Bharwada Bhoginbhai Hirjibhai vs State Of Gujarat on 24 May, 1983

Equivalent citations: 1983 AIR 753, 1983 SCR (3) 280, AIR 1983 SUPREME COURT 753, 1983 (2)24 GUJLR 1073, 1983 CRILR(SC MAH GUJ) 396, 1983 (3) SCC 217, 1983 SCC(CRI) 728, 1983 (2) GUJLR 1073, 1983 CRIAPPR(SC) 343, 1983 CHANDLR(CIV&CRI) 509, (1983) 2 CRIMES 232, (1983) GUJ LH 792, (1983) 2 CRILC 252, (1983) 2 SCWR 190

Author: M.P. Thakkar

Bench: M.P. Thakkar, A.P. Sen

PETITIONER:
BHARWADA BHOGINBHAI HIRJIBHAI

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT24/05/1983

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
SEN, A.P. (J)

CITATION:
1983 AIR 753 1983 SCR (3) 280
1983 SCC (3) 217 1983 SCALE (1)665
CITATOR INFO :
RF 1988 SC 696 (10,14)
R 1988 SC1883 (247)
R 1989 SC1890 (27)
R 1990 SC 658 (14,19)

ACT:
Constitution of India, 1950, Article 136 read with order XXI of the Supreme Court Rules, 7966-Concurrent finding of fact, when can be reopened by the Supreme Court in an appeal by Special Leave, explained.

Evidence - Reappreciation of evidence in the context of minor discrepancies, explained.

Evidence-Corroborative evidence in rape cases-Whether, when and to what extent corroboration to the testimony of a

victim of rape is essential to establish the charge.

HEADNOTE:

The appellant, a government servant employed in the Sachivalaya at Gandhinagar was found guilty, by the Sessions Judge, Mehsna, of serious charges of sexual misbehaviour with two young girls (aged about 10 or 12 and was convicted for the offence of rape, outraging the modesty of women, and wrongful confinement The appeal carried to the High Court substantially failed. The High Court affirmed the orders of conviction under section 342 I.P.C. for wrongfully confining the girls and conviction under Section 354 I.P.C. for outraging the modesty of the two girls. With regard to the more serious charge of rape on one of the girls, the High Court came to the conclusion that what was established by evidence was an offence or attempt to commit rape and not of rape. Accordingly, the conviction under Section 376 was altered into one under Section 376 read with Section Sl I I.P.C.

Dismissing the appeal and maintaining the conviction on all counts, Court

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HELD: 1:1 A concurrent finding of fact as recorded by the Sessions Court and affirmed by the High Court, cannot be reopened in an appeal by Special Leave unless it is established (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. The present is not a case of such a nature. [285 G-H, 286 A]

1:2. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue
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importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses. The reasons are: (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen; (2) ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details; (3) The powers of observation differ from person to person. What

one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another; (4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder; (5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends. On the 'timesense' of individuals which varies from person to person. (6) ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up, when interrogated later on; (7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts; get confused regarding sequence of events, or fill up details from imagination on the spur of moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish, or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment. [286 B-H, 287 A-E]

2:1. Corroboration is not the sine-quo-non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victum of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Viewing the evidence of the girl or the women who complains of rape or sexual molestation with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion, is to justify the charge of male chauvinism in a male dominated society. [287 F. 288 C-D]

Rameshwar v. The State of Rajasthan, [1952] S.C.R. 377 @ 386 followed.

2:2. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be idential. It is conceivable in the Western Society that a female may level false accusation as regards sexual molestation against a male for several reasons such as:-(1) The female may be a 'gold

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digger' and may well have an economic motive-to extract

money by holding out the gun of prosecution or public exposure; (2) She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted and chased, by males. (3) She may want to wreak vengence on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account; (4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarassing position, on account of personal or political vendetta; (5) She may do so to gain notoriety or publicity or to appease her own ego, or to satisfy her feeling of self-importance in the context of her inferiority complex; (6) She may do so on account of jealousy; (7) She may do so to win sympathy of others; (8) She may do so upon being repulsed. By and large these factors are not relevant to India, and the Indian Conditions. [288 F-H, 289 A-E]

