



Judgment

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

CRIMINAL APPEAL NO.208 OF 2023

Kishor s/o Kamlakar Patil, aged
about 49 years, occupation service,
r/o 18, Sukhasagar Society, Dabha,
Nagpur (presently central jail at
Nagpur).

..... **Appellant.**

:: V E R S U S ::

1. The State of Maharashtra, through
Police Station Officer, P.S.
Gittikhadan, district Nagpur.

2. XYZ,
through complainant/informant in
crime No.39/2018, registered with
Police Station Gittikhadan, district
Nagpur.

..... **Respondents.**

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Shri C.R.Thakur, Counsel for the Appellant.

Shri C.A.Lokhande, Additional Public Prosecutor for
Respondent No.1.

Mrs.Rekha Godbole, Counsel Appointed for Respondent
No.2.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 13/01/2025

PRONOUNCED ON : 29/01/2025

JUDGMENT

1. By this appeal, the appellant (accused) has
challenged judgment and order dated 31.1.2023 passed

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by learned Additional Sessions Judge, Nagpur (learned Judge of the trial court) in Special POCSO Case No.93/2018.

2. By the said judgment impugned, the accused is convicted for offence under Section 376(2)(f)(i)(j)(k) and (n) of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act (the POCSO Act) and sentenced to undergo rigorous imprisonment for fifteen years and to pay fine Rs.15,000/-, in default, to undergo rigorous imprisonment for five months. The accused is further convicted for offence under Section 506 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year and to pay fine Rs.1000/-, in default, to undergo rigorous imprisonment for one month.

“A Common Quote from a father about his daughter is, “A daughter may outgrow in her father’s lap, but she will never outgrow in his heart”, signifying that a father’s love for his

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daughter remains constant and no matters how old she gets.

Contrary to this Quote, in the present matter, the accused, who is a father of the victim, is facing charges for offences under Sections 376(2)(f)(i)(j)(k) and (n) and 506 of the Indian Penal Code read with Section 6 of the POCSO Act.

There can never be more shocking heinous crime when a father is charged for committing sexual assault on his own daughter.”

3. Facts of the prosecution case necessary for disposal of the appeal run as under:

In the year 2009, the victim complained her mother that the accused, who is her father, inappropriately touched her private part. The mother, who was serving as “Nurse” in a private hospital, scolded and abused the accused. After knowing, that the victim has disclosed the fact of sexual harassment to her mother, on the next day,

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the accused came along with the victim and the victim disclosed to her mother that no such incident had happened. As per the allegations, the victim was 6-7 years old girl and was subjected for the sexual assault by the accused by threatening her. As the victim was threatened by the accused, she was forced to inform her mother that no such incident had taken place. The victim was restrained from disclosing continuous sexual assault on her by the accused. However, she disclosed to her friends about the said incident. She disclosed that the accused has developed physical relationship with her. On knowing this fact, the friends informed the same to their Class Teacher and the Class Teacher informed to the Principal. At the relevant time, the victim was studying in "Saraswati Vidyalaya" at Shankar Nagar, Nagpur. In December 2016, the mother of the victim received a phone call from the Principal of the said school and, therefore, she met the Principal who disclosed her that whether she is aware that the accused had developed physical relationship with the victim and also carried out

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her pregnancy test thrice. She made an enquiry with the victim and the victim also disclosed her the similar incident. On asking, why she has not disclosed her, the victim informed that she would have scolded the accused and she is scared of act the accused would do with her. On hearing the same, on 17.12.2016, the mother of the victim hid herself in the storeroom. In the evening, she witnessed the accused subjecting the victim forceful sexual assault. Therefore, she obtained video shooting. The accused got scared and he was driven out of the house. But, due to apprehension of defamation, she did not lodge report. Subsequently, the victim was under depression and also attempted to commit suicide and, therefore, the mother took the victim to Dr.Bhave for counselling. Dr.Bhave, asked her to lodge a report looking to condition of the victim. Therefore, the mother has lodged the report. On the basis of the said report, the crime was registered against the accused.

