her rights to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child".

Further, it is the object and essence of Special Act that:

"It is imperative that the law operates in manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual and social development of a child".

36. Therefore, in view of the above discussions and the materials placed on record and the very direct evidence of the victim girl, her mother and other material witnesses and the evidence of the doctor [PW4], to prove the fatal incident at the spot in the manner in which accused No.2 and deceased accused No.1 committed gang rape on the person of the victim girl being minor by putting her under threat using deadly weapon i.e., the Knife[MO-7], thereby the prosecution is able to bring home the guilt of accused persons punishable under the provisions of Sec.376(D) of IPC, specifically accused No.2. Though MO-7 was not recovered from accused No.2, however, he being participated in committing of the said offence, being gang rape, both accused Nos. 1 and 2 are considered to be committing it, keeping the victim girl under threat by using the deadly weapon i.e, Knife, and he [accused No.2] is liable for punishment under the said provision. Hence, even though the prosecution has not secured the Investigating Officer for leading his evidence, and as because of the above discussions and materials placed on record, proving the case of the prosecution, it is therefore, not fatal to the prosecution case. Therefore, prosecution has proved the guilt of accused No.2; For having committed the gang rape by putting the victim girl under threat by using deadly weapon [Knife-MO7] along with deceased accused No.1, he [accused No.2] is liable for punishment under Sec.6 of POCSO Act, 2012 and under Sec.376(D) of IPC. Accordingly, Point Nos. 1 and 2 are answered in the 'Affirmative'.

37. POINT NO.3:- In the result, I proceed to pass the following:

ORDER Acting under Sec.235(2) of Cr.P.C, accused No.2 is hereby convicted for the offences punishable under Sec.6 of POCSO Act, 2012 and under Sec.376(D) r/w Sec.34 of IPC.

[Dictated to the Stenographer, transcript thereby corrected and then pronounced by me in the open court on this the, 30th day of August, 2017] [YADAV VANAMALA ANANDRAO] LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55] Sitting in CHILD FRIENDLY COURT, BENGALURU URBAN DISTRICT 31.8.2017 HEARD REGARDING SENTENCE:

Accused No.2 is produced from judicial custody under body warrant through police escort. Learned defence counsel for accused No.2 is present and the learned Public Prosecutor is also present. Accused No.2 submitted through his counsel that, he [accused No.2] is a poor person having family consisting of parents and younger sister and entire family is depending on his earnings. His younger sister is a student and he [accused No.2] has recently completed SSLC and he wants to attend the college by doing work and earning for the family and his family has no property and they are residing in a rented premises and that he is unable to pay the victim compensation also; and hence he prayed to show leniency in while the sentence.

On the other hand the learned Public Prosecutor has specifically argued pressing upon Sec.42 of POCSO Act, 2012 and specifically stated that, the provisions of Sec.376 of IPC referred to, and the offence there under being heinous in nature and charge in that regard has been framed regarding Sec.376(2)(g) of IPC. But, in view of amendment to the said provision of IPC, the very offence is coming with the purview of Sec.376(D) of IPC i.e., gang rape and the offence committed by accused No.2 was in the year 2014, whereas the amendment to the said provision was with effect from 3.2.2013. Therefore, the punishment provided under Sec.376(D) shall made applicable; Therefore, minimum rigorous imprisonment shall be for a term of not less than 20 years and it may extend to life, which shall mean imprisonment for the remainder of that person's natural life, and with fine; Thus, the provision was prevailing at the time of commission of the offence by the accused persons and hence, accused No.2 is not entitled for any leniency and there shall be no bargain and it should be model to the society and the victim minor's right was violated, etc., and in this connection, he has referred to the following decisions:

(1) AIR 2013 Supreme Court 3246 [State of Haryana Vs. Janak Singh], it is held that:

" Penal Code (45 of 1860), S.376-Rape-Most heinous crime against woman-It dwarfs her personality, erodes her confidence- Violates her right to life-Sentence bargaining not permissible in rape cases".

(2) AIR 2013 Supreme Court 2997 [State of M.P. Vs. Najab Khan] it is held that:

"Criminal P.C (2 of 1974), S.354-Penology-Sentencing- Considerations that way in determining proportionate sentence-Not only rights of victim but also that of society at large have to be kept in view.

In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. 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. Undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law. 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 Courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment".

Therefore,, with due respect to the said decisions, it is proceeded with to consider on sentence to be imposed against accused No.2, as the prosecution has proved the commission of offence of gang rape, which is heinous in nature against the victim girl and as such, accused No.2 is not entitled for any sympathy to impose inadequate sentence, otherwise, it will do more harm to the justice system and undermine the public confidence in the efficacy of law and hence, it is proper to award sentence having regard to nature of the offences and the manner in which it was committed by the accused persons.

