



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 274 OF 2024

Chintaman S/o Janardhan Lohale
Age About 45 Years, Occ. Labour
R/o Mahuli, Tq. Manora, Dist. Washim

...Appellant

// VERSUS //

The State of Maharashtra,
through the Police Station Officer of
Police Station Manora, Tq. Manora,
Dist. Washim.

... Respondent

Shri Sagar Y. Rawate, Advocate for the appellant.
Ms Sonia Thakur, APP for the respondent/State.

CORAM: NIVEDITA P. MEHTA, J.

Reserved on : 15th September, 2025.
Pronounced on : 10th October, 2025

JUDGMENT :

1. The appellant/ accused has preferred the present appeal challenging judgment and order dated 27th February, 2024 (hereinafter referred to as the “impugned judgment”) passed by the learned Additional Sessions Judge, Mangrulpir in Sessions Trial Case No. 107/2013 (old Sessions Trial Case no. 19/2013) whereby the learned Court convicted the appellant/accused for offence punishable under Section 376 of the Indian

Penal Code, 1860 (hereinafter referred to as the “IPC”) and sentenced him to suffer rigorous imprisonment for fifteen years and to pay fine of Rs. 20,000/-, in default of payment of the fine to suffer rigorous imprisonment for six months.

2. Background facts :-

PW-1, the informant is victim's mother. On 11.10.2012, she lodged a report (Exhibit 46) with Manora Police Station. It is stated in the report by the informant that during the commission of the crime, the victim was aged 14 years and was mentally retarded since birth. The accused, aged 45 years then, resided near her house. Whenever the informant and her husband would leave their house for work, the accused would visit their house. This had been going on for seven months. Ten-fifteen days before lodging the oral report, the victim was medically examined at a village medical camp wherein she was found to be pregnant. Upon this discovery, the informant inquired with the victim and the victim told her that in their (parents) absence, Chintaman Lohale Mama i.e., the accused, would visit their home in the afternoon, give her chocolate and do sexual intercourse with her. In her report, the informant also contended that since the victim had started vomiting after 2-3 days, she took the victim to her sister's place in Malegaon who then took the victim for

consultation at a hospital in Washim. Upon returning, the informant was informed that the victim was indeed pregnant. After this, the informant along with the victim returned to their village. Upon further inquiry with the victim, the victim consistently held that, in her parents absence, the accused would come to the house and do sexual intercourse with her and resultantly she had become pregnant. On 11.10.2012, a meeting was held in the village wherein sarpanch, police-patil, tanta-mukti president, victim with her family and the accused were present amongst other villagers. In this meeting, the victim reiterated that the accused had done sexual intercourse with her and the accused admitted to it.

3. Based on this report, police registered crime no. 72/2012 for the offence punishable under Section 376 of the IPC and undertook further investigation. The FIR is placed on record at exhibit 47. The investigating officer then visited the spot and drew up a spot panchnama which is brought on record at exhibit 92. He then referred the accused and the victim for medical examination and collected the medical reports (Exhibits 69 and 70) and samples. He then proceeded to record witness statements. The officer made an attempt to record the victim's statement, but could not do so due to her mental inability. Post investigation, the investigating officer submitted chargesheet to the Court of J.M.F.C

Manora who in turn committed the case to Additional Sessions Judge, Mangrulpir. Charge has been framed against accused vide Exh. 04 to which accused pleaded not guilty and claimed to be tried. His defence is of total denial. It is his specific defence that he is foisted in a false case to extract money from him.

4. During the trial, the prosecution examined 13 witnesses. Lata Digambar Sawant (PW-1) – informant (Exhibit 45); Digambar Kadnuji Sawant (PW-2) – victim's father (Exhibit 48); Bharat Kisan Rathod (PW-3) – panch witness during spot panchnama (Exhibit 54); Dr. Virendra Markande (PW-4) – medical officer (Exhibit 67); Bebitai Ashok Pande (PW-5) – Asha Swayam Sevika (Exhibit 73); Sadhna Ashok Chavhan (PW-6) – retired teacher (Exhibit 78); Dr. Kailas Mahadeorao Ramteke (PW-7) – medical practitioner (Exhibit 81); Bebitai Bandusingh Chavhan (PW-8) – police patil (Exhibit 83); Dr. Vivek Manohar Karale (PW-9) – medical practitioner (Exhibit 85); Dr. Vivek Kishor Lohakare (PW-10) – doctor in private practice (Exhibit 89); Sanjay Seshrao Adhau (PW-11) – police inspector (Exhibit 91); Dr. Ketki Vidhale (PW-12) – psychologist (Exhibit 102); Pravin Uttamrao Shinde (PW-13) – police inspector (Exhibit 106)

5. Upon closure of prosecution's evidence, the accused was examined under Section 313 of the Code of Criminal Procedure, which has been brought on record by Exhibit 108, wherein he denied all the incriminating evidence against him and stated that he had been falsely implicated in the present case.

6. The learned Additional Sessions Judge, upon a comprehensive appreciation of the evidence on record, was persuaded to hold the appellant guilty of the offence charged. It was observed that the prosecution had successfully established the foundational facts of the case and had proved its case beyond reasonable doubt on multiple counts. The learned trial court noted that it is not uncommon to hold a village meeting about any incident and failure to inform police cannot be a ground to disbelieve prosecution's case or evidence. Furthermore, the court considered that attempts were made by the investigating officer to record the victim's statement through a psychologist and an interpreter, but they could not record the statement. The court did not believe that the family of the victim would risk their reputation and her future to file a false case against the accused only to extract money from him, especially since he was engaged in labour work. The court also did not consider that the accused was not seen entering or leaving the victim's house by

anybody, because an act like rape is always committed by ensuring that it is not witnessed by anybody. Additionally, even if there are other houses near the victim's and women from those houses stay at home, this does not automatically mean they will keep a constant and vigilant watch on the victim's house.

