



Judgment

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

CRIMINAL APPEAL NO.411 OF 2022

Juned @ Jishan s/o Gulzar @ Gulsher Khan,
aged 35 years, occupation:- labour,
r/o Swagat Nagar, Near Aksha Masjid
Gittikhadan, Nagpur. **Appellant.**

:: VERSUS ::

1. State of Maharashtra,
through Police Station Officer,
Police Station Gittikhadan, Nagpur.

2. XYZ victim in Crime No.37/2021,
Police Station Gittikhadan, Nagpur. **Respondents.**

Shri Arjun Bobade, Counsel for the Appellant.

Shri V.A.Thakare, Additional Public Prosecutor for the Respondent
No.1/State.

Shri J.S.Duhilani, Counsel Appointed for Respondent No.2/Victim.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 03/03/2025

PRONOUNCED ON : 02/04/2025

JUDGMENT

1. By this appeal, the appellant (accused) has
challenged judgment and order dated 29.3.2022 passed

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by learned Additional Sessions Judge, Nagpur (learned Judge of the trial court) in Sessions Case No.368/2021.

2. By the said judgment and order impugned, the accused is convicted for offence punishable under Section 376(2)(n) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years and to pay fine Rs.50,000/-, in default, to undergo simple imprisonment for three months.

He is further convicted for offences punishable under Sections 323 and 506 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 6 months and to pay fine Rs.500/-, in default, to undergo simple imprisonment for 15 days respectively.

3. Brief facts of the prosecution case are as under:

The victim girl is resident of Jaipur and doing Hotel Business along with her fiance. She had been to

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Nagpur for disposing of her property which was purchased by her father in her name. The victim was residing at Nagpur along with her parents and studied in St.Ursula School at Nagpur till 10th Std.. Nitisingh, the wife of the accused, was her classmate and, therefore, she got acquaintance with her. Though she left Nagpur, she maintained contact with said Nitisingh and whenever she used to visit Nagpur, she used to meet said Nitisingh. Nitisingh married with the accused and after her marriage, her name was changed as Zareen Khan. As the victim had been to Nagpur to dispose of her plot situated at Kondhali, she requested Nitisingh to search for a buyer for the said plot and she assured her. On the say of Nitisingh, the victim had been to Nagpur on 16.1.2024 and stayed at the house of Nitisingh for two days.

4. On 17.1.2021, at about 11:30 pm, after meal, the victim was relaxing on sofa-set in the house of the present

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accused. At the relevant time, the present accused was on the third floor of the said house. At about 2:30 am, Nitisingh asked the victim to go and sleep on 3rd floor. She also informed that door of the room situated on 3rd floor is not having latch and she should close the door by putting the table across the said door. Accordingly, the victim went to the 3rd floor of the said house. At about 5:00 am to 6:00 am, when she was sleeping, she realized touch of somebody and, therefore, she got up and saw that accused No.1 was sitting on her bed. Accused No.3 was standing outside the said room and she was subjected for forceful sexual assault by the accused No.1. She tried to resist by making shouts but accused No.3 has played songs on his mobile-phone in a loud voice and, therefore, her shouts were not heard by anybody. She further attempted to call Nitisingh, but the present accused snatched her mobile-phone. She was also threatened not

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to make shouts, otherwise her obscene videos would be forwarded to her fiancé. As per allegations, she was repeatedly subjected for sexual assault by accused No.1 till 11:30 am.

5. The victim was scared and was not able to narrate the entire incident to Nitisingh. However, she informed the said incident to her cousin brother by sending him message. At about 3:00 pm, somehow, she left the house for registration of her documents. Again, she returned to the house of the accused and narrated the incident to Nitisingh, however Nitisingh has not given any response. She was taken to Mayo Hospital by Nitisingh. She approached the police booth at Mayo Hospital and narrated the incident only to the extent that she was subjected for sexual assault. However, when she was narrating the incident to the police, Nitisingh, on the pretext of visiting doctor, called her outside the booth and

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forced her to leave the place. Thereafter, she obtained room in Orient Hotel at Nagpur and stayed there.

6. The police of the Mayo Hospital had reported the incident to the Gittikhadan Police Station. PSI Laxmi Choudhary had also visited the police booth at Mayo Hospital, but the victim had already left and, therefore, her statement was not recorded. The said police officer reported the said fact to PSI i.e. Rajkumar Upadhyay. Accordingly, entry was taken in station diary. Search of the victim was taken and during her search, it revealed that the victim checked-in Orient Hotel and, therefore, PSI Upadhyay along with other police staff had visited the Orient Hotel. The victim was in a scared condition. The police brought her at the Gittikhadan Police Station. Her statement was recorded. On the basis of the statement, police registered the crime against all the accused.

