

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

JUDGMENT

(1) [Asharam@Ashumal](#) vs. The State of Rajasthan
& ors.

S.B. Criminal Revision Petition No. 192/2014

(2) Miss Sanchita@ Shilpi & anr. vs. The State of Rajasthan.

S.B.Criminal Revision Petition No. 179/2014

(3) Miss S.S. (the prosecutrix) vs. The State of Rajasthan
& ors.

S.B.Criminal Revision Petition No. 255/2014

Date of Judgment : 12.4.2014.

PRESENT

HON'BLE MR. ATUL KUMAR JAIN, J.

Mr. J.S. Choudhary, Sr.Advocate assisted by Mr. Pradeep Chudhary for petitioners in S.B.Cr.Rev. No. 192/2014

Mr. Mahesh Bora, Sr.Advocate assisted by Mr. Arun Kumar for petitioners in S.B.Cr.Revision No. 179/2014.

Mr. Rajesh Panwar, Addl. Advocate General.

Mr. P.C. Solanki for petitioner in S.B.Cr.Rev. No.255/2014.

REPORTABLE

BY THE COURT:

Hon'ble the Supreme Court in [Rajveer@Raju](#) and anr. v. State of Haryana, 2011 AIR SC 568 has mandated as follows:-

“We further direct all the trial courts in India to ordinarily add Section 302 to the charge of Section 304B, so that death sentences can be imposed in such heinous and barbaric crimes against women. Copy of this

order be sent to Registrar Generals/Registrars of all High Courts, which will circulate it to all trial courts.”

Apparently, that order was passed to meet out the eventuality when a charge of lesser offence has been framed and the court in its ultimate conclusion finds the accused guilty of graver offence.

On the analogy of the Apex Court's view mentioned above, an academic question arises that if a charge of rape has been framed against the accused and if argument of the accused is to the effect that at the most a charge of attempt to rape could have been made out from the record, then should the revisional court pass an order for amendment of the charge, particularly when the trial in sessions case has already been started in the concerned sessions court and four witnesses have already been examined in the court and further more when a Co-ordinate Bench of this Court had ordered that the trial of the case should be completed preferably within three months by conducting the 'In Camera' trial on day to day basis.

The present criminal revisions relate to the famous case of the infamous [Asharam@Ashumal](#) and others. The trial court has framed the charges against the accused-persons as follows:



- (1) Asharam@ Ashumal : Sections 376(2)(f), 376(D), 370(4), 354(A), 342, 506, 509, 120B IPC and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'JJ Act, 2000'), and Section 5(f), 5(g) and 7/8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act, 2012')
- (2) (i) Sanchita@ Shilpi : 376(2)(f) read with Sec. 120B/109IPC
(ii) Prakash : 376(D), 354(A)/34 IPC, 342/34, 370(4), 506/34, 509/34 read with Sec. 19 and 120B IPC and Section 23 of JJ Act, 2000 and Sections 5(f) read with Section 17, 5(g) read with Sec. 17 and Section 7/8 of POCSO Act, 2012.
(iii) Sharad Chandra Sharat Chandra
- (3) [Shiva@Savaram](#) : 376(2)(f) read with Sec. 120B/109IPC 376(D), 354(A)/34 IPC, 342/34, 370(4), 506/34, 509/34 read with Sec. 19 and 120B IPC and Sections 5(f) read with Section 17, 5(g) read with Sec. 17 and Section 7/8 of POCSO Act, 2012.

I have heard arguments of both the parties in all the three criminal revisions and I have perused the record of the case.

The thrust of the accused-petitioners in their arguments is to the effect that if charges under POCSO Act, 2012 do not survive then the case from the Special Court (Sessions Judge, Jodhpur District, Jodhpur, who is trying the cases of POCSO Act, 2012) may be transferred to the regular Sessions Court where presumption under Sections 29 and 30 of POCSO Act, 2012 will not be available against the petitioner and the accused-petitioners will be benefited accordingly.

