



Judgment

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

CRIMINAL APPEAL NO.317 OF 2023

Suraj s/o Raju Gaikwad,
aged 30 years, occupation private,
r/o Bajrang Nagar, Galli No.6,
Nagpur, P.St.Ajni, Nagpur.
Presently in Central Prison,
Nagpur.
Native Address: Rambag,
Behind Majdoor Mill, P.St.Immamwada,
Nagpur City. **Appellant.**

:: VERSUS ::

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

2. XYZ Victim in Crime No.86/2018
Regd.P.S.Ajni, Nagpur. **Respondents.**

Shri M.V.Rai, Counsel for the Appellant.
Shri V.A.Thakare, Addition Public Prosecutor for the Respondent
No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 12/02/2025

PRONOUNCED ON : 12/03/2025

JUDGMENT

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1. By this appeal, the appellant (accused) has challenged judgment and order dated 21.3.2023 passed by learned District Judge-7 and Additional Sessions Judge, Nagpur (learned Judge of the trial court) in Special Criminal Case No.143/2018.

2. By the said judgment and order impugned, the accused is convicted for offence punishable under Section 376(2)(f)(i)(j)(n) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 20 years and to pay fine Rs.10000/-, in default, to undergo further simple imprisonment for six months.

He is further convicted for offence punishable under Section 506 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 1 year.

3. Brief facts of the prosecution case which are necessary for disposal of the appeal are as under:

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The victim aged about 10 years old was studying in 5th Std. in the year 2018 having single parent mother as her father is not alive and was residing with her mother and brother. Her brother used to go for work and she remains to be alone in the house after her school is over. Her school timing was between 7:00 am to 11:00 am. As per the allegation, the accused, who is her nearest relative and husband of her maternal aunt, subjected her for forceful sexual assault on multiple occasions by threatening her. The victim disclosed the incident to her mother and after disclosure, on the second day, her mother has lodged the report against the accused. On the basis of the said report, the police registered the crime and after registration of the crime, wheels of the investigation starting rotating. During investigation, the victim was referred to the medical examination. The accused was arrested. The necessary

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investigation was carried out and after completion of investigation, chargesheet was filed against the accused.

4. Learned Judge of the trial court has framed the charge vide Exh.9. The accused denied the charge and claimed to be tried. In support of the prosecution case, the prosecution has examined as many as 9 witnesses, as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Chandramohan Mali, the police constable	22
2	Jyotsana Sathavne, the lady police constable	23
3	Mother of the victim	24
4	The victim	27
5	Sharad Ganvir, pancha on the spot	28
6	Dr.Priya Pratapan, Medical Officer	31
7	Kailash Magar	37
8	Nisha Bhute, API	39
9	Satyendra Patil	45

5. Besides the oral evidence, the prosecution placed reliance on report Exh.25, FIR Exh.26, spot panchanama Exh.29, medical report Exh.32, casualty card Exh.33, medical report of the accused Exh.35, arrest panchanama Exh.38, seizure memo Exh.41, requisition to CA Exh.42, birth report Exh.46, birth certificate Exh.47.

6. On the basis of the oral as well as the documentary evidence, the prosecution claimed that the case against the accused is proved beyond reasonable doubt. All incriminating evidence is put to the accused to obtain his explanation as to the incriminating evidence appearing against him by recording his statement under Section 313 of the CrPC. The defence of the accused is of total denial and of a false implication as he performed the marriage

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with the sister of the mother of the victim against the will of all family members.

7. Learned Judge of the trial court appreciated the evidence and held the accused guilty and sentenced him as the aforesaid.

8. Being aggrieved and dissatisfied with the same, the appeal is preferred by the accused on the ground that the evidence adduced by the prosecution is not cogent and reliable and not inspiring the confidence. There is inordinate delay in lodging of the FIR and the said delay is not explained. The evidence of the victim girl is not corroborated by the medical evidence as the foundational facts are not proved. The presumption under Section 29 will not attract. For all above these reasons, he prays for acquittal of the accused.