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7. After registration of the crime, the victim was referred for medical examination. The investigating officer has also visited the spot of incident. Accused No.1 was absconding. During the search, he was found and arrested. The samples of the victim and accused were obtained. The accused had also made memorandum statement. After completion of investigation, chargesheet came to be filed against the accused persons.

8. After committal of the case, learned Judge of the trial court has framed the charge vide Exh.11. The contents of the charge are explained to the accused. He pleaded not guilty and claimed to be tried. In support of the prosecution case, the prosecution examined in all 10 witnesses, as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Dr.Asлам Rajak	25

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2	Rajkumar Upadhyay, PSI	28
3	Anju Gajbhiye, Police Naik	32
4	Victim	34
5	Ms.Shreya Dahiwale, Medical Officer	41
6	Shailesh Yadav, pancha on spot	47
7	Datta Pendkar, Investigating Officer	51
8	Dr.Trupti Wankhede, Medical Officer	64
9	Laxmi Chaudhari, PSI	69
10	Dr.Sachin Giri, Medical Officer	76

9. Besides the oral evidence, the prosecution placed reliance on requisition to medical officer Exh.26, OPD Papers Exh.27, station diary entries Exhs.31 and 32, report Exh.35, FIR Exh.36, medical certificate Exh.42, requisitions to ENT Surgeon Exh.43 and 44, requisition to forensic medicine Exh.45, medical treatment papers Exh.46, spot panchanama Exh.48, arrest panchanama Exh.52, requisition to medical officer Exh.54, seizure memo Exh.55, memorandum statement of accused

Exh.56, general diary entry Exh.57, requisition to CA Exh.62, medical treatment papers Exhs.65 and 77, medical certificate of accused Exh.78, CA Reports Exh.87 collectively.

10. The statement of the accused was recorded by obtaining his explanation as to incriminating evidence appearing against him. The defence of the accused is of total denial. After appreciating the evidence, learned Judge of the trial court held the accused guilty and convicted him as the aforesaid.

11. Being aggrieved and dissatisfied with the same, the appeal is preferred by accused No.1 on the ground that the evidence of the victim is not consistent and trustworthy. Improbable story is narrated by the victim and learned Judge of the trial court has accepted it without application of mind. Subsequent conduct of the

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victim itself is doubtful and for all above these grounds, the case of the prosecution deserves to be rejected and the accused be acquitted.

12. Heard learned counsel Shri Arjun Bobade for the accused, learned Additional Public Prosecutor Shri V.A.Thakare for respondent No1/State, and learned counsel Shri J.S.Duhilani appointed for respondent No.2/victim.

13. Learned counsel for the accused submitted that the entire story narrated by the victim itself is improbable and unacceptable and the same requires to be thrown out. The conduct of the victim, after the incident that she visited the court, executed the documents, itself appears to be improbable. The evidence of the victim is also not corroborated by the medical evidence. There is no conclusive proof as to sexual assault. Though medical

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evidence shows bite marks on her chest, but the age of the bite marks is not mentioned. There is no independent corroboration to the evidence of the victim. There is no station diary entry to show visit of the investigating officer to the hotel. The investigating officer has not collected the extract of register of hotel whereat the victim stayed. Therefore, entire case of the prosecution fails and the accused deserves to be acquitted.

14. Learned Additional Public Prosecutor for the State strongly opposed the said submissions and vehemently submitted that the evidence of the victim is consistent and corroborated by police officials PW2 PSI Rajkumar Upadhyay and PW9 Laxmi Choudhary. It is further corroborated by medical evidence which shows various injuries on her person. Merely because she has executed the documents after the incident, the same is not sufficient to create doubt about her evidence. Her

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evidence shows that as she was influenced by the wife of the accused, she has not lodged the report. The friendship between the victim and Nitisingh was not denied. Thus, there is satisfactory reason for the victim to stay at the house of accused and also there is satisfactory reason for non lodging of the complaint on the request of Nitisingh. Then also, she visited the police booth near the Mayo Hospital and narrated the incident. Thus, the evidence of the victim is inspiring the confidence and, therefore, it be accepted.