Sections 29 and 30 of the POCSO Act, 2012 read as follows:-

“29. 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 Section 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.



30. Presumption of culpable mental state.-(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental stage but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.- In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.”

Other relevant sections of various Acts mentioned hereinabove may also be reproduced here for ready reference as follows:-

(1) POCSO Act, 2012:

3. Penetrative sexual assault.- A person is said to

commit “penetrative sexual assault” if-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

4. Punishment for penetrative sexual assault.-

Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than **seven years** but which may extend to imprisonment for life, and shall also be liable to fine.

5. Aggravated penetrative sexual assault.-

- (a)
(b)
(c)
(d)
(e)

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution is said to commit aggravated



penetrative sexual assault.

(g) whoever commits gang penetrative sexual assault on a child is said to commit aggravated penetrative sexual assault.

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.

(g)
to

(o)
to

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else is said to commit aggravated penetrative sexual assault.

(q) to (t)

6. Punishment for aggravated penetrative sexual assault.- Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than **ten years** but which may extend to imprisonment for **life** and shall also be liable to **fine**.

7. Sexual Assault.- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any



other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

8. Punishment for sexual assault.- Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine,

17. Punishment for abetment.- Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation.- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.”

9. Aggravated sexual assault.- (a) Whoever, being a police officer, commits sexual assault on a child-

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed



forces or security forces, commits sexual assault on a child-

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces:

or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection;

or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child



in that institution; or

(g) whoever commits gang 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 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;

or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits sexual assault on a child, which-

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (1) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immuno-deficiency Virus or any other life



threatening disease or infection which may temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership of management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position to trust or authority of a child, commits sexual assault on the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child



and attempts to murder the child; or
(s) whoever commits sexual assault on a child in the course of communal or ascertain violence; or
(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.

10. Punishment for aggravated sexual assault.- Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

(2) JJ Act, 2000:

“ 23. Punishment for cruelty to juvenile or child.- Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be



punishable with imprisonment for a term which may extend to six months, or fine, or with both.”

(3) Indian Penal Code:



“ 376(2)(f): Whoever being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.- For the purposes of this sub-section,-

- (a)
- (b)
- (c)

(d) *“women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.*

376D. Gang rape.- *Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:*

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.



370. Trafficking of person.- (1) Whoever, for the purposes of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by-

First- using threats, or

Secondly.- using force, or any other form of coercion, or

Thirdly.- by abduction, or

Fourthly.- by practising fraud, or deception, or

Fifthly.- by abuse of power, or

Sixthly.- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.- The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.- The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor,

it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

354(A).- Sexual harassment and punishment for sexual harassment.-(1) A man committing any of the following acts-

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman, or
 - (iv) making sexually coloured remarks,
- shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in



clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.



506. Punishment for criminal intimidation —Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.— and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

509. Word, gesture or act intended to insult the modesty of a woman —whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

342. Punishment for wrongful confinement- Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

34. Acts done by several persons in furtherance of

common intention —When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

109. Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment — Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation — An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

120B. Punishment of criminal conspiracy —(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

For appreciation of arguments, statement of the prosecutrix may be reproduced here which is as follows:-