7. Significantly, the learned trial court noted that from evidence on record, it stood proved beyond any doubt that accused did sexual intercourse with the victim and made her pregnant. Additionally, the accused or his counsel have not denied that the victim is not mentally retarded. Since the prosecution has duly proved that the victim is retarded, therefore she is incapable of giving consent for sexual relations. Hence, the offence of rape was duly proved against the accused. The trial court refused to grant a lighter sentence to the accused on the circumstances that he was the sole-breadwinner of his family or that he is a poor person and rightly imposed a sentence of rigorous imprisonment for fifteen years and fine.

Being aggrieved by the aforesaid judgment and order of conviction and sentence, the appellant has preferred the present appeal.

8. Heard Sagar Y. Rawate, learned counsel for the appellant and Ms. Sonia N. Thakur, learned Additional Public Prosecutor for the respondent/ State.

9. The learned counsel for the appellant assailed the judgment of the learned trial Court on the grounds of both legal and factual infirmities. The learned advocate submitted that evidence of the informant and the victim is not reliable and trustworthy. It was contended that the prosecution's case lacks direct evidence and rests entirely on circumstantial and hearsay evidence. The counsel asserts that not only was the chain of evidence incomplete in the present matter but also there is nothing on record which directly links the accused with the alleged offence. Reliance was placed on the Supreme Court's decision in the case of State of Haryana v. Jasbir Singh (1996 Cri. LJ 2545)

10. It was further submitted that the prosecution heavily relied on the medical evidence that the victim was pregnant and the foetus was later medically terminated. However, despite availability of scientific methods, a DNA test was not conducted which could have conclusively proved the paternity of the foetus. The benefit of the doubt created by this gap in evidence, must favour the accused. The counsel also submitted that absence of the DNA test was fatal to prosecution's case. To this extent,

reliance was placed on the following judgments – Krishnan Kumar Malik v. State of Haryana (AIR 2011 SC 2877); Rajendra Pralhadrao Wasnik v. State of Maharashtra (AIR 2019 SC 1) and Dilesh Nishad v. State of Chhattisgarh (CRA No. 1266/19).

11. The learned counsel has also advanced the submission that the statement of the mentally retarded victim under Section 161 of the CrPC was not recorded during investigation in 2012. Instead, the investigating officer recorded the statement of the interpreter, which per the learned counsel could not substitute victim's statement. The prosecution also failed to record the victim's statement before the magistrate under Section 164 of the CrPC. The counsel further submits that the trial Court erroneously allowed prosecution's application under Section 311 of the CrPC to record the victim's statement after eleven long years. Since the victim is mentally retarded, it is improbable that she could correctly recall and narrate the alleged incident correctly after passage of such long time. The learned counsel further submits that competency of victim as witness was not established and thereby the mandate of Sections 118 and 119 of the Indian Evidence Act was not followed. To this extent, reliance was placed on paragraphs 17, 19, 20 and 21 of Suresh Karbhari Wadge v. State of Maharashtra (Cri. Appeal 413/2015). The learned

counsel also submits that statements of the interpreter (PW-6) (vide Exhibit 78) and the psychologist (PW-12) at Exhibit 102, hold no evidentiary value since the victim's statement is absent from evidence on record.

12. The learned counsel has emphasized that the accused's acceptance of responsibility for victim's pregnancy and his readiness to maintain her at the village meeting constitutes an extra-judicial confession and the same is weak, inconsistent and unreliable. The counsel submits that while the meeting was allegedly attended by 200-400 people, only one prosecution witness, Bebitai Pande (PW-5) has deposed regarding the confession vide Exhibit 73. Victims parents completely omitted even the mention of this confession by the accused in their depositions. The learned counsel also submits that this court should not see this statement of the accused in the village meeting as a confession since it was not voluntary and free from threat or inducement. To assert this submission, the learned counsel has placed reliance on the following case laws – Pakala Narayan Swami v. Emperor (AIR 1939 PC 47); State of Rajasthan v. Rajaram (2003 Cri. LJ 3901); State of Haryana v. Rajinder Singh (1996 Cri LJ 1875); Director General, Border Security Force v. Vijender

Prakash Gautam ((2001) 3 MPLJ 111) and Mst. Bhagan v. State of Pepsu (1955 Cri. LJ 537).

13. Finally, the learned counsel submits that there was an unexplained delay in lodging a report with the police after the informant (PW-1) came to know about the incident. He also states that parents of the victim, PW-1 and PW-2, are unreliable witnesses, that there are several contradictions in their statements regarding how many people were in the village meeting, when exactly they got to know about the victim's pregnancy and when the police report was lodged. As such, their testimony should be discarded and placed no reliance on. While emphasizing that however great the suspicion against the accused, he cannot be convicted for the offence of rape unless the same is established beyond a reasonable doubt, the learned counsel placed reliance on paragraph 13 of *Jogi Dan & Ors. v. State of Rajasthan (2004 Cri. LJ 1726).*

14. Per contra, the learned Additional Public Prosecutor appeared in support of the impugned judgment and order passed by the learned Additional Sessions Judge and submitted that the accused's conviction was based on a thorough and careful appreciation of the oral and

documentary evidence on record. She argued that the findings of the trial Court are well-reasoned, legally sound and do not warrant interference.

15. The learned APP submits that no suggestions were made by the counsel for the accused to disprove that the victim was not mentally retarded. Nor is it their case that the accused had taken the victim's consent before doing sexual intercourse with her. The evidence on record clearly proves that the sexual intercourse had indeed taken place and there is enough evidence to hold the accused responsible for it. Therefore, in the ambit of Section 376 of the IPC, since the victim was incapable of giving consent due to her mental retardation, the accused's act of doing sexual intercourse with her constitutes the offence of rape.

16. As evidenced in the deposition of PW-2, the accused was known to the victim's family and both the victim and her brother would call him "mama". This trust and proximity was taken advantage of by the accused when he exploited it to access the victim in her home when nobody was present. The trial court has rightly held the accused not being seen entering or leaving the victim's house is of little material importance since the accused would have ensured that an act like rape is not witnessed by anybody.

