

**HIGH COURT OF MADHYA PRADESH: JABALPUR****(Division Bench)****Criminal Appeal No. 1994 of 1997**

State of Madhya Pradesh .....Appellant

Versus

Sheikh Sadik .....Respondent

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**CORAM :****Hon'ble Shri Justice Hemant Gupta, Chief Justice****Hon'ble Shri Justice Vijay Kumar Shukla, Judge**

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**Present:**

Shri Vishal Dhagat, Government Advocate for the appellant-State.

Shri P.S. Thakur and Shri Siddhant Kochar, Advocates for the respondent.

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**Whether Approved for Reporting: Yes**

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**Law Laid Down:**

- ✓ The presumption of correctness of date of birth in the matriculation certificate cannot be disputed on the basis of approximate age given by the doctor who medico-legally examined the victim - Supreme Court decision reported as (2013) 7 SCC 263 (Jarnail Singh vs. State of Haryana) - *followed*.
- ✓ The prosecutrix was staying in the house of the accused, who were providing her education, food, clothes and residence as her parents could not pay the fee of the school. Under such immense pressure and obligations of the family, she did not muster courage to lodge complaint soon after she was violated for the first time. Therefore, with threat of possible defamation, hindrance in her marriage and lack of knowledge of the fact that she is pregnant, it is not a case of consent. The Court cannot absolve the accused of an offence committed against such innocent girl.
- ✓ The accused has exploited the victim taking advantage of her poverty and the fact that his wife has given refuge to the victim for the purposes of education. He has breached her confidence as well. Under such circumstances, the accused is sentenced to undergo rigorous imprisonment for life for the offence Section 376 of IPC.

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**Significant Paragraphs: 10 to 23**

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**Heard/Reserved on: 09.08.2018**

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## **J U D G M E N T**

(Delivered on this 20th day of August, 2018)

**Per: Hemant Gupta, Chief Justice:**

1. The State is in appeal against the judgment dated 28.04.1997 passed by the learned Additional Sessions Judge, East Nimar in Sessions Trial No.14/1997 acquitting the respondent and his wife Akilabi from the charge under Section 376 and 201 of the Indian Penal Code, 1860 (for short "the IPC") respectively by granting benefit of doubt. However, the leave to appeal was granted qua the respondent No.1 only. Therefore, we are dealing with the present appeal against the respondent No.1 only.

2. The prosecution was set in motion on the statement of the prosecutrix (PW-2), daughter of Zarina Bi (PW-3) and Abdul Latif (PW-4). The statement is that when she was 11 years of age and student of Class-6th, she had been staying with Akilabi - wife of the respondent. Akilabi has promised the father of the girl that she will keep the prosecutrix as her daughter to enable her to study. On 28.03.1996, the prosecutrix told Sadik that she has a headache and she will not be able to attend to household chores. Sadik gave a medicine and after taking the medicine, when she was about to lie down on the bed, the accused came and lay her down on the bed and thereafter, undressed her and also undressed himself. The prosecutrix was under the influence of medicine and therefore, she could not resist.

When she gained consciousness, she found that she was bleeding and the bed was wet. When she confronted Sadik, he told her that he had performed sexual intercourse, therefore, this has happened. Sadik threatened the prosecutrix and told her not to say anything to anybody. Later, whenever she used to have headache, the accused would give medicine and then would violate her. He would also threaten her that she will not say it to anybody. One lady by the name of Mumtaj has seen Sadik violating her. When the victim became pregnant of about eight months then the wife of respondent told her that she would facilitate her *Nikah* (marriage) with Sadik. They offered Rs.10,000/- so that she can go to her father's house and abort the fetus. The accused tried to facilitate abortion but was not successful. Since her condition deteriorated on account of medicines, she reached her parental house. She lodged a report when she became fit to move. After completion of investigations, the accused were made to stand trial.

3. In evidence, Smt. Naadra Liyakat, In-charge Principal of the school in which the prosecutrix was a student, appeared as PW-1. She has admitted her signatures on Ex.P-1, which was written by her in response to a query made by the Station House Officer, Moghat Road regarding the date of birth of the prosecutrix. In Ex.P-1, she has certified that as per school record, the date of birth of the prosecutrix is 05.06.1980. The prosecutrix has passed Class-10th examination from her school.

