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

CRIMINAL APPEAL NO.312 OF 2022

Mr.Dalsu Kumma Gawde (In Jail),
age 35 years, occupation – cultivation,
r/o Arewada, tahsil Bhamragad,
district Gadchiroli. **Appellant.**

:: V E R S U S ::

1. State of Maharashtra,
through Police Station Officer,
Police Station Bhamragad,
tahsil Bhamragad, district Gadchiroli.

2. XYZ
victim in crime no.39/2019 registered
with Bhamragad Police Station,
district Gadchiroli. **Respondents.**

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Shri R.R.Vyas, Counsel for the Appellant.
Shri N.B.Kalwaghe, Counsel for Respondent No.2 (Appointed).
Shri M.J.Khan, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 16/06/2023

PRONOUNCED ON : 18/07/2023

JUDGMENT

1. The appellant (accused) has assailed judgment and order dated 28.4.2022 rendered by learned Additional Sessions Judge, Gadchiroli in Sessions Case No.16/2020 whereby he is convicted for offence punishable under Section 376(1) of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 10 years and to pay fine Rs.3000/-,

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in default, to suffer simple imprisonment for 3 months. The accused is also given set-off under Section 428 of the Code of Criminal Procedure since he was in jail.

2. Facts in a nutshell are as under:

On 23.11.2019, victim girl (due to the mandate of Section 228-A of the Indian Penal Code, name of the victim girl and her relatives are not mentioned in this judgment), has lodged report with Bhamragad Police Station, district Gadchiroli alleging that she is residing along with her parents and grandfather and two brothers. Her younger brother is residing at Bhamragad. She studied upto 12 Std. and left the education. On 19.11.2019, when her mother had been to Bhamragad in the hospital, as her sister-in-law was admitted in the hospital for delivery, she was at home along with her father and grandfather. On 20.11.2019, in the evening, after having a dinner, they all went to sleep. Her grandfather was sleeping in a shed attached to the house and her father was sleeping in a room adjacent to the said shed and she was sleeping in a room which was adjacent to the room where her father was sleeping. She had not locked the door and just

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pushed the door and she went to sleep. At about 9:00 pm, when she was in a sleep, the accused came inside her room by pushing the door, pressed her mouth, and removed her clothes. Though she attempted to shout, she could not shout as her mouth was pressed by the accused and, thereafter, he disrobed himself and subjected her for sexual assault. While leaving the house, the accused took her clothes, i.e. leggin and undergarments, with him. When he was running from the house, she shouted for help and her father and her grandfather witnessed the accused eloping from the spot of the incident. Immediately, she narrated the said incident to her father and grandfather. As her mother was not at home, she approached to the police station 22.10.2019, after her mother came home, and lodged the report.

3. On the basis of the said report, the police registered the offence against the accused. The investigating officer has forwarded a special report to his superior officer. After issuing the letter to the Tahsildar, he called two panchas and drawn spot panchanama. The victim girl was referred for medical examination. The accused was arrested. The accused was also referred for medical examination. He

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collected samples obtained by the medical officer while examining the victim girl as well as the accused. He has seized all samples by drawing seizure memo. During investigation, the accused shown his willingness to make a memorandum statement. Accordingly, his memorandum statement was recorded and the clothes of the victim girl, i.e. leggin and a nicker, are seized at the instance of the accused by drawing panchanama. The clothes of the accused are also seized in the police station which were on his person. The clothes of the victim girl and the clothes of the accused and their samples are forwarded to the Chemical Analyzer. After completion of the investigation, the investigation officer has filed chargesheet.

4. As the offence is exclusively triable by the court of sessions, learned Magistrate committed the case to the court of sessions. The Sessions Court framed the charge vide Exhibit-18. The accused pleaded not guilty and claimed to be tried.

5. In support of the prosecution case, it has examined in all 11 witnesses, as follows:

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1. Avinash Dongre (PW1), pancha on memorandum statement and discovery panchanama and seizure of clothes of the accused, Exhibit-32;
2. Gonglu Jogai (PW2), Exhibit-37;
3. Sharad Gurnule (PW3), police constable, Exhibit39;
4. Naina Gedam (PW4), police constable, Exhibit-42;
5. the victim girl (PW5), Exhibit-46;
6. the father of the victim (PW6), Exhibit-52;
7. Kavita Sidam (PW7), Exhibit-54;
8. Asim Mandal (PW8), pancha on seizure of samples, Exhibit56;
9. the brother of the victim girl (PW9), Exhibit-60;
10. Dr.Rupali Patil (PW10), Exhibit-62, and
11. Dhnyaneshwar Zol (PW11), Exhibit-71, the investigating officer.