17. The learned APP further submitted that accused's contention that he has been falsely implicated in a fabricated case because the victim's family want to extort money from him does not hold any ground since the accused is self-admittedly a poor person with his family members counting on him to provide for them. Further, the accused works as a labourer, earning a meagre sum. Therefore, as the trial Court has rightly held, the parents of the victim would not risk her reputation or future to extract money from an already poor person.

18. Finally, the APP submits that taking into consideration the victim's retardation, the police employed an interpreter, Sadhna Ashok Chavhan (PW-6) who was a teacher at a special school for deaf and dumb children. Both her and psychologist Ketki Vidhale (PW-12) form enough basis to fill any lacunae.

19. Let us now deal with the testimonies of the prosecution witnesses. P.W.1, the mother of the victim Madhuri, deposed vide Exhibit 45, that her daughter has been mentally challenged since birth. The accused resides behind her house. This incident occurred five years prior to her present deposition, i.e., in 2012. She got her daughter checked at a medical camp in the anganwadi school where the doctors informed her that her daughter was pregnant. Upon inquiry, her daughter told her that

whenever they (her parents) left for work, Chintaman Lohale mama used to give her chocolate and had sexual intercourse with her. Thereafter, P.W.1 took her daughter to her sister Gokula's house in Washim, who in turn took her to a private hospital where her pregnancy was confirmed again. Post this, the victim and P.W.1 returned to their village. A panchayat meeting was called about this incident where the Sarpanch, the accused and other villagers were present. Madhuri, the victim, pointed at the accused and stated that he was responsible for her pregnancy. Thereafter, P.W.1 along with five others went to the Manora police station to lodge a report (Exhibit 46). A lady police constable took Madhuri to Akola hospital for medical examination and P.W.1 went along with her. The doctors there advised abortion which was done on the same day as evidenced by OPD paper marked as Exhibit 86, and both the victim and P.W.1 returned home the same day. Police recorded the mother's statement wherein she stated that Madhuri, her daughter, can tell names of persons and identify persons. In her cross-examination, she denied asking money from the accused. She stated that his house was 5-6 houses in the back of hers. She admitted that no document was issued for the medical examination done at the anganwadi medical camp. She further stated that they had not seen the accused enter or leave their house. She

confirmed that Madhuri was educated up to 1st grade and can talk and shout.

20. P.W.2, victim's father deposed, vide Exhibit 48, that Madhuri is his daughter and is mentally retarded. He knows the accused who used to come by his house and whom his children called "mama". Pande madam (PW-5, Asha Swayam Sevika) resides near their home and who goes to school, told them that his daughter had become pregnant. The accused used to come by his house, and his daughter told him that he used to give her chocolate. The accused came by at 12:00 and abused the victim. The learned APP sought permission to ask leading questions at this stage. He further stated that a panchayat meeting was conducted before the temple wherein it was asked to the victim who committed the ill act and she told that the accused used to give her chocolate and sleep with her. In cross-examination, a contradiction was pointed out regarding the panchayat meeting that was, according to PW-2, conducted on 02.12.2012. He stated that five persons were present; however, it is mentioned in his statement that 200-400 people were present. He admitted that health camps are conducted in the village each month where they used to examine their daughter each month, but was unable to state in which month his daughter was found to be pregnant. He stated

that after he went to work, his son used to stay with his daughter. The police report was lodged one month after the panchayat meeting. He accepted that it is true to say that all villagers in his village are his relatives, except the accused. He denied that he was deposing falsely. He accepted the omission that he did not state before the police that the accused used to sleep with her on the bed.

21. P.W.3, who was a panch witness during the spot panchnama (Exhibit 92), turned hostile. He denied that police conducted spot panchnama before him. He stated that he does not know what they did inside and that they only took his signature. He denied that he is refusing cooperation to support the accused. His deposition is brought on record vide Exhibit 54.

22. P.W.4, Dr. Virendra Markande who medically examined the accused deposed, vide Exhibit 67, that he was attached to the rural hospital in Manora as medical officer. On 11.10.2012, the accused was brought for medical examination. In the medical examination, he found that the accused is capable of performing sexual intercourse but semen could not be collected at the time; therefore, he asked that the accused be brought the next morning for semen collection. He examined the private parts of the accused including penis, scrotum and inguinal region, anus

and buttocks and found no evidence of injury. He collected 5 ml blood and pubic hair, sealed them and handed them over to LPC bearing number 821. He gave a report marked as Exhibit 69 and another report as Exhibit 70. Both reports are the same. The accused can experience erection but not ejaculation, which can be due to many factors such as stress and non-privacy. In cross-examination, it was pointed out that on both reports there is no signature or thumb impression of the accused.

23. P.W.5, Babytai Pande, one of the village's Asha Swayam Sevika, deposed, vide Exhibit 73, that she has been serving at village Maholi since 2009. As part of her job, she has to survey if any woman in the village is pregnant and provide aid if she is. On 05.10.2012, she and her colleague were doing a leprosy survey in the village. At the victim's house, they asked if she had any leprosy symptoms and were told she does not. Her mother informed them that she has acidity and is vomiting and has missed her period for four months. There was a rumour in the village that the victim was pregnant. They suspected that the victim might be pregnant; therefore, they went to the village police patil and informed her. The village police patil accompanied them to the victim's house. The next day there was a vaccination camp at anganwadi where the victim was administered a pregnancy test which was positive. On 11.10.2012, the

police patil called a meeting in the village where everyone was present. When the police patil asked the victim who has made her pregnant, she pointed to the accused. The police patil, sarpanch and others asked the accused if this was true. He denied the allegations initially but later on accepted that he went to the victim's house to watch "english movies" and that she is pregnant from him. He showed readiness to maintain the victim. In cross-examination, she stated that they had heard the rumour of the victim's pregnancy 4-5 days before visiting her house for the leprosy survey. The victim vomited in their presence and at the police patil's suggestion that she might be pregnant, the victim's mother raised a quarrel with her. The police patil called the meeting where 200-400 people were present. She denied that she is deposing falsely to save her job.

