

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.470 OF 2019

Harishchandra Sitaram Khanorkar
Aged 55 years,
R/o. Plot No.9, in front of house
of Bodare, Chakrapani Nagar,
Nagpur
(Presently at Central Jail, Nagpur)

...APPELLANT

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station Hudkeshwar,
Nagpur

...RESPONDENT

Shri A.S. Dhore, Advocate with Shri Sheikh Sohailuddin, Advocate
and Shri Yash Bangale, Advocate for the appellant.
Shri M.J. Khan, Additional Public Prosecutor for the
respondent/State.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
RESERVED ON : NOVEMBER 25, 2022.
PRONOUNCED ON : DECEMBER 15, 2022

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the parties.

2. The appellant herein is convicted for the offences punishable under Section 376(2)(f)(j)(i)(n) of the Indian Penal Code and sentenced

to suffer imprisonment for life and to pay fine of Rs.25,000/- in default to suffer simple imprisonment for a period of one year.

3. The prosecution case in brief is as under :

A] On 02/12/2013, mother of the victim girl had lodged report at police station Hudkeshwar, Nagpur alleging that victim is her daughter. Father of the victim is not alive and informant who is the mother had performed second marriage. The accused Harishchandra Khanorkar whom she used to treat as her brother. She was working as a domestic servant in the house of accused. Her daughter who is the victim was staying with accused in his family consist of his daughter and son. Informant further alleged that after she performed second marriage, victim continued to stay along with the accused. Accused admitted victim in the school and victim is now studying in the 11th standard. Before a month victim approached to her at her house on 28/11/2013 and complained about abdominal pain. She called the accused and took victim in the hospital. It was revealed that the victim is pregnant of 7 months. Therefore, she enquired with the victim and victim disclosed to her that when she was in 9th standard the accused forcibly committed sexual intercourse with her. He used to touch her body. Accused has repeated the act of sexual intercourse with her 3 to 4 times and she had conceived. Subsequently, victim delivered a child.

The child was given to Bal Kalyan Samiti and informant has lodged report at Hudkeshwar police station on 02/12/2013. On the basis of said report, police have registered the offence against the accused vide Crime No.370/2013.

4. After registration of the crime, Investigating Officer has visited the alleged spot of incident and drawn the spot panchnama. He also collected the blood samples of victim and her child in D.N.A. kit and the blood samples of the accused in the D.N.A. kit and forwarded to D.N.A. examination. He also collected the medical report of the victim and after completion of investigation submitted charge-sheet against the accused. The learned trial Court has framed the charge vide Exhibit 6. The learned trial Court has recorded the evidence and found that the prosecution has proved the charges and convicted the accused and sentenced as mentioned hereinbefore. Hence, this appeal.

5. Heard Shri Dhore, learned Counsel for the appellant.

6. He submitted that the accused is falsely implicated in the alleged offence. Prosecution has not proved the age of the victim girl. The victim girl has narrated before the Medical Officer that she was having love relationship with one person namely Rajan. The pregnancy

might be the result of the said relationship. Considering the same, only on the basis of DNA evidence accused cannot be held guilty for the offence punishable under Section 376(2)(f)(j)(i)(n) of the IPC. Whereas learned Additional Public Prosecutor has submitted that the evidence of victim girl corroborated by the Medical evidence as well as DNA report sufficiently shows that it was the accused who committed sexual intercourse with the victim which resulted into her pregnancy. The accused has taken the disadvantage of the circumstances that the victim girl is not having father, and mother had performed the second marriage. Hence he is not entitled for any leniency.

7. Children are the greatest gift of humanity and the sexual assault on children is the most heinous crime. To substantiate the charge, prosecution has examined in all 8 witnesses.

- (i) PW-1 – Victim (Exhibit 59) (due to the mandate of section 228-A of IPC her name is not mentioned.)
- (ii) PW-2 – Mother of the victim (Exhibit 64) – informant.
- (iii) PW-3 – Dr. Mangala Marotrao Sonak (Exhibit 67) – Medical Officer who has examined the victim.
- (iv) PW-4 – Kiran s/o Vasantrao Chougale (Exhibit 77) – Investigating Officer
- (v) PW-5 – Amulya Amol Pande (Exhibit 91) – Chemical Analyzer
- (vi) PW-6 – Yuvraj Prabhakar Rao Khadse (Exhibit 109) – Head Master.