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9. Learned Additional Public Prosecutor Shri V.A.Thakare for the State taken me through the entire evidence on record and submitted that the victim girl is of very tender age having single parent. The accused is residing in her neighbour and related to her. She was threatened by the accused after subjecting her for forceful sexual assault. As the mother of the victim noticed behaviour of the victim, she enquired with the victim by taking her in confidence and, thereafter, the victim has disclosed the said incident to her mother. Immediately, the mother lodged the report on the next date. The delay is to be ascertained from the certain circumstances like the mother of the victim is not having any support as there is no male member in the family. The people are reluctant to lodge the report considering the stigma to the character and, therefore, the said delay is not fatal to the prosecution. He submitted that the victim was 9

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years old at the time of the incident. Her evidence that she was subjected for the sexual assault is corroborated by the medical evidence that is evidence of PW6 Dr.Priya Pratapan who testified that the victim has narrated the history to her that she was sexually assaulted by her uncle at her house and at the house of her uncle on multiple occasions. She found hymen torn on genetial examination. Though she is cross examined at length, except the general proposition, that there are other reasons to tear hymen, nothing is brought on record. The medical certificate shows hymen is torn and edges were ragged. No material is brought on record by the accused to show that due to his marriage with the sister of mother of the victim the entire family got annoyed. On the contrary, the cross examination of the mother of the victim shows that the accused was on visiting terms at her house as well as at the house of her parents. If

totality of circumstances emerging on record is appreciated, the victim has not any motive to falsely implicate the accused and, therefore, the judgment impugned in the appeal is proper and no interference is called for.

10. This is one more case of sexual molestation or assault of a child. The mother of the victim, who is having utmost confidence on the accused being his relative, left her child at home and the said trust was betrayed as the daughter of the informant which according to her was in safe hands was sexually assaulted and molested. To prove the charge against the accused, the prosecution has examined as many as nine witnesses. To prove the age of the victim, prosecution has examined PW9 Satyendra Patil who was serving with the NMC in Births and Deaths Department. As per his evidence, birth certificate shown to him is prepared by him on the basis

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of the record available in the office. The date of birth of the victim, as per the record, is 29.8.2008. The birth report received is at Exh.46 and birth certificate is at Exh.47. The victim has also narrated her birth date as 29.8.2008. The mother of the victim has also disclosed the birth date of the victim. The mother of the victim and the victim both were not cross examined on birth date of the victim. Though PW9 Satyendra Patil is cross examined, an attempt was made to show that the name of the child was written afterwards in the birth certificate. Perusal of Exh.46 shows that name of the parents is mentioned in the birth report. Date of birth as per the said birth report is 29.8.2008 and the same was informed by the doctor from the GMC Hospital who was on duty. On the basis of the said information, the entry was taken in the record and birth certificate Exh.47 is issued which is at Exh.47. The said birth certificate is issued in view of

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Sections 12 and 17 of the Registration of Births and Deaths Act, 1969. As per Rule 9 of the Maharashtra Births and Deaths Registration Rules 1976, this certificate is issued by the Sub Registrar acting under the provisions of the Registration of Births and Deaths Act, 1969. The Act mandates that the Registrar should discharge duties in view of Section 7 of the said Act. Section 8 of the said Act mandates that each head of the house to report birth in the family to the Registrar. The Act provides for maintenance for recording birth and death within local area. That is how, certificate came to be issued by Sub Registrar as per the provisions of Sections 12 and 17 of the Registration of Births and Deaths Act, 1969. The birth certificate as such is issued by the public officer and it is a document forming record of the acts of the public officer and, therefore, the same is a public document within the meaning of Section 74 of the Indian Evidence

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Act and the same is admissible in evidence in view of Section 77 of the Indian Evidence Act. Section 17 of the said Act provides for search of Birth Register and supply of extract thereof by certifying the same by the Registrar or other authorized Officer. Section 17 of the said Act provides that such extract shall be admissible in evidence for the purpose of proving birth or death to which the entry relates. The birth certificate is in fact the extract of Birth Register in respect of entry of birth of the victim child and as such, admissible in evidence. Section 35 of the Evidence Act makes it clear that if entry is made by public servant in the official book in discharge of his official duty, such entry becomes the relevant fact and admissible in evidence. Section 35 of the Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty

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pecially enjoined by the law of the country is itself the relevant fact.

11. It is thus clear that it is an entry taken by the public servant in discharge of his official duty while performing official duty enjoined by law. It is thus clear that the birth certificate issued by the statutorily appointed authority or competent authority is relevant and admissible.

12. Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 also states that in every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate

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from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or

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in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

13. In the light of the above legal position, the birth entry taken by the office of PW9 Satyendra Patil sufficiently proves the age of the victim and is admissible in evidence in view of Section 35 of the Indian Evidence Act

14. Now, let us examine the evidence of the victim and the mother of the victim.

15. The victim is examined vide Exh.27. Her competency is tested in view of Section 118 of the Evidence Act and after recording satisfaction that the victim is competent witness her evidence is recorded. The evidence shows that at the relevant time, in the year 2018, she was studying in 5th Std. The accused is

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husband of her aunt. She used to be alone in the house as her mother was attending the work being she is the only earning member of the family as the victim has already lost her father. Her brother used to come at home at 5:00 pm and her school timing was 7:00 am to 11:00 am. She specifically stated that the accused used to come to her house and press her mouth subjected her for forceful sexual assault. She narrated the incident in detail by describing the act of the accused. Her evidence further shows that she was threatened not to disclose the incident to anybody by giving her life threats as well as by paying Rs.10/- to her. This act was repeated by the accused on 2-4 occasions. She disclosed the said incident to her mother. Her evidence further shows that she has disclosed the incident to the doctor when she was taken for medical examination. Her cross examination shows that her aunt is also doing the household work and

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leaving the house in the morning and returning the home at 5:00 pm. She specifically admitted that she is unable to recollect on which date she disclosed the incident to her mother. Much stress was given by the defence on the admission of the victim that she disclosed the incident to her mother 2-3 months prior, but there is no clarification as to whether the incident was disclosed by her 2-3 months prior to lodging the report or before recording her evidence. Rest of the cross examination is in denial form.

16. To corroborate her version, the prosecution placed reliance on the evidence of the mother of the victim. She narrated that she observed her daughter used to be remained silent, was in a scared condition, and used to sleep and, therefore, she took her daughter in confidence that, thereafter, the victim disclosed to her that the accused forcefully sexually assaulted her and threatened her. On the next date, she has lodged the report about

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the incident. Her cross examination shows that some omissions are brought on record that she has not narrated before the police that her daughter used to be remained silent, was in a scared condition, and used to sleeps. She has not disclosed that the accused has threatened her daughter. If these omissions are considered in the light of report Exh.25, it is not that the mother of the victim has not stated anything about the behaviour of the victim.

17. Recital of the report shows that she has observed that the victim was restless and not taking food properly and, therefore, the said omission is not material. Further cross examination shows that marriage of her sister and the accused was love marriage. She admitted that her husband died and she was residing separately from her husband before his death. Cross examination further

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shows that the accused used to visit the house of her parents before his marriage.

Thus, cross examination shows that the accused was visiting the house of the parents of the mother of the victim prior to his marriage with the sister of the mother of the victim.

18. The prosecution further examined PW6 Dr.Priya Pratapan to corroborate the version of the victim. She testified vide Exh.31 that the victim was brought for medical examination. She obtained the consent of the victim's mother before examination. The victim gave history that she was sexually assaulted by her uncle at her home as well as at the home of her uncle on multiple occasions. She found on examination of the victim that hymen of the victim was torn. The victim was brought for examination after fifteen days of the alleged incident.

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The only admission brought on record during cross examination is that there are other reasons for tearing of the hymen. Perusal of the medical certificate reveals that hymen shown to be torn and edges shown to be ragged.

19. Besides the oral evidence of these witnesses PW1 Chandramohan Mali and PW2 Jyotsana Sathavne are examined to prove the circumstance that the victim and accused are taken for medical examination. PW5 Sharad Ganvir is examined to prove various panchanamas including spot panchanama Exh.29. Recital of the spot panchanama shows that the house of the victim is situated in two storied building. The house of the accused is also in the same building. Thus, it reveals from the spot panchanama that victim and accused are residing in the same building.

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20. Perusal of the cross examination of the victim and the mother of the victim shows the fact that school timing of the victim, the mother of the victim is attending the work and the wife of the accused is also attending the work is not denied and challenged.

21. PW7 Kailash Magar has carried out initial investigation and PW8 Nisha Bhute is also investigating officer who completed the investigation and submitted the chargesheet against the accused.

