STATE OF MADHYA PRADESH

v.

MAHENDRA ALIAS GOLU

(Criminal Appeal No. 1827 of 2011)

OCTOBER 25, 2021

[SURYA KANT AND HIMA KOHLI, JJ.]

Penal Code, 1860: s.376(2)(f) or s.354 – Prosecution case was that about fortnight prior to the date of registration of FIR, the two victim-prosecutrix (PW-1 and PW-2) aged about 9 years and 8 years respectively were playing in the street near the respondent's house – Respondent lured them with promise to give money and took them to his house and took off his clothes and undressed PW-1 and started rubbing his genital against her genital and repeated same act with PW-2 – Both the girls got scared and started crying and he threatened them with physcial harm – After few days, victims revealed the incident to PW-8 and thereafter the parents came to know about the incident – Trial Court convicted the respondent under s. 376(2)(f) r/w s. 511 – High Court set aside the conviction under s.376(2)(f) r/w s.511 and instead convicted him under s. 354 and consequently reduced sentence from 5 years to 2 years In the instant appeal, the State contended that High Court erred in modifying conviction to one under s. 354; that High Court miserably failed to appreciate the ingredients of 'attempt to commit rape' and has lightened it as a case of mere preparation in a insensitive manner – Held: The act of the respondent of luring the minor girls, taking them inside the room, closing the doors and taking the victims to a room with the motive of carnal knowledge, was the end of 'preparation' to commit the offence – His following action of stripping the prosecutrices and himself, and rubbing his genitals against those of the victims was indeed an endeavour to commit sexual intercourse – These acts of the respondent were deliberately done with manifest intention to commit the offence aimed and were reasonably proximate to the consummation of the offence – Since the acts of the respondent exceeded the stage beyond preparation and preceded the actual penetration, the trial court rightly held him guilty of attempting to commit rape as punishable within the ambit and scope of s.511 read with s.375 as it stood in force at the time of occurrence.

A *Criminal Jurisprudence: 'Attempt' is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission.*

Penal Code, 1860: s.375 – Distinction between 'preparation' B *and 'attempt' to commit an offence – There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case – The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for commission of offence – Whereas, an 'attempt'* C *to commit the offence, starts immediately after the completion of preparation – 'Attempt' is the execution of mens rea after preparation – 'Attempt' starts where 'preparation' comes to an end, though it falls short of actual commission of the crime.*

Allowing the appeal, the Court

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HELD: 1.1 It is a settled preposition of Criminal Jurisprudence that in every crime, there is first, Mens Rea (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, 'attempt' is successful, then the crime is complete. If the attempt fails, the E **crime is not complete, but law still punishes the person for attempting the said act. 'Attempt' is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission. [Para 11][141-G-H; 142-A]**

F **1.2 There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for** G **the commission of the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of mens rea after preparation.`Attempt' starts where `preparation' comes to an end, though it falls short of actual commission of the crime. [Para 12][142-B-C]**

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1.3 However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an 'attempt' to commit the principal offence and such 'attempt' in itself is a punishable offence in view of Section 511 IPC. The 'preparation' or 'attempt' to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between `preparation' and 'attempt'. If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws. [Para 13][142-C-E]

2. Section 511 IPC is a general provision dealing with attempts to commit offences which are not made punishable by other specific sections of the Code and it provides, inter alia, that,"whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both". A plain reading of Section 375 IPC before the 2013 Amendment spells out that sexual intercourse with a woman below sixteen years, with or without her consent, amounted to 'Rape' and mere penetration was sufficient to prove such offence. The expression 'penetration' denotes ingress of male organ into the female parts, however slight it may be. This Court has on numerous occasions explained what 'penetration' conveys under the unamended Penal Code which was in force at the relevant time. [Paras 14, 16] [142-F-H; 143-E-F]

A *Aman Kumar vs. State of Haryana* **(2004) 4 SCC 379 : [2004] 2 SCR 237;** *Madan Lal vs. State of J&K* **(1997) 7 SCC 677 : [1997] 3 Suppl. SCR 337;** *Koppula Venkat Rao vs. State of A.P.* **(2004) 3 SCC 602 : [2004] 2 SCR 944 – relied on.**

B **3.1 What constitutes an 'attempt' is a mixed question of law and facts. 'Attempt' is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to**
C **commit a crime is accomplished, then the crime stands committed for all intents and purposes. [Para 20][145-D-E]**

3.2 There is overwhelming evidence on record to prove the respondent's deliberate overt steps to take the minor girls inside his house; closing the door(s); undressing the victims and
D **rubbing his genitals on those of the prosecutrices. As the victims started crying, the respondent could not succeed in his penultimate act and there was a sheer providential escape from actual penetration. Had the respondent succeeded in penetration, even partially, his act would have fallen within the contours of**
E **'Rape' as it stood conservatively defined under Section 375 IPC at that time. [Para 21][145-E-G]**