24. P.W.6, Sadhna Ashok Chavan, a retired teacher from Shri Gajanan Maharaj Matimand Niwasi Vidyalaya, Karanja-Lad, deposed, vide Exhibit 78, that in 2012 she was serving as a teacher in a deaf-dumb school in Karanja when the headmaster of her school deputised her as an interpreter to the police station. She went to the police station where the victim, her uncle and aunt, the accused and two other persons were present. Police asked her to interpret what the victim was saying. The

victim said that the accused is her maternal uncle who bought her chocolates. He comes to her house and slips in when her parents go for work.

25. P.W.7, Dr. Kailas Ramteke who conducted sonography of the victim deposed, vide Exhibit 81, that on 13.10.2012 the victim was referred to him for sonography regarding her pregnancy. It was found that she is pregnant and that there was a single foetus. Fetal age was ascertained to be 18 weeks and 5 days plus minus 10 days; therefore, he gave his opinion marked as Exhibit 82 that the foetus is 18 weeks and 5 days. In cross-examination, he stated that he cannot say whether the victim has been examined by any other doctor regarding her pregnancy.

26. P.W.8, Bebitai Chavhan who was Police Patil of the village, deposed, vide Exhibit 83, that she has been a police patil since the year 2021. She knows the family of the victim and that the victim is mentally weak. When asha workers were conducting a leprosy survey in the village, they came to her and reported that the victim's mother has quarrelled with them and asked her to come to the victim's house. Upon reaching her house, they found that the victim was vomiting and on asking her mother, she told them that the victim has acidity. The police patil told the

mother that there was a medical camp in the village the next day. She does not know if the victim was taken to the camp or not. The next day, during the meeting, many villagers had gathered. In the meeting, when the victim was asked about the pregnancy, she pointed to the accused and said that he visited her house for watching films and bought her chocolates. The accused showed readiness to maintain the victim. The next day of the meeting, the victim's parents lodged a complaint in the police station. In cross-examination, she stated that she has been a police patil from 1996 to 2016. The medical camp in the anganwadi was a day earlier than the meeting which she had not attended. She stated that she does not know who called the village meeting, which is a contradiction from the deposition given by the asha worker.

27. P.W.9, Dr. Vivek Karale who examined the victim at GMC Akola, deposed, vide Exhibit 85, that on 12.10.2012, he examined the victim and found her to be pregnant from 18-20 weeks. He advised sonography for confirmation of age and referred back to the CMO. His OPD case paper with his findings is at Exhibit 86.

28. P.W.10, Dr. Vikrant Lohakare, Medical Officer, GMC Akola, deposed, vide Exhibit 89, that on 12.10.2012, he referred the victim to the gynecological department. The victim was positive for urine pregnancy test which was personally conducted by him and Dr. Karale and his team examined her. He recorded the history as was given by the mother and relatives of the victim – repeated sexual assault four months ago, missing periods since four months, no major illness. His findings were – the victim was physically well developed for sexual intercourse; considering her pregnancy, her history is positive for suggestive sexual assault on her; foetus age was 18-20 weeks, which were recorded in his opinion paper, marked as Exhibit 90.

29. P.W.11, Sanjay Sheshrao Adhau, API, Manora Police Station, deposed, vide Exhibit 91, that on 11.10.2012, the victim's mother lodged an oral report and stated that the victim was 14 years of age and mentally weak. Asha workers revealed to her that her daughter is pregnant and upon asking the victim, she told that the accused has had sexual relations with her. He reduced the report into writing at Exhibit 46. Thereafter, Crime No. 72/2012 under Section 376 of the IPC was registered with FIR at Exhibit 47. Regarding the spot of incident, he stated that the house

was facing north, with a hall measuring 12 x 18 sq. ft., and the kitchen in the hall itself. There was a wooden cot adjacent to the kitchen where the parents of the victim said that the accused did sexual intercourse with her. Accordingly, he prepared the spot panchnama marked as Exhibit 92. He recorded the statement of the interpreter who asked questions to the victim. The victim told her that she is pregnant from the accused. The API arrested the accused and referred both the victim and the accused for medical examination. He collected their samples and medical reports. He seized these samples in the presence of the panchas and prepared seizure panchnamas marked as Exhibits 95 and 96 accordingly. He recorded the statements of the witnesses. In cross-examination, he stated that he did not make any investigation about the exact date of the incident. He did not mention the year in the statement of the informant. He did not make any investigation about the age of the victim. He did not give written requisition to the panchas. He denied deposing falsely or that a false charge-sheet is filed against the accused or that proper investigation has not been done.

30. P.W.12, Ketki Alkeshrao Vidhale (Psychologist), deposed, vide exh. 102, that she has been working in Shri Gajanan Maharaj Matimand

Niwasi Vidyalaya, Karanja-Lad as a psychologist since 2012. On 07.12.2023, police gave her summons for recording the statement of the victim marked as Exhibit 103. On 08.12.2023 she went to Manora police station with special teacher Pranjali Deshmukh. Police then took her to the victim's house in Mahuli. The victim was sitting in a temple. The psychologist tried talking to her but the victim was not ready to talk. After some time, when the psychologist asked her again, she told her name. When the psychologist asked her the names of her parents, she told her mother's name only. When asked if she knows the accused, or anything else about him, she replied nothing. The psychologist collected three photographs of three persons from her parents and showed those to the victim one by one. She did not react to the first two photographs but when she saw the photograph of the accused, her facial expressions changed. She was scared and she bowed her head. When asked repeatedly if she knows the person in the photograph, after some time she only said, "Bandhi Buva". When asked by the psychologist what Bandhi Buva does with her, she replied that he gives "thumbs up". The psychologist repeatedly asked what he does after giving thumbs up. The victim, after a long pause, looks at her, then at the wooden cot kept there and her mother and goes silent. Despite repeatedly asking her, she replied

nothing, nor raised her head. In cross-examination, she stated that she had stated before the police that the victim was scared. She admitted the omission that three photographs were showed to the victim and that she was scared on seeing the photograph of the accused in her police statement. She stated that she cannot assign any reasons as to why this was omitted.