"मैं कक्षा 12 में संत श्री आशाराम बापू गुरुकुल परासिया रोड़ छिन्दवाड़ा (मध्यप्रदेश) में पढ़ती हूँ। पिछली 2-3 August को मेरी शाम को तबीयत खराब हो गयी थी, थोड़े चक्कर आये और मैं गिर गयी। मेरे होस्टल की लड़कियों ने वार्डन शिल्पी को बताया, उन्होंने उसे आराम करने के लिए कहा मैं आपने कमरे में सो गयी। वार्डन मुझे डाक्टर के पास नहीं ले गयी। अगले दिन भी मुझे डॉक्टर को दिखाने नहीं ले गये। दूसरे दिन भी डॉक्टर को नहीं दिखाया गया। दूसरे दिन डायरेक्टर सर शरद जी ने मुझे अपने कमरे में बुलाया जहाँ भव्या पहले से बैठी थी। भव्या के लिए आश्रम में यह प्रचलित था कि उसे भूत आता है। डायरेक्टर के कमरे में भव्या के भूत ने भूत की आवाज में मुझे बताया कि मेरे ऊपर भूत का साया है। डायरेक्टर और भव्या ने मुझे समझाया कि सात्विक बनो साधना में मन लगाया करो। उसके बाद मैं हॉस्टल चली गयी। उस शाम मेरे वापस पेट दर्द हुआ। दूसरे दिन डायरेक्टर ने मुझे भव्या के साथ अनुष्ठान में बैठने को कहा वहाँ हवन व अखण्ड रामायण का पाठ चल रहा था। उस दिन के बाद भव्या अपने घर मेरठ चली गयी। उसके एक दिन बाद अमावस्या थी आश्रम में महामृत्युंजय मंत्र का जाप चल रहा था। मुझे पूरी रात सोने नहीं दिया और मृत्युंजय मंत्र का पाठ करवाया। दूसरे दिन शिल्पी वार्डन ने मुझे बताया कि तुम पर भूत का साया है और यह बात बापू को बता दी गयी है। शिल्पी ने 7.8.13 को खुद के मो० से मेरे भाई सोमवीर के नं. 9415035839 पर बात करवायी और मुझसे यह कहने के लिए कहा कि मेरी तबीयत सीरीयस है और इलाज करवाने के लिए मम्मी पापा को बुला लो। मैंने यही कहा। दिनांक 8.8.13 को मेरे पेरेन्ट्स छिंदवाड़ा आश्रम आ गये पर मुझसे मिलने नहीं दिया बस विद्या के मोबाइल से मेरी पापा से बात हुई। दिनांक 9.8.13 को सुबह 9.00-9.30 बजे मैं अपने पेरेन्ट्स से मिली तब शिल्पी ने उन्हें बताया कि मुझ पर भूत का साया है और बापू ने हमें बुलाया है। बापू जहाँ है, वहाँ आपको जाना है। उसने बापू के बारे में पता करने की कोशिश की पर पता नहीं लगा तब पापा ने डायरेक्टर से पता किया कि बापू 12-13 को दिल्ली रहेंगे। उस दिन लगभग 11-11.30 बजे हम आश्रम छिंदवाड़ा से अपने घर



अजीजगंज के लिए रवाना हो गये। अगले दिन सुबह घर पहुंच गये। दूसरे दिन पापा ने शिवा से फोन पर बापू के बारे में पूछा। शिवा बापू जी का सेवक है जो बापू के साथ रहता हैं। बापू कहां है यह उसे पता रहता हैं। मेरे पापा पहले भी उससे बात करते रहते है। मैं भी उसे जानती हूँ। पिछले साल मई जून में हम गुरुकुल से हम लड़कियां बापू से मिलने हरद्वार आश्रम गये थे तब भी मेरी उससे बात हुई थी। शिवा ने हमें बताया कि बापू 12-13 को दिल्ली रहेंगे। हम दिल्ली आ गये। वहां पहुंचकर शिवा से बात की तो उसने बताया कि बापू तो जोधपुर चले गये तो हम उस दिन तो दिल्ली में मेरी मौसी बबीता के पास रहे और 13 तारीख की शाम को मंडोर एक्सप्रेस से दिल्ली से रवाना होकर 14 की सुबह जोधपुर आ गये। रेलवे स्टेशन के Waiting Room में तैयार हुए शिवा से पापा ने बात की तो उसने बताया कि यहां मणाई में बापू जी की कुटिया है, उसने ही बापू की कुटिया का Address Note करवाया। हमने Auto वालो से बात की तो कोई भी address नहीं जाना तब एक auto वाले की शिवा से बात करवायी तो शिवा ने उसे address समझाया। हम उससे मणाई आये। मणाई जोधपुर से लगभग 30-35 Km. था जाने में 1-1 ½ घंटा लग गया। हम दिये पते पर पहुंचे, जो एक बड़ा फार्महाउस जैसा था जिसके गेट पर ताला लगा हुआ था। हमें अन्दर नहीं जाने दिया तब हमने फोन पर गेट वाले से शिवा की बात करवाई तब हमें अन्दर आने दिया। अन्दर बहुत बड़े एरिया में खेत था जिसके बीच में एक मकान और एक सुन्दर सा मन्दिर टाइप बना था। बाद में पता चला कि यह मकान बापू जी के एक साधक किशोर भाई का है और ये मन्दिर नहीं बल्कि बापू की कुटिया हैं। जब हम उस मकान के पास पहुंचे तो बापू जी मकान के Left side नीम के पेड़ के नीचे सत्संग दे रहे थे, 100-50 लोग थे। हम भी वहीं बैठ गये हम तीनों में और मम्मी पापा थे। फिर बापू ने पापा से पूछा कहां से आये हो तो पापा ने अपने और मेरे बारे में बताया। तब बापू ने कहा कि अच्छा तुम भूत वाली लड़की हो आओ तुम्हारा भूत उतारता हूँ। फिर जल में मंत्र पढ़कर हमारे ऊपर छिड़का और पिलाया भी। सत्संग खतम होने पर प्रसाद दिया, मुझसे मेरे स्कूल और पढ़ाई के बारे में