- (vii) PW-7 – Dr. Pratik Sahadeo Gilbe (Exhibit 114) – Medical Officer
- (viii) PW-8 – Dr. Sushil Pundlikrao Wairagade (Exhibit 116) – Medical Officer

Besides the oral evidence Prosecution also relied upon various documents such as :

Statement of victim under Section 164 of Cr.P.C. (Exhibit 55), FIR (Exhibit 65), Medical Certificate (Exhibit 68), spot panchnama (Exhibit 78) letter to medical officer (Exhibit 79), letter to C.A. (Exhibit 80), Identification form (Exhibit 82 to 84), Letter to C.A. (Exhibit 85), Letter to CMO (Exhibit 87), Search and seizure memo (Exhibit 88), D.N.A. report (Exhibit 92), School Leaving Certificate (Exhibit 111), School Admission Extract (Exhibit 112), medical certificate of accused (Exhibit 115), Letter by Dr. Vairagade to Police (Exhibit 117) and sonography report (Exhibit 118).

8. As per the prosecution case, victim was minor at the time of incident and to prove the age of the victim prosecution mainly relied upon on the evidence of PW-1 – victim and PW-2 – mother of the victim. PW-1 – victim has narrated her birth date as 27/12/1997. She further deposed that she was studying in 9th standard when the alleged incident has taken place. PW-2 – mother of the victim testified that at the time of

incident her daughter was studying in 10th standard in Dadasaheb Khadse High School. She further testified that her daughter is residing at the house of the accused since she was in 6th standard. To prove the exact age of the victim, prosecution has examined PW-6 – Yuvraj Prabhakar Rao Khadse, Head Master of Dadasaheb Khadse High School, Nagpur. As per his evidence, victim girl was admitted in his school in 8th standard on 25/06/2010 and left the school on 15/06/2013. The birth date of the victim was recorded in his school on the basis of transfer certificate of her earlier school by name Swargiya Shrawanji Watkar Ucha Prathamik Shala, Hudkeshwar Road, Nagpur. He produced on record transfer certificate copy (Exhibit 110) and School Admission Extract (Exhibit 111) and extract of the admission register (Exhibit 112).

9. The accused has challenged the birth date of the victim. During cross-examination, victim denied that she disclosed her false birth date. Admittedly, mother of the victim had not stated about the birth date of the victim. The material evidence is of PW-6 – Head Master. It is elicited during cross-examination that he has not enquired about the correctness of birth date of the victim as it was taken as per the birth date mentioned in the transfer certificate. It is further elicited that he had not personally taken the entry. Admittedly, prosecution has not produced matriculation certificate, or the school record wherein

victim girl was firstly admitted. The evidence in the nature of matriculation certificate or the school record wherein she was firstly admitted is the material evidence.

10. Learned Counsel for the appellant placed his reliance on *Umesh Chandra Vs. State of Rajasthan AIR 1982 SC 1057, Jarnail Singh Vs. State of Harayana 2013 ALL MR (Cri) 2946, Mahadeo S/o Kerba Maske Vs. State of Maharashtra and another (2013) 14 SCC 637.*

11. It is observed by the Hon'ble Apex Court in the case of *Jarnail Singh Vs. State of Harayana 2013 ALL MR (Cri) 2946* that even though Rule 12 of Juvenile Justice Rules 2007 is strictly applicable only to determine the age of the child in conflict with law, the aforesaid statutory provision should be the basis for determining the age, even for a child who is victim of a crime. For, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is victim of crime. Therefore, it would be just and appropriate to apply Rule 12 of the 2007 Rules to determine the age of prosecutrix. The manner of determining age conclusively, has been expressed in Sub-rule 3 of Rule 12. Under the aforesaid provision, the age of the child is ascertain by adopting the first available basis, out of number of options postulated in Rule 12(3).

If, in the scheme of options under Rule 12(3), an option is expressed in the preceding clause, it has over riding effect over an option expressed in a subsequent clause. In the scheme of Rule 12(3) matriculation (or equivalent) certificate of the concerned child is the highest rated option. In case the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisaged consideration of the date of birth entered, in the school 1st attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive and no other material is to be relied upon. Only in the absence of such entry Rule 12(3) postulates reliance on the birth certificate issued by Corporation, Municipal authority or Panchayat. Yet again, if such certificate is available then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child, it is only in the absence of any of the aforesaid, the Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.

12. Thus, in the present case, prosecution has not proved the age of the victim by producing relevant documents and evidence on record.

