



Judgment

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

CRIMINAL APPEAL NO.590 OF 2023

Vijesh s/o Chandan Maharwade,
aged about 38 years, occupation : labourer,
r/o Datora, Gondia tahsil and district Gondia,
(presently at Central Prison, Nagpur). **Appellant.**

:: VERSUS ::

The State of Maharashtra,
through PSO PS Gondia Rural,
district Gondia. **Respondent.**

**Shri Gajanan Kale, Counsel Appointed for the Appellant is
absent.**

Shri N.R.Rode, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 20/08/2025

PRONOUNCED ON : 20/09/2025

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order dated 28.4.2022 passed by learned Sessions Judge, Gondia (learned Judge of the trial court) in Special (POCSO) Case No.57/2017.

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2. By the said judgment impugned in the appeal, the accused is convicted for offence under Section 376(2) (f) of the IPC and sentenced to undergo RI for 15 years and to pay fine Rs.10,000/-, in default, to undergo further SI for 3 months.

He is also convicted for offence under Section 376(2)(i) of the IPC and sentenced to undergo RI for 15 years and to pay fine Rs.10,000/-, in default, to undergo SI for 3 months.

He is further convicted under Section 506 of the IPC and sentenced to undergo RI for 6 months.

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

The victim is the granddaughter of the informant aged about 10 years. On 6.9.2017, the informant had been Gondia to attend the funeral of his

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sister's son. The father of the victim is not alive and mother has performed the second marriage. Therefore, the victim was residing along with her grandfather, the informant, and the accused who is her uncle. On 6.9.2017, she was alone in the house along with her uncle. In the evening, she finished her meal and went to sleep. After some time, her uncle i.e. the accused came near her bed and asked her to sleep along with him on his bed and took her on his bed. He subjected her for the forceful sexual assault. As per the allegations, she was subjected for forceful sexual assault throughout the night. In the morning, the victim approached to the second wife of the informant who is her grandmother, but did not disclose about the said fact as she was threatened by the accused. The informant returned on 7.9.2017 and she disclosed the said fact to him. He took her to the police station on the same day and lodged the report. On the

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basis of the said report, the police registered the crime under Sections 376 and 506 of the IPC and under Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act).

4. After registration of the crime, the wheels of the investigation started rotating. During the investigation, the victim was immediately referred for medical examination and her statement was recorded. The informant and victim have shown the spot of the incident. Accordingly, spot panchanama was drawn. The birth certificate of the victim was collected. The accused was arrested. The clothes of the victim and the accused and their samples were collected and after completion of the investigation, chargesheet is filed in the special court.

5. Learned Judge of the trial court framed the charge against the accused vide Exh.14. The particulars

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of the charge are explained to the accused in vernacular and he pleaded not guilty and claimed to be tried.

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

PW Nos.	Names of Witnesses	Exh. Nos.
1	Pranay Pranay Chandekar, pancha on spot and seizure panchanamas	20
2	Rajesh Shivankar, pancha on seizure of samples of the accused	31
3	Grandfather of the victim	34
4	Dr.Dipak Bhagwat, Medical Officer who examined the accused	39
5	Suresh Wanjari, ASI who recorded the report	43
6	Victim	46
7	Dr.Rashmi Prasad, Medical Officer	93
8	Prakash Meshram, carrier	97
9	Sandip Kohle, carrier	98
10	Dineshchandra Shukla, Investigating Officer	101
11	Rajni Tumsare, police officer	110

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7. Besides the oral evidence, the prosecution placed reliance on spot panchanama Exh.21, seizure panchanama Exhs.22 and 23, seizure of clothes of victim Exh.24, seizure of samples Exh.25, seizure of clothes of accused Exh.26, seizure panchanama as to the samples of the accused Exh.31, requisition Exh.40, medical certificate of the accused Exh.41, medical report of the accused Exh.42, oral report Exh.44, FIR Exh.45, medical report of the victim Exh.94, OPD papers of the victim Exh.96, requisition to CA Exh.95, requisition to CA Exh.99, requisition to Medical Officer Exh.102, CA Report Exh.116.

8. On the basis of oral as well as documentary evidence, the prosecution claimed that the prosecution has proved its case beyond reasonable doubt against the accused. Whereas, defence of the accused is of total denial and of false implication. All incriminating

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evidence is put to the accused in order to obtain his explanation regarding the evidence appearing against him by recording his statement under Section 313 of the CrPC.