पूछा। सत्संग के बाद सभी भक्तों को भेज दिया और हमें किशोर जी के यहां रुकने के लिए कहा। मकान में नीचे किशोर का परिवार रहा है और ऊपर कमरा व बाथरूम है, जहां हमें ठहराया। उस रात लगभग 10 बजे किशोर ने कहा कि बापू ने तुम्हें बुलाया है, तब हम तीनों बापू की कुटिया में गये। बापू कुटिया के बाहर Garden में टहल रहे थे। हम भी उनके साथ साथ चलने लगे। उन्होंने हमें पूरा Garden दिखाया। मुख्य कुटिया की लाइट बंद थी तो टार्च से दिखाया कि ये मेरी कुटिया है, ये कमरा है जिसमें मैं रहता हूँ, रसोई है ऊपर भी दिखाया कि ऊपर कमरा और बरामदा था। चलते-चलते बातें भी कर रहे थे। पूछा कि क्या बनना चाहती हो, मैंने कहा CA तो उन्होंने कहा कि CA बनकर क्या करोगी सारे अफसर हमारे चरणों में आकर लोटते हैं, तुम B.Ed कर लेना शिक्षिका बन जाना। पापा से कहा कि तुम यहीं रुक जाओ और 11 दिन तक अनुष्ठान करो, मां को घर भेजने के लिए कहा और मुझे कहा कि तुम अहमदाबाद आश्रम चले जाओ वहां अनुष्ठान करना। मैंने कहा मेरी पढ़ाई का क्या होगा तब उन्होंने कहा कि अहमदाबाद से किसी के साथ छिंदवाड़ा भेज देंगे। बापू ने ये भी बताया कि इस कुटिया में वो किसी को आने नहीं देते। उनके साथ 2 और लोग रहा करते थे जिसने एक 15-17 साल का लड़का उनका रसोइया था और 1 आदमी और था। उसके बाद बापू ने हमें बहुत सारा प्रसाद देकर भेजा। हम किशोर जी मकान पर कमरे में जहां रूके थे वहां आकर सो गये। 15.8.13 को बापू लेट आये। रात को पेड़ के नीचे सत्संग किया सत्संग करके लगभग 10 बजे जाने लगे तो कहा कि जाटों आ जाओ। हम बापू के पीछे पीछे चलने लगे तब चलते-चलते कुटिया आ गये। बीच में बातचीत भी कर रहे थे। हम अन्दर पहुंचे तो पहले हम कुटिया के बड़े गेट के अन्दर वाले रास्ते पर जिस पर कंकर बिछे थे दोनों तरफ गार्डन था वहां बिठा दिया वो Chair पर बैठे थे। जहां उनका एक मन्दिर सा बना है। फिर हमसे बातें भी कर रहे थे। अनुष्ठान व साधना की बात समझा रहे थे। फिर हमें रसोइये से दूध भिजवाया हमने दूध पिया। रसोइये ने माता-पिता को जाने को कहा तो पापा चले गये मम्मी रूकी रही और मुझे कुटिया में पीछे सीढ़ियों के