2:3. Rarely will a girl or a woman in India make such false allegations of sexual assault, whether she belongs to the urban or rural society, or, sophisticated, or, not-so sophisticated, or, unsophisticated society. Only very rerely can one conceivably come accross an exception or two and that too possibily from amongst the urban elites. Because:- (1) A girl or a woman in the tradition bound non-permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred; (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours; (3) She would have to brave the whole world; (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered; (5) If she is unmarried, she would apprehend that it would be, difficult to secure an alliance with a suitable match from a respectable or an acceptable family; (6) lt would almost inevitably and almost invariably result in mental torture and suffering to herself; (7) The tear of being taunted by others will always haunt her; (8) She would feel extremely embarrassed in relating the incident to others being over powered by feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo; (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy; (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour; (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident

regardless of her innocence; (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built in assurance that the charge is genuine rather than fabricated. [289 F-H, 290 A-E]
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2:4. On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the Western World. [290 E-G]

2:5. Therefore, if the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities-factor' does not render it unworth of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification: Corroboration may be insisted upon when a woman having attained majority is surprised in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the 'probabilities-factor' is found to be out of tune. [290 G-H, 291 A-B]

2:6. To countenance the suggestion, in the instant case, that the appellant has been falsely roped in at the instance of the father of P.W. 2 who was supposed to have some enmity against the appellant would be wrong. Ordinarily no parents would do so in Indian Society as at present and thereby bring down their own social status and spoil their reputation in Society, not to speak of the danger of traumatic effect on the psychology of their daughter. Having regard to the prevailing mores of the Indian Society, it is inconceivable that a girl of 10 or 12 would invent on her own a false story of sexual molestation. Moreover, the medical evidence fully supports the finding of the High Court that there was an attempt to commit rape on P.W. 1 by the appellant. [291 G-H, 292 A-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 68 of 1977.

Appeal by Special Leave from the Judgment and order dated 15th November, 1976 of the Gujarat High Court in Criminal Appeal No. 832 of 1976.

R.H. Dhebar and B. V. Desai for the Appellant. R.N. Poddar for the Respondent.

The Judgment of the Court was delivered by THAKKAR, J. To say at the beginning what we cannot help saying at the end: human goodness has limits-human depravity has none. The need of the hour however, is not exasperation.

The need of the hour is to mould and evolve the law so as to make it more sensitive and responsive to the demands of the time in order to resolve the basic problem: "Whether, when, and to what extent corroboration to the testimony of a victim of rape is essential to establish the charge." And the problem has special significance for the women in India, for, while they have often been idolized, adored, and even worshipped, for ages they have also been exploited and denied even handed justice-Sixty crores anxious eyes of Indian a women are therefore focussed on this problem. And to that problem we will presently address ourselves.

The learned Sessions Judge Mehsana found the appellant, a Government servant employed in the Sachivalaya at Gandhinagar, guilty of serious charges of sexual misbenaviour with two young girls (aged about 10 or 12) and convicted the appellant for the offence of rape, outraging the modesty of women, and wrongful confinement. The appeal carried to the High Court substantially failed. The High Court affirmed the order of conviction under Sec. 342 of the Indian Penal Code for wrongfully confining the girls. The High Court also sustained the order of conviction under Sec. 354 of the Indian Penal Code for outraging the modesty of the two girls. With regard to the more serious charge of rape on one of the girls, the High Court came to the conclusion that what was established by evidence was an offence of attempt to commit rape and not of rape. Accordingly the conviction under Sec. 376 was altered into one under Sec. 376 read with Sec. 511 of the Indian Penal Code. The appellant has preferred the present appeal with special leave.

The incident occurred on Sunday, September 7, 1975, at about 5.30 p.m. at the house of the appellant. The evidence of P.W. 1 and P.W. 2 shows that they went to the house of the appellant in order to meet his daughter (belonging to their own age group of 10 or 12) who happened to be their friend. The appellant induced them to enter his house by creating an impression that she was at home, though, in fact she was not. Once they were inside, the appellant closed the door, undressed himself in the presence of both the girls, and exposed himself. He asked P.W. 2 to indulge in an indecent act. P.W. 2 started crying and fled from there. P.W. 1 however could not escape. She was pushed into a cot, and was made to undress. The appellant sexually assaulted her. P.W. 1 was in distress and was weeping as she went out. She however could not apprise her parents about what had transpired because both of them were out of Gandhinagar (they returned after 4 or 5 days).

