

Supreme Court of India

Kamalanantha And Ors vs State Of Tamil Nadu on 5 April, 2005

Author: Sema

Bench: B.N. Agrawal, H.K. Sema

CASE NO. :

Appeal (crl.) 611-612 of 2003

PETITIONER:

Kamalanantha and Ors.

RESPONDENT:

State of Tamil Nadu

DATE OF JUDGMENT: 05/04/2005

BENCH:

B.N. Agrawal & H.K. Sema

JUDGMENT:

JUDGMENT SEMA, J.

These appeals by special leave are preferred by accused nos. 1, 2, 4, 6 and 7 against their conviction concurrently recorded by two Courts. A-3 served out the sentence and A-5 died during the pendency of the appeal before the High Court and his appeal stands abated. They were convicted and sentenced to imprisonment as under :-

Charge Convicted Accused Sentence of Imprisonment/ Nos. under Fine imposed.

Section			
(1)	(2)	(3)	(4)
1.	120 (B) A-1 to A-7 I.P.C.		No Separate sentence.
2.	376(2)(c) A-1	Imprisonment for Life and to I.P.C. (12 pay a fine of Rs. 5,10,000 on Counts) each count. In default, Rigorous Imprisonment for a further period of Two years and Six months.	
	(Total Fine for life on each count is to concurrently.		rs. 61,20,000. Imprisonment run
3.	376 r/w A-2, A-4,	Imprisonment for Life on 109 I.P.C. A-6 & A-7 each accused. Rigorous A-3 Imprisonment for Two years, 7 months and 2 days (period of sentence already undergone) and to pay a fine of Rs. 10,000. In default, Rigorous Imprisonment for a further period of 3 months.	
4.	354 I.P.C. A-1	No separate Sentence.	

(one Count)

5. 312 I.P.C. A-3 Rigorous Imprisonment for (Four Counts) Two Years, 7 Months and 2 Days (period of sentence already undergone) and to pay a Fine of Rs.

5,000 on each count. In default,
Rigorous Imprisonment for a further period of
45 Days. (Total Fine Rs. 20,000)

6. 302 I.P.C. A-1 Imprisonment of life and to pay a Fine of Rs. 10,000. In default, Rigorous Imprisonment for a further period of 3 months.

302 r/w A-2 Imprisonment for Life and to 34 I.P.C. pay a Fine of Rs. 10,000. In default, Rigorous Imprisonment for a further period of 3 Months.

7. 304 I.P.C. A-4 A-6 Imprisonment of Ten years and A-7 and to pay a fine of Rs.

10,000 In default, rigorous
imprisonment for a further period of 3
Months on each accused.

8. 343 I.P.C. A-1, A-2, No separate sentence. A-6 to A-7

9. 201 r/w A-6 & A-7 For each accused, Rigorous 304 I.P.C. Imprisonment for One year and to pay a fine of Rs. 2,500 In default, Rigorous Imprisonment for a further period of one month. (R.I.

For one year is to run
concurrently with the sentence
under Charge 7).

10. 201 r/w A-2 Rigorous imprisonment for
I.P.C. 14 one year and to pay a fine of
Rs. 2,500 In default, rigorous
imprisonment for a further period of
one month. (R.I. for one year is to
run concurrently with the
sentence under Charge 6).

11. 506 (Part II) A-1, A-2, No separate sentence. I.P.C. (2 A-4, A-6 Counts) and A-7

12. 420 I.P.C A-1 Acquitted.

1st Accused: The sentence imposed on A-1 on charge Nos. 2 and 6 are to run consecutively. Total fine on A-1 is Rs. 61,30,000 (Rs. 61,20,000 + Rs. 10,000). Sentences imposed on A-1 in default of payment of fine on each count are to run separately and consecutively apart from the above sentence of imprisonments. In default of payment of fine, Total further sentence to undergo; 32-1/2 years + 3 months.

2nd Accused: The sentences imposed on A-2 on Charge Nos. 3 and 6 are to run consecutively. Total fine on A-2 Rs. 12,500 (Rs. 10,000 + Rs. 2,500). The Sentences imposed on A-2 in default of payment of fine is to run consecutively apart from the above sentenced of imprisonments.

4th Accused: The sentence of imprisonment of Charge Nos. 3 and are to run concurrently. Fine amount on A-4: Rs. 10,000 The sentence of imprisonment imposed in default of payment of fine is to run separately.

Accused 6 and 7: The sentence of imprisonment imposed on each of these Accused on Charge Nos. 3 and 7 are to run concurrently. Total Fine Rs. 12,500 each (Rs. 12,500 X 2 = Rs. 25,000). The sentence of imprisonment imposed in default of payment of fine is to run separately and consecutively.

Total fine on A-1 to A-7 Rs. 62,07,500 Out of the payment of fine of Rs. 51,30,000 collected from A-1 under Sec. 357(1) a (3) Cr.P.C., a compensation of Rs. 5,00,000 is to be paid to each of the victim girls, P.W.3 Sureskumari; P.W.4 Nallammal; P.W.5 Princy, P.W.6 Mary; P.W.7 Selvakumari @ Manjula; P.W.8 Sugunakumari @ Sudha; P.W.9 Pushparani; P.W.10 Saikumari @ Jaya P.W.12 Udayakumari; P.W.13 Vanitha; P.W.14 Aruljothi and P.W.15 Malligadevi (rs. 5,00,000 X 12 = Rs. 60,00,000).

ACCUSED RELATED:

Accused No. 2 is the Secretary of A-1, A-6 is the younger brother of A-1 and A-7 is the adopted son of A-1.

The facts of this case, as revealed by the prosecution, shocked the judicial conscience. It illustrate a classic example as to how the insatiable lust for sex of A-1 Swami Premananda leads to the raping of `13 Ashram girls and murder of one Ravi. The Ashram which is supposed to be God abode turned out to be devil's workshop. A-1 to whom the inmates of the Ashram regarded as God having the divine power turned out to be a monster. It is a classic case of betrayal of fatherly and divinely trust of the inmates of the Ashram girls who were mostly orphans and destitutes, brought from Srilanka except PW-4 Nallammal and PW-6 Mary.

The facts of the case also illustrate a classic example as to how a game- keeper has become a poacher or a treasury guard has become a robber. From the facts as disclosed by the prosecution, some of the victim girls were brought up by A-1 since when they were aged about 2, 3 and 6 years. They were reared to be butchered later when they attained the age.

The prosecution case was set in motion pursuant to the news item appeared in "The Indian Express" dated 15.11.1994 under the caption, "Tale of the two who were able to get away" (Ex.D.29) followed by a complaint, Ex.P-25 dated 16.11.1994 given by R. Sureshkumari @ Baby (PW-3) to the Inspector of Police, Viralimalai has laid the foundation for the case of rape of 13 girls and one murder in an ashram near Tiruchirappalli. In that brief complaint, Sureshkumari has stated that she joined the Premananda Swami Ashram, Mathalai, Sri Lanka when she was six years of age. She was taken to

India by the Swami along with 12 other girls in the year 1984 when the ashram was formed at Tiruchy. She had alleged that she was subjected to sexual harassment by the Swami four times even before she attained puberty at the age of 13 and that she was raped within a month on her attaining puberty by the Swami by threat and by beating her with stick. Unable to withstand this torture, she left the ashram at the age of 14 and came to Madras, but she was caught by the police and sent back to the ashram. In spite of her complaint to her mother, she did not come forward to help her and she had to suffer the torture in the ashram as she had no other place to go. She came to know from some inmates of the ashram that Premananda had not only raped her, but also many other girls in the ashram, and she recorded their conversation in a cassette. In these circumstances, she approached one of her relatives, Anand Mohan who helped her and Latha, another inmate, to come out of the ashram to Chennai, with the assistance of a Women Organisation. In the ashram, Premananda would not allow them to talk freely to others and they were compelled to undergo this ordeal. Divya Devi knew all this and was abetting the misdeeds of the Swami. Ultimately, unable to bear the torture, she left the ashram on 1.11.1994, but could not gather the courage to give a police complaint. However, with the assistance and encouragement given by the All Indian Women Democratic Association and in order to see that other girls also were not subjected to the same fate, she had come forward to expose the misdeeds of the Swami and the suffering undergone by her even at the cost of her dignity and modesty. She had stated that many girls had to undergo abortion because of the rapes committed on them by the Swami. She had alleged that one Balan had acted as a pimp for the Swami. She had requested for an appropriate action against the Swami, Divya Devi and Balan. The subsequent news report on these allegations was followed by the registration of a crime investigation, enquiry, seizure of incriminating documents, materials, evidence and filing of charge sheet.

The prosecutrix raped by A-1 systematically abetted by A-2, A-4, A-6 and A-7 are P.W.3 Sureshkumari, P.W.4 Nallammal, P.W.5 Princy, P.W.6 Mary, P.W.7 Selvakumari @ Manjula, P.W.8 Sugunakumari @ Sudha, P.W.9 Purshparani, P.W.10 Sasikumari @ Jaya, P.W.11 Shantha, P.W.12 Udayakumari, P.W.13 Vanitha, P.W.14 Aruljothi, P.W.15 Mallikadevi and P.W.55 Krishnaveni.