नीचे बिठा दिया। बापू कमरे में चले गये। मैं वहीं बैठी रही। एक बार मम्मी मुझे देखने भी आयी फिर मैं बाथरूम में गयी। बाथरूम पीछे ही था। बाथरूम में गीजर भी लगा था, वाश बोसिन, कमबोर्ड, एक मिरर था, एक बकेट व मग था। बाथरूम की लाइट मैंने ही जलायी थी स्विच बोर्ड अन्दर था। पहले बाहर के स्विच से जलायी तो जली नहीं, इसलिए अन्दर से जलायी। मैं वापस वहीं बैठ गयी। फिर बापू ने पीछे ही अपने कमरे के गेट से मुझे इशारा करके बुलाया लाइट बंद थी पर उन्होंने सफेद कपड़े कुरता सा, लूंगी और शॉल पहन रखा था इसलिए मुझे दिख गये। मैं कमरे में अन्दर गयी। कमरे की लाइट बंद थी पर हल्की सी रोशनी खिड़की या A.C. की लाइट से हो रही थी। AC दीवार पर ऊपर लगा था जिसका रिमोट बापू के पास था। बापू बैड पर लेटे थे, बैड सिंगल था शायद सफेद चादर बिछी थी। उन्होंने मुझे अपने पास ही बिठा लिया कमरे में एक वाश बेसिन और एक कांच (छोटा) भी था। मैं उनके पास बैठी तब मेरा हाथ सहलाने लगे और कहने लगे कि पढ़ लिख कर C.A. बन कर क्या करोगी? बड़े बड़े अफसर मेरे चरणों में ढोक लगाते हैं। ज्यादा पढ़ना है तो D. Ed कर लेना हम तुम्हें आश्रम में शिक्षिका बना देंगे फिर Principal बना देंगे। तुम तो समर्पित हो जाओ हम तुम्हें अच्छा वक्ता बनायेंगे, प्रवचन दिया करना हमारे साथ रहना। अहमदाबाद चली जाओ मैंने कहा मैं पढ़ना चाहती हूँ। वो बोले बस तुम तो समर्पित हो जाओ मैं तुम्हारा जीवन सुधार दूँगा। ऐसा कहते कहते उन्होंने दरवाजा बंद कर दिया दरवाजा Single door था और बंद करने वाली कुन्दी बीच में लगी थी। मेरा दिमाग कुछ सोचता इससे पहले बापू ने अपने सारे वस्त्र निकाल दिये और मुझसे छेड़छाड़ करने लगा। मैंने चिल्लाने की कोशिश की तो उसने मुंह बन्द कर दिया और धमकी दी की बाहर हम तुम्हारे मां बाप को जान से खतम भी करवा दें तो पता नहीं चलेगा। तुम दूँढती रहोगी तुम्हारा परिवार खतम हो जायेगा। मैं तो Shocked रह गयी जिस आदमी को संत समझकर मैं और मेरा परिवार भगवान की तरह पूजते हैं वो ऐसा भी कर सकता है? मैंने सलवार कुरता पहना था, उसने मेरी सलवार उतर दी और मेरे शरीर को टच करने लगा। उसने मेरी पूरी बाँड़ी टच की।