31. P.W.13, Pravin Uttamrao Shinde, P.I. Manora Station, deposed, vide Exhibit 106, that he is attached to Manora Station from 10.09.2023. On 04.12.2023, he received a court order to record the victim's statement in this case. When he found out that the victim was mentally retarded, he requested Shri Gajanan Maharaj Matimand Niwasi Vidyalaya, Karanja-Lad to make available a psychologist for recording the statement. The school sent over Ketki ma'am. Both he and Ketki ma'am went to the village of the victim where he found the victim sitting in a temple adjacent to her house. They brought the witness to her house where the psychologist asked her questions. He was standing in the courtyard and could hear the psychologist and the victim clearly. He corroborated that when three photographs were shown to the victim, she did not react to the first two but when the accused's photograph was

shown to her, she was scared and her expressions suddenly changed. The victim said that the person in the photo which scared her is Bandhi Buva. When the psychologist asked what did Bandhi Buva do to her or if he gave chocolates or biscuits, the victim replied nothing. But when the psychologist asked if he gave her "thumbs up", the victim nodded in the affirmative. When the psychologist asked what the accused did with her, she said nothing, simply looked at her mother and a wooden cot lying there and bowed her head down. In cross-examination, he stated that the psychologist had not asked the victim if she knows what a "thumbs up" is, nor what a "bandhi buva" is. He further stated that the psychologist in her statement to the P.I. had not stated that she had shown three photographs to the victim or that the victim was scared.

32. This Court has undertaken a comprehensive evaluation of the oral and documentary evidence placed on record. This Court then proceeds to analyse the evidentiary value of the same in the context of the charges alleged against the accused.

33. At the outset, it is pertinent to note that the victim in the present case is a mentally challenged individual who was approximately 14 years of age at the time of the incident. This fact stands undisputed on

record. The accused himself, through his counsel, has not challenged the victim's mental condition. The prosecution witnesses, particularly PW-1 (the victim's mother), PW-2 (the victim's father), PW-5 (Asha worker), and PW-8 (Police Patil) have consistently deposed that the victim has been mentally retarded since birth. This is a foundational fact.

34. Under the Indian Penal Code, a mentally challenged person is incapable of giving valid consent to sexual intercourse. The law recognizes that such individuals lack the mental capacity to understand the nature and consequences of the act. Therefore, any sexual intercourse with a mentally challenged person, regardless of whether there was apparent acquiescence, constitutes rape under Section 376 of the IPC. This legal principle is well-established and forms the bedrock of the prosecution's case.

35. While the learned counsel for the appellant has sought to highlight minor contradictions in the testimonies of prosecution witnesses regarding peripheral details such as the exact number of persons present at the village meeting (whether five persons or 200-400 persons), this Court notes that the core allegations remain consistent throughout. The victim consistently identified the accused as the perpetrator - first to her

mother (PW-1) when questioned about her pregnancy, then during the village panchayat meeting, subsequently to the interpreter (PW-6) at the police station, and finally, albeit in limited manner, to the psychologist (PW-12) eleven years later when she identified the accused's photograph and showed visible fear and distress.

36. The fundamental narrative - that the accused would visit the victim's house during her parents' absence, give her chocolates or "thumbs up", and commit sexual acts with her - remains unshaken. This consistency is particularly significant given the victim's mental condition. Minor variations in peripheral details by different witnesses regarding circumstances cannot be deemed sufficient to discredit the entire prosecution case, especially when the crux of the allegations stands corroborated by multiple independent sources.

37. The medical evidence in this case establishes beyond doubt that the victim was pregnant at the relevant time. PW-5 (Asha worker) first suspected the pregnancy during a routine survey. This suspicion was subsequently confirmed through a pregnancy test at the anganwadi medical camp. PW-7 (Dr. Kailas Ramteke) conducted sonography on 13.10.2012 and ascertained that the victim was carrying a single foetus of

18 weeks and 5 days (plus minus 10 days). PW-9 (Dr. Vivek Karale) independently examined the victim on 12.10.2012 and found her to be 18-20 weeks pregnant. PW-10 (Dr. Vikrant Lohakare) corroborated this finding and recorded a history of repeated sexual assault four months prior. The pregnancy itself is, therefore, an established and irrefutable fact.

38. A significant piece of evidence in this case is the alleged admission made by the accused during the village panchayat meeting. According to PW-5 (Asha worker Bebitai Pande), when confronted in the meeting and asked whether the victim's allegations were true, the accused initially denied but subsequently admitted that he went to the victim's house to watch "english movies" and that the victim is pregnant from him. He showed readiness to maintain the victim.

39. While the learned counsel for the appellant has sought to characterize this as a weak extra-judicial confession lacking corroboration and voluntariness, this Court finds this submission unpersuasive for several reasons. First, the admission was made in a public gathering attended by numerous villagers, the Sarpanch, and the Police Patil. The very public nature of the admission lends credibility to it. Second, PW-5's testimony regarding this admission is clear and categorical. Third, while

PW-1 and PW-2 may not have explicitly mentioned this confession in their depositions, this omission can be explained by the fact that they may have focused on narrating the victim's identification of the accused rather than his subsequent admission. The absence of mention is not the same as contradiction. Fourth, PW-8 (Police Patil) has corroborated that the accused showed readiness to maintain the victim during the meeting, which is consistent with an acknowledgment of responsibility. It is a well-established principle of evidence law that to exclude the admissibility of a confession made before a person, he must be a police officer. The same was held by the Supreme Court in the case of Sivakumar.Vs State (2006 1 SCC 714). The paragraph 41 of the case reads as under:

“41. A Village Administrative Officer does not answer the description. While carrying out his duty to inform the police or the Magistrate in terms of Section 40 of the Code, the Village Headman does not act as a public servant removable only by or with the sanction of the local government, nor does he act in his capacity as Magistrate. It is pertinent to acknowledge that the extra-judicial confession by the accused before the Village Administrative Officer was not inadmissible and, thus, could be relied upon”

The argument that this confession was not voluntary or was obtained under threat or inducement finds no support in the evidence. There is nothing on record to suggest that the accused was coerced or threatened during the panchayat meeting. The meeting was convened to ascertain

the truth, and the accused's statement appears to have been a response to the victim's direct identification of him in front of the entire village. The accused was not in police custody at that time, nor is there any evidence of any inducement being offered to him.