4. After registration of the crime, the victim was sent for medical examination and her samples were collected.

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The accused was arrested and he was also referred for medical examination and the samples were collected and forwarded for Forensic Analysis. The Investigating Officer has recorded relevant statements of witnesses and after completion of the investigation, the Investigating Officer submitted chargesheet against the accused.

5. Learned Judge of the trial court framed charge vide Exh.5. The accused has not pleaded guilty and claimed to be tried.

6. In support of the prosecution case, the prosecution has examined as many as 11 witnesses namely PW1 the mother of the victim Exh.14, PW2 the victim, PW3 Dr.Monisha Das Exh.39, PW4 Anjali Singh Exh.42 friend of the victim, PW5 Rahul Ghode Exh.45 Class Teacher, PW6 Sheikh Rizwan Exh.48 pancha on spot and seizure panchanama, PW7 S.Prabhuraman Exh.53 Principal, PW8 Dr.Sudhir Bhave Exh.55 Psychiatrist, PW9 Monali Pohankar Exh.59 Member of NGO, PW10 Dr.Madhuri Patil Exh.60, PW11 Shalini Kinake Exh.67 Investigating Officer.

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7. Besides the oral evidence, the prosecution placed reliance on report Exh.29, FIR Exh.30, seizure memos Exhs.31 and 32, medical treatment papers of Dr.Sudhir Bhave Hospital Exh.40, spot panchanama Exh.49, seizure panchanama Exhs.50 and 51, medical certificate Exh.61 and CA Reports Exh.84.

8. After appreciation of the evidence, the accused was held guilty and convicted as the aforesaid.

9. Heard learned counsel Shri C.R.Thakur for the accused, learned Additional Public Prosecutor Shri C.A.Lokhande for the State, and learned counsel Mrs.Rekha Godbole appointed for the victim.

10. Learned counsel for the accused submitted that due to matrimonial dispute, on the say of the mother of the victim, the accused is implicated by the victim with a false allegation. There is inordinate delay in lodging the FIR. The evidence of the victim is not inspiring confidence and is not corroborated by the medical evidence.

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11. As far as the evidence of PW3 Dr.Monisha Das and PW8 Dr.Sudhir Bhave is concerned, they are interested witnesses.

12. Class Teacher PW5 Rahul Ghode and Principal PW7 S.Prabhuraman are also deposing on the say of the mother of the victim. Except hymenal tear, there is no evidence to prove that it was the accused who subjected the victim for forceful sexual assault.

13. As per the prosecution case, the victim was minor at the relevant time and to prove the age of the victim, the prosecution mainly placed reliance on the evidence of mother of the victim who narrated the age of the victim as twelve years at the time of lodging of the report and birth date narrated is 17.6.2004. The birth certificate of the victim is not produced on record Moreover, the birth date of the victim is not challenged by the defence during the cross examination. The victim has also narrated her birth date as 17.6.2004. The victim is also not cross examined on the aspect of her birth date. The evidence of Class Teacher PW5 Rahul Ghode and Principal PW7

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S.Prabhuraman also shows that when the incident was reported by the victim to her friends, she was studying in 8th Std.. The evidence of Principal PW7 S.Prabhuraman also shows that the victim was studying in 8th std. and PW5 Rahul Ghode was class teacher of Std.8.

14. Thus, as far as the evidence of the victim as to the birth date is concerned, the same remained unchallenged and, therefore, it is to be accepted.