3.3 The deposition by the victims (PW-1 and PW-2) are impeccable. Both have unequivocally stated as to how the respondent allured them and indulged in all those traumatic acts which have already been narrated in the preceding paragraphs.
F **The statements of both the victim-children inspire full confidence, establish their innocence and evince a natural version without any remote possibility of tutoring. [Para 22][145-G-H]**

3.4 Since the acts of the respondent exceeded the stage beyond preparation and preceded the actual penetration, the Trial
G **Court rightly held him guilty of attempting to commit rape as punishable within the ambit and scope of Section 511 read with Section 375 IPC as it stood in force at the time of occurrence. The findings given contrarily by the High Court in ignorance of the material evidence on record, are perverse and untenable in the eyes of law. [Paras 24, 25][146-E-F]**

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Case Law Reference A

[2004] 2 SCR 237	**relied on**	**para 9**
[1997] 3 Suppl. SCR 337	**relied on**	**para 17**
[2004] 2 SCR 944	**relied on**	**para 18**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1827 of 2011. B

From the Judgment and Order dated 08.10.2009 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.1089 of 2007.

Mukul Singh, Dy. AG, Upendra Mishra, Sunny Choudhary, Advs. for the Appellant. C

Anil K. Sharma, Praveen Chaturvedi, Advs. for the Respondent.

The Judgment of the Court was delivered by

SURYA KANT, J.

1. State of Madhya Pradesh (hereinafter referred to as "Appellant") is in appeal against the impugned judgment dated 08.10.2009 passed by the High Court of Madhya Pradesh, Principal Bench at Jabalpur whereby the respondent's conviction under Section 376(2)(f) read with Section 511 of Indian Penal Code (for short, "IPC") has been set aside and instead he has been held guilty under Section 354 IPC and consequently his sentence has been reduced from 5 years to 2 years Rigorous imprisonment. D E

BRIEF FACTS:

2. The prosecution case is that, about a fortnight prior to 20.12.2005 (date of registration of FIR), the two victim-prosecutrix who are named as 'X' (PW-1) and 'Y' (PW-2), aged about 9 years and 8 years respectively, were playing 'gilli-danda' in the street located near the respondent's house. The respondent who was known to both the victims by virtue of living in the same locality, called them with the inducement that he will give them money. Lured by the promise of getting money, both victims went along with the respondent to his house which was totally empty at the time of the incident. Taking advantage of this opportune moment, the respondent closed all the doors of the house from inside. He then led the victims to one of the rooms in the house and declared that he would marry them. It is stated that the respondent thereafter undressed PW-1 and made her lie down on the cotton cot which was kept in the room. Meanwhile, he also took off his clothes and F G H

started rubbing his genitals against the genitals of PW-1. Further, in the same identical manner, the above-mentioned act was repeated with PW-2.

3. Both the minor victims, as an obvious reaction to the respondent's acts must have felt scared and shocked because of which they allegedly started crying. The respondent apprehending that the neighbours could possibly hear the victims' voices, told them not to disclose anything about this incident and silenced them by threatening them with physical harm. However, after a few days, both victims revealed the details of the incident to their friend who is named as 'Z' (PW-8). Fortunately, the incident which could have remained buried forever, surfaced because of the fateful and inadvertent intervention of PW-8. It is stated that on the occasion of a religious gathering at PW-2's house, PW-8 started teasing PW-2 by calling her as 'respondent's wife', which led to PW-6 (PW-2's mother) inquiring the reasons behind the same. This chance probe spiralled into the victims revealing the incident's details to their mothers. On the same day of the gathering, PW-2 confided in PW-6 when the latter prodded her to share the details of the incident. Similarly, PW-1 confided in PW-3 (PW1's mother) on the same day in the evening. The mothers (PW-3 and PW-6) then communicated the same to their respective husbands. After a lapse of 15 days of the incident, the present FIR was thus filed.

4. The Trial Court convicted the respondent for the offence under Section 376(2)(f) read with Section 511 IPC though acquitted him under Sections 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The respondent was sentenced to undergo rigorous imprisonment of 5 years and fine of Rs. 5000/-.