6. Besides the oral evidence, the prosecution further relied upon Chemical Analyzer's Reports (Exhibits-26 to 28); letter by the Block Development Officer to the Police Inspector of Bhamragad Police Station (Exhibit-33); memorandum statement of the accused (Exhibit-35); seizure of the clothes of the accused (Exhibit-36); letter to the Medical Officer for

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medical examination of the accused (Exhibit-41); report (Exhibit-43); the First Information Report (Exhibit-45); statement of the victim girl under Section 164 of the Code of Criminal Procedure (Exhibit-49), spot panchanama (Exhibit-55); seizure memos (Exhibits-57 and 58), medical certificate of the victim girl (Exhibit-63), letter to the Chemical Analyzer (Exhibit-64); report to the superior officer (Exhibit-72); letter to the Tahsildar to call employees to act as panchas (Exhibit-74), arrest panchanama (Exhibit-75), letter to the Chemical Analyzer (Exhibit-78); admission extract of school (Exhibit-81); letter for drawing map (Exhibit-82), and map (Exhibit-83).

7. All the incriminating evidence is put to the accused in order to obtain his explanation regarding evidence appearing against him by recording his statement under Section 313 of the Code of Criminal Procedure. The defence of the accused is of total denial and of love affairs. It is further defence of the accused that sexual intercourse was by consent of the victim girl.

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8. The trial court, after hearing both the sides and on appreciation of the evidence adduced, held the accused guilty as aforesaid. The accused has challenged the judgment and order of the conviction and the sentence on the ground that the trial court ought to have considered that the First Information Report is delayed one and no explanation is put forth for the said delay. Moreover, the evidence of victim girl is not corroborated by any other evidence and is suffering from variance and, therefore, liable to be discarded. The evidence of the prosecution is not supported by medical evidence also. Thus, the entire prosecution case fails and is liable to be discarded.

9. Heard learned counsel Shri R.R.Vyas for the accused; learned counsel Shri N.B.Kalwaghe appointed for the victim girl, and learned Additional Public Prosecutor Shri M.J.Khan for the State.

10. Learned counsel Shri R.R.Vyas for the accused, submitted that the entire case of the prosecution, narrated by the victim girl does not inspire confidence and is humanly impossible. Though the prosecution has examined 11

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witnesses, evidence of the victim girl is not corroborated either by PW7 Kavita Sidam or PW9 the brother of the victim girl. Even, evidence of the victim is also not corroborated by medical evidence adduced by PW10 Dr.Rupali Patil. In fact, there was a love affair between the accused and the victim girl. The wife of the accused called a panchayat-meeting and in the said meeting, the panchayat directed the victim girl to join cohabitation at the house of the accused. Accordingly, she joined. However, on the next day, her brother brought her back and lodged the false report. Thus, the act of the sexual relationship was consensual. Hence, the conviction of the accused is erroneous and liable to be set aside.

11. In support of his contentions, learned counsel Shri R.R.Vyas for the accused placed reliance on the decision of the Honourable Apex Court in the case of **Sadashiv Ramrao Hadbe vs. State Of Maharashtra and anr**, reported in (2006)10 SCC 92.

12. *Per contra*, learned Additional Public Prosecutor Shri M.J.Khan for the State, submitted that from the evidence adduced on record nowhere it reveals that the victim girl was

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a consenting party. She has narrated the entire incident and during cross examination, she denied love affair as well as the fact that she joined the company of the accused at his house.

PW6 the father of the victim girl has also denied the love affair between the victim girl and the accused and the victim girl joined the company of the accused.

Though PW9 the brother of the victim girl admitted that the victim girl has joined the company of the accused on the say of panchayat. However, he also denied the love relationship and the victim girl stayed with the accused. His evidence shows that within an hour the victim girl was brought to the house.

He further submitted that even if it is assumed that there was love relationship, a consent of the victim girl ought to have been there for the said particular act. There is no evidence that the victim girl has consented for the said particular act. There is a presumption under Section 114A of the Indian Evidence Act and the said presumption is not rebutted by the accused. The fact of sexual assault is corroborated by recovery of the clothes of the victim girl at

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the instance of the accused from his house. The said circumstance is not explained by the accused. Thus, there is sufficient evidence on record on which the trial court has convicted the accused.