कपड़ों के अन्दर हाथ डालकर छुआ छुई की। मैं उससे छोड़ने के लिए कह रही थी पर वो जबरदस्ती कर रहा था। मेरे हाथों से अपना लिंग टच करवा रहा था और चूसने के लिए कह रहा था। उसने लगभग 1-1 ½ घंटे मेरे साथ जबरदस्ती छेड़छाड़ की, किस किया, हग किया, मुझे दबाया, चिल्लाने भी नहीं दिया। परिवार को खतम करने की धमकियां भी दे रहा था, कभी प्यार से बात कर रहा था। मेरे साथ जबरदस्ती करने की कोशिश की चुन्नी उतार दी। लगभग 1-1 ½ घण्टे बाद उसने मुझे छोड़ा। कहा कि ये बात किसी को नहीं बताना नहीं तो परिवार को खतम करवा देंगे। अब अच्छे से जाओ बाल ठीक करो, कपड़े ठीक करो। मैं बाहर आयी तो मम्मी बैठी थी, रसोइया बरामदे में बैठा था। मैं मम्मी के साथ किशोर के मकान पर आ गयी रास्ते में मम्मी ने पूछा कि अन्दर क्या हुआ तो उसको मैंने कुछ नहीं बताया बस ये ही कहा कि बापू अच्छे इन्सान नहीं हैं। हम मकान पर आये तो मकान गेट बंद था धक्का दिया तो खुल गया। अन्दर से ऊपर जा रहे तो चौक में किशोर का शायद भाई व उसकी बहने खड़ी थी जिनके नाम मैं नहीं जानती। मम्मी ने पूछा कि पापा पानी ले गये तो उन्होंने कहा कि ले गये। लगभग 11.30 बज गये होंगे। मैं ऊपर आकर सो गयी, पापा पहले से सो रहे थे, मुझे नींद भी नहीं आया। दूसरे दिन मैं बापू से नहीं मिली, मना कर दिया नहाने चली गयी। मम्मी पापा को यही कहा कि तुम जिसे भगवान मानते हो वो शैतान है, यहां से चलो। उस दिन जल्दी खाना खाकर हम वहां से चल दिये। किशोर जी के घर से एक लड़का हमें जोधपुर रेलवे स्टेशन छोड़ने आया था। किशोर का परिवार अच्छा था। हम अपने घर अजीजगंज आ गये तब मैंने ये बात मेरी मम्मी को बतायी और मम्मी ने पापा को। आश्रम में जोधपुर इसलिए नहीं बताया क्योंकि कोई भी मेरी बात पर विश्वास नहीं, करता बल्कि मुझे गलत बताता। मेरा व मम्मी पापा को वहां से निकलना मुश्किल हो जाता। जब पापा को ये बात बतायी तो पापा ने पता किया कि बापू दिल्ली सत्संग कर रहे हैं इसलिए हम दिल्ली आ गये। जहां उनका सत्संग चल रहा था शायद उसके सामने पुलिस का कोई ऑफिस था हम वहां गये उन्होंने थाने भेज दिया जहां रिपोर्ट की। वहां से

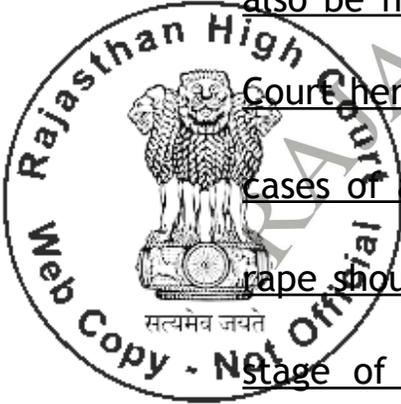
हमें जोधपुर ले आये। इससे पहले जब मैं मई-जून-12 में उनके हरिद्वार आश्रम गयी थी तब उन्होंने कमरे में बुलाकर छूने की कोशिश की, गाल पर हाथ फेरा पर मैंने सोचा गुरु है, संत है बच्चा मान कर प्यार कर रहे है। इसके अलावा कुछ नहीं किया था। पर वो संत नहीं है जिस आदमी को हम 11 साल से भगवान की तरह पूज रहे हैं वो गंदा और घटिया आदमी है। कोई संत ऐसा नहीं कर सकता जो उसने किया। मैं बस ये ही चाहती हूँ कि मेरे साथ जो किया किसी और के साथ न कर सकें। वो भव्या भी अभी तक वापस नहीं आयी। मेरा भाई अभी छिंदवाड़ा आश्रम मे है, मुझे उसकी चिंता है।"