Most of the rapes committed on the victims as disclosed by the prosecution story are inside the Kudil of A-1. The modus operandi of A-1 abetted by other accused are that although there were 200-300 boys in the Ashram, A-1 used the girls to put on the night watch around his Kudil, Arulvakku Room, Dharmasala and other places. The victims tolerated the beastly assault of A-1 as they were orphans and totally dependent on A-1 Ashram for their food and shelter and they had no alternative place to go if they made complaint to the police or to the outside world. The evidence disclosed that A-2, A-4, A-6 and A-7 were abetting the commission of rape by A-1 by threatening the victims not to reveal the rape committed on them by A-1.

BACKGROUND FACTS :

The facts of this case are cumbersome. To avoid prolixity we may refer to few facts to appreciate the controversy in proper perspective. A-1 called Swami Premananda was running an orphanage in the name of Boopalakrishna Ashram, Mathalia at Srilanka. Due to the ethnic violence in the region A-1 came over to India in the year 1984. 12 young Tamil girls and a few women, who were in the Ashram

in Sri Lanka, were also brought to Tiruchy by boat. Initially, A-1 set up an Ashram in a rented building at Tiruchy and later established a big institution at Fathima Nagar in the year 1989 in a sprawling space spread over nearly 150 acres. The Ashram consists of residence, kudidil, eating place, school, etc. The boys and girls mostly orphans, were staying in the Ashram. There are separate hostels for the stay, education and training for boys, girls and women. Besides, the Ashram has 5 acres of flower plants, 5 acres of tamarind plantation, mango trees plantation, 300 coconut trees, 90 acres of cashew plantation, 1 acre of jackfruit plantation, 10 acres of teak wood, 1 acre of lime trees and 2 acres of guava trees. The Ashram has its branches at U.K., Switzerland, Belgium and many other countries.

BACKGROUND OF THE VICTIM GIRLS :

As already noticed except P.W.4 Nallammal and P.W.6 Mary, all other victims are Srilankan. Most of them were orphans and were left in the Ashram when they were small children. All of them were dependent on the first accused for food, shelter and other basic needs. All the victim girls were under the complete mercy and control of A-1 and the other accused. They were warned and threatened not to disclose to anybody about the misdeeds of A-1. If they were turned out from the Ashram they had no place to stay and therefore they had tolerated the cruel assault of rape on them for so long. They were like mouse before the cat. Who will bell the cat?

A comparative chart as to particulars of the victim girls of rape as recited by the High Court is being reproduced, which speaks for itself.

Name, Age and Relatives in Instances of Instances of Statement Rank the Ashram rape abortion made u/s committed 161(3) and and the period 164 Cr.P.C.

Sureshkumari Sister PW7- 1) 1985 before Nil Ex.P25 refers 20/1994 Selvakumari attaining to the P.W.3 Sri @ Manjula, puberty, at instances of Lankan PW 8 - residential rape Sugunakumari house at committed on @ Sudha, Crapatti, her by A1 PW10 Tiruchy.

Sasikumari 2) July 1987 @Jaya and in A1's room daughter of 3) July 1987 DW32 - in A1's room Deivanai 4) November 1991 in A1's bedroom at 1 p.m.

Nallammal 1) May 94 at Abortion Ex.P27 21/1994 11.30 am in conducted (Accident P.W.4 Native the Arulvakku by Dr. Register): of Room Muthulakshmi Contact with Pallathupatty, 2) May 94 at some time in known Keeranur, 12.30 p.m. in Oct. 94. person, Tamil Nadu. A1's room PW2-Nesan willingly;

3) May 94 at was asked milk 2.30 pm at to bear secretion Dharmasala. responsibility complete

4) May 94 at for the abortion. Dharmasala conception Ex.D1 (u/s (u/s 164):

Admits sexual intercourse with A1 and money given by A1 for abortion.

Princy, Sister of 1) 1986 at Missed her Ex.P.36 20/1994, PW2-Nesan lodge in periods 2-3 (Accident PW.5 Sri and PW18 Courtallam at times; taking Register): Lankan Dinesan 1 p.m. the Coitus with

2) July 90, abortifacients working, days after given by A-3 person Guru Purnima willingly pooja at 11 Hymen not pm in A1's intact room. Ex.D2 (u/s

3) 1992, a 164): Refer month after to A1's name the 3rd incident at 5 and four am. instances of

4) 1993 in rape lodge at commencng Thanjavur. from 1992.

5) on 17.4.1994.

Mary, 1) 1993 in the Missed her Ex.P35 16/1994 Pomegranate period once (Accident PW.6 Native Garden, 4 and Register): of Venniayaru days abortifacients Shows Estate, thereafter at given by A3 Hymen Not Madurai. the and Divya intact; as per Dharmasala Devi physical examination, age 16 years:

As per Ex.P46, Age Certificate, completed 16 years on 2.11.94.

Ex.D3 (u/s

164) Refers to sexual intercourse by force by A1 at the age of 13 in the room near Dharmasala at 1.30 pm. Immediately after Christmas.

Sivakumari Elder sister of 1) May 94 in Nil Hymen not @Manjula, PW3 & sister A1's room. intact.

22/1994, of PW3 8 & 2) October 94 Ex.D4 (u/s P.W.7, 10 related to at 4 pm in 164):

Sri Lankan. A1 as their A1's room. Refers to father's 3) Refers to sexual brother. forced intercourse perverted oral with A1 sex by A1. willingly once.

Sugunakumari 1) in 1993, 2-3 Nil Ex.P37 @Sudha, months after (Accident 16/1994, she attained Register):

PW 8, puberty A1 Not a virgin Sri Lankan had sexual accustomed intercourse in to sexual his room. intercourse.

2) September in the Arulvakku Room.	As per Ex.P48, Age Certificate,	94
3) September 94 in the Arulvakku Room.	completd 18 years as on 22.11.94. Ex.D5	
	(u/s.164):	

Refers to
sexual
intercourse
by A1
forcibly.

Pushparani Sister of 1) 1992 at Nil Ex.P.33 16/1994, PW 17 1.30 am in the Accident P.W.9, Pooja room. Register):

Sri Lankan 2) 1994 at Had affair 11.30 am in with a the working Dharmasala person for 1 room. year; as per

3) in 1994, 2 her own days prior to statement Deepavali in and physical A1's room. examination, aged 16. As per Ex.P49, not completed 16 years.

Statement (u/s) 164):

Refers forcible sexual intercourse by A1 when she was 14 years old.

Sasikumari @ Twin sister 1) In 1993, 15 Nil Ex.P37 Jaya, 16/1994 of PW8 & days after she (Accident PW.10 Younger attained Register):

sister of puberty in Hymen not PWs. A1's room. intact. As 3 & 7. per her own statement & physical examination, she is 16 years old.

As per Ex.P50, age certificate she has not completed 16 years as on 22.11.94.

Ex.D6 (u/s 164):

Refers sexual intercourse with a known person.

Shantha, Sister of 1) November Nil Ex.P39 34/1994 PW13 91 first sexual (Accident P.W.11 Vanitha intercourse by Register): Sri Lankan A1 who made Sexual her to agree contact with @ 4 pm - known male Arulvakku person.

room. Hymen not

2) Nov.92 in intact.

Visitors' Ex.D7 Room against (u/s.164):

her wish. Refers to

3) November sexual 93 in Divya intercourse Devi's room with A1 on against her consent in wish. 1991; without consent in 1992; without consent in 1993.

Udayakumari Sister of May 1993- Nil Ex. P.40 21/1994, PW 15 - forcible (Accident P.W.12, Malligadevi intercourse by Register): Sri Lankan & DW29 A1 in the Hymen - not Kanthan garden; intact;

accustomed to Refers to torture meted the sexual out to her by intercourse.

confining her No in the dog's Statement Kennel. u/s. 164 Cr.P.C.

recorded.

Vanitha, Younger 1) June 91 1st one at Ex. P57 21/1994, sister of while sleeping Dr.Gomathi's (Accident PW.13, PW11 - in A1's kudil. Hospital @ Register): Sri Lankan Shantha 2) July 92 Thanjavur. Contact with Saturday at 3 a known pm in A1's 2nd one at person for bedroom. Athi Hospital more than

3) October 94 Speaks of 2 four years.

at 11 am in forcible Last A1's room. sexual abortion 2 years back intercourse at Tanjore.

even as MTP done informed A1 twice.

that doctor had told her Statement that her uterus u/s 164 was very Cr.P.C.

weak Refers sexual contact with twice and abortion twice.

Aruljothi 1) 1991 in 1) Ex.D9 21/1994, A1's room at Abortifacients (Accident PW.14, 1 pm. given by Register):

Sri Lankan 2) One month Divya Devi & thereafter, A1 A3 in 1991. Contact with had forcible sexual 2) Second a known intercourse in abortion at person for 5 A1's room A3's instance years.

even while by taking she was tablets. Ex.D10 bleeding after (u/s 164):

taking abortifacients. 1) Refers to

3) On 3 sexual 14.11.94 in intercourse A1's room. by A1, 2 months after attaining puberty.