9. Heard learned counsel Shri Gajanan Kale appointed for the accused and learned Additional Public Prosecutor Shri N.R.Rode for the State. They took me through the entire evidence on record.

10. Learned counsel for the accused submitted that the age of the victim is not proved by the prosecution. On the say of the mother of the victim, the false report is lodged. The evidence of the victim is not at all inspiring the confidence as material admissions are brought on record during her cross examination which shows that no such incident has taken place. Being the victim is a child, she is tutored and, therefore, corroboration is required.

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The grandfather of the victim who lodged the FIR has not supported the prosecution case and turned hostile. The medical certificates nowhere show that the victim was subjected for sexual assault. Learned Judge of the trial court has not appreciated this aspect and wrongly convicted the accused. In view of that, the appeal deserves to be allowed by setting aside the judgment impugned in the appeal.

11. Learned Additional Public Prosecutor for the State strongly opposed the application and submitted that not only the evidence of the victim but also the medical evidence and the other circumstantial evidence like blood stains are found on the quilt which was seized from the house of the accused; injuries on the genital of the victim are sufficient corroboration to show involvement of the accused in the alleged offence. The victim, a very small girl, is niece of the accused, is subjected for the forceful

sexual assault and the evidence sufficiently shows involvement of the accused in the alleged offence. In view of that, the appeal being devoid of merits is liable to be dismissed.

12. On hearing both the sides and perusing the evidence on record, it has to be ascertained as to whether the evidence adduced by the prosecution is sufficient to warrant conviction of the accused. As per the prosecution case, the victim was aged about 10 years at the time of the incident. The victim has narrated her birth date during the evidence as 5.12.2007. During investigation, though the birth certificate is collected by the investigating officer, no witness is examined. Admittedly, the said birth certificate is admitted under Section 293 of the Code. The victim is not cross examined as to her age. Admittedly, the evidence of the victim as to her age remained unchallenged. The birth

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certificate Exh.109 is issued under Sections 12 and 17 of the Registration of Births and Deaths Act, 1969 and Rules 8 and 13 of the Maharashtra Registration of Births and Deaths Rules.

13. As per provisions of Rule 9 of the Maharashtra Registration of Births and Deaths Rules, 1976, this Certificate is issued by the Sub-Registrar acting under the provisions of the Registration of Births and Deaths Act, 1969. Section 7 thereof deals with appointment of Registrars for each local area comprising the area within the jurisdiction of the Municipality, Panchayat or other local authority. It is the duty of the Registrar to register every birth and every death which takes place in his jurisdiction. This Act mandates that the Registrar should discharge his duties carefully. Section 8 of this Act mandates each head of the house to report birth in the family to the Registrar. The Act provides for maintenance

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of register for recording birth and death within the local area. That is how, certificate came to be issued by the Sub-Registrar as per provisions of Sections 12 and 17 of the said Act. The Birth Certificate, as such, is issued by the Public Officer and it is a document forming the record of the acts of the Public Officer and therefore the same is a public document within the meaning of the said term as per provisions of Section 74 of the Indian Evidence Act, 1872. The same is admissible in evidence by mere production thereof in view of provisions of Section 77 of the Evidence Act.

14. Section 17 of the Registration of Births and Deaths Act, 1969, 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

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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, 1872, makes it clear that if entry is made by public servant in the official book in discharge of his official duty, then such entry becomes the relevant fact and admissible in evidence. Section 35 of the Indian Evidence 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 specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public

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servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. It is, thus, clear that the Birth Certificate issued by the statutorily appointed competent authority is relevant and admissible. The birth certificate is a public document and primary evidence which can be proved by production in view of Section 77 of the Indian Evidence Act.

15. The Hon'ble Apex Court, in the case of **Mahadeo vs. State of Maharashtra and anr, reported in (2013)14 SCC 637**, held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is applicable in determining the age of the victim of rape. Said Rule 12(3) reads as under:

“Rule 12(3) : In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the co

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urt or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) i. the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

ii. the birth certificate given by a corporation or a municipal authority or a panchayat;

iii. the matriculation or equivalent certificates, if available;

(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.

16. 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 the one year, and, while passing orders in

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

17. Thus, the evidence as to the date of birth of the victim remained unchallenged and the prosecution succeeded in proving that the victim was below 18 years of age i.e. 10 years at the time of the incident is established.

18. Children are the greatest gift of humanity and the sexual assault on children is the most heinous crime.

19. In the present case, the accused, who is real uncle of the victim, is facing charge on an allegation that he

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subjected a tender girl of 10 years for forceful sexual assault and thereby committed an offence under Section 376(2)(f) and 376(2)(i) of the IPC.