5. The respondent laid challenge to his conviction before the Principal Bench of Madhya Pradesh High Court and vide impugned judgment dated 08.10.2009, the High Court modified the judgment of the Trial Court; set aside the conviction under Section 376(2)(f) read with Section 511 IPC and convicted the respondent under Section 354 IPC and sentenced him to undergo 2 years of rigorous imprisonment and fine of Rs. 5000/-. The High Court was of the opinion that:

> *"17. On going through the evidence on record particularly allegations in FIR Ex.P/1,* ***I am of the view that the appellant did not make all efforts to attempt to commit rape with both prosecutrix, he had not gone beyond the stage of preparation***

and he did not intend to do so at all events*. It is well settled principle of law that preparation of any offence cannot be termed as attempt to commit the same offence, I am of the considered view that the strength of evidence on record the offence of indecent assault by the appellant on both the prosecutrix* ***u/s 354 IPC*** *is made out beyond reasonable doubt…… Consequently the appellant is acquitted of charge* ***376 (2)-(f)*** *read with* ***Section 511 IPC*** *two counts. The Appellant is convicted u/s* ***354*** *of* ***IPC****."*

[Emphasis applied]

6. The aforestated modification and resultant reduction in sentence are assailed before us at the instance of the Prosecution.

CONTENTIONS OF PARTIES:

7. Mr. Mukul Singh, learned Counsel for the State vehemently contended that there are explicit allegations of 'attempt to commit rape' against the respondent. Both the prosecutrices have deposed as 'X' (PW-1) and 'Y' (PW-2) and supported the prosecution case. They unshakably faced the grilling cross-examination and have minutely explained how the diabolic offence was committed. Both the victims have admirably withstood the pressure of a humiliating and unnerving cross-examination. Their depositions have been duly corroborated by 'Z' (PW-8)—a chance witness of the circumstances. He urged that the Trial Court had rightly convicted the respondent for the commission of offence under Section 376 (2)(f) read with Section 511 IPC which has been unjustifiably modified by the High Court overlooking the soul of the Statute or the settled principles attracted to the facts and circumstances of the case. Learned Counsel further argued that the High Court miserably failed to appreciate the ingredients of 'attempt' to commit rape and has lightened it as a case of mere 'preparation' in a cavalier and insensitive manner.

8. Contrarily, learned Counsel for the respondent submitted that even if the prosecution case is accepted as gospel truth, nothing beyond the 'preparation' to commit rape has been proved. He emphasised that the Trial Court failed to draw the distinction between 'attempt' to commit an offence or mere 'preparation' thereof and erringly convicted the respondent for the offence of 'attempt' to commit rape. He passionately argued that the High Court has rightly rectified the patent error and

A modified the conviction from 'attempt to commit rape' to an offence of 'outraging the modesty' of a woman, as defined under Section 354 of IPC. Further, learned Counsel for the respondent has also urged that there was a material contradiction in the testimony of PW-8 vis-à-vis both the victims regarding the former's presence near the place of occurrence which makes the prosecution story highly doubtful.

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9. In all fairness, Mr. Praveen Chaturvedi, learned Counsel for the respondent has heavily relied upon the decision of this Court in ***Aman Kumar vs. State of Haryana***[1] to buttress his contention of distinct features of mere 'preparation' to commit an offence, as compared to an actual 'attempt' to commit it. He, in specific, relied upon the following paragraphs of the cited decision:

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> *"**9.** A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after*

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H [1] (2004) 4 SCC 379

preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (waging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.

10. *An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt."*

QUESTIONS FOR DETERMINATION:

10. In this factual backdrop, the question which falls for our consideration is whether the offence proved to have been committed by the respondent amounts to ' attempt' to commit rape within the meaning of Section 376(2)(f) read with Section 511 IPC or was it a mere 'preparation' which led to outraging the modesty of the victims?

ANALYSIS:

Distinction between 'Preparation' and 'Attempt' to commit rape

11. It is a settled preposition of Criminal Jurisprudence that in every crime, there is first, *Mens Rea (*intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, 'attempt' is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act. 'Attempt' is punishable because even an

A unsuccessful commission of offence is preceded by *mens rea*, moral guilt, and its depraving impact on the societal values is no less than the actual commission.

12. There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict B coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission o f the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of *mens rea* after preparation. 'Attempt' starts where 'preparation' comes to an end, C though it falls short of actual commission of the crime.

13. However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an 'attempt' to commit the principal offence and such 'attempt' in itself is a punishable offence in view of Section 511 IPC. The 'preparation' or D 'attempt' to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between `preparation' and 'attempt'. If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken E and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws.