15. So far as charge under Section 376(2)(f)(i)(j)(k) and (n) of the Indian Penal Code is concerned, the implicit reliance placed on record by the prosecution is on the evidence of PW2 the victim who testified on oath that she was residing at Sukhasagar Society, Dabha, Nagpur along with her mother, father, and sister. Her mother is working as "Nurse" with "Midas Hospital" and father was working with Centre Point School as "Peon". She with her sister was taking education at "Saraswati Vidyalaya". The duty time of her mother was 3:00 pm to 9:00-9:30 pm. Whereas, working time of her father was 7:00 am to 5:00 pm and her school timing was 11:00 am to 5:00 pm. After

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her school, she used to stay with her father at the house. She further testified that when she was in KG, the accused sexually harassed her by touching his penis to her vagina. She disclosed the said act to her mother. Her mother scolded her father and on the next day, her father beat her and took her to the hospital and forced her to tell whatever she informed was false. When she was in 6th Std., the father started developing physical relationship with her. On her refusal, he used to beat her, but she has not informed about the same to anybody as he used to threaten her that he would kill her if she discloses the incident. Even, whenever she used to demand money from her father for purchasing stationery for school purpose, he used to ask sexual favour from her. She further alleged that even whenever she had been to bathroom for having bath, the accused was impatiently touching her. The said act was continued for the period of two years. She had her menstrual when she was in 8th Std.. The accused carried out her pregnancy test for three occasions, but she has not disclosed the incident to her

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mother as she was scared that the accused would beat her. But, when she was in 8th Std., she informed the incident to her friends and her friends informed to Class Teacher PW5 Rahul Ghode who informed the same to Principal PW7 S.Prabhuraman. Thereafter, the Principal made a phone call to her mother and disclosed the entire incident. Her mother decided to catch the accused red-handed. She sent her sister with grandmother to village and hid herself in storeroom. On the day of the incident, her father came to home, put blanket over her person, removed her clothes, and developed physical relationship with her. At the relevant time, her mother entered in the bedroom and caught him. Her mother beat him and drove him out of the house. Thereafter, she attempted to commit suicide. Hence, her mother took her to Psychiatrist and she has undergone the treatment. Thereafter, the mother has lodged report.

From her cross examination, it is brought on record that she accompanied her mother to lodge report to which she denied. The cross examination shows that the

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accused is implicated as there was matrimonial dispute, which is denied by her. Some omissions are brought on record that she has not stated to the police about the incident when she was in KG. She has also not stated to the Investigating Officer while recording her statement that work means physical relationship. She has not stated before the Investigating Officer that the accused has carried out her pregnancy test. Thus, some omissions are brought on record. During further cross examination, the topography of her house is also brought on record. As far as the incident is concerned, except denial, nothing is brought on record. However, she has denied the suggestion that to grab property of her father, the mother insisted her to lodge the report.

16. To corroborate the version of PW2 the victim, the prosecution has examined PW1 the mother of the victim who supported the version of the victim as far as disclosure by the victim is concerned. She stated that initially the victim has narrated the incident and on that count she scolded the accused. But, the subsequent

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incidents are not narrated by the victim and she came to know from the Principle of the school of the victim. Thereafter, she hid herself to ascertain genuineness of the facts and on 17.12.2016 she sent her younger daughter with her mother. She was having night shift, but she informed her husband that her shift is from 3:00 pm to 9:00 pm. The accused came home. At the relevant time, she hid herself in storeroom and only the victim was in the house. The accused has taken the advantage and carried the victim in bedroom. He undressed himself as well as the victim and subjected her for sexual assault. She witnessed and also took video shoot of the incident and caught the accused. Her evidence shows that when she witnessed the accused, he was in undressed condition. She got annoyed and drove out the accused from the house. The accused was not residing with them thereafter and she was staying along with her daughters.

Her evidence further shows that the victim was under depression and attempted to commit suicide and, therefore, she took the victim to Psychiatrist Dr.Bhave and

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on consultation with the same doctor, she lodged the report.