It has been argued on behalf of accused [Asharam@Ashumal](#) that at the most his conduct may come within the definition of attempted fellatio and he cannot be charged for the offence of fellatio. The conduct of the accused asking the girl to suck his organ is called fellatio. Had the girl started sucking his organ, it would have been argued that it was her consensual act. Certainly the charge of attempt to fellatio is graver offence than the fellatio itself. So, the charge even if it relates to fellatio, it will cover the charge of attempted fellatio and the accused is not going to be prejudiced when the charge of fellatio has been framed against him in place of attempted fellatio. Some times the prosecutrix, who is a minor girl may hesitate to tell complete truth before the Investigating Officer and many a times it happens in such type of cases that the prosecutrix unfolds the complete truth only during the camera trial when she is assured

that nobody will be able to cause any harm to her because of her statement. Hon'ble the Supreme Court has mandated that in cases of Section 304 B IPC, a charge of Section 302 IPC should also be framed against the accused and on the same logic, this Court hereby directs all the trial courts in Rajasthan that in all cases of attempt to commit rape, a charge for the offence of rape should also be framed against the accused so that, at the stage of conclusion of the trial, the Court may not have to undertake tedious process of amendment of charge and recalling the witnesses causing serious prejudice to the cause of justice in such cases.

The matter, as has been discussed above, leaves no doubt that the conduct of the accused-petitioner [Asharam@Ashumal](#) may be of committing rape or attempt to commit rape or aggravated penetrative sexual assault or penetrative sexual assault or aggravated sexual assault or sexual harassment or its attempt or its abetment, in all these cases, the charges framed by the trial court are such that it will cover all the possibilities of aggravated form of offence committed by the accused-petitioner and so at the time of judgment, the trial court will not have to amend the charges causing any prejudice to the cause of justice and hence this Court is of the view that the



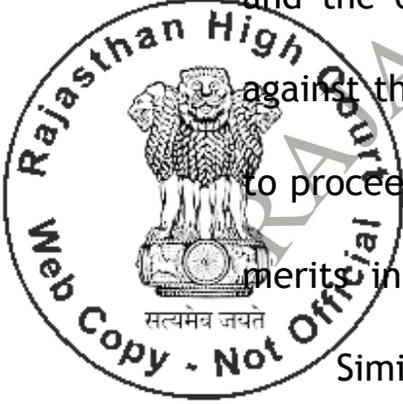
charges framed against accused-petitioner [Asharam@Ashumal](#) deserve no interference at this stage because within three months, the trial will be completed in the trial court, no doubt subject to cooperation by the accused-petitioners in the trial

court. Hon'ble the Supreme Court in Munna Devi v. State of Rajasthan, 2002 Cr.L.R.(S.C.) page 101, has held that the

revisional powers should be exercised only when it is shown that there is legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the F.I.R. even if they are taken at the face value and accepted in their entirety, do not constitute the offence for which the accused has been charged. In that case, accused for the charge under Section 376 IPC etc. was discharged by the High Court in criminal revision and that order was quashed by Hon'ble the Apex Court. It was held by the Apex Court that the learned Judge of the High Court has ignored the basic principles which conferred the jurisdiction upon the High Court for exercise of revisional power. It was further held that it was pre-mature for the High Court to say that the material placed before the trial court was insufficient for framing the charge or that the statement of the prosecutrix herself was not sufficient to proceed further against



the accused-respondent. The impugned order of the Rajasthan High Court was held to have been passed against the settled position of law and so it was set aside by the Hon'ble Apex Court and the order of framing the charge passed by the trial court against the accused was upheld with directions to the trial court to proceed with the trial of the case and dispose of the same on merits in accordance with law.