13. So far as the charge under Section 376(2)(f)(j)(i)(n) of the IPC is concerned, the implicit reliance placed on record by the prosecution is on the evidence of PW-1 – victim and the scientific evidence in the nature of D.N.A. report. The facts on record shows that the victim is not having father and her mother had performed second marriage, therefore, she was residing along with the accused. As per the allegation, accused who is of the age of her father subjected her for sexual assault forcefully and resultantly, victim girl got pregnant and delivered a child in a tender age. The evidence of PW-1 – victim reveals that she was residing along with the accused and used to treat him as ‘Mama’. When initially she started residing with the accused, accused was residing along with his daughter and son. After marriage of daughter of the accused she continued to stay along with the accused. When she was in a 9th standard the accused forcibly had a sexual intercourse with her. She further alleged that he used to touch her body and had physical relations with her on 3 to 4 occasions. She could not understand that she is pregnant and started vomiting, therefore, accused took her at Vairagade hospital at Manewada. Dr. Vairagade disclosed to her that she is carrying the pregnancy of 7 months. Doctor further informed to her that if she has to abort the child, expenses are to be incurred which she could not and, therefore, she had not aborted the child. In the last week of November, 2013 she delivered a child. Her

mother has lodged the report and child was handed over to the Child Welfare Committee. She further deposed that after registration of the crime, her blood samples and blood samples of her child were taken. During her cross-examination defence was taken that she had a love relations with one boy namely Rajan but she denied the same. She also denied that she disclosed before the Medical Officer that she was having love affair with one boy namely Rajan. Except this cross-examination, nothing incriminating came on record.

14. The evidence of PW-2 – mother of the victim girl who lodged the report is only to the extent that her daughter was residing along with the accused and she remained pregnant and delivered a male child. Her daughter disclosed to her that she was subjected for sexual assault, therefore, she lodged the report which is at Exhibit 65. PW-2 has also denied that victim is having love affair with one boy Rajan. Except this cross-examination remaining cross-examination is in the denial form.

15. To corroborate the version of the victim, prosecution relied upon the medical evidence and to prove the medical evidence, evidence of PW-3 – Dr. Mangala Marotrao Sonak was laid. PW-3 – Dr. Managala Marotrao Sonak testified that the victim was referred to her for medical examination and she narrated the history that she was in relationship

from last one and half year with one boy Rajan and conceived and delivered a child on 28/11/2013. On her examination, she found milk secretion was present in the breast. Uterus was palpable. Accordingly, she issued the certificate vide Exhibit 68. She also collected the blood samples of the victim and handed over to the police. During her cross-examination it is elicited that when the history was given victim was not under pressure which is admitted by PW-3. PW-7 – Dr. Pratik Sahadeo Gilbe has examined the accused on 09/12/2013. As per his evidence accused informed him that incident took place since 2008 to 2013 at his residential house. He opined that there was nothing to suggest that accused was incapable of performing sexual intercourse. Accordingly, he issued the medical certificate. PW-8 – Dr. Sushil Pundalikrao Vairagade is the medical practitioner who initially examined the victim. As per his evidence, on 28/11/2013 one girl was brought to his hospital with pain in abdomen and distension. She was accompanied with man. The man was under influence of alcohol and was talking irrelevantly. Said man disclosed that he is maternal uncle of that girl. PW-8 also disclosed the name of the girl and testified that the girl was in agony and was not able to walk. On examination she was found to be pregnant and in a labour pain. The girl was taken in labour room wherein she delivered a male child. The girl seems to be of 10-12 years old. No relative was present and the man with the girl was not able to

speaking. Therefore, he informed to the police about the incident. Though PW-8 is cross-examined but nothing incriminating came on record during the cross-examination. PW-4 - Kiran S/o Vasantrao Chougale is the Investigating Officer who testified that he obtained the DNA kit from the forensic lab and forwarded the victim as well as the child for obtaining the blood samples. He also obtained the blood samples of the accused in a sealed condition and forwarded the DNA kits to Chemical Analyzer office along with the letter Exhibit 85 and invoice challan Exhibit 86. He also received the DNA report which he filed on record along with the charge-sheet.