17. The cross of PW1 the mother of the victim shows that she has not narrated before the police that the accused was undressed. She has also not narrated that she assaulted the accused. Thus, the defence relied upon the omissions which are brought on record. It specifically brought on record that Exh.29 is based upon the incident dated 17.12.2016. She further admitted that the accused had executed Power of Attorney in respect of house in her favour on 16.1.2016. She also admitted that she lodged the complaint on 20.1.2018 and 24.1.2018. She further admitted that they have also filed a petition for mutual divorce on 17.1.2018. She also admitted that she has mentioned in the divorce petition that she and the accused were residing separately since 1.12.2016. She denied the contention that due to matrimonial dispute, the said complaint is lodged. Her cross examination further shows that she agreed to sale house for consideration of Rs.9,29,000/- and she received part consideration of

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Rs.51,000/-. The accused executed possession receipt on 17.1.2018. But, she denied that on 19.1.2018 she told Shri Mandpe that if the accused fails to hand over the Power of Attorney, she will lodge the complaint. She admitted that a complaint is registered with Saoner Police Station against her by the brother of the accused.

18. Thus, the nature of the defence is that due to matrimonial dispute and dispute over property, the accused is implicated.

19. To prove the charge against the accused, the prosecution also examined friend of the victim PW4 Anjali Singh studying in the class of the victim who testified that she and one Sejal and the victim were best friends. The victim was calm and composed. In the year 2017, when she was in 8th Std, she witnessed the victim crying in the school and, therefore, they enquired with her and she told that her father does indecent acts with her. Therefore, they took her to Class Teacher PW5 Rahul Ghode. Her cross shows that the police had been to school and enquired with her and Sejal. The victim never disclosed to

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her that she was having boy friend by name Om. She has not stated to the police that the victim told them that her father saw her talking with her boyfriend and he was having suspicion.

Thus, the cross examination shows that an attempt was made to bring on record that the victim was having relationship with one boy and her father was having suspicion.

20. Class Teacher PW5 Rahul Ghode and Principal PW7 S.Prabhuraman, have also corroborated the same version. Their evidence shows that the victim used to remain silent in the class and, therefore, her Class Teacher asked her and she disclosed that her father sexually assaulted her. She has also not disclosed the incident that she was having apprehension of assault at the hands of her father.

21. Friend of the victim PW4 Anjali Singh narrated the said incident to the Principal and the Principal called her mother. The evidence of the Principal is on the same line.

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Though both these witnesses are cross examined, nothing incriminating is brought on record.

22. As per the prosecution case, due to the incident, the victim was under depression and she was treated by the Psychiatrist. To establish the same fact, the prosecution examined PW3 Dr.Monisha Das, who testified that she is practising as consultant Psychiatrist. The mother of the victim is serving with "Midas Hospital" which is owned by Dr.Sudhir Bhave. In November 2017, the mother of the victim approached her and disclosed that her daughter has been sexually assaulted by her husband. She further informed that the victim developed suicidal tendency and refusing to go to school. PW3 Dr.Monisha Das discussed this issue with Counsellor Mrs.Anagha Bhave as well Dr.Sudhir Bhave. On the say of Dr.Sudhir Bhave the victim was brought. On clinical examination of the victim, they observed that she is weeping and continuously blaming herself that she is a bad girl. On enquiry with her, the victim disclosed that her father has been sexually abusing her from last 2-3

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years. On her refusal, he used to bash her up and also threaten to kill her. She disclosed about her suffering to her teacher and her teacher disclosed the said fact to her mother. Thereafter, her mother expelled her husband from the house and, therefore, the victim was thinking that all that happened due to her and she is a bad girl. PW3 Dr.Monisha Das has also noticed scratch marks on her left forearm. The victim has undergone therapy for 2-3 years. The medical papers are filed on record at Exh.40. The cross examination of this witness shows that she examined the witness first time on 4.11.2017. She noticed that child undergoes trauma and abnormal behaviour. She admitted that when there is stress, a person may reflect behaviour of silence or violent. She further admitted that the victim was brought before her after 11 months of the incident. It further came on record that since 17.12.2016 to 4.11.2017 condition of the victim was deteriorated as she was academically performing poor and was remaining aloof. She was not

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communicating with her friends and was going under emotional turbulence.