40. The learned counsel for the appellant has placed considerable emphasis on the absence of DNA evidence to establish paternity of the foetus. While this Court acknowledges that DNA evidence would have been conclusive, its absence cannot be deemed fatal to the prosecution's case, particularly in the circumstances of this case.

First, the incident occurred in 2012 in a rural setting. DNA testing, while available, was not as routinely conducted in such cases as it may be today, particularly in cases involving mentally challenged victims from economically disadvantaged backgrounds.

Second, and more importantly, the foetus was medically terminated on the same day the victim was brought to the hospital (12.10.2012), as evidenced by the OPD paper at Exhibit 86. The termination was necessary given the victim's age, mental condition, and the advanced stage of pregnancy. In such emergent circumstances, preserving fetal tissue for DNA testing may not have been the foremost consideration.

Third, the absence of DNA evidence must be viewed in the context of the totality of the evidence available. The victim has consistently identified the accused. The accused himself allegedly admitted to his responsibility during the village meeting. The medical evidence establishes that the victim was repeatedly sexually assaulted over a period of time, resulting in pregnancy. The investigating officer recorded the statement of an interpreter who had conversed with the victim, and the victim named the accused. In such circumstances, the absence of DNA evidence creates, at best, a gap in the evidence, but not a gap so wide as to create reasonable doubt about the accused's guilt.

41. The learned counsel for the appellant has criticized the prosecution for not recording the victim's statement under Section 161 CrPC during the initial investigation in 2012, and for subsequently seeking to record her statement through a psychologist in 2023 under Section 311 CrPC. While this Court notes these procedural irregularities, they must be placed in proper perspective.

The victim in this case is severely mentally challenged. The investigating officer (PW-11) has clearly deposed that he attempted to record the victim's statement but could not do so due to her mental

inability. In such circumstances, he did the next best thing available - he recorded the statement of an interpreter (PW-6) who had conversed with the victim. The interpreter's testimony clearly establishes what the victim communicated about the accused.

The subsequent attempt in 2023 to record the victim's statement through a trained psychologist was a bona fide effort to strengthen the prosecution's case and give the victim an opportunity to depose. The fact that this was done after eleven years does not automatically vitiate the evidence. The psychologist's testimony (PW-12) and the Police Inspector's corroboration (PW-13) provide valuable insight into the victim's continued recognition of and fear of the accused, even after the passage of considerable time.

42. The learned counsel has sought to make much of the alleged delay in lodging the FIR. According to the prosecution witnesses, the victim's pregnancy was discovered around 05.10.2012 during a leprosy survey by Asha workers. The panchayat meeting was held around 11.10.2012, and the FIR was lodged on 11.10.2012 (as per PW-11's testimony). However, PW-2 has stated that the police report was lodged

one month after the panchayat meeting, which would be in November 2012.

Even assuming there was some delay, such delay is entirely explicable in the facts and circumstances of this case. The victim's family lived in a rural village. The victim was mentally challenged. Upon discovering the pregnancy, the natural first response of the parents was shock and the need to confirm the pregnancy through proper medical examination. The mother took the victim to her sister's place and then to a hospital in Washim. After confirmation, they returned to the village. A panchayat meeting was then convened - which is entirely consistent with rural practices where community elders are first approached to resolve matters before police involvement. Only after the panchayat meeting, where the accused allegedly admitted his responsibility but no satisfactory resolution was reached, did the family approach the police.

This sequence of events demonstrates not suspicious delay, but rather the natural progression of a rural family's response to a traumatic situation involving their mentally challenged daughter. There is no evidence to suggest that the delay was used to fabricate evidence or concoct a false case.

43. The learned counsel has sought to discredit the testimonies of PW-1 and PW-2 (the victim's parents) by pointing to contradictions regarding the number of persons present at the panchayat meeting and the exact timeline of events. While minor contradictions exist, they pertain to peripheral details and not to the core of the allegations. It is well-settled in law that minor inconsistencies in testimonies are natural and do not render the entire testimony unworthy of credence. Indeed, testimonies that are perfectly consistent in every minute detail often arouse suspicion of being tutored or fabricated.

44. What remains consistent throughout is that: (i) the victim was found to be pregnant; (ii) upon inquiry, she identified the accused as responsible; (iii) a panchayat meeting was held where she again identified the accused; (iv) the accused allegedly admitted to his responsibility during the meeting; and (v) an FIR was subsequently lodged. These core facts find corroboration from multiple independent witnesses including the Asha worker (PW-5), the Police Patil (PW-8), and the interpreter (PW-6).

45. Upon a holistic appreciation of the evidence, this Court finds that the prosecution has established a cogent and credible case against the

accused. The victim, though mentally challenged, has consistently identified the accused. The medical evidence irrefutably establishes that she was sexually assaulted and made pregnant. The accused's own conduct, including his alleged admission during the village panchayat meeting and his offer to maintain the victim, points to his guilt. The absence of DNA evidence, while regrettable, is not fatal given the strength of the other evidence. The procedural irregularities in recording the victim's statement are understandable given her mental condition and do not vitiate the prosecution's case.

46. The learned counsel for the appellant has placed reliance on eleven case laws and submitted a compendium highlighting relevant paragraphs. This Court has carefully examined each of these authorities and finds that none of them support the appellant's contentions in the facts and circumstances of the present case.

47. The learned counsel for the appellant contends that the prosecution's case depends solely on oral hearsay and circumstantial evidence, and that in such cases, the prosecution must establish a complete and unbroken chain of circumstances. To support this contention, reliance has been placed on the decision of the Hon'ble

Supreme Court in *State of Haryana v. Jasbir Singh* (1996 Cri. LJ 2545).