4. PW-2 is the prosecutrix. She has deposed that when she was student of Class-6th, accused Akilabi promised that she will facilitate her education, as her parents could not afford her further education. She is living with the family of the accused for the last 6-7 years. She qualified class 6th to 10th

examinations while staying with the accused. She was examined on 04.04.1997. She has deposed that on 28th March last year, at 2-3 p.m., she had acute headache. She informed Sadik. Sadik gave some tablet. After taking the tablet she felt drowsy. Sadik undressed her and put her on bed. Thereafter, Sadik violated her. At about 3-4 p.m. she gained some consciousness and found that she had no clothes on her. She was bleeding and the bed was wet. When she confronted Sadik as to why her clothes have been removed, then Sadik told her that he had violated her but she would not say anything to anybody. She would get defamed and her engagement will be broken. Thereafter, Sadik violated her 2-3 times when he would undress her and himself and violate her. She did not inform anybody regarding these acts of Sadik. However, after some days, she informed Akila wife of Sadik about the actions of Sadik. Akila told her not to inform anybody and they will take her to Indore to carry out abortion. When she did not have her periods then Sadik asked her whether she has got her period. She informed him that she has not had her mensuration period. In this process, 2-3 months passed away. Sadik told her that there is marriage of his sister and thereafter he will facilitate abortion as at that moment, he had no money. After marriage of sister of Sadik she told him for abortion but he made an excuse that he has finished all the money. Sadik has not taken her for abortion. For abortion, Sadik would give her brown (*Katthai*) colour tablet. By such medicine she got boils on her hand and face. Since she was not feeling well, her mother came. When her mother asked from Akila that what happened to her daughter then accused told her that she has got chicken pox. Her mother took her along and got her treated. At that time, she was six months' pregnant. She was with her mother for about 8-15 days but she did not tell

her mother, as Sadik had told her not to tell her mother otherwise she would die. After some time, Sadik brought her back to his house saying that he will take her for treatment. She was with the accused for 15-20 days. In the month of 11th Sharique [As per Islamic calendar, *in the year 1996, 11th Sharique would begin from 27th August, which is celebrated for 30 days*], her mother herself called her whereupon she had gone to her place. Her mother noticed that her clothes have become tight (fit). She asked her to buy loose clothes. After seeing her clothes, the mother got suspicion and took her to the house of the accused. Her mother asked Akila that her daughter was staying with her (Akila) then how she became pregnant. Whereas, she was sent for studies. Akila told her mother that take money but do not speak loudly as the neighbours would hear the conversation. Akila offered Rs.10,000/-. Sadik was at the shop. Akila went to call Sadik. Sadik told that give Rs.10,000/- to her mother and let her mother go anywhere otherwise they will take them to Indore but her mother did not accept money. Mother told them that this is insult as what will they do with Rs.10,000/-. It is, thereafter, report Ex.P-3 was lodged. She stated that the report was got typed by her father Sheikh Latif. She has no idea from where her father got it typed. Whatever was written in the complaint was told by her to her father. She admitted her signatures on Ex.P-3 and P-4. She was medically examined. Ex.P-6 mark-sheet recovered by the police was proved by her as that of her. Ex.P-6 is the mark-sheet of Class-10th issued by M.P. Secondary School Education Board, Bhopal. As per the said certificate, the date of birth of the prosecutrix is 05.06.1980.

5. In cross-examination, the prosecutrix deposed that her parents are very poor. When she was in Class-6th, her mother would leave her to school. The school would start at 11 a.m. and finish at 5 p.m. After 3-4 months, the teacher demanded fee. Her father used to remain sick and would take treatment from Mumbai. Since they had no money, mother went to teacher for fee concession. Accused Akila was her class teacher. The accused told her mother that she would pay her fee and the books she will get from the school. Akila told her mother that she would facilitate her education, deposit fee, and provide books as well and that she be handed over to her. Still further, she deposed that accused couple had two children. The house has two rooms; one on the ground floor and another on the first. Sadik would sleep with his children whereas she would sleep with Akila in the room on the ground floor which was used as bedroom cum drawing room. Both the accused used to give her clothes and food. She used to do the entire household chores such as cooking food; washing clothes, utensils and filling water. Akila would go to school after taking bath and she would also go with her. After coming back from school, Akila would go to either her friends or relatives. Sadik would go to Studio after taking breakfast at 7 - 7.30 a.m. He would come for lunch but when he was busy he would take tiffin box with him. Since she would be in school from 11.00 a.m. to 5.00 p.m. she had no idea when Sadik would come for lunch. She also deposed that the house of her parents is at 2-3 minutes walking distance. The bathroom and the tap is outside the house and she would go to fill up the water from the tap. Such tap was used by many other persons. She would go to her house to meet her mother, brother and sister whereas her parents would also visit to meet the accused in their house. She deposed that she would go to her mother's house