To show the witness is interested witness, it is brought on record that the mother of the victim was having good bonding with Dr.Bhave and Mrs.Bhave.

Thus, attempt was made to show that that PW3 Dr.Monisha Das is interested witness.

23. Exh.40 is the medical examination report of the victim which also shows that on examination, it revealed that the victim blames herself for the sexual abuse. Her academic performance is also deteriorating. She is having feeling of guilty and worthlessness. She is treating herself sad and intermittent. Observation of the medical officer was adjustment disorder.

24. To corroborate the version of PW3 Dr.Monisha Das, the prosecution further examined PW8 Dr.Sudhir Bhave who specifically stated that PW3 Dr.Monisha Das and Mrs.Anagha Bhave informed him that their patient was subjected for sexual harassment by her father and,

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therefore, he called her mother and asked her to lodge a report. The mother was scared to lodge the report as she was apprehending about defamation.

Though this witness is cross examined, nothing fruitful came for the help of the defence.

25. As far as disclosure is concerned, the prosecution also examined PW9 Monali Pohankar who was team member of the Child Line. The evidence of the said witness shows that on 26.12.2017 Dr.Bhave telephonically informed her that a minor child is subjected for sexual assault by her own father and the child is under depression and undergoing treatment and, therefore, she visited the house of the victim and met the mother of the victim. Thereafter, she along with the mother of the victim and the victim went to the Gittikhadan Police Station. The mother of the victim was reluctant to lodge report due to fear of being defamed.

The evidence of this witness also remained unchallenged.

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26. To corroborate the version of the victim, that she was subjected for sexual assault by her father, the prosecution has examined PW10 Dr.Madhuri Patil. As per the evidence of this witness, she was Assistant Professor at IGGMC, Nagpur. On 21.1.2018, the victim was brought to the hospital who had narrated the history of sexual assault by father at the age of five and repeated for two years since she was ten years of her age. She further narrated in a history that the victim disclosed the facts to her teacher. On her examination of her genital part, hymen was found old ruptured. She collected samples and opined that hymen was old ruptured and, therefore, sexual intercourse might have occurred.

27. The evidence of PW6 Sheikh Rizwan is formal in nature who acted as a pancha on the seizure panchanama as well as on spot panchanama.

28. PW11 Shalini Kinake is the Investigating Officer who narrated about the investigation which is carried out by her.

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29. On appreciation of the evidence on record, the entire prosecution case revolves around the evidence of the victim and the medical evidence.

30. PW2 the victim has categorically stated that she was residing along with her parents and sister. Her mother was serving as “Nurse” and required to perform night shift also. When she used to be in the house along with her father, her father subjected her for sexual assault. This fact, is also corroborated by her mother. The evidence of PW1 the mother of the victim shows that initially the victim has narrated the incident of indecent behaviour by the accused and she scolded him but the accused on the next date, came along with the victim in the hospital where she is serving and the victim disclosed that she has narrated the false incident. Subsequently, she came to know that the accused assaulted the victim and, therefore, the victim retracted from her earlier statement. As far as the incident of sexual assault on the victim is concerned, it was brought to the notice by the principal of the school PW7 S.Prabhuraman who came to

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know about the incident from PW5 Rahul Ghode who is Class Teacher of the victim. The disclosure of the sexual assault is by PW4 Anjali Singh who is friend of the victim studying in the same class.