14. Section 511 IPC is a general provision dealing with attempts F to commit offences which are not made punishable by other specific sections of the Code and it provides, inter alia, that, **"whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is** G **made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one- half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with** H **such fine as is provided for the offence, or with both".**

15. It is extremely relevant at this stage to brush up the elementary components of the offence of 'Rape' under Section 375 IPC, as was in force at the time when the occurrence took place in the instant case. The definition of 'Rape', before the 2013 Amendment, used to provide that **"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*.—xxx xxx xxx**

***Fourthly*.— xxx xxx xxx**

***Fifthly*.— xxx xxx xxx**

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."*

16. A plain reading of the above provision spells out that sexual intercourse with a woman below sixteen years, with or without her consent, amounted to 'Rape' and mere penetration was sufficient to prove such offence. The expression 'penetration' denotes ingress of male organ into the female parts, however slight it may be. This Court has on numerous occasions explained what 'penetration' conveys under the unamended Penal Code which was in force at the relevant time. In ***Aman Kumar* (supra)**, it was summarised that:-

> *"7. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (see Joseph Lines, IC&K 893)."*

17. Even prior thereto, this Court in ***Madan Lal vs. State of J&K*[2]** opined that the degree of the act of an accused is notably decisive to

[2] (1997) 7 SCC 677

differentiate between 'preparation' and 'attempt' to commit rape. It was held thus:

> *"12. The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove for an offence of an attempt to commit rape has been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her lie flat on the ground undresses himself and then forcibly rubs his erected penis on the private parts of the girl but fails to penetrate the same into the vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354 IPC and not an attempt to commit rape under Section 376 read with Section 511 IPC. In the facts and circumstances of the present case the offence of an attempt to commit rape by the accused has been clearly established and the High Court rightly convicted him under Section 376 read with Section 511 IPC."*

18. The difference between 'attempt' and 'preparation' in a rape case was again elicited by this Court in ***Koppula Venkat Rao vs. State of A.P.***[3], laying down that**:-**

> *"10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this.* ***An attempt may be described to be an act done in part-execution*** **of a criminal design, amounting to more** ***than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime.*** *In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.*

[3] (2004) 3 SCC 602

11. In order to find ***an accused guilty of an attempt with intent to commit rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part.*** *Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect."*

[Emphasis applied]

19. In light of the statutory provisions as construed by this Court from time to time in the cited decisions, let us examine whether the respondent attempted to commit rape of the prosecutrices or there was only preparation on his behalf?

20. We may at the outset explain that what constitutes an 'attempt' is a mixed question of law and facts. 'Attempt' is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes.

21. There is overwhelming evidence on record to prove the respondent's deliberate overt steps to take the minor girls inside his house; closing the door(s); undressing the victims and rubbing his genitals on those of the prosecutrices. As the victims started crying, the respondent could not succeed in his penultimate act and there was a sheer providential escape from actual penetration. Had the respondent succeeded in penetration, even partially, his act would have fallen within the contours of 'Rape' as it stood conservatively defined under Section 375 IPC at that time.

22. The deposition by the victims (PW-1 and PW-2) are impeccable. Both have unequivocally stated as to how the respondent allured them and indulged in all those traumatic acts which have already been narrated in the preceding paragraphs. The statements of both the victim-children inspire full confidence, establish their innocence and evince a natural version without any remote possibility of tutoring.

A 23. Additionally, the feeble contention regarding the contradiction between the testimonies of PW-8 vis-à-vis both the victims is equally untenable. The perceived contradiction is not adequate to unsettle the narrative on which the case of the prosecution is based. Even otherwise, this contradiction can at best be seen as a mere 'exaggeration' on behalf of a child witness whose remaining testimony completely supports the B prosecution. As correctly pointed out by the Trial Court, the pivotal fact that the details of the incident were shared by the victims with PW-8 remains undisputed and as such the Courts are obliged not to discard the entire testimony on the basis of a minor exaggeration. Furthermore, this Court has time and again reiterated that the victim's deposition even on C a standalone basis is sufficient for conviction unless cogent reasons for corroboration exist.

24. In our considered opinion, the act of the respondent of luring the minor girls, taking them inside the room, closing the doors and taking the victims to a room with the motive of carnal knowledge, was the end D of 'preparation' to commit the offence. His following action of stripping the prosecutrices and himself, and rubbing his genitals against those of the victims was indeed an endeavour to commit sexual intercourse. These acts of the respondent were deliberately done with manifest intention to commit the offence aimed and were reasonably proximate to the consummation of the offence. Since the acts of the respondent exceeded E the stage beyond preparation and preceded the actual penetration, the Trial Court rightly held him guilty of attempting to commit rape as punishable within the ambit and scope of Section 511 read with Section 375 IPC as it stood in force at the time of occurrence.

CONCLUSION:

F 25. The findings given contrarily by the High Court in ignorance of the material evidence on record, are perverse and untenable in the eyes of law. We, thus, allow the appeal, set aside the judgment of the High Court and restore that of the Trial Court. The respondent is directed to surrender within two weeks and serve the remainder of his sentence G as awarded by the Trial Court. In case the respondent fails to surrender, the Police Authorities are directed to arrest him and send a compliance report.

26. The appeal stands disposed of in the above terms.

Devika Gujral Appeal allowed.