20. Insofar as the charge under Section 376(2)(f) and 376(2)(i) of the IPC is concerned, the implicit reliance on record by the prosecution is on the evidence of PW6 victim who testified on oath that her father is not alive. Her mother has performed second marriage and is staying along with her husband at Dongargaon. The victim was residing along with her grandfather who is informant and the accused is her uncle. As per her evidence, on 6.9.2017, her grandfather had been to Gondia to attend funeral of his relative. She was along with the accused at home. After taking meal in the evening, she was sleeping on the bed. At the relevant time, her uncle came near to her and subjected her for forceful sexual assault by disrobing her as well as

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disrobing himself. In detail, she has narrated the act of the accused. As per her evidence, the accused has also outraged her modesty by pressing her breast. Her evidence further shows that in the morning, she went to her grandmother who is the second wife of her grandfather, but she has not disclosed the incident to her. Due to the sexual assault by the accused by way of penetration, she was having pain in her genitals. When her grandfather came home, she disclosed the incident to him and her grandfather took her to the police station and lodged report. The police recorded her statement. She was referred for medical examination. She has narrated the history to the Medical Officer. The spot of the incident was also shown by her and her grandfather to the police. The police seized her underwear as well as her slax by drawing panchanama Exh.24. Her statement was recorded before the Magistrate also.

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During her cross examination, her family history, that her grandfather has two wives, is taken on record. It also came on record that her one of grandmothers is residing at Murdoli and another grandmother was residing along with her grandfather. One Anusayabai is the wife of elder brother of her father. She was residing adjacent to her house. She admitted that on the next day of the incident she has gone to the house of Anusayabai. She further admitted that the children of said Anusayabai were at home on the day of the incident. When the grandfather came home, the accused was not at home. When she approached to said Anusayabai, at that time also, the accused was not at home. It has further brought on record that her house is surrounded by the adjoining houses.

21. Learned defence counsel placed reliance on admission that on the date of incident the accused

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returned home at night at 12:30 to 1:00 am and was sleeping in his room and submitted that this admission sufficiently shows that no such incident has occurred. During cross examination, she denied the suggestion that the accused has not subjected her for sexual assault. During the cross examination, it is again came on record that she has narrated history to the Medical Officer. She also narrated the incident before the police. The observation of the court that to the suggestion given by the defence counsel the victim emphatically denied the question and voluntarily stated that she has stated which happened with her.

22. Admittedly, the report regarding the incident is lodged by the grandfather of the victim who has not supported the prosecution case during the trial. However, he has admitted that he lodged the report. The report shown to him is the same and bears the signature.

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The portion mark "A" of his report as to the incident disclosed to him by the victim is proved by the prosecution during the evidence of the investigating officer PW5 Suresh Wanjari who stated that he has reduced into writing the report as per his narration, which is at Exh.44. The cross examination of the victim shows that the accused was residing with him till the date of incident. He further admitted that the accused is only earning member in his family. Now, the victim is residing along with her mother at Dongargaon. It further came in cross examination that initially also, sexual assault was committed on the victim prior to this incident. He further admitted that the victim went to stay along with her mother. He knows reading and writing. He further admitted that he read the documents before putting signature on it. He further admitted that on 7.9.2017 he returned home from Gondia.

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23. To corroborate the version of the victim, the prosecution placed reliance on the evidence of Medical Officer PW7 Dr.Rashmi Prasad, whose evidence shows that on 7.9.2017 a ten years girl was brought to her for medical examination by LPC Bakkal No2280. She narrated history of her own uncle aged about 37 years. She was accompanied by her grandfather. As per the history narrated by the victim, she was subjected for sexual assault by the accused on 6.9.2017 in the evening at around 6:00 pm to 7:00 pm. Prior to that also, she was subjected for the sexual assault on 5-6 times by the accused, but she has not disclosed the incident. She further narrated that she was also sexually assaulted by a person namely Sunil Kore in January 2017.

As per the evidence of the Medical Officer, on examination of the victim, she found that hymenal margin was in flashed. It was reddish with signs of inflation.

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Hymen injuries were present, edges inflation, multiple tags inflation were present. The injuries to genital hymnal margin irregular inflated. The hymen was ruptured and hymenal tags were old healed which was suggested of insertion of some object and or manipulation. On the basis of the observations, she gave final opinion that overall findings are consistent with sexual intercourse/assault. Accordingly, she issued medical report Exh.94. During her cross examination, she admitted that she did not observe any fresh injuries, but she also clarified that margin was inflamed which was suggestive of recent insertion and manipulation or inflation.