31. Thus, the evidence reveals that due to apprehension of assault at the hands of the father, the victim has not narrated the incident to her mother, but when she was in 8th Std., she disclosed the said fact to her friend PW4 Anjali Singh. PW4 Anjali Singh took the victim to Class Teacher PW5 Rahul Ghode and disclosed the said incident. Class Teacher PW5 Rahul Ghode disclosed it to PW7 S.Prabhuraman who is Principal of the School. Principal PW7 S.Prabhuraman called PW1 the mother of the victim and narrated the incident. PW1 the mother of the victim decided to ascertain the said fact and, therefore, on 17.12.2016 she hid herself and informed the accused that she is attending the duty from 3:00 pm to 9:00 pm, but she was in a storeroom. She witnessed that the accused came and subjected the victim for sexual assault. She has produced the video clip before the

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Investigating Officer. The evidence of the Investigating Officer shows that the mother of the victim produced the video clip and, therefore, he seized memory card and C.D. from the mother of the victim in presence of the panchas and also prepared seizure memos Exhs.31 and 32. The said memory card was sent for analysis. The Forensic Analysis Report which is at Exh.84 shows capacity of C.D. in Exh.1 and memory card Exh.2 are 16 MB and 7.4 per GB respectively. The hash value present in C.D. is also described in the Analysis Report. The Analysis Report shows that person present in obscene video found in Exhs.1 and 2 appears to be similar with the reference photographs provided in Exhs.3 and 4 i.e. of the victim and Exh.5 i.e. of the accused.

32. Thus, not only the oral evidence but also the Analysis Report substantiates the allegations.

33. Thus, the oral evidence of PW2 the victim is not only corroborated by the medical evidence but also corroborated by the Analysis Exh.84.

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34. The defence of the accused is of total denial and of a false implication on the ground that due to matrimonial dispute between him and his wife, he is implicated falsely. During cross examination of PW1 the mother of the victim it is brought on record that the accused and PW1 the mother of the victim were residing separately. The cross examination further shows that she filed divorce petition on 17.1.2018. She further admitted that she mentioned in the divorce petition that she and the accused are residing separately since 1.12.2016. Thus, even considering the defence, it reveals that the dispute between PW1 the mother of the victim and the accused appears to be after the incident was disclosed to her and not prior to the incident. Thus, it is apparent that the dispute arose between them due to this incident. The evidence specifically shows that after she came to know about the incident in the year 2016, she drove the accused out of the house and, thereafter, the dispute started between them. Therefore, contention of the

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defence, that due to the dispute he was implicated in the alleged incident, is not sustainable.

35. The sum and substance of the entire evidence on record goes to show that the victim who is daughter of the accused was subjected for sexual assault by him at a very tender age. She has not disclosed the said fact to her mother that she was assaulted sexually as she was scared that the accused would beat her. But, when she was in 8th Std., she informed the incident to her friends and her friends informed to Class Teacher PW5 Rahul Ghode who informed the same to Principal PW7 S.Prabhuraman. She was sufferer at the hands of the accused. It was the headmaster who disclosed the said incident to her mother. The mother of the victim attempted to ascertain the said fact and recorded the incident in her mobile phone. The memory card of the mobile phone of the mother of the victim was seized by the Investigating Officer by drawing seizure memo Exhs.31 and 32. The said memory card, which was seized, as well as one C.D. which was prepared, was forwarded for analysis wherein the obscene videos

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are seen and analyzed. On analysis, the persons seen in the videos are the victim and the accused.

36. Thus, the evidence of the victim is not only supported by the oral evidence but also it is supported by the scientific evidence. The medical evidence sufficiently shows that the victim was subjected for sexual assault. Thus, the evidence of the victim is corroborated by the scientific evidence as well as by the medical evidence.

37. The sexual activities with the victim of an immature age having a traumatic effect is also established by the prosecution by examining PW3 Dr.Monisha Das and PW8 Dr.Sudhir Bhawe. The evidence PW1 the mother of the victim and PW2 the victim shows that the victim has attempted to commit suicide. The evidence of PW3 Dr.Monisha Das shows that the victim has developed tendency of committing suicide as she was treating herself guilty due to the incident. The behaviour of the victim is also not normal. Exh.40 shows that the victim, on her examination, found blaming herself for the sexual abuse. Her academic performance was deteriorating. She was

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found sad feeling herself worthlessness and guilty. Thus, due to the incident, not only her physic was affected but also there was traumatic effect which affected her daily life as she attempted to end her life.