2) Second sexual intercourse in A1' room.

Missed her period and took abortifacient Next day, after publication of news, refers to the forcible sexual intercourse by A1 and refers to the conception and her request for termination of pregnancy.

Malligadevi, Sister of 1) April 92 at Nil Exp32 20/1994, PW12 - 2 pm. in A1's (Accident P.W.15, Udayakumari room Register):

Sri Lankan & D29 2) On 18.11.94 Hymen - not Kanthan intact.

Ex.P133 (u/s

164):

Refers to the forcible sexual intercourse by A1 after she attained puberty by persuading her that she would be cured of asthma in A1's room.

Krishnaveni. 1) January 94 Nil Not included 23/1994, at 3 pm in in the PW.55 Sri the room of charge.

Lankan PW.55

2) August 94 at 12 noon in A1's room.

3) September 94 at night watch in A1's room.

On her refusal the first time she was tied to calf made to run along with it & tortured for her adamancy.

Latha, Not raped by 30/1994 A1, but speaks P.W.16 about the rape of Sureshkumari, PW3 by A1 1987 and Vanitha, PW 13 in June, From the statements of the victim girls made under Section 164 Cr.P.C. as summarized above, it is seen that :

(a) P.Ws, 3, 4, 5, 6, 8, 9, 11, 13, 14 and 15 have named A-1 and his forcible rape on them :

(b) P.Ws. 7 and 11 (once) have stated to have consented for sexual intercourse with A-1; and

(c) P.W.10 has admitted forcible rape by a known person :

ACTIVITIES OF ASHRAM :

Religious discourses were performed by A-1 in the Ashram. He used to give holy water at the time of "abhishekam" which is believed to have a healing power and the "viboothi" and manjal were also used as substances for healing disease. A-1 used to produce "lingams" and viboothi during the nights of Mahasivarathri.

With this background let us now examine the evidence of each of the prosecutrix before the Court.

P.W.3 Sureshkumari was examined on 1.7.1996. Her age was recorded as 21 years. She deposed that PW-3 along with 12 other girls left Sri Lanka through a boat and arrived in India. The first accused took them in a van from Rameswaram to a house at Crapatti, Tiruchy. At that time she was aged 11-12 years and had not attained puberty. Even during that time A-1 used to call her to his room,

made her to sit on his lap and used to kiss her and give her sweets. This happened three times in 1985. On the fourth occasion, A-1 called her to a separate room, removed her dress and squeezed her breast hard to the pain of P.W.3, thereafter he pushed her on the bed and tried to have sexual intercourse forcibly. She attained puberty in the year 1987. She was confined in a room for nearly one month. After completion of one month, A-1 called her to his room on the pretext of giving viboothi (sacred ash) in July, 1987. Thereafter, A-1 made her to sit on his lap, embraced her and after kissing, asked her consent for sexual intercourse. When P.W.3 asked him how he could do that when he was wearing saffron robes. To that A-1 had pacified her by stating that robe is different and sex is different and further said that since he is like her father she would not beget any children even if he had sexual intercourse with her. P.W.3, however, managed to open the doors and came away running. It was witnessed by P.W.16. After three days at about 1.30 p.m. while P.W.3 was standing outside, A-1 gave her a signal to come. When P.W.3 went inside his room A-1 locked the doors. Thereafter, P.W.3 was taken to his bedroom and inside his bedroom, inspite of her attempt to escape, A-1 removed her dress and when she resisted A-1 slapped her and pushed her over the bed. When she shouted A-1 closed her mouth, mounted on her and started squeezing her breasts and despite protest A-1 had sexual intercourse with her. A-1 had sexual intercourse with her three times in year 1987. P.W.3 further stated that at about 1 p.m. in November, 1991 A-1 had forcibly sex with her. She further said that since they were orphans and there was nobody else to take care of them, she did not disclose to anybody. A-1 had also threatened her that if she revealed this to anybody she would be beaten. She further disclosed that in October, 1994 when P.W.9 refused to concede to the demand of A-1 during night, A-1 convened a meeting in the next morning on the ground that she was talking with one boy and therefore A-1 punished her by pushing his big toe in the vagina of P.W.9. When P.W.3 was unable to see such torture, she went out of the meeting; she was called and slapped in front of others. Therefore, P.W.3 not able to bear such torturous conduct of A-1 came out of the Ashram on 31.10.1994. It is also admitted that she left the Ashram in year 1991 and went to Madras.

P.W.4 Nallammal was examined on 2.7.1996. Her age was recorded as 22 years. She stated that in the Ashram she was doing flower garden work and the press work. She was also given the responsibility in the Pooja hall. Six months prior to the arrest of A-1 she was arranging the vessels in the Pooja room at 11.30 on Saturday. A-1 gave Arul vaku at 9.30 a.m. and it was completed at 3 p.m. After Arul vaku all the devotees left and only A-1 was in the Arul vaku room. From there A-1 called her and she went there thinking that A-1 would give vibuthi. But when she went near A-1 he closed three doors in the Arul vaku room. After closing the three doors he pushed her and removed the underskirt and raped her and she was crying. Though she was crying, the first accused continued to rape her. The first accused threatened her if she would disclose the happening to anybody he would kill her like Ravi was killed. In that month the first accused raped her 3 or 4 times. He had raped her two times in his room and once in the Dharmasala. In his room it was at about 12.30 p.m. and in the Dharmasala it was about 2.30 p.m. She further stated that she got three months pregnancy because A-1 forcibly raped her. When A-1 came to know that she was pregnant he instructed A-3 Divya to give pineapple and papaya and as the pregnancy was not aborted. A-1 called A-3 and asked her to give medicines and injection. Despite this pregnancy was not aborted and witness started bleeding. She further stated that two days later she gave a statement before the Magistrate. Some of the statements were true and other were lies because she came to learn from the interview that A-1

would be out within two days and she was frightened that if the accused came out in two days he would do something to her. So in front of the Magistrate, she gave some false information together with the true information.

P.W.5 Princy was examined on 2.7.1996. Her age was recorded as 22 years. She stated that when they were in Fatima Nagar Ashram, A-1 used to sleep on bed. Myself and P.W.3 were sleeping on the floor. At 1.00 a.m. the first accused came down from the bed and slept with her. The first accused forcibly raped her even though she was shouting and did not care even Sureshkumari was nearby. She further stated that Gurupoornima was held in July and two days after Gurupoornima in 1990 around 11.00 p.m. the first accused called her. That night she had the night watch. Night watch was between 11.00 p.m. to 12.00 p.m. She went into the 1st accused room. The first accused told Balan(A-4) to look outside whether anybody was standing outside. When she went inside the room of the first accused he locked the door. She tried to go outside the room but she could not. The 1st accused forcibly hugged her and pushed her on the bed and had sex with her. She told the first accused "I was grown up by you from 3 years old and I am like your daughter" even then he forcibly had sex with her.

P.W.6 Mary was examined on 2.7.1996. Her age was recorded as 18 years. She stated that in 1993 she was doing the night watch. That time the first accused called her to pomegranate field. The pomegranate field was in front of the first accused room. There are a lot of guava trees and pomegranate trees in the Ashram. She went to the pomegranate field as called by A-1. The first accused told her to have sex with him, whom she refused but then A-1 forcibly had sex with her against her wish. After she had sex with A-1 she did not get period for three months. Thereafter, A-1 called Divya and the 3rd accused Dr. Chandradevi to give some medicine for abortion. Divya (absconding accused) gave pineapple and papaya. She also took some medicines given by the third accused. The period was restored. Thereafter A-1 sent for her through a small girl and when she went to A-1, he forcibly had sex with her in the Dharmasala. She further deposed that she did not tell to anybody that A-1 raped her because in the Ashram no one could do anything against the first accused. She also deposed that A-1 pushed his leg big toe into Pushparani's vagina. They all put their heads down because they could not see this.

P.W.7 Selvakumari @ Manjula was examined on 3.7.1996. Her age was recorded as 23 years. She is the sister of P.W.3 Sureshkumari and P.W.8 Sugnakumari @ Sudha and P.W.10 Sasikumari @ Jaya. A-1 is their uncle. She stated that she attained the age when she was 14 years. In 1988 the 1st accused used to touch her while talking. She asked the 1st accused "You are my uncle, why are you touching me while talking" and the accused told her this relationship in earlier days only and now there is no relationship like this. She states that in August, 1990 the first accused caught her and pressed her breast. On being asked A-1 told her that he liked it and he would do it. She further deposed that six months before the first accused was arrested she was pouring water in the garden after lunch at 3 p.m. At that time, the first accused came from his room and showed the signal through the hand that she should come to his room. When she went to his room he removed her clothes and forcibly raped her. On being refused he slapped her on the cheeks. A-1 raped her in his room. She further stated that one month before the first accused was arrested he had forcibly sex with her in the evening at 4 p.m. in his room. She further stated that A-1 gave interview to the press

before she gave statement before the Magistrate. In the interview before the press the accused said that he would come out in two days. Fearing that the accused would come out he would do something to her so she hide some of the statement before the Magistrate. She further deposed that in 1993 the first accused kept his penis in her mouth. The first accused beat her to keep his penis in her mouth and also forced her to suck the penis with her mouth. She also stated that A-1 pushed his leg big toe into Pushparani's vagina.