22. On appreciation of the evidence, the question is, whether testimony of the child witness can be relied upon for basing conviction.

23. The Hon'ble Apex Court in the case of **Radhey Shyam vs. State of Rajasthan, reported in (2014)5 SCC 389** has laid down the law regarding appreciation of

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evidence of child witness. Paragraph No.12 of the said judgment reads as under:

“12. In **Panchhi and ors, National Commission for Women vs. State of UP and ors, AIR 1998 SUPREME COURT 2726**, after reiterating the same principles, this Court observed that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and, thus, a child witness is an easy pray to tutoring. This Court further observed that the courts have held that the evidence of a child witness must find adequate corroboration before it is relied upon. But, it is more a rule of practical wisdom than of law. It is not necessary to refer to other judgments cited by learned counsel because they reiterate the same principles. The conclusion which can be deduced from the relevant pronouncements of this Court is that

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the evidence of a child witness must be subjected to close scrutiny to rule out the possibility of tutoring. It can be relied upon if the court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, the court must find adequate corroboration to the child witness's evidence. If found, reliable and truthful and corroborated by other evidence on record, it can be accepted without hesitation. We will scrutinize PW-2 Banwari's evidence in light of the above principles.

24. The victim as seen from her evidence appearing to be the witness of truth. It is not the defence of the accused that she is tutored witness. Even there is no suggestion that she is a tutored witness. Her evidence also nowhere shows that she is tutored witness.

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25. As a rule prudence, let us find out whether the evidence of the victim is corroborated by other evidence available on record.

26. The victim has disclosed the incident to her mother as the mother has enquired with her by observing the change in behaviour. Thereafter, immediately, report was lodged and the victim was medically examined. Dr.Priya Pratapan medically examined her and on medical examination, she found that hymen of the victim was torn. Though the attempt was made that there are other reasons for tearing of the hymen, the victim was not cross examined to bring on record the said reason to show that the hymen was not torn due to the sexual assault, but due to the other reasons. It is vehemently submitted that no injuries are found on the person of the victim. As regards objection about medical evidence that no injuries are found on the person of the victim, the said objection

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cannot be entertained for the reason that law does not require or make it imperative for the prosecution to corroborate its version always by way of medial evidence.

27. It is now well settled that absence of the injuries on the person of the prosecutrix does not lead to any inference that the accused has not committed forcible sexual intercourse on the victim. Absence of mark of injuries on the person of the victim cannot be adopted as formula to disbelieve the version of the victim. It will all depend on the facts and circumstances of each case. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any

injuries or that she had offered no resistance at the time of commission of the crime.

28. In **State of Tamil Nadu vs. Ravi @ Nehru, reported in 2006 (10) SCC 534** the Hon'ble Apex Court ruled that "rape" is crime and not a medical condition. "Rape" is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the "rape" has occurred or not is a legal conclusion, not a medical one. That is the reason why, even the opinion of the doctor that there was no evidence of sexual intercourse or rape is at times held to be not sufficient to disbelieve the accusation of the rape by victim.

29. In the light of the above discussion, here, in the present case, allegations are made by the victim against

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her uncle. There is no reason for false implication. Though defence suggested that the love marriage between accused and sister of mother of the victim is disliked by the family members, the cross examination of mother of victim itself shows that the accused was visiting the parents of the mother of the victim itself is sufficient to show that relationship between the accused and his wife in the nature of love relationship was accepted by the family members. There is no other reason brought on record showing enmity between two families. Even accepting the enmity or strained relationship cannot be a reason for the false implication. In fact, cross examination of the mother of the victim as well as victim shows that both families were visiting on each other's house. In the light of admissions given during the cross and when there is no other evidence to show that the victim has ulterior motive to implicate the

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accused in the false case, it hardly needs to be mentioned that rape is a ghastly act which leaves the victim shattered for the life as it causes not only physical but emotional and psychological trauma to the victim. Sexual activities with young girls of immature age have a traumatic effect on them, which persists throughout their life and often destroys their whole personality. the victim of a sexual assault is not an accomplice, but she is a victim of lust of another person. She stands at a higher pedestal than that of an injured witness. Evidence of victim of rape case is required to receive same weight as is attached to evidence of an injured witness. If totality of circumstances emerging on record discloses that the victim of such crime does not have any motive to falsely implicate the accused, then, it is not required to seek corroboration to her evidence and the court generally needs to accept her evidence. While dealing with cases of

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sexual assault on females of tender ages, the court is expected to shoulder great responsibility and is required to deal with such cases sensibly. Broader probabilities of the prosecution case are required to be examined in such crimes and the court is not expected to get swayed by minor contradictions or insignificant discrepancies in the evidence of prosecution which does not go to the core of the prosecution case which case requires to be thrown away.