38. Learned counsel for the accused vehemently submitted that there is inordinate delay in lodging of the FIR. He submitted that as per the prosecution, the alleged incident has occurred in 2016 when the victim was ten years old, but the FIR is lodged on 20.1.2018. As per the report, the period of the incident is from 20.1.2013 to 17.12.2016. However, the FIR is lodged on 20.1.2018 and no explanation is put forth for the delayed FIR. In support of his submissions, he placed reliance on the decision of the Hon'ble Apex Court in the case of **State of Himachal Pradesh vs. Prem Singh, reported in AIR 2009 SC 1010** and wherein it is held that it would be quite unsafe to rely upon the prosecution when delay is not properly explained.

39. On the contrary, learned Additional Public Prosecutor for the State placed reliance on the decision of

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the Hon'ble Apex Court in the case **State of Punjab vs. Ramdev Singh, reported in (2004)1 SCC 421; State of Punjab vs. Gurmit Singh and ors, reported in (1996)2 SCC 384; and State of H.P. vs. Gian Chand, reported in (2001)6 SCC 71.**

40. As far as delay is concerned, it is now settled law that the delay is not fatal to the prosecution case when it is properly explained.

41. The evidence of PW1 the mother of the victim, PW3 Dr.Monisha Das, and PW8 Dr.Sudhir Bhave discloses that the mother of the victim was reluctant to lodge the report as she was apprehending that her daughter will be defamed. It was PW8 Dr.Sudhir Bhave who asked her to lodge the report and, thereafter, also she was not ready to lodge report and, therefore, Dr.Bhave called member of NGO PW9 Monali Pohankar and, thereafter, the report was lodged.

42. The Hon'ble Apex Court in the case of **State of H.P. vs. Gian Chand** *supra* held that delay in lodging the

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FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

43. The accused in the present case is close relative of the victim i.e. father. The mother of the victim, obviously, was not having support of anybody. She was apprehending that her daughter would be defamed and, therefore, was reluctant to lodge the report. But, when her daughter attempted to commit suicide and there was a traumatic effect on the victim, she took the victim to the Psychiatrist and he suggested to lodge report and provided her help by calling member of the NGO PW9

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Monali Pohankar and, thereafter, she lodged the report. This fact is not only stated by the mother of the victim but also by PW3 Dr.Monisha Das and PW8 Dr.Sudhir Bhawe and PW9 Monali Pohankar who is member off the NGO.

44. As far as the delay in lodging of the FIR in sexual offence is concerned, the Hon'ble Apex Court in the case of **State of Punjab vs. Gurmit Singh and ors** *supra* held that the grounds on which the trial court disbelieved the version of the prosecutrix are not at all sound. The findings recorded by the trial court rebel against realism and lose their sanctity and credibility. The court lost sight of the fact that the prosecutrix is a village girl. She was a student of Xth Class. It is further held that the trial court fell in error for discrediting the testimony of the prosecutrix on that account. If there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural.

45. If the facts and circumstances of the present case and sequence of the events are taken into consideration, it

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properly explains the delay. It is common knowledge that the incident like rape, more so when the perpetrator of the crime happens to be member of family or related therewith, which involves honour of the family and, therefore, there is reluctance on the part of the victim's family to report the matter to the police and carry it to the court and, therefore, there is delay in the present case. It is an obvious on the part of the mother of the victim that she was reluctant to lodge report due to apprehension of defamation or stigma to her family as well as to the victim.