for bath and her brother would come towards the house of the accused while selling fruits and then she would meet him also. She told her parents about the incident and only then her father got the complaint typed. She has given something in writing as well. She denied that her parents have taken her to the house of Arun Chaterjee, Advocate and that the Advocate has drafted the complaint Ex.P-3. She deposed that she has read Ex.P-3 before submitting in the Police Station, which was written in the same manner as she has deposed. She was confronted with the statement in Ex.P-3 but she cannot explain as to why the fact of giving the medicine by Sadik is not mentioned. Similarly, she could not explain the reason as to why the fact of threat given by Sadik that her engagement would break and she would get defamed is not mentioned. She deposed that when Sadik violated her then her parents have not visited the house of the accused. She visited her parental house after one or two months when Sadik violated her. She informed Akila about the act of Sadik violating her. Similarly, she has deposed that she cannot explain as to why the fact that the accused promised to get her aborted from Indore is not mentioned in the report Ex.P-3. Similarly, about the missing periods she could not explain as to why the same was not mentioned. She also deposed that Akila offered Rs.10,000/- and Sadik offered Rs.10,000/- to her mother. She could not explain the reason as to why such things do not find mention in the complaint Ex.P-3. She denied the suggestion that the accused was offering Rs.10,000/- to go to her parental house and to abort. She further deposed that in the summer vacations she used to stay at her parental house for 15-20 days and that after examination of Class-9th she did not stay in her parental house. She would go in the morning and come back in the evening. She had not gone to her parental house after Class-10th examination. She

has denied the suggestion that she knows Firoj, son of owner of Yakub Bakery. She denied that Firoj is friendly with her brother. Jafar, brother of Sadik, is friendly with Firoj. She knows that Firoj is friend of Jafar. She volunteered that Firoj had given one letter, which was containing obscene contents. Next day, Firoj asked whether she has read the letter. She told Firoj that who has written this letter and do not get this kind of letter. Thereafter, Firoj stopped giving these kinds of letters. Jafar would bring letter and he would get letter written from her. Jafar would say that she should write letter otherwise Firoj would defame her. She has given 3-4 letters to Jafar. She has informed Sadik that Jafar is getting these kinds of letters. Sadik thrashed Jafar after reading those letters. The letters were written when she was in Class-9th. Before 2-3 days of examination of Class-10th there was a festival of Eid-UI-Fitr and she went to fair of Eid-UI-Fitr with Akila. She denied the suggestion that Firoj met her and gave lot of presents. She stated that she is engaged with Shahjad who is resident of Mundipura and Shahjad has not come to meet her. She denied the suggestion that the accused were fed up with her fiance and Firoj. Therefore, she was asked to go to her parental house. The festival of 11th Sharique is celebrated for 30 days when the verses from Hajrat Peeranpeer Dastgir are read and eatables are exchanged between the families. She denied that festival of 11th Sharique comes in the month of *Ussal* or *Avval* as per Urdu calendar. She did not recollect that 11th Sharique festival came in the month of August, 1996 and that she is staying with her mother since such festival. Her mother has not got her treated nor has she taken her to any doctor for treatment. Though she has taken her to Dr. Ubeja, who told that she is seven months' pregnant. When there were boils on her face then her parents got her treated and drip was administered.



She denied the suggestion that her age is 18 or 19 years. Her age is 15 years but her approximate age is 16-17 years. She denied the suggestion that her parents demanded Rs.10,000/- from the accused and the accused refused to give that money. She stated that her parents have not asked for any money from the accused.