30. The defence has not disputed the fact that the victim was ten years old at the time of the incident. The age of the victim is also proved by the prosecution. From the contents of the deposition of the victim as to whether she has turned or not inference can be drawn. Deposition of child witness needs to be examined and tested against formal statement of such witness and so also in the light of all attending circumstances. The basic

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principle of criminal jurisprudence is that the prosecution must establish the guilt of the accused by cogent and reliable evidence and the burden always rest on the prosecution to prove guilt beyond all reasonable doubt. The same principle is applicable to the cases of sexual offences against the persons of tender age. After applying all tests, nothing is on record to show that there was any ulterior motive to implicate the accused falsely. On the contrary, the evidence of the victim is inspiring confidence. Her sole testimony is found to be truthful. In fact, there is no need of any corroboration.

31. The another ground raised by the accused is that there is inordinate delay in lodging of the FIR.

32. Learned Additional Public Prosecutor for the State vehemently submitted that mere delay in lodging of the FIR is not sufficient to disbelieve the case of the

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prosecution. Delay in lodging of the FIR in sexual offences has to be considered with different yard sticks. In sport of his contentions, he placed reliance on the decision in the case of **Satpal Singh vs. State of Haryana, reported in (2010)8 SCC 714** wherein the Hon'ble Apex Court held that in a rape case the prosecutrix remains worried about her future. She remains in traumatic state of mind. The family of the victim generally shows reluctance to go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than comfort and sympathise with her. Family remains concern about its honour and reputation of the prosecutrix. It has been further observed that no *straight jacket* formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the

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matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon.

33. In **Phool Singh vs. The State of Madhya Pradesh**, reported in (2022) 2 SCC 74 the Hon'ble Apex Court by referring the judgment in the case of **State of Punjab vs. Gurmit Singh**, reported in (1996) 2 SCC 384 held that there is no reason to doubt and trustworthiness of the prosecutrix.

34. In **State of Punjab vs. Gurmit Singh** *supra* the Hon'ble Apex Court observed that the courts must, while

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evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual

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assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.

35. Though learned counsel for the accused placed reliance on **Criminal Appeal No.584/2022 (Sikandar Zakari Chouhan vs. State of Maharashtra)** decided by this court on 26.11.2024 and **Criminal Appeal NO.882/2022 (Surendra s/o Dayaram Bobde vs. The State of Maharashtra)** decided by this court on 5.12.2024, the said judgments can be differentiated on the facts and the same are not helpful to the accused.

36. As far as ground of delay is concerned, the evidence shows that victim has disclosed the incident to her mother and on the second day she lodged the report. The delay is to be considered in the light of the fact that the mother of victim is not having support and she is only parent looking after her children. Penetrative sexual

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assault on the victim was shock for her and, therefore, immediately lodging of the FIR is not expected from her. Being a mother, she requires some time to approach the police station and lodge report. As observed in catena of decisions, that delay is to be considered in the light of facts and circumstances of that case, such delay is not always fatal to the prosecution.

37. After re-appreciating the entire evidence, it reveals that the victim who is niece of the accused was subjected for sexual assault by him. He has betrayed the trust of the small child who is having trust on the accused being her uncle. Learned Judge of the trial court appreciated all these aspects and considering evidence on record, rightly convicted the accused.

38. In the light of the above foregoing discussion, no infirmity can be found in the judgment impugned in the

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appeal in view of the Criminal Law Ordinance 2018 which says that whoever commits “rape” on girl under twelve years of age shall be punished with rigorous imprisonment for a terms which shall not be less than twenty years, but which may extend to imprisonment for life for the remainder of that person’s natural life with fine or with death.

39. In this view of the matter, the appeal being devoid of merits and liable to be dismissed, the same is **dismissed**.

Appeal stands disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!