P.W.8 Sugunkumari @ Sudha is the younger sister of P.W.3 Sureshkumari and P.W.7 Selvakumari @ Manjula. She was examined on 3.7.1996. Her age was recorded as 17 years. She stated that A-1 is her uncle. She attained the age in 1992. After two or three days on attaining age the first accused sent her elder sisters by van somewhere. A-1 refused to send me with them and she was sleeping in the room. Her room was about 100 feet distance from the A-1 room. At about 10 p.m. while she was still awaking A-1 came to her room and spread out something similar to a powder and she became unconscious. Through the back door A-1 carried her to his room and put her on his bed and A-1 forcibly lied down on her and raped her. After 10 minutes she became conscious and got up. A-1 threatened her that if she told this to her elder sisters or any other girls he would kill her. After the rape she got fever for three days. She did not tell to her sisters when they came back to the Ashram next day. She did not tell to anybody and kept quiet since A-1 threatened her that he would kill her. One week later A-1 called her. But because of the fear she did not went to see him. A-1 thereafter sent a little girl and called her but because of fear she did not went to his room. Then the little girl showed the place to A-1 where the witness was hiding. Thereafter A-1 showed a stick and threatened her and brought her to his room. Again the first accused forcibly raped her in a beastly manner. A-1 also threatened her not to tell anybody and because of fear she did not tell anybody that A-1 had raped her. After that whenever she saw A-1 she used to hide herself. Two months thereafter before A-1 was arrested she went to Arul Vaku room in a queue. A-1 had forcibly raped her for the third time in the Arul Vaku room. When she tried to stop accused nails in his hand touched her right eye. She stated that when A-1 raped her for the first time she was 14 years old.

The learned Trial Judge recorded the demeanour of P.W.8, in paragraph 272 of the judgment as under :-

"While recalling the forcible act of rape, the court noticed torrential flow of tears from the eyes of P.W.8 with all pain and conscience shocked, the court listened to the most startling and saddening story of P.W.8 who is yet to attain mental maturity. Though P.W.8 attained puberty, she is yet to grow physically and mentally. Even her childish voice is not broken into that of a grown up and adult woman."

The version of P.W.8 not only inspires the confidence of the court, but also shocks the conscience of the court.

P.W.9 Pusharani was examined on 4.7.1996. Her age was recorded as 18 years. She stated that they all came from Srilanka in 1984. In the Ashram she was given works such as building cleaning, supervising work, looking after the children and night watch. Her night watch time was between 2 and 3 a.m. Later on it was changed between 10 to 11 pm. The night watch is in front of the first

accused building. In 1992 A-1 inquired as to why she came late to do the night watch and beat her. It was about 10.30 p.m. Thereafter A-1 took her to his room in the pooja room and forcibly raped her. Because of rape she started bleeding in her vagina. At about 1.30 a.m. when she came out of the accused room two girls were doing night watch with her inquired as to where she went. As A-1 had threatened her not to disclose to anybody she did not tell this to girls that A-1 had sex with her. In 1994 A-1 took her to the Dharmasala at 11.30 p.m. and raped her. The accused after closing all the doors and windows in that room removed all her clothes. A-1 also removed his clothes and A-1 lay her on a table and had sex with her. She further deposed that after 5 to 6 days A-1 called a meeting and she attended the meeting where P.W.3 Sureshkumari, P.W.14 Aruljothi, P.W.10 Sasikumari, P.W.7 Selvakumari and other girls also came to that meeting. In the meeting A-1 removed all her clothes and called four persons to hold her legs and hands. Thereafter A-1 lay down her without clothes and A-1 beat her with a cane. A-1 also pushed his leg big toe into her vagina and when she shouted because of pain he did not leave her. Unable to see P.W.3 left the meeting. Two days before Diwali in 1994 A-1 had also forcibly sex with her in his room.

The learned Trial Judge recorded the demeanour and observed the manner under which P.W.9 deposed before the Court in paragraph 280 of the judgment as under :-

"280. Experiencing the most humiliating form of violence P.W.9 did not even attend the daily pooja. About 2 days prior to Deepavali 1994. A-1 again had sexual intercourse in his Kudil with P.W.9. Much weight has to be attached to the evidence of P.W.9. While narrating the ugly episode the Court could realize the psychological harassment of this girl. Even while she was confronted about the humiliation she developed a kind of giddiness and uneasiness and the Cross examination could be continued only the next day. P.W.9 who was below 16 years during 1992-94, was ravished by A.1. The consent of P.W. 9 is not of much relevance".

P.W.10 Sasikumari @ Jaya was examined on 4.7.1996. Her age was recorded as 17 years. She also stated that they all came from Srilanka to India in 1984. She was working in the garden, cleaning office and cleaning Dharmasla in the Ashram. She further stated that when she was two years old, her mother left her in Poobalakrishna Ashram. She attained the age in 1993 when she was 15 years old. She was kept in a room for 10 to 15 days. After 15 days A-1 came to her room, hugged her and kissed her. The next day she came out of the room. From 10 to 11 p.m. she was doing night watch, A-1 took her to his room. She was near the bell as after every hour we ring the bell in the Ashram. It was about 50 feet distance from A-1 room and when she was near the bell A-1 called her making a sign with his hands. He asked her to come closer. When she went to A-1 he pressed her breasts. She got frightened and ran out. Two days later, A-1 gave her night watch from 1 to 2 a.m. and when she was doing night watch A-1 caught her hands and pulled her to his room and pushed her on his bed. When A-1 pushed her on the bed she realized that A-1 would do something so she tried to escape from him. But A-1 slapped her on the cheeks, beat her and had forcibly sex with her. She further deposed that Arul Vaku room used to be dark and she saw that A-1 used to take girls one by one into that room. She did not disclose to anybody about her rape as A-1 threatened her that if she told about the rape he would kill her on the same day. She further deposed that A-1 used to tell them that "although he is in a human body he is God". A-1 also threatened girls that they should not tell against him to the Magistrate and if they disclosed anything he would come out and see them. The

witness further deposed that two days before the police examined her, A-1 threatened that they should not tell against him to the Magistrate and therefore they hide something in their statements to the Magistrate.

P.W.11 Shanta was examined on 4.7.1996. Her age was recorded as 36 years. The High Court has acquitted the accused on this count, in our view, wrongly but since no appeal is preferred, we need not examine the statement of this witness, although she admitted having sex with A-1.

P.W.12 Udayakumari was examined on 5.7.1996. Her age was recorded as 24 years. She stated that she born in Sri Lanka. In 1984 she came from Sri Lanka. She does not have parents. They were staying in a rented house with A-1 before they shifted to Fatimanagar in 1986. She was doing work in the flower garden and looking after the dogs in the Ashram. In 1990 A-1 called her through A-4. When she went to A-1 room and inquired as to why he had called her, A-1 asked her whether she wanted to have sex with him. To which she replied, "how can I have sex with you because I was grown up by you and I thought you are like my parents". The first accused then by way of revenge kept her in the dog kennel for three days without giving her food and water on the excuse that she did not look after the dogs well. The witness further stated that in May, 1993 when she was working in the flower garden, A-1 inquired whether I poured water to the plants. To which she replied that she had poured water. It was about 4 p.m. and in the flower garden A-1 forcibly hugged her and kissed her and then he pushed down and lay on her and raped her. She did not tell to anybody as the accused threatened her not to tell.

The learned Trial Judge has observed as to the demeanour of P.W.12 during her examination and recorded in paragraph 304 of the judgment as under :-

"P.W.12 had narrated the entire incident in a simple manner and in her own language. The court could notice the reflection of pain and suffering on her face. There was torrential flow of tears even while she was recalling the incident. During the examination she could not control herself when she was questioned whether she consented for the act committed on her. Nothing could be more perverse than to reject the testimony of this victim girl."