13. In support of his contentions, learned Additional Public Prosecutor Shri M.J.Khan for the State, placed reliance on the decisions of the Honourable Apex Court in the cases, as follows:

State of U.P. vs. Pappu alias Yunus and anr, reported in (2005)3 SCC 594;

Vijay alias Chinees vs. State of Madhya Pradesh, reported in (2010)8 SCC 191, and

State of H.P. vs. Shree Kant Shekari, reported in (2004)8 SCC 153.

On the basis of his oral submissions and the law laid down by the Honourable Apex Court in the aforesaid judgments, he submitted that the appeal has no merits and is liable to be dismissed.

14. To substantiate the charge, the prosecution has placed implicit reliance on the evidence of the victim girl, who has lodged the report about the said incident. As per her

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evidence, she and the accused both are residents of the same village. At the time of the incident, she was at home along with her father and grandfather as her mother along with her elder brother had been to Bhamragad in the Hospital as her sister-in-law was admitted for delivery. On the day of the incident, after taking dinner, she was sleeping by pushing the door and her father was sleeping adjacent to the room wherein she was sleeping. Her grandfather was sleeping in a shed adjacent to the house. At about 9:00 pm, when she was in a sleep, the accused entered inside the house by pushing the door and subjected her for sexual assault. She attempted to resist the act by attempting to shout. However, her mouth was gagged and, therefore, she could not shout. After the incident, while leaving the place, the accused carried her leggin and nicker and, thereafter, she shouted and her father and grandfather witnessed the accused eloping from the place of the incident. As her mother was not at home, she has not approached to the police. After her mother came home, she approached to the police and lodged the report. She also identified her clothes which were seized at the instance of the accused from his house.

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15. The defence of the accused is of love affair between him and the victim girl. However, the victim girl has denied the same. She also denied that she was asked by the panchayat to join the company of the accused and accordingly she has joined. She only admitted to the extent that members of the panchayat decided that she should reside at the house of the accused as his wife. However, she has not joined his company. It further came in her cross examination that her younger brother was working with the accused and was driving a tractor owned by the accused.

16. To corroborate the version of the victim girl, PW6 the father of the victim girl is also examined. His evidence is only to the extent that he witnessed the accused eloping from his house. He further deposed that immediately after the incident, his daughter has disclosed the said incident to him. He also denied that there was love affair between the victim girl and the accused. He admitted that a panchayat was held. However, it was decided to send his daughter at the house of the accused, is denied by him.

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17. PW9, is the brother of the victim girl. His evidence shows that at the time of the incident, he was residing at Bhamragad and he was informed by his father by a telephonic call about the incident. During his cross examination, he admitted that he was a driver on a tractor of the accused and, therefore, the accused used to visit their house. He further admitted that a meeting of panchayat was held and panchayat decided that the victim girl should join the company of the accused as his second wife. He further admitted that as per decision of the panchayat, the victim went at the house of the accused. However, he further stated that his brother brought her back within an hour.

18. Insofar as the panchayat meeting is concerned, the prosecution has examined PW2 Gonglu Jogai, who is resident of the same village. As per his evidence, the panchayat meeting was called by the accused and his wife. He was present in the said meeting and he came to know about the misbehaviour by the accused with the victim girl. His evidence remained unchallenged as he is not cross examined on the misbehaviour of the accused.

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19. Besides the evidence regarding the incident, the prosecution has also examined PW1 Avinash Dongre, who acted as a pancha on the memorandum statement of the accused and discovery of the place where the clothes were concealed. As per his evidence, he was called by the police and, therefore, he went at Bhamragad Police Station. In their presence, the accused made a statement that the clothes of the victim girl are concealed by him at his house. Accordingly, his statement was recorded. Thereafter, the accused led them at his house. He took them to a toilet and from the toilet he produced a bag wherein the clothes of the victim girl were kept. The said clothes are seized by the police by drawing panchanama. The memorandum statement of the accused is at Exhibit-34 and panchanama is at Exhibit-35. The leggin of the victim girl is marked as Article-A and the nicker is marked as Article-B.

His further evidence shows that in the police station the clothes of the accused are also seized in his presence by drawing panchanama Exhibit-36. The clothes of the accused, i.e. black pant and T-shirt, are at Articles-C and D respectively. During the cross examination, he admitted

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that the clothes of the accused were already seized by the police. As far as the memorandum statement is concerned, only cross examination is that he has not enquired whether the house is owned by the accused or not, from which the clothes of the victim are seized. The evidence of this witness regarding the memorandum statement and discovery of the place where the articles were concealed remained unchallenged.