16. The prime evidence on which prosecution relied upon is the scientific nature in the form of DNA report. Evidence of PW-5 - Amulya Amol Pande who is the Assistant Chemical Analyzer reveals that he is expert in analysis of DNA profile as he conducted analysis of DNA profile in more than 800 cases. He had undergone special training for DNA profile. The accuracy of DNA results is 100%. On 05/12/2013, he received the requisition letter along with the DNA kits. Prior to that requisition was received for obtaining the DNA kit from Hudkeshwar police station. On 06/12/2013, the DNA kits containing the samples are received in the office which were duly sealed along with the forwarding letter Exhibit 85 with identification forms Exhibit 82 to 84. Accordingly,

16 different tests are performed and the analysis was made by applying PCR (Polymers Change Reaction) test. As per the said report, victim and the accused are concluded to be biological parents of baby delivered by the victim. Said report is at exhibit 92. He specifically stated that the report is accurate and there is no question of any doubt.

17. During the cross-examination of DNA analyzer attempt was made to elicit that he had not obtained any special training. He admitted that the person who is M.Sc. (Chemistry) can perform DNA test and special training is required for DNA test. PCR is advanced test/technique. During cross-examination he narrated entire method which is applied by him that he examined 16 STR locus in DNA samples. He personally had extracted DNA from blood samples and extracted the DNA from blood by Robotic method and prepared the report. It was suggested that the result of DNA may get affected if the analyst suffering from cold, fever or other infections which is admitted by PW-5. But he specifically denied that his condition was not normal when he conducted the analysis. Thus, the attempt was made that the DNA analysis test is not 100% sure which is denied by the PW-5. The evidence of PW-5 further reveals that he extracted DNA from blood samples and done its amplification by PCR method. He obtained electro pherogram by electro phoresis on genetic analyzer. Thereafter he compared the profile and

lastly prepared the report. Though arduous cross-examination was taken, nothing incriminating is brought on record.

18. After appreciation of evidence on record the entire prosecution case revolves around the evidence of PW-1 – victim and the medical evidence and the DNA report. PW-1 – victim has categorically stated that she was residing at the house of the accused when accused sexually assaulted her. At the time of framing of the charge, the age of the accused was 55 years whereas victim girl was 19-20 years old at the time of her deposition. Thus, the age difference between the victim girl and the accused is more than 30 years approximately. The evidence of victim girl specifically states that she was staying with the accused initially when his daughter was not married. After the marriage of daughter of the accused, he subjected her for sexual intercourse due to which she was pregnant and delivered a male child. It is an admitted fact that mother of the victim girl was working as a domestic helper at the house of the accused, and therefore, she got acquaintance with the accused. Victim girl has lost her father in her early age and mother had performed second marriage. Due to the second marriage of mother, victim girl has taken the shelter at the house of the accused and was calling the accused as 'Mama'. However, accused had not treated her like a daughter and subjected her for sexual assault. Admittedly,

defence has not denied her presence along with the accused at his house. It is admitted fact that the victim girl was staying with the accused and she specifically stated that the alleged incident of sexual intercourse by the accused was forceful and took place after accused had performed the marriage of his own daughter. During cross-examination nothing is elicited to falsify her version.

19. The evidence of victim girl is corroborated by PW-2 – mother of the victim to the extent that when victim girl approached to her with a complaint of abdominal pain, she was pregnant. The implicit reliance was placed by the prosecution is on the evidence of Medical Officers, PW-3 – Dr. Mangala Marotrao Sonak and PW-8 Dr. Vairagade. PW-8 – Dr. Vairagade is the Medical Practitioner who initially examined the victim whom she approached along with the accused on 28/11/2013 with pain in abdomen. The evidence of PW-8 reflects that the accused was under the influence of alcohol. No female accompanied the victim. The victim was in agony and having labour pain. She was pregnant and within 10-15 minutes she delivered a male child. The evidence of Dr. Vairagade further shows that the person who brought her at the hospital left the hospital without informing him, therefore, he informed the police. As per the evidence of PW-1 – victim, accused is the person who took her to the hospital of Dr. Vairagade. The defence has not denied

the fact that accused had taken the victim at the hospital of Dr. Vairagade. Evidence of PW-3 – Dr. Mangala Sonak shows that on examination, she found the presence of pregnancy changes. So far as history narrated to her is concerned it was given by the victim that she is having some relationship with one boy Rajan. The admitted fact is that the victim was staying with the accused, accused has taken her in the hospital and in such circumstances, the possibility of giving false history to save the accused cannot be ruled out.