15. Learned counsel appointed for the victim endorsed the same contentions and submitted that the evidence of victim is consistent and learned Judge of the trial court rightly appreciated the same and rightly convicted the accused.

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16. After hearing both the sides and perusing of the evidence, it is to be ascertained whether the evidence of the victim is consistent and inspiring the confidence as to the incident and independent corroboration is not required.

17. It is pertinent to note that the victim has not lodged the report initially, but as she approached the police outpost at Mayo Hospital and given a cryptic information as to the sexual assault on her, the said information was communicated to the Gittikhadan Police Station. It further reveals from the evidence that after receipt of the information PW9 Laxmi Choudhary immediately rushed to the outpost at Mayo Hospital, but the victim had already left and, therefore, the victim was searched. During the search of the victim, it revealed that she is staying in Orient Hotel and, therefore, the police visited the Orient Hotel. The victim was found in a scared

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condition in the said Orient Hotel and she was enquired and the alleged incident came into light.

18. In support of the prosecution case, the prosecution has examined PW4 victim who testified that she is originally resident of Jaipur. In the year 2010-11, her parents left Nagpur and went to Nepal and from Nepal to Jaipur. When she was studying in St.Ursula, she got acquaintance with Nitisingh and developed friendship with her. Though she left Nagpur, she maintained the contact with said Nitisingh. Said Nitisingh married with the accused and thereafter her name was changed as Zareen. Her father has purchased some property at Kondhali in her name. She was in need of financial assistance to run business and, therefore, she requested Nitisingh to search customers to sell out the said property. Nitisingh called her at Nagpur and, therefore, she came to Nagpur on 16.1.2021. She stayed at the house of said

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Nitisingh for 2 days. The house of Nitisingh is of three storied. The ground floor was used for keeping articles. The accused was residing on first floor and upper floor was having one more room. On 17.1.2021, she went to sleep and Nitisingh was in her room and the accused was in the room situated on third floor. At about 2:30 am, she was woken up by Nitisingh and asked her to go to sleep in the room on third floor. When she along with Nitisingh went on 3rd floor, the present accused and accused No.3 were there. Nitisingh also disclosed to her that there is no latch to the said room and she should use table to close door. At about 5:00 am, when she was in sleep, she realized touch to her body. Therefore, she woke up and saw that present accused was sitting on his bed and accused No.3 was outside the room. She made enquiry with the present accused, but the present accused forcefully subjected her for sexual assault. She shouted

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for help, but her shout could not go out and, therefore, the present accused asked other co-accused to play music on mobile-phone. Her mobile-phone was also snatched by them. She was repeatedly subjected for forceful sexual assaults. Though she made an attempt to disclose the incident to Nitisingh, but as she was scared, she could not disclose the incident to Nitisingh. Thereafter, she left the house for registration of the documents and after coming home, she disclosed the incident to Nitisingh. Nitisingh left the house on pretext of visiting Durgah and, thereafter, victim received message from co-accused and the victim shared her location to her. Nitisingh came there and the victim narrated the incident to Nitisingh and Nitisingh took her to Daga Hospital for medical examination, but the Medical Officer from the said Daga Hospital asked her to go to Mayo Hospital. She approached to the police outpost at Mayo Hospital. At

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the relevant time, Nitisingh influenced her and restrained her from lodging of the report. Therefore, she left the house of the accused and obtained room in Orient Hotel. She further deposed that the police and one lady police constable visited Orient Hotel in search of her, made enquiry with her, took her to the police, and she lodged the report. She was also referred for medical examination. Her clothes were also seized by the police.

19. During the cross examination of the victim, some infirmities are brought on record like she has not disclosed details about her travelling to the police and she has not informed about the incident to the police by dialing No.100. The further defence attempted to be brought on record is that she has obtained amount of Rs.1.00 lac from accused No.1 in the year 2019 when property was registered in her name. She admitted that the house of the accused is in a dense locality. The

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attempt was further made to bring on record that the story narrated by the the victim is improbable as she visited the registration office after the incident and also visited the bank. Therefore, the evidence of the victim appears to be improbable and unacceptable as nobody would be in a position to execute any deed after the alleged incident has taken place with her.