It appears that the parents of P.W. 1 as well as parents of P.W. 2 wanted to hush up the matter. Some unexpected developments however forced the issue. The residents of the locality somehow came to know about the incident. And an alert Woman Social Worker, P.W. 5 Kundanben, President of the Mahila Mandal in Sector 17, Gandhinagar, took up the cause. She felt indignant at the way in which the appellant had misbehaved with two girls of the age of his own daughter, who also happened to be friends of his daughter, taking advantage of their helplessness, when no one else was present. Having ascertained from P.W. 1 and P.W. 2 as to what had transpired, she felt that the appellant should atone for his infamous conduct. She therefore called on the appellant at his house. It appears that about 500 women of the locality had also gathered near the house of the appellant. Kundanben requested the appellant to apologize publicly in the presence of the woman who had assembled there. If the appellant had acceded to . this request possibly the matter might have rested there and might not have come to the court. The appellant, however, made it a prestige issue and refused to apologize. Thereupon the police was contacted and a complaint was lodged by P.W. 1 on 19 Sept. 1975. P.W. 1 was then sent to the Medical officer for medical examination. The medical examination disclosed that there was evidence to show that an attempt to commit rape on her had been made a few days back. The Sessions Court as well as the High Court have accepted the evidence and concluded that the appellant was guilty of sexual misbehavior with P.W. 1 and P.W. 2 in the manner alleged by the prosecution and established by the evidence of P.W. 1 and P.W. 2. Their evidence has been considered to be worthy of acceptance lt is a pure. finding of fact recorded by the Sessions Court and affirmed by the High Court. Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established: (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (43 some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. The present is not a case of such a nature. The finding of guilt recorded by the Sessions Court as affirmed by the High Court has been challenged mainly on the basis of minor discrepancies in the evidence. We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned counsel for the appellant. Over much importance cannot be attached to minor discrepancies. The reasons are obvious:

> (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. (2) ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.
>
> (3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation.

It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment 1.1 at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time- sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses.

It is now time to tackle the pivotal issue as regards the need for insisting on corroboration to the testimony of the prosecutrix in sex-offences. This Court, in Rameshwar v. The State of Rajasthan,(1) has declared that corroboration is not the sine que-non for a conviction in a rape case. The utterance of the Court in Rameshwar may be replayed, across the time-gap of three decades which have whistled past, in the inimitable voice of Vivian Bose, J. who spoke for the Court The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge .....

The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

And whilst the sands were running out in the time glass, the crime graph of offences against women in India has been scaling new peaks from day to day. That is why an elaborate rescanning of the jurisprudential sky through the lenses of 'logos' and 'ethos', has been necessitated.

In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opiniated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the Western World which has its own social mileu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to transplate it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. It is conceivable in the Western Society that a female may level false accusation as regards sexual molestation against a male for several reasons such as:

> (1) The female may be a 'gold digger' and may well have an economic motive to extract money by holding out the gun of prosecution or public exposure.
>
> (2) She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted, and chased by males.
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> (3) She may want to wreak vengence on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account.
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> (4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarassing position, on account of personal or political vendatta. (5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of self-importance in the context of her inferiority complex.
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> (6) She may do so on account of jealousy.
>
> (7) She may do so to win sympathy of others. (8) She may do so upon being repulsed.

By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statements or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly

from amongst the urban elites. Because: (1) A girl or a woman in the tradition bound non-permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the Society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (S) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over powered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.

In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.. On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the Western World. Obseisance to which has perhaps become a habit presumably on account of the colonial hangover. We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the probabilities-factors does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification:

> Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the 'probabilities-factor' is found to be out of tune.