20. To corroborate the version of the victim girl, that she was subjected for sexual assault, the prosecution has adduced the evidence of PW10 Dr.Rupali Patil. She deposed that the victim girl was referred to her for medical examination. She narrated the history of forceful sexual intercourse on her on 19.11.2019, at 9:00 pm.. On her examination, no external injury was found. However, hymen was found torn. She collected the samples. During her cross examination, she admitted that there are so many reasons for rupture of hymen like cycling, long jump, and fingering. She admitted that she has not mentioned whether the hymen was having old rupture or new rupture. She has also not mentioned the rupture condition clock wise.

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Thus, the defence has attempted to bring on record that mere fact of rupture of hymen is not sufficient to prove that the victim girl was subjected for sexual for sexual assault.

Admittedly, a suggestion was not given to the victim girl that she does cycling or activity like long jump and she is in habit of fingering.

Thus, general cross examination appears to have been conducted by the defence.

21. As regards the other circumstances, PW3 Sharad Gurnule, is the witness, who is police constable, took the accused in the hospital for medical examination and obtaining samples. The medical officer handed over the samples to him. Thus, he is a formal witness.

22. PW4 Naina Gedam, is police constable, who recorded the First Information Report narrated by the victim girl. She denied that the contents of the First Information Report are written on her own.

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23. PW8 Asim Mandal, is also a pancha on seizure memo of the samples. His evidence is only to the extent that in his presence the samples were seized by drawing seizure memo.

24. PW11 Dhnyaneshwar Zol, is the Investigating Officer, who has narrated about the investigation carried out by him. During his cross examination also, nothing incriminating is brought on record as far as the memorandum statement and the recovery of the place of concealment of the clothes of the victim girl are concerned. His chief examination shows that the accused made a memorandum statement in his presence and in the presence of panchas that he will show the place where he concealed the clothes of the victim girl. During his cross examination, only suggestion is given that no memorandum was given by the accused.

25. Admittedly, during the pendency of the trial, the Chemical Analyzer's Reports are received. However, no blood or semen was found on the clothes of the accused.

26. It is true that there would not be any controversy on the legal issue that an evidence of a prosecutrix in criminal

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trial for charges of sexual assault against accused needs no corroboration, as victim of sexual offences cannot be put at par with accomplice and the Indian Evidence Act nowhere contemplates that her evidence cannot be accepted unless it is corroborated on material particulars. Undisputedly, prosecutrix is an competent witness under Section 118 of the Indian Evidence Act and her evidence must receive the same weightage as is attached to evidence of injured witness.

27. In the present case, the victim girl has narrated about the sexual assault in a clear words. She has specifically stated that when she was sleeping in the house, the accused entered inside the house and subjected her for sexual assault. The defence of the accused is of love affair and the act of the sexual intercourse by consent. The victim girl as well as PW6 and PW9, the brother and the father of the victim girl, specifically denied the story of the accused of love affair.

No such story is put up to PW2 Gonglu Jogai, who is from the same village. The evidence of the said witness shows that he came to know in a panchayat meeting that the

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accused misbehaved the victim girl. Even, there is no denial to the said witness with regard to the misbehaviour.

28. Regarding the cross examination, all these three witnesses, the victim girl as well as PW6 and PW9, the brother and the father of the victim girl, denied the story love affair. The victim girl has also denied that she joined the company of the accused as per the decision taken in a panchayat meeting. Her version is corroborated by PW6 the father of the victim girl. As far as the admission by PW9 the brother of the victim girl is concerned, he admitted that the victim girl went at the house of the accused as per the decision of the panchayat. However, he further stated that within a hour the victim girl returned back.

29. The evidence of the victim girl is further corroborated by the medical evidence adduced by PW10 Dr.Rupali Patil. As per the said doctor, during medical examination, hymen of the victim girl was found ruptured.

Though the defence has brought on record that behind the rupture of hymen, there may be many reasons like cycling, long jump, and fingering. However, the suggestions

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were not given either to the victim girl or her father or her brother to suggest that the victim girl was doing the activities like cycling and long jump. It is also not suggested that the victim girl was in habit of fingering.

30. In Dr.K.S.Narayan Reddy's Medicolegal Manual, reference is given as to rupture of hymen which says that rupture of hymen occurs with first intercourse which is the main evidence of rape. It is further explained that labias are separated by gentle transaction to examine hymen. The rupture of hymen occurs with first intercourse which is the main evidence of rape.