P.W.13 Vanitha was examined on 5.7.1996. Her age was recorded as 27 years. She stated that she was born on 31.7.1969 at Srilanka. P.W.11 Shantha is her elder sister. In 1984 she and her family came from Srilanka to India because of riots. They were living in a rented house in RMS colony, Karumandabam, Trichy. In 1989 her sisters Shanta and Gita went to Srilanka but she stayed back in the Ashram. In 1990 her sisters came from Colombo to the Ashram. In 1991 when Divya Mataji was not in the Ashram A-1 told her to do the works of Divya Mataji. At that time she was studying plus one. She was sleeping in the first accused room. There were four rooms in the first accused kudil. She was sleeping in the centre section. In the night at 1 a.m. she felt that somebody was covering her face with a cloth She also felt that person the who covered her face had sex forcibly with her. When she got up she found that it was A-1. She became three months' pregnant. In the Ashram if any girl does not get the periods usually it is reported to Divya Mataji and Divya Mataji will convey message to A-1. Accordingly, she reported to Divya Mataji and Divya Mataji reported to A-1 about the delay of three months period. A-1 took the urine for examination through A-7. She stated that A-1 had sex

with her in June, 1991. She went to Tanjavur to Dr. Gomathi accompanied by P.W.3, P.W.5, A-1 and A-2. A-1 was driving the car. They were in Tanjavur for three days and pregnancy was aborted in Dr. Gomathi hospital. After they came back from hospital A-1 did not allow her to go home for five days and kept her in his kudil. She was in the room next to A-1 room. In July 1992 at 3 p.m. A-1 called her for some work. When she went there A-1 closed the door and pushed her on his bed and forcibly had sex with her. She became five months pregnant after A-1 had sex with her. It was reported to A-1. A-1 again sent her urine for examination and it was found that she was 5 months' pregnant. Thereafter, A-1 sent her with A-4 to Tanjavur to abort the pregnancy. She was aborted in Arti hospital in Tanjavur. She did not disclose it to anybody that she had sex with A-1 and went twice to do abortion in Tanjavur, because she believed that A-1 was a divine man and if she would tell about activities of A-1 he would harm her family. After 10 days of 2nd abortion doctor told A-1 that her womb was weak and when she told A-1 her womb was weak A-1 had again forcibly raped her. Again in October, 1994 around 11 am A-1 called her and when she went to his room A-1 had forcibly sex with her. She further stated that she did not tell anybody because she was frightened that A-1 would harm her family and because A-1 told to her father and mother that he was an important person.

P.W.14 Aruljothi was examined on 12.7.1996. Her age was recorded as 21 years. She stated that she was born in Matala, Sri Lanka. From the age of two she was brought up in the Matale Poobala Krishna Ashram. The said Ashram was managed by A-1. She does not have parents. In year 1983 A-1 came to India. In the year 1984 she and the other children came to India from Sri Lanka. They arrived at Vedaraniyam and from there A-1 took them by a van to Crawford, Trichy. There they stayed in a rented house. In 1986 they came to the Ashram at Fathimanagar. In the Ashram, the food and clothes were provided by A-1. She attained the age in the year 1987. In the year 1988 on Krishna Jayanthi she was sleeping in Sureshkumari's (P.W.3) room. Early morning at 5.30 A-1 came to the room took the Vesti he was wearing and put it on her face and had sex with her by force. In 1989 in the evening at 4 O'clock A-1 asked her to come to his room. He asked her to apply oil to his legs. A-1 also asked her to apply oil on his penis. When she refused to do that A-1 beat her and forced her and asked her to apply oil on his penis. A-1 threatened her that he would murder her, if she told about this to outside. Next day early in the morning at 5.30, P.W.7 Selvakumari, P.W.5 Princy and P.W.12 Udayakumari, four of them ran away from the Ashram. When they were in Samayapuram A-1 and A-2 forcibly took them from Samayapuram to the Ashram. In the Ashram A-1 tied her and three others and beat them. In 1991 when they were cooking in the kitchen in the afternoon at about 1. o'clock A-1 forcibly took her to his room and pushed her on the bed in his room and had sex by force. After having sex with him she did not get menstruation. Divya Devi and A-3 used to have a meeting on every Sunday in the Ashram and enquired who and who did not get their menstruation. During such Sunday's meeting she told A-3 and Divya Mataji that she did not have her periods. Thereafter Divya Mataji gave her a pineapple fruit and A-3 Chandra Devi gave tablets for disturbing the conception. Again A-1 had forcibly intercourse with her. After that she had fever for seven days and slept. Then A-3 Dr.Chandra Devi gave treatment to her. After a month when she was working in the pooja room A-1 came to the pooja room at around 1.00 in the day time, pushed her down in the pooja room itself and had forcibly intercourse with her. After this again monthly period stopped. A-3 Dr.Chandra Devi gave tablets to disturb the conception and she was aborted. In the year 1992 one day A-1 sent a message to her and she was lying down in her room in fever. Since she did not respond to the calling of A-1, in Dharamsala when she was eating A-1 pulled her hair and knocked

against the wall. He took a stick and pricked her eyes by the stick, so her eyes became red and got infection. This was witnessed by about 100 girls in the Dharmasala.

In 1994 five days before the arrest of A-1 (A-1 was arrested on 19.11.994) she was doing night watch in the cowshed. At midnight about 12' o'clock A-4 came to her and told that A-1 is calling her and took her to A-1 room. A-4 left her in A-1 room and went. Thereafter A-1 shut the doors of the room and pulled her on the bed and had sexual intercourse forcibly. About 20 days before the arrest of A-1 she had her menstruation. She further stated that she never told to anybody that A-1 had sexual contact with her forcibly. Just before the police arrested A-1, A-1 told that he would come back within 2 days and that she should not tell anybody that he had sexual contact with her and he told others that there was no way or nobody for them to give food. Particularly, A-1 called her alone and threatened her that she should not tell anybody that he had sexual contact with her just five days before. She further stated that other than A-1 Swami Premananda, nobody had sexual contact with her.

P.W.15 Mallikadevi was examined on 18.7.1996. Her age was recorded as 22 years. She stated that she was born in Colombo in Sri Lanka. She lost her parents. She was in a Guru Shanti Villayam in Matakilapu, Sri Lanka. A-1 took her to Poobala Krishna Ashram in Matale. It was maintained by A-1. In 1984 she came from Srilanka to India. She and her sister P.W.12 Udayakumari along with some other girls came to India from Srilanka. They were made to stay in a rented house in Crawford, Trichy, by A-1. From there they came to Fatimanagar Ashram. They were provided food, clothes and shelter by A-1. She was assigned the library work in the Ashram. She was also doing the night watch from 10.00 to 11.00 p.m. In 1991 when she was doing night watch between 10 to 11 pm A-1 called her to his room and when she went A-1 said that he liked her and hugged her. In his room when A-1 hugged and kissed her to consent to his wish, she ran out from his room.

In April, 1992 one day she went to A-1 and told that she is suffering from asthma and could not work in the library and so she would go and sleep in the room. A-1 told her that she should compulsorily do the library work and after that she went to the library. After finishing the work around 2.00 o'clock in the noon she went to her room. A-1 called her from his room by waving his hand and when she went to the room A-1 hugged her to which she told that she had been suffering from asthma and if she got a baby without marrying, people would talk bad about her. For that A-1 told her that if she would sleep with him her asthma would be cured and saying so A-1 pushed her to his bed and had forcibly sex with her. A-1 had sex with her about 10 minutes after that she returned to her room crying. She also stated that she gave a statement to Pudukkottai Magistrate. Before the statement A-1 threatened her not to tell anybody and told Magistrate that she had sex with A-1 on her own wish.

All the prosecutrix were examined by the doctor and found that hymen was not intact. The potency of A-1 was also established.

The prosecutrix were subjected to incisive cross-examination. However, no material could be brought out to discredit the credit worthiness of the statement in chief. From the facts of the prosecution as disclosed most of the victim girls were orphans brought from Srilanka. A-1 provided

them food, clothes and shelter. They were entirely dependent on A-1 for their survival. Once they were thrown out by A-1 they had no alternative place to stay. A-1 had dominion control over the prosecutrix physically, mentally and spiritually. In fact, many of them believed that A-1 is God to them. It is in these circumstances, there is no reason why the prosecutrix should depose falsely against A-1 who was the source of their survival physically, mentally and spiritually, by providing shelter, food and clothes to them.

It is trite law that the prosecutrix is not an accomplice. The evidence of victim of sexual assault, if inspires confidence, conviction can be founded on her testimony alone unless there are compelling reasons for seeking corroboration. Her evidence is more reliable than that of injured witness. In a case of sexual assault corroboration as a condition for judicial reliance is not a requirement of law but a guidance of prudence. Examining the testimony of prosecutrix in the background, as stated above, and in the facts and circumstances of this case, we are of the clear view, that the testimony of prosecutrix inspires confidence, on the basis of which alone conviction can be safely sustained. Moreover, in the instant case we find that the statements of the prosecutrix are well corroborated by medical and other contemporaneous documents. It is also well established principle of law that minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. [See State of Punjab v. Gurmit Singh and Ors., [1996] 2 SCC 384] We have heard Mr. Ram Jethmalani, learned senior counsel, for the appellants and Mr. Sushil Kumar learned senior counsel for the respondent at length.

At the outset we may observe here that the contentions which have been raised before the Trial Court and the High Court and got rejected by assigning good reasons by two courts have been restated again by the counsel for the appellants before this Court.

Before we proceed to deal with the contentions we may at this stage set out several charges on various counts framed against the accused by the Trial Court :

Charge No. Against which Under what Gist of the accused section offences (1) (2) (3) (4) Charge No.1 A.1 to A.7 U/s 120B IPC A1 to A7 Criminal conspiracy to commit rape on victim girls.

Abatement of rape and to cause abortion and to murder Ravi.

A.3 Being a Co-

Conspirator for the first part of the Conspiracy of rape, Abatement of rape and abortion. Charge No.2 A.1 U/s 376(2)

(c) For committing I.P.C. 14 Counts rape on 14 Victim girls Nallammal, Mary, Princy Selvakumari @ Manjula, Sugunakumari @ Sudha, Pushparani, Mallikadevi, Sasikumari @Jaya, Aruljothi, Sureshkumari, Latha, Udayakumari, Vanitha and Shantha.