6. PW-3 is Zarina Bi, the mother of the prosecutrix. She deposed that the prosecutrix is in 14th year. She deposed that when her daughter was in Class-6th, she could not arrange for her fee. In school, many teachers were sitting when she asked for fee concession. One teacher told her that she would pay fee of her daughter. That teacher told her that she would educate her and take care of her and that she should give her daughter to her. She said that she would ask her husband and then she would give the girl. Akila came to her husband and told him that she is living alone. Nobody is living with her as her husband is living with another wife. She, thus, gave her daughter to Akila. Her daughter stayed with Akila for seven years. She does not know how Sadik and Akila united together. Her daughter was kept well for 5-6 years. Sadik and Akila were living together. About one year ago at the time of 11th Sharique, when her daughter was prosecuting studies in Class-11th, she brought her home. She noticed that the clothes worn by her daughter were becoming tight. When she asked from her daughter, she told that she does not know. She made her daughter to lie down and then she guessed that she is pregnant. She took her daughter to the house of accused. She told Akila that she had promised to treat her daughter as her own but what she has done to her. She said that the prosecutrix told her that Akila or her husband would give tablet and her daughter informed her that Sadik has

violated her; when and how he has done it, she does not know. In respect of a specific question, she said that Akila told her to take Rs.10,000/- and abort the fetus. She declined to accept Rs.10,000/-. She deposed that she married 27-28 years back but she does not remember the year of birth of her daughter. She further stated that they lodged report soon after they came to know about the pregnancy of their daughter and not after many months. She denied that she had taken her daughter to Chaterjee Advocate for preparing a complaint. She denied the suggestion that accused told her that the prosecutrix writes letter to Firoj and her fiance also comes, therefore, she should keep her daughter with her. She denied the suggestion that she demanded Rs.10,000/- which the accused refused.

7. Abdul Latif has been examined by the prosecution as PW-4. He has deposed that date of birth of the prosecutrix is 11.05.1980 and that he knows accused Akilabi for 7-8 years and accused Sadik for three years. He deposed that when prosecutrix was student of Class-6th, accused Akila had a talk with his wife to keep the prosecutrix with her. Akila had told him that they will educate their daughter. The next day he had gone to Akila's house with the prosecutrix. Akila had told him that Sadik stays with his first wife and she is living alone. His daughter has passed Class-10th while staying with the accused and has gone to Class-11th. The expenditure of education was being born by the accused persons. On every festival the accused will come with the girl to their house and will go back with the girl after taking food. After the festival of 11th Sharique, the prosecutrix alone came and she was wearing loose clothes. When the prosecutrix had worn another set of clothes after taking bath, her abdomen was looking quite big. His wife has taken the

prosecutrix to Dr. Ubeja and his wife told him that Dr. Ubeja has informed that she is six months' pregnant. In the same night, he has gone to the house of the accused. Accused Akilabi told him not to shout as they have tried much to abort the fetus. They are ready to pay Rs.10,000/- and he should abort the fetus. Sadik was not at home. He has not taken Rs.10,000/- and told her that he is taking his daughter and will make report. When he asked the prosecutrix that how she became pregnant, she was trying to evade the issue but when he promised that nobody will rebuke her and beat her, she wrote the entire sequence of events on a piece of paper and they went to police station with that paper. The report was lodged on 22.10.1996. He again said that whatever the girl has written that was typed and then a typed paper was given to the police station. He does not remember where the hand written paper of the girl has gone. In cross-examination he could not give the date of birth or the year of his children and that he has not noted the date of birth of the prosecutrix as 11.05.1980 anywhere.

**8.** PW-5 is Dr. Raksha Sharma, who medico-legally examined the prosecutrix on 22.10.1996. The report is that she has no injuries on her person and the secondary sex characteristics were well developed. She was found to be pregnant of 28-30 weeks. The medical report is Ex.P-9. Since the police has not asked for the age of the prosecutrix, she has not given in the report.

**9.** Devendra Singh Sengar (PW-6) is the Sub-Inspector. He has taken the photocopy of the mark-sheet Ex P-6 vide recovery memo Ex.P-7 and prepared the site plan of the place of occurrence Ex.P-5. He is the one who has recorded the statement of the witnesses.