Keeping in view the right of the victim of the crime and also interest of society at large to impose sentence, as contemplated under Sec.376(D) of IPC, which is greater in degree as amongst the POCSO Act, 2012 and IPC, as per Sec.42 of POCSO Act, 2012, as alternative punishment. However considering the submission made by accused No.2 through his counsel about his capacity and condition, accused No.2 has to undergo minimum sentence of 20 years of imprisonment as per Sec376(D) of IPC and minimum fine of Rs.2,500/-.

Considering the same and regarding the capacity of accused No.2, it is necessary to take into account Rule 7 of POCSO Rules and Sec.357(A) of Cr.P.C for awarding victim compensation, it is necessary to direct the complainant police to submit Report regarding the present status of the victim girl [PW13] within the stipulated period of One Month from the date of this Order so as to make recommendation to District Legal Services Authority, Bengaluru Urban District. In the result, I proceed to pass the following:

ORDER ON SENTENCE Accused No.2 shall undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.2,500/- for the offences punishable under Sec.6 of POCSO Act, 2012 r/w Sec.376(D) of IPC. In default of payment of fine



amount, accused No.2 shall undergo simple imprisonment for a period of Three Months.

The period of detention undergone by the accused in judicial custody shall be set-off against the term of imprisonment imposed on him, and the accused shall undergo the remaining sentence as provided under Sec.428 of Cr.P.C.

The sentence of imprisonment imposed in default of payment of fine amount shall run consecutively.

In so far as victim compensation is concerned, the complainant police is directed to file a Report with regard to the present status of the Victim girl [PW13] before this court within a period of One Month from this date, so as to make recommendation to District Legal Services Authority, Bengaluru Urban District.

Since the accused No.2 was produced from the judicial custody under Body Warrant, as he was in judicial custody in Cr.No.194/2017 of Basaveshwaranagar Police station and NBW was issued against accused No.2 in this case, the, surety of accused No.2 was prevailing, hence, surety of accused No.2 is hereby discharged.

Office is directed to supply the free copy of this Judgment to accused No.2 forthwith.

MOs-1 to 7 being worthless are ordered to be destroyed after the appeal period is over.

[Dictated to the Stenographer, transcript thereby corrected and then pronounced by me in the open court on this the, 31st day of August, 2017] [YADAV VANAMALA ANANDRAO] LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55] Sitting in CHILD FRIENDLY COURT, BENGALURU URBAN DISTRICT ANNEXURE  
Witnesses examined for the prosecution:

Pw.1	Manjulatha	CW10	27.6.2015
Pw.2	N.Byregowda	CW11	27.6.2015
Pw.3	G.Sudarshan	CW12	27.6.2015
Pw.4	Dr.Jessica	CW13	29.6.2015
Pw.5	Bhagawan	CW17	29.6.2015
Pw.6	S.Lingegowda	CW19	29.6.2015
Pw.7	M.H.Manujanthaswamy	CW21	29.6.2015
Pw.8	Venkatesh	CW7	15.7.2015
PW.9	Shivakumar	CW4	15.7.2015
PW.10	Roopa.G.L	CW15	15.7.2015
PW.11	Nitin	CW8	29.7.2015
PW.12	Kamakshi	CW1	17.8.2015
PW.13	Victim girl	CW2	31.8.2015

PW.14	Santhosh	CW5	5.10.2015
PW.15	Rajesh.S	CW3	5.10.2015
PW.16	Palani	CW9	5.10.2015

Documents marked for the prosecution:

Ex.P1 Information regarding the victim girl given by the

Head Mistress, Government Higher Primary School, Krishnananda Nagar, Nandini Layout, Bangalore regarding the date of the birth of the victim girl 1.2.1999 instead of 1.5.1999 Ex.P1[a] Signature of PW1 Ex.P2 Certificate issued by the Head Master, Veena Teachers Education Society, Kanteerava Nagar, Bangalore, showing the date of birth of accused No.1 as 4.1.1993 Ex.P2(a) Signature of PW2 Ex.P3 Transfer Certificate of accused No.2 issued by Head Master, St.Philomena High School, Bangalore, Ex.P3(a) Signature of PW3 Ex.P4 School Register Book in respect of the victim girl maintained by Government Higher Primary School, Krishnanda Nagar, Chandra Layout, Bangalore, where PW1 is the Head Mistress of the said school.