Charge No.3 A.2 to A.7 U/s 376 r/w 109 For abetment of I.P.C. rape Charge No.4 A.1 U/s 354 I.P.C. For 4 counts. outraging the modesty of 4 victim girls Sureshkumari, Princy, Kumari and Sasikumari.

Charge No.5 A.3 U/s 313 I.P.C. For causing 8 counts abortion to 8 Victim girls.

Charge No.6 A.1 U/s 302 IPC For causing the A.2 U/s 302 r/w 34 murder of Ravi IPC Charge No.7 A.4 to A.7 U/s 302 r/w 109 For abetting the murder of Ravi murder of Ravi.

Charge No.8 A.1, A.2, A.4 to U/s 343 I.P.C. Wrongful A.7 confinement of Ravi in Kavadi Kudil.

ChargeNo.9 A.5 to A.7 U/s 201 r/w 302 For causing the I.P.C. evidence burying the body of Ravi in the Ashram.

Charge No.10 A.2 U/s 201 r/w 114 Abetment by being IPC present in the place where the body of Ravi was buried.

Charge No.11 A.1, A.2, A.4 U/s 506 (Part II) Criminal to A.7 I.P.C. (4 Counts) Intimidation and the threat to cause death.

Charge No.12 A.1 U/s 420 I.P.C. For cheating Mark Dennis dishonestly inducing him to part with the money.

This case has more than one rarest of rare facts. It is rare that A-1, supposed to be incarnation of God and allegedly having divine powers has been alleged of raping 13 of Ashram girls systematically and murder of Ravi. It is rare that out of 62 prosecution witnesses examined none of them turned hostile. It is rare that in an institution like Ashram, P.W.62 I.O. seized amongst other things two new packets of nirodh vide Ex.P.83 from the kudil of Divya Devi in the Ashram.

The contention of Mr. Ram Jethmalani, learned senior counsel, that the charge of rape leveled against A-1 does not come within the ambit of definition of rape under Section 375 IPC inasmuch as some of the victim girls have consented to have sexual intercourse with A-1. It is also contended that investigation has been carried out in breach of Section 160 of the Code of Criminal Procedure. These contentions are to be noted only to be rejected. Section 375 defines rape. It reads :-

"375.Rape.- 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.

It is in the evidence of the prosecutrix, as already referred above, consent of many of the prosecutrix has been obtained by deceitful means that if they had sex with A-1 they would cure the asthma or that if they had sex with A-1 it is service to God or some of the girls have been raped under threat of dire consequences. As already stated A-1 had dominion control over the Ashram girls and most of them are orphans and no alternative place to go. Therefore it clearly falls within the thirdly clause of Section 375 IPC. Furthermore, if the consent is obtained by deceitful means or under threat of death or hurt, it is no consent at all and it is without her consent. Therefore, the charge of rape leveled against A-1 falls within the definition of Section 375 I.P.C. This apart, under sixthly clause the consent is immaterial when she is under 16 years of age. PWs. 6, 8, 9, 10 were below 16 years of age when they were raped by A-1.

A-1 was charged under Section 376(2)(c) and convicted under that Section. The charge under Section 376(2)(c) was never challenged by A-1. Section 376(2)(c) reads :-

"376(2)(c)- Whoever, -

being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution or

shall be punished with Rigorous Imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine."

Similarly, the contention of breach of Section 160 Cr.P.C. is unacceptable. All the victim girls were the inmates of the Ashram. They were raped by A-1 in the Ashram, who had dominion control over the Ashram. The victim girls were being threatened not to disclose to anybody about the misdeeds of A-1 or face the dire consequences including the threat of death. In such circumstances, the Ashram cannot be the place for the purposes of Section 160 Cr.P.C. and the victim girls were rightly examined and interrogated in women police stations. They were removed from the Ashram to erase the fear psychosis from them. It was for the safety and to serve the interest of justice, they were

removed from the clutches of A-1. Section 160 Cr.P.C. must be understood and appreciated in the context of given situation.

MISJOINDER OF CHARGES:

Mr. Ram Jethmalani, learned senior counsel, contended that Section 218 Cr.P.C. prescribes that for every distinct offence there shall be a separate charge and every charge shall be tried separately, which has not been done in the present case. According to him, the first injunction contained in Section 218 is incurable either under Sections 464 or under Section 465 Cr.P.C. In other words, if the charge is framed in contravention of Section 218 it is the breach of mandate of Section 218 and is illegal and not misjoinder of charges and therefore it is incurable either under Section 464 or Section 465 Cr.P.C.

We are unable to countenance with this contention of Mr. Ram Jethmalani. It is true that Section 218 Cr.P.C. prescribes for every distinct offence there shall be a separate charge and every charge shall be tried separately. Chapter XVII of the Code deals with the charge. Section 218 is under the Heading - "Joinder of Charges". Therefore, if joinder of charges is in contravention of procedure prescribed under Section 218, it would be misjoinder of charges and curable under Section 464 and Section 465 Cr.P.C., provided no failure of justice has in fact been occasioned thereby.

Reliance has been heavily placed on the decision of this Court in *W. Slaney v. State of M.P.*, AIR (1956) SC 116 particularly the observation of Justice Imam in paragraphs 97 and 99. That was a case where this Court was considering the error and irregularity in which there was conviction with no charge at all from start to the finish down to cases in which there was a charge but with errors, irregularities and omissions in it. Therefore, the decision in *Slaney* (supra) was not based on misjoinder of charges. There was no charge under Section 302 IPC from start to finish and in that context this Court said that a trial must be examined on the touchstone whether the trial is fair. It was pointed out in paragraph 44 as under :-

"44 Now, as we have said, sections 225, 232, 535 and 537(a) between them, cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The Code is emphatic that 'whatever' the irregularity it is not to be regarded as fatal unless there is prejudice.

It is the substance that we must seek. Courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction.

Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said

and done what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

If all these elements are there and no prejudice is shown the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one."

Justice Imam in paragraphs 97 and 99 observed that even if there is a total absence of a charge from start to finish in a case where the law requires a charge to be framed, is a contravention of the provisions of the Code as to the mode of trial and a conviction of the accused of an offence in such a case is invalid and the question of prejudice does not arise. As already said in Slaney (supra) there was no charge under Section 302 from start to finish of the case. That is not the case here; here the charge was framed on all counts. Therefore, the facts of the case in Slaney (supra) are not applicable in the present facts. However, in Slaney (supra) Justice Imam also observed in paragraph 98 as under :-

"98. In cases where a charge has been framed and there is an omission or irregularity in it, it is difficult to see how the mode of trial is affected. In any event, the Code expressly provides that in such cases the conviction need not be set aside, unless, in fact, a failure of justice has resulted."

In the case of *Birichh Bhuian v. State of Bihar*, [1963] Supp. 2 SCR 328, a five Judge Bench of this Court, where Justice Imam was a party, considered the distinction between an illegality and an irregularity in such misjoinder of charges. This Court, after considering the divergent views of the Privy Council as to whether misjoinder of charges is not saved by Section 537 (old) and 465 (new), the Court then said at p.335 (2) SCR as under:-

"In this state of law, the Parliament has intervened to set at rest the conflict by passing Act XXVI of 1955 making a separate provision in respect of errors, omissions or irregularities in a charge and also enlarging the meaning of the expression such errors etc. so as to include a misjoinder of charges. After the amendment there is no scope for contending that misjoinder of charges is not saved by s.537 of the Criminal Procedure Code if it has not occasioned a failure of justice."

This Court summarised its finding at p.337 (2) SCR as under :-

"To summarise : a charge is a precise formulation of a specific accusation made against a person of an offence alleged to have been committed by him. Sections 234 to 239 permit the joinder of such charges under specified conditions for the purpose of a single trial. Such a joinder may be of charges in respect of different offences committed by a single person or several persons. If the joinder of charges was contrary to the provisions of the Code it would be a misjoinder of charges. Section 537 prohibits the revisional or the appellate court from setting aside a finding, sentence, or order passed by a court of competent jurisdiction on the ground of such a misjoinder unless it has occasioned a failure of justice."

Again in the case of State of Andhra Pradesh v. Cheemalapati Ganeswara Rao, [1964] 3 SCR 297, the Court noticed the decisions rendered in (supra) and Birichh Bhuian (supra) and said at p.332 3 SCR as under:-

"Even if we were to assume that there has been a misjoinder of charges in violation of the provisions of ss.233 to 239 of the Code, the High Court was incompetent to set aside the conviction of the respondents without coming to the definite conclusion that misjoinder had occasioned failure of justice. This decision completely meets the argument based upon Dawson's case [1960] 1 All. E.R.558. Merely because the accused persons are charged with a large number of offences and convicted at the trial the conviction cannot be set aside by the appellate court unless it in fact came to the conclusion that the accused persons were embarrassed in their defence with the result that there was a failure of justice. For all these reasons we cannot accept the argument of learned counsel on the ground of misjoinder of charges and multiplicity of charges."