10. In the statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short "the Code"), in response to question No.52 Sadik stated that he is innocent and that prosecutrix would go to her parental house every week. She would go to parental house in every vacation including Diwali and summer vacations. Before examination of Class-10th, her fiance would come and she would write letters to Firoj and soon after examination was completed, she was sent to her parental house. She is staying with her parents since 18th March, 1996. He stated that on that day, Bajrang Dal BJP has taken out procession on the eve of Ram Navami and that he was busy from 2 p.m. taking photographs. However, no defence witness has been produced.

11. Learned counsel for the appellant relies upon a judgment of the Supreme Court reported as **(2013) 7 SCC 263 (Jarnail Singh vs. State of Haryana)** to contend that the parameters fixed for determination of the age under Juvenile Justice (Care and Protection of Children) Rules, 2007 can very well be applied for determining the age of the prosecutrix. The first parameter is the matriculation certificate. As per the matriculation certificate, the date of birth of the prosecutrix is 16 years. As per the mother of the prosecutrix, she is 14 years of age. As per the father of the prosecutrix, her date of birth is 11.05.1980. The learned Trial Court has returned a finding that the prosecutrix is not proved to be less than 16 years of age for the reason that there are contradictory dates of birth given by the father and the prosecution. The learned Trial Court also found that date of birth was not given either by the parents to the School authorities while they admitted her in the school in view of the statement of the mother and father of the

prosecutrix in Court. The Trial Court referred to the statement of Dr. Raksha Sharma (PW-5) that the secondary sex characteristics were developed, therefore, the age of the prosecutrix can be 17 years or more and that the age of the prosecutrix cannot be said to be less than 16 years.

12. We find that even if the parents of the girl have not given the date of birth at the time of her admission in the school but the fact is that such date of birth finds mention in the official record of the school. The matriculation certificate has been issued with date of birth as 05.06.1980. Such matriculation certificate has presumption of correctness. The relevant extract from the Judgment in the case of **Jarnail Singh (supra)** reads as under:-

"23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. *In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the*

absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion."

*(emphasis supplied)*

**13.** Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 raises presumption of age as well the parameters to determine age. As per the said provision, the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination Board, if available, is the basis to determine the age. Section 94 of the Act is reproduced as under:-

**"94. Presumption and determination of age.** - (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

- (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
- (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the

Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

Though Section 94 is the new provision, but the fact that the date of birth certificate from the school or the matriculation certificate from the concerned examination Board is relevant for determining the age, cannot be brushed aside as such provisions are not dealing with substantive rights of the parties.

**14.** In view of the above, the presumption of correctness of date of birth in the matriculation certificate cannot be disputed on the basis of approximate age given by Dr. Raksha Sharma (PW-5). The prosecutrix was less than 16 years of age even if date of birth as given by the father is treated as 11.05.1980 or as per the matriculation certificate i.e. 05.06.1980. Therefore, we have no hesitation to hold that the prosecutrix was less than 16 years of age at the time of incident and the finding recorded by the learned Trial Court in that behalf is not sustainable. Thus, the respondent is guilty of an offence in terms of Section 375 Sixthly of IPC.

**15.** Even otherwise, we find that there was no consent of sexual intercourse by Sadik with her. The statement of the prosecutrix is clear that Sadik would violate after giving some tablet to her. In the lengthy cross-examination on her, it is not suggested that she would voluntarily surrender to the wishes of Sadik. Since she was residing in the house of Sadik and his wife Akilabi, who were providing her education, food, clothing and

residence etc., she was under immense obligation of the said family. She was carrying out all household chores. She was dependent on the accused for her daily needs. Therefore, she was not a willing partner in the acts of Sadik but had no option but to keep quiet on account of pressure mounted on her by Sadik that she would get bad name and her engagement would come to an end. It was a trauma for young girl not to face this kind of humiliation. Still further, the statement of all the witnesses i.e. prosecutrix (PW-2), mother Smt. Zarina Bi (PW-3) and father Abdul Latif (PW-4) is consistent and categorical that the accused wanted to pay Rs.10,000/- to facilitate her abortion. Such part of the statement rather stands affirmed in the cross-examination conducted on the three witnesses. Therefore, even if the prosecutrix is treated to be more than 16 years of age but it is not a case of consent so as not to constitute an act of rape within the meaning of Section 375 of the IPC. The relevant provision of the Statute in the year 1996 reads as under:-

**"375.** A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First.- Against her will.

Secondly.- Without her consent.