Now we return to the facts of the present case. Testing the evidence from this perspective, the evidence of P.W. 1 and P.W. 2 inspires confidence. The only motive suggested by defence was that there was some history of past trade union rivalry between the father of P.W. 2 and the appellant. It must be realized that having regard to the prevailing mores of the Indian Society, it is inconceivable that a girl of 10 or 12 would invent on her own a false story of sexual molestation. Even at the age of 10 or 12 a girl in India can be trusted to be aware of the fact that the reputation of the entire family would be jeopardised, upon such a story being spread. She can be trusted to-know that in the Indian Society her own future chances of getting married and settling down in a respectable or acceptable family would be greatly marred if any such story calling into question her chastity were to gain circulation in the Society. It is also unthinkable that the parents would tutor their minor daughter to invent such a story in order to wreak vengence on someone. They would not do so for the simple reason that it would bring down their own social status in the Society apart from ruining the future prospects of their own child. They would also be expected to be conscious of The traumatic effect on the psychology of the child and the disastrous consequences likely to ensue when she grows up. She herself would prefer to suffer the injury and the harassment, rather than to undergo the harrowing experience of lodging a complaint in regard to a charge reflecting on her own chastity. We therefore refuse to countenance the suggestion made by the defence that the appellant has been falsely roped in at the instance of the father of P.W. 2 who was supposed to have some enmity against the appellant. It is unthinkable that the parents of P.W. 2 would tutor her to invent a story of sexual misbehavior on the part of the appellant merely in order to implicate him on account of past trade union rivalry. The parents would have also realized the danger of traumatic effect on the psychology of their daughter. In fact it would have been considered to be extremely distasteful to broach the subject. It is unthinkable that the parents would go to the length of inventing a story of sexual assault on their own daughter and tutor her to narrate such a version which would bring down their own social status and spoil their reputation in Society. Ordinarily no parents would do so in Indian society as at present. Under the circumstances the defence version that the father of P.W. 2 had tutored her to concoct a false version in order to falsely implicate the appellant must be unceremoniously thrown overboard. Besides, why should the parents of P.W. 1 mar the future prospects of their own daughter ? It is not alleged that P.W. 1 had any motive to falsely implicate the appellant. So also it is not even suggested why P.W. 1 should falsely implicate the appellant. From the stand point of probabilities it is not possible to countenance the suggestion that a false story has been concocted in order to falsely implicate the appellant. The medical evidence provided by P.W 6, Dr. Hemangini Desai, fully supports the finding of the High Court that there was an attempt to commit rape on P.W. 1. Under the circumstances the conclusion reached by the High Court cannot be successfully assailed.

The only question that now remains to be considered is as regards the sentence. The appellant has behaved in a shockingly indecent manner. The magnitude of his offence

cannot be overemphasized m the context of the fact that he misused his position as a father of a girl friend of P.W. 1 and- P.W. 2. P.W. 1 and P.W. 2 were visiting his house unhesitatingly because of the fact that his daughter was their friend. To have misused this position and to-have tricked them into entering the house, and to have taken undue advantage of the situation by subjecting them to sexual harassment, is a crime of which a serious view must be taken. But for the following facts and circumstances, we would not have countenanced the prayer for leniency addressed to us on behalf of the appellant. The special circumstances are these. The appellant has lost his job in view of the conviction recorded by the High Court. The incident occurred some 7 years back. The appeal preferred to the High Court was dismissed in November 15, 1976. About 6- 1/2 years have elapsed thereafter. In the view that we are taking the appellant will have to be sent back to jail after an interval of about 6-1/2 years. The appellant must have suffered great humiliation in the Society. The prospects of getting a suitable match for his own daughter have perhaps been marred in view of the stigma in the wake of the finding of guilt recorded against him in the context of such an offence.

Taking into account the cumulative effect of these circumstances, and an overall view of the matter, we are of the opinion that the ends of Justice will be satisfied if the substantive sentence imposed by the High Court for the offence under Sec. 376 read with Sec. 511 is reduced from one of 2-1/2 years' R. I., to one of 15 months' R.I. The sentence of fine, and in default of fine, will be course remain undisturbed. So also the sentence imposed in the context of the offence under Sec. 342 and Sec 354 of the Indian Penal Code will remain intact. Subject to the modification in the sentence to the aforesaid extent the appeal fails and is dismissed The appellant shall surrender in order to undergo the sentence. The bail bonds will stand cancelled.

S.R. Appeal dismissed.