This reliance is wholly misplaced.

The present case is not built solely on circumstantial evidence or uncorroborated oral testimony. The prosecution has adduced direct medical evidence from multiple independent doctors who confirmed pregnancy at approximately 18 weeks with sonographic corroboration of foetal age, which aligns with the timeline of events narrated by the prosecution witnesses. PW-7 (Dr. Kailas Ramteke) conducted sonography and ascertained the foetal age to be 18 weeks and 5 days. PW-9 (Dr. Vivek Karale) independently examined the victim and found her to be pregnant from 18 weeks. PW-10 (Dr. Vikrant Lohakare) corroborated these findings and recorded a history of repeated sexual assault four months prior. This medical evidence is not circumstantial – it is direct, objective, and clinically established.

This medical evidence is further supplemented by substantial documentary materials including the spot panchnama (Exhibit 92) and seizure documents (Exhibits 95 and 96). The victim's identification of the accused at the village panchayat meeting attended by numerous villagers including the Sarpanch and Police Patil, and the accused's own admission during that meeting of having visited the victim's house along

with his stated readiness to maintain her, constitute direct evidence pointing to his guilt.

Crucially, given the victim's mental vulnerability, specialized procedures were employed to ensure the reliability of her statements. A psychologist (PW-12) was engaged to facilitate communication with the victim, and photographic identification was conducted, which was corroborated by the police officer (PW-13). The victim's fearful reaction upon seeing the accused's photograph, her identification of him as "Bandhi Buva", and her non-verbal communication by looking at the wooden cot where the offence was committed, all constitute direct evidence of recognition and trauma.

Unlike cases where conviction rests on a broken chain of purely circumstantial evidence, the present matter is fortified by a robust evidentiary matrix combining direct medical testimony, documentary records, physical evidence, testimonial evidence from multiple independent witnesses, and expert-facilitated validation of a vulnerable witness's account. The ratio in *Jasbir Singh* pertains to cases where the prosecution relies entirely on circumstantial evidence without direct proof. That is manifestly not the situation in the present case.

Accordingly, this authority is distinguishable on facts and does not assist the appellant.

48. The learned counsel for the appellant has cited three cases to contend that the foetus, before being medically terminated, should have been subjected to DNA testing to prove that it was the accused's child, and that the absence of such DNA evidence must favour the accused. These cases are: (i) *Krishnan Kumar Malik v. State of Haryana* (AIR 2011 SC 2877) (paragraphs 45-47); (ii) *Rajendra Pralhadrao Wasnik v. State of Maharashtra* (AIR 2019 SC 1) (paragraphs 54-79); and (iii) *Dilesh Nishad v. State of Chhattisgarh* (CRA No. 1266/19) (paragraphs 19, 20, 22). The ratio decidendi in Malik pertains to the establishment of paternity through DNA-based biological testing derived from semen samples recovered during investigation. The Court in Malik was concerned with evidentiary standards where paternity was disputed and required scientific confirmation through DNA analysis of biological samples that were available and could have been tested but were not.

In the present case, the factual matrix is entirely different. There is no dispute regarding the fact that the victim was pregnant as a result of sexual assault. The pregnancy of the victim has been medically established

through clinical examination and sonography. The victim's testimony, though limited due to her mental condition, has been communicated through an interpreter (PW-6) and a psychologist (PW-12), and is corroborated by the medical evidence and the testimony of multiple independent witnesses including her parents (PW-1 and PW-2), Asha worker (PW-5), Police Patil (PW-8), medical personnel (PW-7, PW-9, and PW-10), and the investigating officers (PW-11 and PW-13). These witnesses sufficiently establish the fact of pregnancy and the circumstances leading to the commission of the offence.

More importantly, the foetus was medically terminated on 12.10.2012 itself, as evidenced by the OPD paper at Exhibit 86. The termination was necessitated by the victim's age, her mental condition, and the advanced stage of pregnancy (18 weeks). In the emergent circumstances prevailing at that time, preserving foetal tissue for DNA testing may not have been practically feasible or even contemplated by the medical personnel or the investigating officer.

The evidentiary matrix in the present case does not rest upon DNA-based paternity determination alone, but rather upon contemporaneous medical records, direct testimony of the victim communicated through qualified intermediaries, consistent identification

of the accused by the victim on multiple occasions, and substantial corroboration from independent sources. The ratio in *Malik* cannot be interpreted to mandate DNA testing in every case involving rape resulting in pregnancy, particularly where there exists cogent testimonial and medical evidence establishing the pregnancy and the identity of the perpetrator. The Hon'ble Supreme Court has never held that in the absence of DNA evidence, no conviction can be recorded even when other credible evidence is available.

This Court is therefore of the considered view that *Krishnan Kumar Malik v. State of Haryana* (supra) is distinguishable on facts and does not govern the present case.

49. *Rajendra Pralhadrao Wasnik v. State of Maharashtra (AIR 2019 SC 1)* dealt with significant evidentiary gaps where DNA testing was feasible but not conducted. Here, as aforementioned the victim's account is corroborated by family members, village functionaries, panchayat witnesses, and medical personnel who examined her contemporaneously. The documentary evidence forms a consistent chain. Unlike *Wasnik*, this case does not involve evidentiary lacunae but presents substantial testimonial and documentary evidence establishing

pregnancy and identifying the perpetrator through multiple independent sources.

50. *Dilesh Nishad v. State of Chhattisgarh (CRA No. 1266/19)* addresses vulnerable victim testimony requiring corroboration. In the present case, the mentally challenged minor victim is supported by extensive corroborative evidence from her parents (PW-1, PW-2), medical witnesses (PW-7, PW-9, PW-10), police officers (PW-11, PW-13), psychologist (PW-12), Asha worker (PW-5), and Police Patil (PW-8). The medical evidence establishes pregnancy through clinical examination and sonography. The victim's consistent account across different time periods with convergence of independent testimonial and documentary evidence provides robust corroboration that distinguishes this case from Nishad's evidentiary posture.