20. The evidence of victim is further corroborated by the evidence of PW-5 - Amulya Amol Pande who is the Chemical Analyzer conducted the DNA examination. His evidence shows that he conducted the said DNA examination by applying the PCR test and on the basis of examination he opined that the accused and the victim are concluded to be biological parents of the child delivered by the victim. His evidence further shows that he received the samples which were in a sealed condition. The documents on record shows that on 05/12/2013 requisition was issued for obtaining the DNA kit, immediately on 05/12/2013 DNA kit was handed over. Victim and the accused are forwarded to the Medical Officer for obtaining their blood samples on 05/12/2013 itself. The blood samples of newly born baby was also obtained on 05/12/2013. Exhibits 82 to 84 are the identification forms

prepared by the Medical Officer when victim, baby and accused were referred for obtaining their blood samples. Immediately on 06/12/2013, samples are forwarded to Forensic Lab for analysis. PW-5 had analysed the said samples. During the cross-examination entire procedure carried out by PW-5 came on record. PW-5 categorically narrated about the said procedure and nothing is on record to show that the samples were tampered. Thus, the evidence of scientific expert is proved by the prosecution in the present case. PW-7 - Dr. Pratik Sahadeo Gilbe is the Medical Officer who examined the accused and PW-4 – Kiran Chougale is the Investigating Officer. The sum and substance of entire evidence on record shows that victim girl of a young age was subjected for sexual intercourse and in the result she delivered a child. The accused has not denied that the victim girl was subjected for sexual intercourse and she delivered a child. In fact, nothing is brought on record by the accused to show that he is falsely implicated in the alleged offence. On the contrary, evidence of the victim supported by the scientific evidence is sufficient to show that the victim was subjected for penetrative sexual assault. Sexual activities with young girl of immature age have a traumatic effect on them which persists throughout their life and often destruct whole personality of the victim. The victim of a sexual assault is not an accompish but she is a victim of lust of another person. Her evidence stands at a higher pedestal than that of an injured witness. The

evidence of victim of rape case is required to receive same weight as it attached to evidence of an injured witness.

21. It is also supported by the scientific evidence. There can be no doubt that there have been remarkable technological advancement in forensic science and in scientific investigations. The DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. Modern DNA testing can provide powerful new evidence unlike anything known before DNA technology as a part of forensic science and scientific discipline not provide any guidance to investigation but also supplies the Court accurate information about the tending features of identification of criminals.

22. In *Mukesh and another Vs. State (NCT of Delhi) 2017 ALL MR (Cri) 2448*, Hon'ble Apex Court held the importance of DNA evidence. It was observed in paragraph No.216 and 217 :

"216. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Criminal Procedure Code by the insertion of Section 53A by Act 25 of 2005, DNA profiling has now become a party of the statutory scheme. Section 53A relates to the examination of a person accused of rape by a medical practitioner.

217. Similarly, under Section 164A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is must. (Emphasis supplied by us)”

23. Thus, if totality of circumstances emerging on record discloses that the victim does not have any motive to falsely implicate the accused and her evidence corroborated by the medical and scientific evidence indicate that she had been sexually assaulted by the accused.

24. Learned Advocate Shri Dhore submitted that the punishment awarded by the trial Court is the maximum punishment. He submitted that the accused is of more than 55 years of age. Admittedly, victim was staying at the house of the accused. Though defence of consent is not available but the fact remains that prior to lodging of the report she never complained and continued to stay along with him. In the background that it was the accused who maintained her and brought up her when her real parents left her on the streets, the punishment awarded to him is to be reduced.

25. We have given thoughtful consideration to the submissions made by the learned Advocate for the appellant. The Protection of Children from Sexual Offences Act, 2012 is enacted with specific object that the law should operate in a manner that the best interest and well

being of the child are regarded as paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual, social development of the child. The object is also that the person of culpable state of mind should be punished for harassing the child and keep the society child friendly. From the evidence on record, it reveals that the accused in the present case is of a 55 years old whereas victim was only 16 years of age at the time of lodging report. As per her evidence, the first instance of sexual assault on her by the accused when she was in a 9th standard. The evidence further discloses that the accused had physical relations with her on 3-4 occasions and resultantly, she was pregnant and delivered a child at a tender age of 16 years. She had carried the pregnancy of such a tender age and delivered the child. Due to the act of the accused who is fatherly figure for her she carried the said pregnancy. It further reveals from the evidence of PW-8 Dr. Sushil Pundalikrao Vairagade that the person brought the victim in his hospital was under the influence of liquor. Victim was in agony and she was not able to walk. The girl has delivered a child immediately within 10-15 minutes. His evidence further reveals that the person who brought her in the hospital had left the hospital and never returned again. Thus, the conduct of the accused shows that he left the victim in the hospital under the labour pain and not taken care what happens to the victim thereafter. PW-8 – Dr. Vairagade identified the accused as the same