Ex.P4(a) Relevant Portion of Register No.117/2005-2006 in respect of the victim girl showing her date of birth as 1.5.1999, at the time of admission of the victim girl to the said Government School Ex.P4(b) Certified copy of Ex.P4(a) Ex.P5 Medical certificate of the victim girl Ex.P5(a) Signature of PW4 Ex.P5(b) Signature of the victim girl Ex.P5(c) Signature of the mother of the victim girl Ex.P6 Report given by PW5 regarding taking of accused Nos.1 and 2 to M.S.Ramaiah Hospital for medical examination and after their medical examination again producing accused Nos.1 and 2 before the Police Inspector of the complainant police station Ex.P6(a) Signature of PW5 Ex.P7 Report given by PW7 regarding taking of the articles seized in this case from the victim girl and the accused persons during their medical examination to the FSL and producing the Acknowledgement given by the FSL before the Police Inspector of complainant police station Ex.P7(a) Signature of PW7 Ex.P8 Passport given to PW7 to go to FSL to hand over the articles seized during the medical examination of the victim girl and the accused persons Ex.P9 Acknowledgement given by FSL for receiving the seized articles from PW7 Ex.P10 Spot Mahazar Ex.P10(a) Signature of PW8 Ex.P10(b) Signature of PW11 Ex.P10(c) Signature of PW12 [mother of the victim girl] Ex.P10(d) Signature of PW13/ victim girl Exs.P11 to P13 Photographs of the spot of incident Ex.P14 Seizure Mahazar Ex.P14(a) Signature of PW9 Ex.P14(b) Signature of PW15 Ex.P15 Report given by PW10 regarding taking victim girl to M.S.Ramaiah Hospital for medical examination and after examination, producing the victim girl before Police Inspector of complainant police station Ex.P15(a) Signature of PW10 Ex.P16 Complaint dated: 9.12.2014 Ex.P16(a) Signature of PW12 Ex.P16(b) and Signatures of PW15 Ex.P16(c) Ex.P17 Statement of PW12 recorded under Sec.164 of C.P.C by the Learned Magistrate.

Ex.P17(a) Signature of PW12  
Ex.P18 Statement of PW13/victim girl recorded under Sec.164 of C.P.C by the Learned Magistrate.

Ex.P18(a) Signature of PW13/victim girl  
Ex.P19 Spot Mahazar conducted as shown by the accused persons

Ex.P19(a) Signature of PW14  
Ex.P20 Statement given by PW15 on 12.12.2014 under

Sec.161 of Cr.P.C before the complainant police Ex.P21 Statement given by PW15 on 10.12.2014 under Sec.161 of Cr.P.C before the complainant police Material Objects marked for the prosecution:

M01	Purple colour embroidery top	
M02	Purple duppatta	
M03	Brown tight	
M04	Pink slip	of the victim girl
M05	White bra	
M06	Brown underwear and pubic hair	
M07	Knife	

Witness examined, documents and MOs marked for accused No.2: NIL [YADAV VANAMALA ANANDRAO] LIV ADDL., CITY CIVIL & SESSIONS JUDGE, Sitting in CHILD FRIENDLY COURT, BENGALURU URBAN DISTRICT.

30.8.17 Judgment pronounced in open court:

[ Vide separate detailed Judgment] Acting under Sec.235(2) of Cr.P.C, accused No.2 is hereby convicted for the offences punishable under Sec.6 of POCSO Act, 2012 and under Sec.376(D) r/w Sec.34 of IPC.

To hear regarding of Sentence by  
31.8.2017.

[YADAV VANAMALA ANANDRAO]  
LIV ADDL., CITY CIVIL &  
SESSIONS JUDGE, [CCH:55]  
Sitting in CHILD FRIENDLY COURT,  
BENGALURU URBAN DISTRICT.

31.8.2017 Sentence pronounced in open court:  
{Vide separate detailed sentence}

Accused No.2 shall undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.2,500/- for the offences punishable under Sec.6 of POCSO Act, 2012 r/w Sec.376(D) of IPC. In default of payment of fine amount, accused No.2 shall undergo simple imprisonment for a

State By Nandini Layout Police vs Nos.1 A1: N.Lokesh on 31 August, 2017  
period of Three Months.

The period of detention undergone by the accused in judicial custody shall be set-off against the term of imprisonment imposed on him, and the accused shall undergo the remaining sentence as provided under Sec.428 of Cr.P.C.

The sentence of imprisonment imposed in default of payment of fine amount shall run consecutively.

In so far as victim compensation is concerned, the complainant police is directed to file a Report with regard to the present status of the Victim girl [PW13] before this court within a period of One Month from this date, so as to make

recommendation to District Legal Services Authority, Bengaluru Urban District.

Since the accused No.2 was produced from the judicial custody under Body Warrant, as he was in judicial custody in Cr.No.194/2017 of Basaveshwaranagar Police station and NBW was issued against accused No.2 in this case, the, surety of accused No.2 was prevailing, hence, surety of accused No.2 is hereby discharged.

Office is directed to supply the free copy of this Judgment to accused No.2 forthwith.

M0s-1 to 7 being worthless are ordered to be destroyed after the appeal period is over.

[YADAV VANAMALA ANANDRAO]  
LIV ADDL., CITY CIVIL &  
SESSIONS JUDGE, [CCH:55]  
Sitting in CHILD FRIENDLY COURT,  
BENGALURU URBAN DISTRICT