24. PW4 Dr.Dipak Bhagwat, is the Medical Officer, who examined the accused medically and issued the medical certificate.

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25. As per evidence of PW1 Pranay Chandekar, pancha on spot and seizure panchanamas, he was called to act as a pancha. They were taken on the spot of incident. The father of the accused shown room that was the place of the incident. One quilt was seized from the said room. The bed was kept in the outside room which was like a shade. Accordingly, panchanama was drawn. The seizure memo of the quilt is at Exh.22. His further evidence shows that the victim has also produced her clothes which were on her person on the day of the incident, which were seized in her presence. Her samples are also produced by lady constable in their presence and the same were seized vide Exh.25. The clothes of the accused are also seized in his presence by drawing panchanama Exh.26. Though the pancha witness is cross examined, nothing incriminating is brought on record to falsify the version.

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26. PW2 Rajesh Shivankar, is another pancha in whose presence, the blood samples and other samples of the accused are seized.

During cross examination of this witness also nothing incriminating is brought on record.

27. Though PW3 the grandfather of the victim has left loyalty towards the prosecution, the contents of the FIR are proved by the prosecution through the evidence of PW5 Suresh Wanjari, who recorded the said FIR, who specifically stated that PW3 approached the police station and lodged the report against the accused. He recorded the portion mark "A" as per the narration of PW3. During cross examination, except suggestion that the informant has not stated portion mark "A", no other cross examination affecting the prosecution case came on record.

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28. PW8 Prakash Meshram and PW9 Sandip Kohle both are police constables, who carried muddemal for chemical analysis. Their evidence is formal in nature.

29. PW10 Dineshchandra Shukla, is the Investigating Officer who narrated about the investigation carried out by him. Even, during his cross examination, the prosecution case is not affected as nothing incriminating is brought on record to falsify the version of the victim.

30. PW11 Rajni Tumsare, is the police officer, who recorded the statement of the victim.

31. Besides the oral evidence, the prosecution placed reliance on CA Report Exhs.117 and 118. As per Exh.117, Blood Group of the victim is "O" and Blood Group of the accused is also "O". The quilt seized from the spot of the incident has moderate number of blood

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stains and blood detected on it is of human. However, Blood Group detected on quilt cannot be determined.

32. Leaned APP vehemently submitted that the evidence of the victim is cogent and consistent and nothing is on record to show that she has any oblique motive to implicate the accused falsely. Moreover, her evidence is corroborated by the medical evidence also. The CA Report also shows that the quilt found at the spot of the incident is having blood stains.

33. Thus, the oral evidence of the victim is not only corroborated by the medical evidence but also corroborated by Exh.116 which is Chemical Analyzer's Report. Though the defence of the accused is of total denial and of false implication, nothing is brought on record to show that there was any reason for the victim to implicate the accused falsely. On the contrary, the

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evidence on record shows that after death of her father, her mother performed second marriage and she was living at the shelter of the accused and her grandfather.

34. The sum and substance of the entire evidence of the victim shows that by taking disadvantage of the absence of her grandfather, she was assaulted sexually by the accused, who is her uncle. The fact that the accused is residing in the same house along with the informant and the victim, is not denied. It is also not denied that on the day of the incident, the informant had been to Gondia to attend funeral.

35. Thus, the evidence of the victim, that she was subjected for forceful sexual assault, is not shattered during the cross examination, but corroborated by the medical evidence. The medical evidence sufficiently shows that she was subjected for the sexual assault. The

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sexual activities with the victim of a tender age are having traumatic effect on her and she has to suffer due to the said trauma throughout her life.

36. The accused in the present case is close relative of the victim, i.e. uncle. Admittedly, the victim was not having support of her parents as her father is not alive and mother has already performed second marriage. As far as defence of the accused is concerned, as observed earlier, there is no circumstance brought on record to show that she is having any reason to implicate the accused falsely.

37. Learned counsel for the accused submitted that there is delay in lodging of the FIR.

38. The delay in lodging the FIR cannot be used as ritualistic formula for doubting the prosecution case and discarding the same. Delay has the effect of putting the

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

39. As far as the delay in lodging of the FIR in sexual offence is concerned, the Hon'ble Apex Court in the case of **State of Punjab vs. Gurmit Singh and ors, reported in (1996)2 SCC 384** held that the grounds on which the trial court disbelieved the version of the prosecutrix are not at all sound. The findings recorded by the trial court rebel against realism and lose their sanctity and credibility. The court lost sight of the fact that the

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prosecutrix is a village girl. She was a student of Xth Class. It is further held that the trial court fell in error for discrediting the testimony of the prosecutrix on that account. If there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural.