The question was again examined by this Court in the case of State of West Bengal v. Laisal Haque, [1989] 3 SCC 166, where the earlier views of this Court including the views of Justice Vivian Bose in Slaney (supra) were reiterated.

It is clear from the aforesaid decisions that misjoinder of charges is not an illegality but an irregularity curable under Section 464 or Section 465 Cr.P.C. provided no failure of justice had occasioned thereby. Whether or not the failure of justice had occasioned thereby, it is the duty of the Court to see, whether an accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

In the light of the aforesaid principle, let us now examine the facts of the present case, as to whether any failure of justice had occasioned thereby or whether any prejudice is caused to the accused. The accused was represented by a very senior and abled criminal lawyer. All the prosecution witnesses were subjected to incisive cross-examination. The accused put up 49 defence witnesses. In his cross-examination under Section 313 altogether 445 questions were put to him, affording an opportunity to explain all the circumstances appearing against him. Having regard to these facts, in our opinion, no failure of justice has occasioned and both the Courts below are justified in rejecting the contention.

ALLEGATION OF TORTURE AND BEATING TO THE VICTIM GIRLS BY THE POLICE.

If this contention is established it could have been fatal to the prosecution story, but in our opinion not. Mr. Ram Jethmalani in this connection has referred to the statement of Aruljothi PW.14. P.W.14 stated before the Court as under :-

"When the Magistrate examined me I told him that because of the fear of A1 first we didn't give statement, after the police beat us, me and the other girls gave the statement that we were raped by Premananda Swami. I myself took the decision and told to the Magistrate that I gave the statement after the police beat me. Not all the girls together took this decision."

This statement must be examined in the context and under the facts and circumstances, in which it has been stated. All the victim girls were in one voice that because of fear of A-1, ladies in the Ashram did not tell to the police that A-1 had sexually contact with them. They further stated that just one hour before the arrest of A-1, he called all the Ashram ladies and threatened that nobody should tell the police that he had sexually contact with them. The victim girls were also in one voice that A-1 had given a press statement that he would come out on bail in two days and the victim girls were frightened if the accused really came out on bail he would take stern action against them. Keeping in view the trauma and agony suffered by all the victim girls at the hands of A-1, it is expected that the victim girls were reluctant to disclose the misdeeds of A-1 for fear of reprisals. This apart, DW-10 filed a Habeas Corpus Petition No. 1808 of 1994. On 7.12.1994 she was questioned by the Hon'ble Judges constituting the Bench of the High Court in Chamber. She had stated before the Judges that she had not been ill-treated or wrongly confined by the respondent at any point of time and was not coerced to give out any statement against her will. Another detenu Valliammal also filed a Habeas Corpus Petition through her father Sundaram. The allegation in the petition was that the police are compelling the detenu to give false statement. She was examined by the Hon'ble Judges in Chamber and it was observed by the Hon'ble Judges as under :-

"We examined the detenu in our chambers. According to her, her date of birth is 9.5.1979. She has crossed 15 years and she is now a student in 9th standard in the Ashramam School. She was very specific, while stating before us, that she was not coerced or tortured by the police to give out any statement against her will and that she was not wrongfully confined or illegally detained."

Another Habeas Corpus No. 1010 of 1995 was filed by the legal guardian of Vasanthi. She was examined in the Chamber and she did not complaint of any ill-treatment. She expressed her willingness not to go with the petitioner but to stay in "Udhavum Karangal", an institution looking after the persons who are unable to look after themselves.

The detenus also filed Habeas Corpus Petition No. 623 and 624 of 1995. They were also examined in the Chambers and there was no complaint of coercion or ill-treatment.

Another Habeas Corpus Petition No. 1688 of 1995 was filed by Devyani DW-32 mother of PWs. 7, 8 and 10. The detenus were produced before the Court escorted by two women police from Ambattur Police Station who had nothing to do with the investigating agency in the crime against A-1. No complaint of torture or coercion has been made to the Hon'ble Judge on being questioned. On the contrary, the victim girls stated that their mother (DW-32) had sent a letter dated 5.4.1995 mentioning that A-1 Swami Pramananda would give them all in marriage to suitable bridegrooms and pay to each one of them Rs. 2 lakh in dowry. On being questioned by the Hon'ble Judges DW-32 admitted to have sent the said letter to her daughters. This would clearly show that even at the belated stage an attempt was made to lure the prosecutrix by offering money and marriages. They were examined on the 21st day of December, 1995. No complaint of torture or coercion was made to the Hon'ble Judges.

Reverting back to the statement of P.W.14 Aruljothi, in which she admitted that they had started disclosing the facts after the police beat them has to be considered in the light of the statement by

P.W.14 under Section 164 Cr.P.C. This is what she has stated :-

"Balan came in search of me at about 12 midnight and took me stating that Premananda Swami is calling me. After letting me inside Premananda's room, he went away locked the door. On that day also Premananda swami compelled me to have sexual intercourse. This happened five days prior to his arrest. While Premananda Swami was arrested, police also took us to the Pudukkottai Police Station in a jeep. In the Police Station, we were enquired about the character of Premananda Swami. Since Premananda has already kept us under threat, myself and others did not reveal anything to the police. After the police beat us, myself and other girls informed that we were raped by Premananda. Only at that time I came to know that Premananda Swami was having sexual relationship with other girls."

It is in that context the High Court holds that so called beating could have meant to shake-off their inhibition and fear, to make them free to say what they wanted to say. In the given facts and circumstances of this case, beating will mean to remove the fear psychosis and to come out with truth. We do not find any infirmity in the concurrent findings recorded by both the Courts below on this count.

CONSPIRACY CASTED AGAINST A-1.

The allegation of conspiracy hatched by Mark Denis, Ambikanandan P.W.1 (Approver), Anandamohan P.W.30 and Latha PW.16 is also to be noted to be rejected. It is admitted that P.W.3 Suresh Kumari along with Latha P.W.16 ran away from the Ashram on 31.10.14994. Till 15.11.1994 no complaint was lodged. On 15.11.1994, DW-32 the mother of P.W.3 lodged a complaint with the Viralimalai Police Station, a crime No. 1181 of 1994 was registered under Section 363 I.P.C. While police was investigating that case P.W.3 lodged a complaint (Ex.P.25) as already noted and a crime No. 1183/94 was registered on 17.11.1994 under Sections 142 and 376. By an order dated 19.11.1994 passed by the DGP the case was handed over to C.B.C.I.D. and C.B.C.I.D. came into picture on 19.11.1994. Therefore, the allegation that the victim girls were with C.B. CI.D right from 1.11.1994 is belied by the documents. The theory of conspiracy hatched by Mark Denis, PW-1, Anandamohan, PW-30 and Latha PW-16 against A-1 is, therefore, demolished.

D.N.A.TEST Dr. Lalji Singh, Deputy Director, C.C.M.B. Hyderabad, was examined as P.W.59. Dr.Lalji Singh is working as the Deputy Director at the Centre for Cellular and Molecular Biology at Hyderabad. This Centre is on the Constituent Laboratories of the Council of Scientific and Industrial Research under the Department of Science and Technology, government of India. Dr. Lalji Singh initially joined the Centre as Scientist-E-II and was subsequently promoted as Scientist-F (Deputy Director) from 1992. He is B.Sc., M.Sc. and Ph.D. qualified from Banaras Hindu University, having obtained his Doctorate in the year 1971. He had worked in the Calcutta University as a Pool Officer from 1971 to 1974. He was awarded commonwealth Fellowship to go to United Kingdom and he was working in the Institute of Animal Genetics, University of Edinburg from 1974 to 1987. He came to India and joined the C.C.M.B. Hyderabad on 3.6.1987. According to Dr.Lalji Singh, he had published 57 Scientific papers in internationally reputed journals. He was awarded the Banaras Hindu University Gold medal in 1966, the science Academy Medal for Young Scientists for the year 1974

and various other awards like the C.S.I.R. Technology Award for the year 1992 for Biological Sciences Professor S.P. Roy Chaudhuri 75th Birthday Lecture Award for the year 1994. Professor Viswanathan memorial Lecture award for the year 1995, VASVIK Research Award for Biological Sciences and Technology for the year 1992 and the Ranbaxy Research Award in the field of Basic Medical Sciences for the year 1994. He is the elected Fellow of the Indian Academy of Science since 1989, Fellow of National Academy of Science since 1991 and fellow of Indian National Science Academy elected in 1993. He is also a member of various other organizations like the Indian Society for cell Biology etc. according to him, he had given opinion in 96 cases and has also given evidence in 5 cases in various courts, including the Rajiv Gandhi's Assassination Case.

He stated that after the detailed examination, the result was submitted vide Ex.P.185. The operative portion of the Report is as follows :-

"When D.N.A. Profiles in track 3 (Premananda) was compared with that of track 2 (tissue from the foetus) and track 1 (Aruljothi) it is seen that ever bend present in track 2 is fully accounted for either being inherited from the mother (track 1) or from the alleged father (track 3). The alleged father Premananda (source of Exhibit A) and the mother Aruljothi (Source Exhibit C) are, therefore, the biological parents of the dead foetus (Source of Exhibit B)".