person who brought her in the hospital and left her there in agony. The prosecution evidence further discloses that victim girl who has taken the shelter at the house of the accused as her father is not alive and mother had performed second marriage. This evidence shows that the trust of the victim is betrayed by the accused. The accused was under moral obligation to protect the child in the background that he was having his own daughter but he destroyed her future life. The accused had destroyed the physical body of the victim and degrades the very soul of helpless girl. It is to be borne in mind that the accused is the person who has violated the victim's privacy and personal integrity and also caused serious psychological as well as physical harm to the victim. Rape is not merely a physical assault but it is often destructive the whole personality of the victim, and therefore, the matters of such allegation must be dealt with utmost sensitivity.

26. The Hon'ble Apex Court in *Ravi S/o Ashok Ghumare Vs. The State of Maharashtra 2019 ALL MR (Cri) 4873 (S.C.)* held that the object and purpose of determining quantum of sentence has to be 'society centric' without being influenced by a 'judge's' own views, for society is the biggest stake holder in the administration of criminal justice system. A civic society has a 'fundamental' and 'human' right to live free from any kind of psycho fear, threat, danger or insecurity at the hands of

anti-social elements. The society legitimately expects the Courts to apply doctrine of proportionality and impose suitable and deterrent punishment that commensurate(s) with the gravity of the offence. It is further held that the Sentencing Policy, therefore, needs to strike a balance between the two sides and count upon the twin test of (i) deterrent effect, or (ii) complete reformation for integration of the offender in civil society. It is further held by the Hon'ble Apex Court that the criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State. The 'victim' - the de facto sufferer of a crime had no say in the adjudicatory process and was made to sit outside the court as a mute spectator. The ethos of criminal justice dispensation to prevent and punish 'crime' would surreptitiously turn its back on the 'victim' of such crime whose cries went unheard for centuries in the long corridors of the conventional apparatus. A few limited rights, including to participate in the trial have now been bestowed on a 'victim' in India by the Act No.5 of 2009 whereby some pragmatic changes in Cr.P.C. have been made.

27. Considering the above observation of the Hon'ble Apex Court, the facts of the present case are examined and it reveals that the small girl was subjected for sexual assault by the grown up man and imposed on her motherhood in a very tender age when she was unable to carry

said burden. The subsequent conduct of the accused shows that he left the victim girl in the hospital under the pain and mental agony and she delivered the child there without support of anybody. The learned trial Court had considered all these aspects and rightly come to the conclusion to award the punishment of life imprisonment. Learned trial Court has observed that the accused who being in position of trust and dominance over victim took undue advantage of these circumstances and committed heinous crime to fulfill his lust. Victim had undergone tremendous mental trauma by delivering a child. Victim has to lead remaining life with permanent scar as well as psychological impact on her life. The trial Court further observed that she is a shelterless child. It jeopardized future prospects of enjoying life, therefore, such cases should be dealt with iron hands and maximum punishment needs to be awarded. Thus, the trial Court has assigned the reasons while awarding the maximum punishment.

28. We do not find any reason to interfere with the impugned judgment even on the point of quantum of sentence.

29. Considering all these factors no case for acquittal as well as for lesser punishment is made out. The appeal is devoid of merits. While dismissing the appeal the question of rehabilitation of a victim as she is shelterless is to be addressed. Admittedly, father of the victim girl is not

alive, mother is residing along with her second husband and keeping the victim without any shelter would be again keeping her on the street, therefore, we direct the Secretary, High Court Legal Service Sub-Committee, Nagpur to take necessary steps regarding the rehabilitation of the victim girl. Till then, victim girl shall be kept in the Priyadarshini Shaskiya Mahila Vasatigruha, Nagpur. Hence we proceed to pass following order :

- (i) The Criminal Appeal is dismissed.
- (ii) The Secretary, High Court Legal Service Sub-Committee, Nagpur shall take necessary steps regarding the rehabilitation of the victim girl. Till then, victim girl shall be kept in the Priyadarshini Shaskiya Mahila Vasatigruha, Nagpur.
- (iii) The copy of the judgment be forwarded to the Secretary, High Court Legal Service Sub-Committee, Nagpur

30. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*