20. In the nature of corroboration, the prosecution has examined PW2 Rajkumar Upadhyay who was serving as Police Sub Inspector in Gittikhadan Police Station. His evidence shows that on 18.1.2021 PSI Laxmi Choudhary informed him that two women approached the police outpost at Mayo and out of those two women one disclosed that she was subjected for forceful sexual assault. When the police were taking information, they left the police booth on a pretext that they want to communicate with each other. Thereafter, PSI Laxmi

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Choudhary visited the Mayo Hospital and searched the victim, but she could not search her. Accordingly, entry was taken in the station diary. His further evidence shows that he received the instructions from his superior officer to search the victim and accordingly he searched the victim. While searching the victim, he came to know that the victim is staying in Orient Hotel and, therefore, he visited the Orient Hotel wherein the victim was found. He made enquiry with the victim. The victim has disclosed the entire incident. By recording her statement, the crime was registered against the accused. His cross examination shows that the victim never approached the the police station on her own. He has not seized any documents from the hotel to show that the victim was residing in the said hotel.

21. PW9 PSI Laxmi Choudhary deposed on the same lines stating that when she was on duty as a day officer in

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Gittikhadan Police Station, she received a phone call from Mayo Hospital disclosing that the victim came at Mayo Hospital and when she was residing at her friend's house, some untoward incident took place with her. She immediately rushed to the Mayo Hospital, but the victim had already left the Mayo Hospital. The police at outpost had obtained her mobile number. While handing over the charge, she disclosed the entire incident to PW2 PSI Rajkumar Upadhyay. As far as this evidence is concerned, PW9 PSI Laxmi Choudhary is not cross examined on this aspect.

22. To corroborate the aspect of sexual assault on the victim, the prosecution has examined PW1 Dr.Aslam Rajak vide Exh.25. His evidence shows that on 19.1.2021 he was Casualty Medical Officer at Indira Gandhi Medical College and Hospital. Police officials had brought the victim who narrated the history of rape. The said letter is

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at Exh.26. He examined her and on external examination, he witnessed contusion over left forearm of the size 1x1 cm. The injury was one day old. Considering history of sexual assault, he referred to the Gynaecology Department.

23. PW5 Dr.Ms.Shreya Dahiwale, is also working as a Senior Resident of Medical Officer in Gynaecology at IGMC Nagpur. The victim was referred to her from casualty department who has narrated the history of sexual assault and brought by LPC Anju Gajbhiye. The victim narrated the history that when she was staying at friend's house, she was sexually assaulted by husband of her friend. On her examination, she found two bite marks over the right breast near areola i.e. medial side and two bite marks over left breast medial side above the areola. She further witnessed one contusion admeasuring 1x1 cm over right arm, contusion 1x1 cm over left forearm,

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contusion 1x1 cm on left forearm, 1x1 cm contusion over left body. On internal examination, she witnessed one old hymen tear at 7, 8 and 2 O'clock position. She collected samples and handed over to the investigating agency. Accordingly, she issued certificate Exh.46. She also referred letter to ENT Department and General Surgery Department Exh.44. She further testified that possibility of sexual assault over the victim cannot be ruled out.

24. PW8 Dr.Sachin Giri is another Medical Officer In Gynaecology Department. She also testified that the victim has narrated the history and referred for medical examination. She carried her physical examination and asked her to get admitted, but the patient has denied for the same.

25. PW10 Dr.Sachin Giri is also medical officer of IGMCH, Nagpur who has also examined the victim on

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19.1.2021. On his examination he found following injuries on the person of the victim:

1. contusion over left forearm posteriorly laterally at upper 1/3 region 02x01 cm
2. contusion over left forearm antyero-laterally at middle 1/3 region 01x01 cm
3. contusion over left breast at upper part laterally of size 02 x 01 cm, semi circular in shape;
4. contusion over left breast at upper part medially of size 1.5 x 01 cm
5. contusion over right breast at upper part laterally of size 1.5 x 01 cm.

He obtained swab from the breast and handed over to WPC Anju B.No.772 of Gittikhadan Police Station. Accordingly, he issued certificate Exh.77. As per his

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evidence, all injuries were fresh and possible due to resistance. He has also examined the accused.

26. These all medical officers are cross examined at length. Cross examination of PW1 Dr.Asram Rajak shows that Exh.26 i.e. requisition letter does not bear anything showing timing. He admitted that he made general observation and not given any treatment. He further admitted that contusions can occur during traveling also.

27. PW5 Dr.Ms.Shreya Dahiwale also admitted that possibility of sexual assault is not mentioned by her in the report Exh.42. There were no injuries on the face and neck of the patient. Injury like contusions is possible by fall on the hard surface. She further admitted that she did not find any injury on the head of the patient.