51. The reliance on paragraphs 17, 19, 20 and 21 of *Suresh Karbhari Wadge v. State of Maharashtra (Cri. Appeal 413/2015)* to contend that PW-6 (interpreter) and PW-12 (psychologist) testimonies hold no evidentiary value is misplaced. Those paragraphs prescribe caution and corroboration precisely what the prosecution has provided not wholesale rejection. Section 118 of the Evidence Act provides that all

persons are competent unless prevented from understanding questions or giving rational answers. Mental challenge does not automatically disqualify a witness.

The investigating officer engaged PW-6, a trained teacher deputized by her headmaster, who clearly testified what the victim communicated: the accused bought chocolates and came to her house when parents were away. Subsequently, PW-12, a qualified psychologist, facilitated the victim's identification of the accused through photographs. The victim showed marked fear and changed expressions upon seeing the accused's photograph, identified him as "Bandhi Buva", and after persistent questioning, looked at the wooden cot where the offence occurred eloquent non-verbal testimony of trauma and recognition.

These testimonies form part of a comprehensive evidentiary mosaic including independent medical testimony, documentary evidence, and corroborative statements from the victim's parents, Asha worker, and Police Patil. The interpreter's and psychologist's testimonies illuminate the victim's communication within this broader framework, subjected to cross-examination and consistent with other evidence. Suresh Karbhari Wadge supports this corroboration-driven assessment.

52. The learned counsel cites five cases - *Pakala Narayan Swami v. Emperor (AIR 1939 PC 47); State of Rajasthan v. Rajaram (2003 Cri. LJ 3901); State of Haryana v. Rajinder Singh (1996 Cri LJ 1875); Director General, Border Security Force v. Vijender Prakash Gautam ((2001) 3 MPLJ 111) and Mst. Bhagan v. State of Pepsu (1955 Cri. LJ 537)* - to characterize the accused's village meeting admission as weak and unreliable.

These authorities mandate careful scrutiny and corroboration of extra-judicial confessions. They do not render them per se inadmissible. Unlike cases where uncorroborated confession forms the sole basis for conviction, here the accused's admission at the public panchayat meeting is corroborated by: (i) medical testimony establishing pregnancy in a minor with gestational age compatible with the timeline; (ii) the victim's consistent identification of the accused across multiple occasions; (iii) documentary evidence; (iv) independent witnesses present at the meeting; and (v) expert psychological testimony regarding the victim's fearful reaction and non-verbal trauma indicators.

Nothing suggests coercion or inducement. The meeting was a community inquiry before the Sarpanch, Police Patil, and villagers. The

accused was not in custody. PW-5 testified he initially denied but later admitted visiting the victim's house to watch "english movies" and that she is pregnant from him, showing readiness to maintain her. This sequence suggests voluntary statement, not duress. PW-8 corroborated his readiness to maintain the victim. The alignment of this admission with objective medical findings and consistent testimonial evidence, coupled with absence of demonstrated coercion, provides the necessary corroboration these authorities mandate.

53. The reliance on paragraph 13 of Jogi Dan & Ors. v. State of Rajasthan (2004 Cri. LJ 1726) is also misconceived. That judgment emphasizes that delay must be satisfactorily explained and does not vitiate prosecution if evidence is credible and corroborated which supports the prosecution here.

Any delay is adequately explained by social context: the victim is a mentally challenged minor; parents first sought medical confirmation at sister's place in Washim and private hospital; upon return, a panchayat meeting was convened consistent with rural practices; the FIR was lodged on 11.10.2012 per PW-11. Even assuming confusion in PW-2's testimony about exact timeline, such minor inconsistency on peripheral details does

not affect the core case. In sexual assault cases involving mentally challenged minors, some delay due to stigma and family reluctance is not uncommon. In the case of *Srivalla Srinivasa Rao And Others vs. State of Andhra Pradesh (2011) 8 SCC 113* the honourable Supreme Court held non-recording/delay of statement, however, cannot be a ground to discard cogent and convincing evidence on record. The paragraph 9 of the judgment reads as under :

“9. It is true that there appears to be some delay in lodging the FIR but in cases of rape and that too in a gangrape, some delay is inevitable.”

Critically, the prosecution is independently corroborated by: medical testimony establishing pregnancy and gestational age; independent witnesses; investigative documentation; and expert testimony. PW-1 and PW-2's credibility rests not on familial relationship alone but on consistency in material particulars daughter's mental condition, pregnancy discovery, victim's identification of accused, panchayat meeting, and FIR all reinforced by this comprehensive evidentiary matrix. Minor contradictions about peripheral details like exact number of attendees are natural and do not discredit witnesses; perfect consistency often suggests fabrication. The principle in *Jogi Dan & Ors. v. State of Rajasthan* (supra) that suspicion cannot substitute proof

actually supports the prosecution, which has proved its case beyond reasonable doubt through credible, cogent, and corroborated evidence.

54. Upon a holistic appreciation of the entire evidence - oral, documentary, medical, and expert testimony - this Court is satisfied that the prosecution has proved its case beyond all reasonable doubt. The learned Additional Sessions Judge has meticulously analyzed the evidence, correctly applied the law, and arrived at the just conclusion that the accused is guilty of the offence punishable under Section 376 of the IPC. The sentence of fifteen years' rigorous imprisonment and fine of Rs. 20,000/- and in default of payment of fine, six months' rigorous imprisonment, is proportionate to the gravity of the offence and requires no interference.

For the reasons stated hereinabove, this Court finds no merit whatsoever in the present appeal. The impugned judgment and order dated 27th February, 2024 passed by the learned Additional Sessions Judge, Mangrulpur in Sessions Trial Case No. 107/2013 convicting the appellant/accused under Section 376 of the Indian Penal Code, 1860 and sentencing him to suffer rigorous imprisonment for fifteen years and to pay fine of Rs. 20,000/-, in default of payment of fine to suffer rigorous

imprisonment for six months, is hereby confirmed. Resultantly, I pass the following order.

ORDER

- i. The Criminal Appeal stands dismissed.

[NIVEDITA P. MEHTA, J.]