40. In the present case, admittedly, the victim is residing along with her grandfather and the accused who is her uncle. Her grandmother is the second wife of her grandfather. Admittedly, when her grandfather came next day of the incident in the morning, she disclosed the incident to him and he immediately rushed to the police station and lodged the report.

41. Thus, if the facts and circumstances of the present case and sequence of the events are taken into consideration, it properly explains the delay. It is

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common knowledge that the incident like rape, more so when the perpetrator of the crime happens to be member of family or related therewith, which involves honour of the family and, therefore, there is reluctance on the part of the victim's family to report the matter to the police and carry it to the court and, therefore, there is delay in the present case. It is an obvious on the part of the victim that being she is very tender age girl, was waiting for her grandfather and as soon as her grandfather reached the home, she disclosed the incident to him and FIR came to be lodged.

42. A careful analysis of the evidence of the victim shows that the evidence of the victim is corroborated on all particulars by the medical evidence also. The testimony of the victim inspires confidence. There is neither exaggeration nor omissions which would create doubt as to the evidence of the victim. The testimony of

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the victim has ring of truth which is corroborated by the medical evidence and the scientific evidence. The accused has not explained incriminating circumstances as to the blood stains appearing on the quilt. If totality of the circumstances are considered, nothing is on record to show that the victim has any other motive to falsely implicate the accused.

43. After giving a thoughtful consideration to submissions made by learned counsel for the accused and learned Additional Public Prosecutor for the State, the evidence on record sufficiently shows involvement of the accused. Though the defence of the accused is that he is falsely implicated, no reason is assigned to show that there is any motive for the victim to implicate him falsely.

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44. Thus, the evidence on record shows that the victim who is child carries trust about her grandfather and uncle. The uncle, who has role of her father, has betrayed trust of the victim. The accused who was protector has ruined the physic as well as state of mind of the victim, who is his own niece and destroyed her future life. He had degraded the very sole of helpless girl, who was staying with him as her father is not alive and mother has already left her.

45. It is to be borne in mind that the accused is the person who has violated the victim's privacy and personal integrity and also caused serious psychological as well as physical harm to the victim. Rape is not merely a physical assault but it is often destructive to whole personality of the victim and, therefore, the matters of such allegations must be dealt with utmost sensitivity.

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

47. The Hon’ble Apex Court, in the case of **Ravi Ashok Ghumare vs. The State of Maharashtra, reported in ALL MR (Cri) 4873** held that a civic society has a 'fundamental' and 'human' right to live free from any kind of psycho fear, threat, danger or insecurity at the hands of anti-social elements. The society legitimately expects the Courts to apply doctrine of proportionality and impose suitable and deterrent punishment that commensurate(s) with the gravity of offence. It is further held that the sentencing Policy, therefore, needs to strike a balance between the two sides and count upon the twin test of (i)

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deterrent effect, or (ii) complete reformation for integration of the offender in civil society. The criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State.

48. The 'victim' the *de facto* sufferer of a crime had no say in the adjudicatory process and was made to sit outside the court as a mute spectator. A few limited rights, including to participate in the trial have now been bestowed on a 'victim' in India by the Act No. 5 of 2009 whereby some pragmatic changes in the Code of Criminal Procedure have been made.

49. In the present case, the accused who is grown up man, who is uncle of the victim, subjected her for sexual assault on a very tender age girl who has undergone mental trauma. The accused, being in a

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position of trust and dominance over the victim, took undue advantage of these circumstances and committed heinous crime to fulfill his lust. The evidence on record sufficiently shows sufferings and tremendous mental trauma which she has undergone. She has to lead remaining life with permanent scar as well as psychological impact on her life. The condition of the victim, who has to lead the life with the said scar which jeopardize future prospects of enjoying life. By considering all these facts, punishment is awarded by the trial court is proper and the trial court has assigned the reasons while awarding the maximum punishment.

50. In this view of the matter, as I do not find any reason to interfere with the judgment impugned in the appeal, the appeal deserves to be dismissed and the same is **dismissed**.

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51. Fees of learned counsel Shri Gajanan Kale appointed for the appellant are quantified and the same be paid to him as per rules.

Appeal stands **disposed of** accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!