31. Thus, the oral evidence of the victim girl is further corroborated by the medical evidence. As far as the defence of the accused is concerned, that there was love affair and the victim girl has consented for the sexual intercourse, the same is not supported by any evidence.

32. Learned Additional Public Prosecutor Shri M.J.Khan for the State, rightly submitted that merely because there is love affair, the accused has no right to subject her for sexual intercourse against her wish. He submitted that even if it is

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assumed that there was love affair, the accused has no right to have sexual activity against her consent.

In support of his contentions, he placed reliance on the decision of the Honourable Apex Court in the case of **State of U.P. vs. Pappu alias Yunus and anr** cited *supra* wherein it has been held that that even assuming that victim was previously accustomed sexual intercourse, that is not a determinative question. On the contrary, question, which was required to be adjudicated was, did the accused commit rape on victim on the occasion complained of. Even, if it is hypothetically accepted that victim had lost her virginity earlier, it did not and cannot in law give licence to any person to rape her. It is accused who was on trial and not victim. Even, if victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone.

Learned Additional Public Prosecutor further submitted that it was the accused, who has to show that there

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was consent. It was not the victim girl to show that there was no consent.

In support of his contentions, he placed reliance on the decision of the Honourable Apex Court in the case of **State of H.P. vs. Shree Kant Shekari** cited *supra* wherein it is held that it is not for victim to show that there was no consent. Factually also, conclusion is erroneous right from the beginning that is from the stage when First Information Report was lodged and in her evidence there was a categorical statement that rape was forcibly done notwithstanding protest by the victim. The High Court was, therefore, wrong in putting burden on victim to show that there was no consent.

Learned Additional Public Prosecutor further submitted that corroboration is not a requirement. The absence of injury or mark of violence on private part of victim is of no consequence.

In support of the said contentions, he placed reliance on the decision of the Honourable Apex Court in the case of **Vijay alias Chinee vs. State of Madhya Pradesh** cited *surpa* wherein it is held that conviction on the sole testimony

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of prosecutrix, if found to be worthy of credit and reliable, requires no corroboration.

He submitted that in the present case victim was neither a consenting party nor there was love affair. The victim girl was subjected for sexual assault and there is nothing on record to doubt her testimony.

33. *Per contra*, learned counsel Shri R.R.Vyas for the accused submitted that the story narrated by the victim girl is not probable and not acceptable. It is humanly impossible.

He placed reliance on the decision of the Honourable Apex Court in the case of **Sadashiv Ramrao Hadbe vs. State Of Maharashtra and anr** cite *supra* wherein it is held that no injury was found on the body of victim and conviction set aside.

34. After going through the facts of the case in the decision, as relied upon by learned counsel for the accused, the same are not identical with the facts in the case in hand.

35. After appreciating the evidence adduced and considering the legal position, it is settled legal position that

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the victim girl of the sexual assault is not an accomplice to the crime. However, she is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion, as that of an accomplice. A prosecutrix of a sexual offence cannot be put on par with an accomplice. She is in fact a victim of crime. The Evidence Act nowhere states that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Indian Evidence Act. Her evidence must receive the same weight as is attached to an injured in cases of physical violence. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at the higher pedestal than an injured witness. In case of injury to any person, the said injury is in a physical form. Whereas, in a sexual assault, it is both physical, psychological, and emotional. Thus, when evidence of victim inspires confidence, it is to be accepted without any corroboration.

36. If the evidence of the victim girl in the present case is evaluated, it is apparent that she denied the love affair with the accused. She also denied that she was a consenting

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party. Though the defence has come with a case that the panchayat was held and the decision was taken to send her at the house of the accused, she has not accepted. Thus, there is no evidence to show that out of love affair the victim girl and accused came together and had a physical relationship.

Insofar as the meeting of panchayat is concerned, no person, who was member of the said panchayat, is examined by the accused in support of his defence to show that as there was love affair, panchayat took a decision and asked the victim girl to join the company of the accused.

37. Section 375 of the Indian Penal Code defines the expression "rape", which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is interested in fear of death or of hurt. The expression "against her will" means that the act must have been done in spite of

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the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Section 90 of the said Act refers to the expression "consent". Section 90, though, does not define "consent", but describes what is not consent. "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.