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and



consequences of that to which she gives consent.

Sixthly.- With or without her consent, when she is under sixteen years of age.

Explanation. - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

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**376.** (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years with fine or with both:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years."

**16.** In terms of Section 375 of IPC a man is said to have sexual intercourse with a woman under any of the six descriptions mentioned above. In the present case, the act of accused Sadik falls under first, second, third and fifth description, as the prosecutrix has deposed that for the first time when Sadik violated her she was administered some tablet and thereafter, on number of occasions but some time she would be subjected to sexual intercourse even without tablet. Thus, offence of rape is clearly made out as defined under Section 375 of IPC.

**17.** Learned counsel for the respondent submitted that the matriculation certificate is not conclusive proof of the age of the victim. The best evidence i.e. date of birth certificate from the Registrar of Birth and Death has not been produced. It is a case of consent inasmuch as, as per the medical

evidence she was used to of sexual intercourse. It is further contended that as per the prosecutrix, there was an eyewitness but such eyewitness has not been examined, therefore, she is not proved to have been violated by respondent Sadik. It is also argued that Firoj and her fiance used to visit her and therefore, it is a possibility that they have violated her.

**18.** We do not find any merit in the first argument raised by the learned counsel for the respondent-accused. In terms of **Jarnail Singh's** case (**supra**), the matriculation certificate is good evidence of age of the prosecutrix. As discussed above, it is not a case of consent, as the prosecutrix was staying in the house of Sadik and Akilabi, who were providing her education, food, clothes and residence. Therefore, she was under immense pressure of that family not to raise alarm. The innocence of child can be imagined as she was not aware that she is pregnant although she was missing her periods. We have to appreciate such statement in view of the social strata from which she comes where the parents of the girl could not even pay the fee of the school. With such financial condition and the obligation on her rendered by the accused, she did not muster courage to lodge complaint soon after she was violated for the first time. Therefore, she was threatened with possible defamation and of hindrance in her marriage. Therefore, with such threats and her lack of knowledge of the fact that she is pregnant, cannot absolve the accused of an offence committed against such innocent girl.

**19.** In respect of an argument of the learned counsel for the respondent that the eyewitness has not been examined, we do not find that such fact is sufficient to discard the entire prosecution story. As per the evidence on

record, the undisputed facts are that the girl was staying with Akilabi since she was student of Class-6th. Sadik started living with his wife Akilabi for last 2-3 years. The evidence of the prosecutrix unhesitatingly proves that it is the accused who has violated her time and again when she was dependent on them for food, clothing and residence. The prosecutrix became pregnant as well.

**20.** Still further, keeping in view the oral testimony and the fact that the prosecutrix was pregnant, is sufficient to prove the act of rape as defined under Section 375 of IPC committed by accused Sadik. Though the statement of the accused under Section 313 of the CrPC is that the prosecutrix will go to her house frequently and during vacations and that Firoj and her fiance would meet her but the defence has not produced any evidence of Firoj and fiance of having established sexual relationship with her. The only evidence is of some exchange of letters by Firoj but exchange of letters is not proof of act of sexual intercourse by such person.

**21.** In view thereof, we find that the judgment of the learned Trial Court suffers from patent illegality and cannot sustain in the eye of law. Consequently, the same is set aside and the respondent-accused stands convicted for the offence under Section 376 of IPC.

**22.** The respondent was guardian of the prosecutrix; his wife has undertaken to educate her and to bring her up. The respondent-accused has exploited the victim taking advantage of her poverty and the fact that his wife has given refuge to the victim for the purposes of education when she was still a student of Class 11th. He has violated her by breach of that confidence.

**23.** Therefore, the present appeal is allowed and the order passed by the learned Trial Court is set aside. The respondent is sentenced to undergo rigorous imprisonment for life and further directed to pay a fine amount of Rs.1,000/- (Rupees One Thousand); in default of payment of fine amount, the accused will further undergo six months of rigorous imprisonment. The period during which the respondent was in custody, shall be set off against the sentence awarded to him under Section 376 of IPC. The appeal succeeds and is **allowed**.

**(HEMANT GUPTA)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**