28. The evidence of PW8 Dr.Trupiti Wankhede remained unchallenged.

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29. PW10 Dr.Sachin Giri, admitted that he has not mentioned in the certificate that injuries were fresh.

30. On the basis of this cross examination, attempt was made to falsify the version of the victim.

31. The prosecution also adduced evidence of PW3 Anju Gajbhiye who has taken the victim to the hospital and PW9 Investigating Officer Laxmi Choudhary.

32. Perusal of the evidence shows that the victim came to Nagpur on 16.1.2021. Undisputedly, from 16.1.2021 to 18.1.2021 she stayed at the house of the present accused and his wife Nitisingh. As per the evidence, in the intervening night of 17.1.2021 to 18.1.2021 she was subjected for sexual assault by the accused. She disclosed the incident to the Nitisingh and Nitisingh has taken her to Mayo Hospital. Admittedly, investigating agency has

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not collected the evidence that the victim was staying in Orient Hotel.

33. On appreciation of the evidence, undisputed facts are that the victim was having acquaintance with Nitisingh prior to the incident. It is also undisputed that she had been to Nagpur and stayed at the house of the accused. This fact is not denied during the cross examination. The evidence of PW2 PSI Rajkumar Upadhyay and PW9 Laxmi Choudhary shows that the victim had approached to police outpost at Mayo Hospital and had given incomplete information. Therefore, she was searched and she was found in Orient Hotel. Her statement was recorded. On the basis of her statement, crime was registered. The victim has narrated the entire incident. Though she is cross examined at length, defence was taken that she obtained Rs.1.00 lac from the accused in the year 2019 to which she denied.

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34. To corroborate the version of the victim, the prosecution mainly placed reliance on the medical evidence by examining four Medical Officer. Their evidence consistently shows that they have seen the external injuries on the person of the victim. Even accepting the suggestion that the said injuries caused on her left and right hand are possible while travelling, the question remains as to the injuries on her breast.

35. The evidence of PW5 Dr.Ms.Shreya Dahiwalé shows that she witnessed two bite marks on right breast and two bite marks on left breast. This fact is neither challenged nor cross examined. PW10 Dr.Sachin Giri specifically stated that all injuries were fresh injuries and possible due to resistance.

36. It is only argued by learned counsel for the accused that age of the bite marks is not mentioned by the medical

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officers. Whether that aspect would be sufficient to discard the entire evidence of the victim when no reason came forward for implication of the accused falsely in the alleged incident. The incriminating articles forwarded to the Chemical Analyzer also show that the slack of the victim and one piece of cloth seized from the house of the accused were stained with the human blood. The specific evidence of the victim shows that during the incident she has menstrual period i.e. s also corroborated by PW5 Dr.Ms.Shreya Dahiwalé.

37. The another submission made by learned counsel for the accused is that after the incident, it is highly improbable that a victim of sexual assault would visit the office to register the documents. While appreciating the evidence of the victim, it is to be borne in mind that the victim had been to Nagpur to collect some amount by selling her property as she was in need of financial

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assistance. Therefore, she was in contact with Nitisingh and that was the reason for her to say at the house of accused Nos.1 and 2. After the incident, attempt was made by her to disclose the incident to the Nitisingh. Though there is no evidence that Nitisingh has taken her to the Daga Hospital, the evidence of PW2 PSI Rajkumar Upadhyay and PW9 Laxmi Choudhary specifically shows that PW9 Laxmi Choudhary was present in the police station as a day officer. She received a phone call from the police outpost of the Mayo Hospital and disclosed to her that two women approached to the said police outpost and one of them made a complaint of sexual assault on her at her friend's house. Immediately PW9 Laxmi Choudhary rushed to the police outpost at Mayo Hospital, but both the women left the place. On enquiry by her, it revealed to her that they left the police chowki on pretext of having communication with each other.

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This evidence is to be appreciated in the light of the evidence of the victim that Nitisingh influenced her by saying that she should not lodge complaint otherwise Nitisingh would commit suicide and took her from the police station. The victim immediately left the house of the accused and took shelter at Orient Hotel. The information received by PW9 Laxmi Choudhary is communicated by her to PW2 PSI Rajkumar Upadhyay. PW2 PSI Rajkumar Upadhyay was also informed by his superior to search the victim and during search the victim was found in Orient Hotel and, thereafter, the victim was immediately taken to the police station and referred for medical examination. PW1 Dr.Asлам Rajak examined her on 19.1.2021 at 12:20 pm. PW5 Dr.Ms.Shreya Dahiwalе examined her at 1:30 pm and PW10 Dr.Sachin Giri examined her at 3:50 pm. The external injuries as well as the bite marks are seen on the

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chest of the victim. The evidence as to the bite marks remained unchallenged.