46. A careful analysis of the evidence of witnesses on record shows that their evidence corroborates to the evidence of each other. The evidence of PW1 the victim is corroborated by the evidence of PW2 the mother of the victim, friend of the victim PW4 Anjali Singh, Class Teacher PW5 Rahul Ghode, Principal PW7 S.Prabhuraman. The evidence is further corroborated by PW3 Dr.Monisha Das and PW8 Dr.Sudhir Bhave. The testimony of the victim inspires confidence. There are some omissions, but it is

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well settled that FIR is not an encyclopedia and, therefore, few omissions would not render the FIR suspect. The testimony of the victim has ring of truth which is also corroborated by the medical evidence and the scientific evidence. The delay in lodging of the FIR is sufficiently explained by the mother of the victim. No appropriate reason came before the court if totality of the circumstances are considered disclosing that the victim has any other motive to falsely implicate the accused.

47. After giving a thoughtful consideration to the submissions made by learned counsel for the accused and learned Addition Public Prosecutor for the State, the evidence on record sufficiently shows the involvement of the accused. Though defence of the accused is that he is falsely implicated due to the matrimonial dispute, the evidence on record shows that when the incident was disclosed by the victim to her friends and teachers, her parents were living together. The evidence consistently shows that she has not disclosed the incident to her mother as she was having apprehension that her father

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would be scolded by her mother and after that she would be assaulted by her father. Her state of mind, that she was feeling guilty and treating herself bad, is disclosed from the evidence PW3 Dr.Monisha Das, PW8 Dr.Sudhir Bhave, and the medical certificate issued by Dr.Monisha Das which at Exhibit-40.

48. Thus, totality of circumstances emerging from record discloses that PW2 is a victim of sexual assault at the hands of her father. The POCSO Act is enacted with a specific object that the law should operate in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage to ensure the healthy, physical, emotional, intellectual, and 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 keeping the society child friendly. From the evidence on record, it reveals that the accused who is father of the victim subjected her for the sexual assault at her tender age and continued for years together. The evidence further

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discloses that the victim has undergone mental trauma and disclosed the incident to her friends as well as the teachers. It was the Principal of the school from whom the incident was disclosed to the mother of the victim. The victim's state of mind and agony is revealed from the evidence of PW3 Dr.Monisha Das and PW8 Dr.Sudhir Bhave. The fact that she has attempted to commit suicide also discloses her state of mind. This evidence shows that the trust which a child carries about his or her father itself is betrayed by the accused. The accused who was protector has ruined the physic as well as state of mind of the victim who is his own daughter and destroyed her future life. He had degraded the very soul of helpless girl.

49. 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 to whole personality of the victim and, therefore, the matters of such allegations must be dealt with utmost sensitivity.

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50. As far as quantum of punishment is concerned, the object and purpose of determining quantum of sentence have to be “society centric” without being influenced by a judge’s’ own views as society is the biggest stake holder in the administration of criminal justice system.

51. The Hon’ble Apex Court, in the case of **Ravi Ashok Ghumare vs. The State of Maharashtra, reported in ALL MR (Cri) 4873** held that 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 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. The criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused

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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 the Code of Criminal Procedure have been made.

52. Considering the above observations of the Hon'ble Apex Court, if the facts of the present case are examined, it reveals that a small girl was subjected for sexual assault by the grown man who is father in a very tender age and the victim has undergone the mental trauma. The accused, being in a position of trust and dominance over the victim, took undue advantage of these circumstances and committed heinous crime to fulfill his lust. The evidence on record sufficiently shows sufferings and

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tremendous mental trauma which she has undergone. She has to lead remaining life with permanent scar as well as psychological impact on her life. The condition of the victim, who has to lead the life with the said scar which jeopardize future prospects of enjoying life. By considering all these facts, punishment is awarded by the trial court. The trial court has assigned the reasons while awarding the maximum punishment.

53. In this view of the matter, I do not find any reason to interfere with the judgment impugned in the appeal even on the point of quantum of sentence. Hence, the appeal deserves to be dismissed and the same is **dismissed**.

The Criminal Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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