Similarly, the arguments of other accused-petitioners, namely, Prakash, Sharad Chandra@Sharat Chandra, Miss Sanchita@Shilpi and Shiva@Savaram are also not acceptable at this stage because charges are to be framed in wider terms covering all eventuality which may crop-up during the trial. A person may wear a shirt slightly larger than his size but he cannot wear a shirt which is smaller to his size. Minor irregularities, if found in charges, do not vitiate the trial unless they have caused the prejudice to the case of the accused. In the present case, by any stretch of imagination, it cannot be said that no case under POCSO Act, 2012 has been made out against any of the accused-persons and hence the accused-persons in the case in hand cannot defeat the provisions of presumption likely to be applicable against them under Sections 29 and 30 of the POCSO Act, 2012.

It may further be mentioned here that the age of the prosecutrix has also rightly been determined by the trial court where she has been found to come within the definition of a child as defined under Section 2(1)(d) of the POCSO Act, 2012, according to which a child means any person below the age of eighteen years. As per the High School Certificate of the prosecutrix, her date of birth is 4.7.1997. I see no reason to disbelieve the genuineness of High School Certificate of the prosecutrix which is the best available evidence to prove her date of birth. In Bhoop Ram v. State of U.P., AIR 1989 S.C. 1329, it was held that Medical Certificate is generally based on estimate and possibility of error cannot be ruled out, while the School Certificate, particularly, the High School Certificate is always more reliable for determination of the age of the person in question. In JJ Act, 2000 also, as per rule 12(3)(a)(i) of the JJ Rules, 2007, the best reliable document for determination of age is mentioned as Matriculation or equivalent Certificate. So the argument of accused-persons in this regard also is not acceptable.

The case has been argued on behalf of the accused-petitioners on so many counts as mentioned in their memo of revisions but this Court is not inclined to appreciate the evidence



in the case at the stage of charge because that will seriously prejudice the cause of justice in the case and hence without commenting upon the merits of the case, it can be said that the charges framed by the trial court against all the petitioners do not deserve to be disturbed but the trial court is also left free to amend or alter the charges as and when required in furtherance of the cause of justice to do complete justice with the parties.



By this order, I have to decide the criminal revision filed by the prosecutrix also. In her petition, it was argued on her behalf that the charge under section 5(p) of the POCSO Act, 2012 should also have been framed against the accused-petitioners but this argument has been raised perhaps because of the apprehension that the place where the alleged main offences were committed by accused Asharam, may or may not come within the definition of the "institution under the management of accused-petitioners", but Section 5(p) of the POCSO Act, 2012 is a minor offence of Section 5(f) of the POCSO Act, 2012 and so at the time of the judgment, if the trial court is convinced that Section 5(f) of the POCSO Act, 2012 is not made out, then the trial court will be free to take help of Section 5(p) of the POCSO Act, 2012 also without amending the charge, if need arises to

save the cause of justice. Prayer regarding charge under Section 26 of the JJ Act, 2000 has not been pressed by the learned counsel for the prosecutrix in criminal revision petition.

Thus, not only the revision petition filed by the prosecutrix (S.B.Criminal Revision No.255/2014) but also the criminal revision petitions filed by all the accused-persons (S.B.Criminal Revision Petition No. 192/2014 and S.B.Criminal Revision Petition No. 179/2014) are devoid of any force, which are hereby dismissed and the impugned order dated 7.2.2014 by which the charges were framed against all the accused-persons is left undisturbed though the trial court is directed to conduct the expeditious trial in the case. The prosecutrix as well as all the accused-persons are also supposed to cooperate in the trial before the trial court. Copy of this order be sent to the trial court today only.

सत्यमेव जयते (ATUL KUMAR JAIN),J.

mlt