Dr.Lalji Singh was subjected to lengthy cross examination. He has categorically stated that if really there is any contamination, it would result only in non-matching of bands. He has also stated that multilocus/single locus probe have been carried out throughout the world for DNA test.

Regarding Data Base and contamination Dr.Lalji has stated in cross- examination as under :-"

"As far as Paternity is concerned, the Paternity of the child is determined by identifying which are the bands of maternal and which are paternal. Therefore, comparison of DNA fingerprinting of the child with the mother will identify which are the bands maternally inherited. Elimination of these bands will leave those bands inherited from the child to father, the paternally specific bands. If the alleged Father's Fingerprinting pattern contains all of these bands, then he is the true Biological Father of that Child and Paternity is confirmed. The article published by a Laboratory - CELLMARK, United States is Ex.D.42."

The witness further clarified that a laboratory error can produce mismatch but it cannot produce a proper match.

The witness further clarified that when the sample is taken in sterile container following the instructions given by the CCMB scrupulously there is no possibility of any bacterial or any other infection.

The witness further stated that the contamination never results into proper match. It can give rise to exclusion not to positive inclusion. The witness in cross-examination has specifically stated as under :-

"According to me, for paternity test, large scale population Data Base was neither required not even today. When the samples of the parents are not available and when one has to establish the identity of the child based on probability only then Data Base is required. In short, where both the parents are available, no data base is required for paternity testing."

Both the Trial Court and the High Court have appreciated the evidence of Dr. Lalji Singh and in our view correctly.

On behalf of A-1, DW-49 Dr.Wilson J.Wall has been examined and the High Court has rejected his evidence on the following grounds:-

- (1) He is a private consultant.
- (2) He was requested to undertake a review of the evidence of Dr.Lalji Singh P.W.59.
- (3) He had held conferences with the defence counsel both in London and India.
- (4) He was present in the Court on 28.10.1996 and 29.10.1996 when Dr. Lalji Singh (P.W.59) was cross examined by the counsel for A-1.
- (5) He says "I have been instructed by the counsel for the accused to inform this Honourable Court that if the prosecution wants to repeat this experiment, the accused is prepared to pay the cost of the same".
- (6) He admit that the test was conducted at the laboratory called University Diagnostics laboratory, London and that he had a working arrangement with the above said laboratory, but they are professionally independent. He further says, "I was present in this court instructing the defence lawyer for cross-examination P.W.59. I am not a scientist attached to the University Diagnostics Laboratory, London.

We are of the view that these are good reasons to have rejected his testimony.

DEFENCE WITNESSES 49 DWs were examined on behalf of the accused, D.W.8 Nirmlal Mataji was chargesheet witness No. 29, D.W. 11 Uma Devi Mataji was chargesheet witness No. 28, D.W. 14 Amarkumar was chargesheet witness No. 37, D.W. 20 Rajendran was chargesheet witness No. 45, D.W.31 Lilis Mary was chargesheet witness No. 20, D.W. 10 Vijaykumari was chargesheet witness No. 11, D.W. 33 Valaimmal was chargesheet witness No. 17, D.W.12 Durga Devi was chargesheet witness No. 12, D.W.13 Lakshmi Devi was chargesheet No. 13, D.W. 16 Balamurugan was chargesheet witness No. 40, D.W. 27 Parmeshwari was chargesheet witness No. 30, D.W. 29 Kandan was chargesheet witness No. 39 and D.W. 34 Damayanti Mataji was chargesheet witness No. 25.

Both the courts have rejected their testimonies on the ground that they are blind followers of Swami and their testimony also do not inspire confidence. We have been taken through the entire evidence of DWs.

DWs. 10, 31, 33 have been declared perjury by the Trial Court. By way of reference D.W. 41 Nithya Devi Mathaji had stated "Mark Dennis also had personal problem. Mark Dennis was taking treatment with a psychiatrist for his mental problem". This was nobody's case. It is false even to the knowledge of the maker. No credence can be placed on such evidence. Two Courts have concurrently and rightly rejected the testimony of DWs as not inspire confidence.

MURDER OF RAVI :

Ravi was brought to the Ashram on 22.7.1990. He was allegedly beaten up by the accused on 10.4.1991 and confined in a Kudil without food and water and succumbed to injuries on 17.4.1991. The reason for beating and confining to death of the deceased Ravi was that he was shouting in the Ashram that A-1 is having sex with Ashram girls. This had infuriated A-1 to take this extreme step with the help of A-2, A-4, A-6 and A-7.

The submission of Mr. Ram Jethmalani that during the period Ravi stayed in the Ashram there was no allegation of rape against A-1, is factually incorrect. P.W.13 Vanitha stated that in the year 1991 in the night at about 1.00 A.M. A-1 had sex with her. P.W.14 also stated that in the year 1991 when she was cooking in the kitchen in the Dharamshala, A-1 forcibly pushed her in his room and had sex with her. P.W.5 Princy also stated that in the year 1990 around 11 p.m. A-1 called her inside his room and had forcibly sex with her. Again in 1991 before Ravi died, A-1 had forcibly sex with her in his room.

The prosecution relied upon the eye witnesses namely P.Ws. 1, 3, 5, 8, 11, 16, 17 and 18. From the evidence of the eye witnesses it is clearly established that Ravi died of the injuries suffered by him. Following facts are established:

- (1) Ravi died of the injuries suffered by him.
- (2) The death of Ravi was not reported either to the police or to the Revenue Authorities.
- (3) Ravi was confined in a room after the injuries he sustained without food and water for several days.
- (4) The skeletal remains were found to be that of the deceased Ravi. From the evidence on record, it is also clear that:
 - (1) Ravi died and he was buried on 17.4.1991.
 - (2) Before burial, Ravi was given a bath, his face was shaved and he was clad with a full sleeved sweater and a dhoti.
 - (3) The death of Ravi was not informed to the police. No information or complaint was given either to the village Administrative officer or any revenue officer.

(4) No prior treatment was given to the deceased before his death.

From the statement of P.Ws. aforesaid, the prosecution has clearly established its case that Ravi died out of the injuries caused by A-1 and A-2 and subsequent confinement and starvation accelerated his death.

The defence case was that Ravi died on account of self inflicted injuries and it was a natural death. The homicidal death of Ravi due to beating and starvation is corroborated by medical evidence of P.W.46 and Serology Report. The evidence of eye witnesses disclosed that when Ravi exposed the misdeeds of A-1 that A-1 is raping Ashram girls, A-1 ordered that Ravi be brought and Ravi was brought by A.4, A.6, A.7 near A-1's kudil and Ravi was tied to the pole. P.W.1 (approver), A.2 and A.5 were also present. A-1 had beaten Ravi with Casuarina stick on the left lower and upper limb and Ravi sustained bleeding injuries. When the knot was untied and Ravi had fallen down, A.1 kicked him on the back and A.2 on the chest. A-1 directed P.W.1, A.4 to A.7 to confine Ravi in Kavadi Kudil. A-2 had taken away the key of Kudil after confining Ravi in Kavadi Kudil. Ravi was provided neither food or water nor medical assistance and died of starvation. The ocular evidence of PWs is consistent with the medical opinion of P.W.46.

We have been taken through the entire evidence of P.Ws. and D.Ws. We do not find any infirmity or perversity either in Trial Court or High Court judgment in recording the concurrent findings by appreciating the evidence adduced.

Mr. Ram Jethmalani learned senior counsel, referred to the evidence of P.W.15 Mallikadevi when she stated that A-1 had locked Ravi like this and he had asked to give food also. It is to be noted that regarding the murder of Ravi her evidence was not relied upon by the prosecution. As already noted, the prosecution relied upon the testimony of P.Ws. 1, 3, 5, 8, 11, 16, 17 and 18 which proved otherwise.

Regarding the sentence, the Trial Court resorted to Section 31 Cr.P.C. and ordered the sentence to run consecutively, subject to proviso (a) of the said Section.

The contention of Mr. Jethmalani that the term `imprisonment' enjoined in Section 31 Cr.P.C. does not include imprisonment for life is unacceptable. The term `imprisonment; is not defined under the Code of Criminal Procedure. Section 31 of the Code falls under Chapter III of the Code which deals with power of Courts. Section 28 of the Code empowers the High Court to pass any sentence authorised by law. Similarly, Sessions Judge and Additional Sessions Judge may pass any sentence authorised by law, except the sentence of death which shall be subject to confirmation by High Court. In our opinion the term `imprisonment" would include the sentence of imprisonment for life.

In the aforesaid facts and circumstances, we see no infirmity in the well merited findings concurrently recorded by the two Courts below, which do not warrant our interference. The appeals are, accordingly dismissed. Having regard to the amplitude of the gravity of the offence, perpetrated in an organized and systematic manner, the nature of the offence and its deleterious effects not only against the victims, but the civilized society at large, needs to be curbed by a strong judicial hand.

We are inclined to confirm the sentence and conviction as recorded by the Trial Court and confirmed by the High Court. The order of the Trial Court that any remission of sentence or amnesty on any special occasions announced or to be announced be either by the Central or the State Government shall not apply to the sentence and imprisonment imposed on all the accused is also maintained.