38. In the present case, if the entire evidence of the victim girl is assessed, absolutely there is no cross examination on record from which it can be ascertained that there was a consent on the part of the victim girl out of love affair. On the contrary, her evidence shows that she denied the love affair. Even, if it is assumed that there was a love affair, she has a reserved right to say "No" to the sexual

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activity if it is against her will. There should be consent for the said particular act. She consistently stated that she had never a love affair with the accused and nothing is on record to show that she was a consenting party. In such circumstances, the defence of the accused is not acceptable.

The Honourable Apex Court in the case of **State of U.P. vs. Pappu alias Yunus and anr** cited *supra* observed that even assuming that victim was previously accustomed to sexual intercourse, the same is not determinative question. She has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not vulnerable object.

39. In the light of the above discussion, the evidence on record shows that the victim girl was subjected for sexual assault against her will. The prosecution has proved the charges against the accused beyond reasonable doubt. As observed earlier, no corroboration is required. The evidence of the victim girl, corroborated by the medical evidence, sufficiently shows the involvement of the accused in the present case.

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40. The another issue raised by the defence is that the First Information Report is rather late and the delay is not properly explained. In the First Information Report itself, the victim girl has narrated that at the time of the incident her mother was not at home as she had been to Bhamragad. Her mother came after two days. She narrated her the incident and, thereafter, the report is lodged. Thus, the delay is explained by the victim girl not only in her evidence but also in the report lodged by her.

41. It is well settled that the delay in lodging the First Information Report, in sexual offences, is not always fatal if explained.

42. The Honourable Apex court in the case of State of Punjab vs. Gurmit Singh and ors, reported in 1996(2) SCC 384 held that the courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after

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giving it a cool thought that a complaint of sexual offence is generally lodged.

43. As far as delay in lodging of the First Information Report is concerned, it is to be borne in mind that the victim girl, who is subjected for sexual assault, is in her state of mind, since the committal of sexual assault on her body always left the scar not only on her body but also on her mind and, therefore, the delay is not always fatal to the prosecution. The only requirement is that the said delay should be explained.

44. In the present case, the delay is properly explained by the victim girl.

45. As observed earlier, that the evidence of the victim girl is corroborated by the medical evidence, it is also corroborated by the circumstance like discovery of the place where the clothes of the victim girl were concealed by the accused. The evidence of PW1 Avinash Dongre and Investigating Officer PW11 Dhnyaneshwar Zol shows that the accused made a memorandum statement and in pursuance of the said memorandum statement, articles were recovered at

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the instance of the accused. Though PW1 Avinash Dongre and Investigating Officer PW11 Dhnyaneshwar Zol are cross examined, nothing is brought on record to falsify the said recovery. The requirement of Section 27 of the Indian Evidence Act 1872 can be summed up as, (i) the fact of which evidence is sought to be given must be relevant to the issue; (ii) the fact must have been discovered; (iii) the discovery must have been in consequence of some information received from the accused; (iv) a person giving the information must be accused of any offence; (v) he must be in the custody of a police officer; (vi) the discovery of an act must be deposed to, and (vii) only the portion of the information which relates distinctly or strictly to the fact can be discovered.

46. Thus, the doctrine, therefore, if founded on the principles, that if any fact is discovered, after search is carried out on the search of any information obtained from prisoner, such a discovery is guaranteed that the information supplied by prisoner is true. The recovery of the articles at the instance of the accused admittedly has to be proved.

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47. PW1 Avinash Dongre and Investigating Officer PW11 Dhnyaneshwar Zol, have supported the fact that the accused made a memorandum statement and at his instance the clothes of the victim are recovered from his house, which is an additional circumstance to connect the accused with the alleged offence. Though no incriminating evidence is found, during the analysis by the Chemical Analyzer, still the recovery of the clothes of the victim girl from the house of the accused, which is not explained by the accused, is an additional circumstance.

48. In the light of the discussion above and having appreciated the entire evidence on record including the oral, the documentary, the medical, and the circumstantial, and also having considered the aforesaid judicial pronouncements by the Honourable Apex Court, I am not inclined to accept the submissions advanced by learned counsel Shri R.R.Vyas for the accused and to hold that the prosecution has proved and established beyond reasonable doubt that the accused has committed the sexual assault on the victim girl. The trial court, after scrutinizing and analyzing the evidence, convicted and sentenced the accused rightly and no glaring defect is

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found therein and hence no interference is warranted in the judgment and order of the conviction and the sentence impugned in the appeal. In the result, the appeal deserves to be **dismissed** and the same is dismissed.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!