38. It is well settled that the evidence of victim of sexual assault stands on par with evidence of an injured witness. The evidence of the victim of sexual offence is entitled to great weight and corroboration is not required if it inspires confidence. In physical assault case, there may be evidence of eyewitnesses, but such type of evidence cannot be expected in sexual assault case. A prosecutrix of a sex-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. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If

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the court keeps this in mind and appreciates the evidence, Illustration (b) of Section 114 of the Indian Evidence Act which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice.

39. In the case of **State of Punjab vs. Gurmeet Singh reported in (1996 (2) SCC 384)** the Hon'ble Apex Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. The evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are

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compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof.

40. Learned counsel for the accused submitted that the evidence of the victim which remains uncorroborated deserves to be rejected. In support of his contentions, he placed reliance on the decision in the case of **Santosh Prakash vs. State of Bihar, reported in (2020) 3 SCC 443** and **Rai Sandeep @ Deepu vs State of NCT of Delhi, reported in (2012)8 SCC 21** and submitted that the prosecution failed to pass the test of sterling witness. He submitted that in view of the decision of the Hon'ble Apex

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Court, sterling witness should be of a very high quality and caliber whose version should therefore be unassailable.

41. The another ground raised by him is, no semen stains are found either on the clothes of the accused, clothes of the victim or on bed sheet. Rape is all regards penetration i.e. penial vaginal penetration and certainly not about ejaculation or emission of semen. As the very explanation under Section 375 states that to constitute the offence of rape, it is not necessary that there should complete penetration with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Section 376 of the IPC. The *sine quo non* of offence of rape is

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penetration and not ejaculation. Therefore, in absence of semen, being found, either on clothes of accused or victim, not sufficient to discard the evidence.

42. The legal position, therefore, is quite unambiguous that the evidence of victim in case of rape is ordinarily to be believed and may form the sole basis for conviction unless cogent reasons for the court to be hesitant in believing the statement at its face value and to seek corroboration thereof exist.

43. Here, in the present case, victim's evidence is corroborated by the medical evidence and also corroborated by the evidence of police officers which suggests that after the incident, though the victim approached the police station, due to the influence of Nitisingh, the wife of the accused, she has not lodged the report. There may be reason for the victim for not

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lodging the report immediately as her marriage is already settled and the accused threatened her not to inform the incident by sharing the videos with her fiancé. In such type of cases, generally, there is a reluctance to go to the police station because of the society's attitude towards such women. She was concerned about her future and, therefore, no *straight jacket* formula can be laid down in this regard to hold that as she has not immediately approached the police station, her contentions are to be disbelieved. As observed earlier, there may be several reasons for the victim not to lodge the report immediately. As soon as she got the support of the police, she disclosed the incident and lodged the report. The delay is to be considered in the light of the fact that the victim came to Nagpur having support of the Nitisingh who was her friend, but Nitisingh betrayed her trust and in the house of Nitisingh she was subjected for sexual assault. She

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attempted to inform the Nitisingh about the incident, but Nitisingh has not supported her and, therefore, some time was required for her. The delay is to be considered in the light of the facts and circumstances of that case and such delay is not always fatal to the prosecution.

44. After re-appreciating the evidence, it reveals that the victim was subjected for sexual assault by the accused. The evidence of the victim is corroborated by the medical evidence as four medical officers witnessed the injuries on her person. Injuries as to the bite marks are even not challenged during the cross examination. No other reason is brought on record to show that the said injuries are possible by other reasons also. Considering the nature of injuries on her breast, in the light of her evidence and the evidence of PW10 Dr.Sachin Giri, it shows that injuries were fresh and after appreciating the evidence,

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learned Judge of the trial court rightly convicted the accused.

45. In the light of the above foregoing discussion, no infirmity can be found in the judgment impugned in the appeal. Thus, the appeal being devoid of merits is liable to be dismissed and the same is **dismissed**.

46. Fees of learned counsel Shri J.S.Duhilani appointed for the victim be quantified and the same be paid to him as per rules.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!