



Judgment

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

CRIMINAL APPEAL NO.494 OF 2024

Gaurav s/o Gajananrao Ade, aged
about 26 years, occupation: student/
agriculturist, r/o Vikhni, Jasapur,
tahsil Samudrapur, district Wardha. **Appellant.**

:: V E R S U S ::

1. The State of Maharashtra, through
its Police Station Officer, Police
Station Bela, district Nagpur.

2. XYZ (victim of crime bearing First
Information Report No.154/2022
registered at respondent no.1
police station). **Respondents.**

**Shri Adwait Manohar, Counsel and Shri Tejas Deshpande
& Shri Suyog Deshpande, Advocates for the Appellant.
Mrs.S.V.Kolhe, Additional Public Prosecutor for the
Respondents/State.
Shri K.G.Rathi, Counsel Appointed for the Victim.**

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 20/06/2025
PRONOUNCED ON : 15/07/2025

JUDGMENT

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1. By this appeal, the appellant (accused) has challenged judgment and order dated 2.4.2024 passed by learned Additional Sessions Judge-13, Nagpur (learned Judge of the trial court) in Sessions Case No.539/2022.

2. By the said judgment impugned, the accused is convicted for offence under Section 376-D read with Section 34 of the IPC and sentenced to undergo rigorous imprisonment for 20 years and to pay fine Rs.15,000/-, in default, to undergo rigorous imprisonment for 1 year.

He is also convicted for offence under Section 506 read with 34 of the IPC and sentenced to undergo rigorous imprisonment for 1 year.

3. Brief facts of the prosecution case can be summarized, thus:

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The crime is registered on the basis of report lodged by the victim on 18.5.2022 alleging that on that day, at about 8:00 am, when she had been to Jasapur Forest to graze cattle, near the field of one Ramesh Warade, at the relevant time, at about 9:00 am, the accused along with Subhash (the co-accused) came out of bushes, adjacent to boundary of field near a stream, and came near to her and caught hold her neck and the co-accused by disrobing her subjected her for forceful sexual assault. Thereafter, the other co-accused caught hold her hands and the present accused also subjected her for forceful sexual assault. Though she shouted, nobody was there and she was threatened by both the accused. By obtaining her clothes, she left the place of incident and came on the road wherein she met one Naresh Zilpe to whom she disclosed the incident and wore her saree. There were blood stains on her petticoat. She narrated

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the incident to said Naresh and subsequently, came at home and disclosed the incident to her husband and, thereafter, they approached the police station and lodged report.

4. After registration of the crime, wheels of investigation started rotating. The investigating officer has visited the alleged spot of the incident and drawn spot panchanama. During the investigation, the clothes of the victim, the present accused, and the co-accused were seized and the same were forwarded for chemical analysis. The victim as well as the present accused and the co-accused were referred for medical examination. After conducting medical examination, the victim returned to home. After completion of due investigation, chargesheet was submitted against the accused.

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5. As the offences under Sections 376D and 506 of the IPC were exclusively triable by Sessions Judge, learned Magistrate committed the case to the Court of Sessions. Learned Judge of the trial court framed charge vide Exh.7. The contents of the charge are read over and explained to the accused and the accused pleaded not guilty and claimed to be tried.

6. In support of the prosecution case, the prosecution examined as many as 14 witnesses, which are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	The victim	20
2	Naresh Zilpe	23
3	Dr.Nitin Johnson Laila, the medical officer	25
4	Krushna Banabakode	39
5	Anil Ade	49
6	Bandu Sarate	50
7	Dr.Shubham Munde	56

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8	Arvind Titare	57
9	Pankaj Waghode	60
10	Puja Gaikwad, the investigating officer	65
11	Pranali Bhandakkar, police constable	81
12	Shailendra Mankar, police constable	83
13	Tushar Salam, police constable	85
14	Savita Khobragade, Chanical Analysist	87

7. Besides the oral evidence, the prosecution placed reliance on report Exh.21, FIR Exh.22, medical report Exh.26, medical report of co-accused Subhash Exh.27, medical report of the present accused Exh.29, seizure memo as to clothes of the victim Exh.41, seizure memo as to the clothes of co-accused Subhash Exh.42, seizure memo as to the clothes of the present accused Exh.43, spot panchanama Exh.44, seizure memo as to samples of victim Exh.45, seizure memo as to samples of the present accused Exh.46, seizure memo as to samples of co-accused Subhash Exh.47, seizure memo of motorcycle

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Exh.48, arrest memos Exhs.61 and 62, letter to C.A. Exhs.73 and 75, and DNA Report Exh.79.

8. All incriminating evidence appearing against the present accused and the co-accused is put to them in order to obtain their explanation as to evidence appearing against them by recording their statements under Section 313 of the CrPC. The defence of the accused is of total denial and false implication.

9. After hearing learned counsel for the accused persons perusing the evidence on record, learned Judge of the trial court held both the accused guilty and convicted them as the aforesaid.

10. Heard learned counsel Shri Adwait Manohar for the accused, learned Additional Public Prosecutor Mrs.S.V.Kolhe for the State, and learned counsel Shri K.G.Rathi appointed for the victim. With their able

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assistance, I have gone through the entire material on record.

11. Learned counsel for the accused submitted that the evidence of the victim, alleging that the present accused has subjected her for the forceful sexual assault, is neither substantiated by medical evidence nor by any circumstantial evidence. He invited my attention towards the evidence of the victim and submitted that it came in the evidence of the victim that the alleged incident has taken place in forest area near nullah or stream. As per her evidence, she was holding a stick in her hand at the relevant time. Her cross examination shows that she has not attempted to resist by means of that stick. Even, accepting the allegations that she was assaulted sexually by using the force by both the accused, though it is hard and rough surface, not a single scratch was found on her person. Her evidence itself shows that there were trees

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and bushes near the spot of the incident. She was disrobed and, thereafter, by using force, she was subjected for sexual assault by both the accused. Despite the said facts, she has not received a single injury on her person. Her evidence further shows that at the spot of the incident, other villagers also used to come for grazing the cattle. There used to be villagers present along with the cattle. The spot of the incident is surrounded by the agricultural fields and not a single person came forward in support of the victim to show that the accused persons were seen at the spot of incident and presence of the victim was also noted. The medical officer has obtained the samples and forwarded the same for DNA Examination. DNA Report, as far as present accused is concerned, is negative. The clothes of the accused are also seized and no blood stains are found on his clothes. There is a contradiction as to the medical examination of

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the victim. As per evidence, she approached the police station on 18.5.2022 itself. Her medical examination is carried out in the intervening night of 18.5.2022 and 19.5.2022 at about 2 am. The evidence of Police Constable Pranali Bhandakkar shows that she has taken the victim for medical examination along with the requisition and duty pass at about 9:00 to 9:30 pm and the victim was examined after 1 to 2 hours. Whereas, the medical report shows that the victim was examined at 2:00 am. Not a single injury was witnessed by the medical officer. The evidence of Medical Officer PW3 Dr.Nitin Johnson Laila shows that no fresh injury was noted by him though she was examined within 24 hours of the incident. There was no tenderness as per the complaint made by the victim on her person. The said medical officer noted old healed tear and there was no

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fresh bleeding. Whereas, the clothes seized show that blood stains are found on her petticoat.

He further submitted that PW2 Naresh Zilpe, has not supported the prosecution case as far as disclosure of the name of the present accused by the victim to him is concerned.

As per the prosecution, PW5 Anil Ade, to whom co-accused Subhash disclosed as to the commission of the rape. However there is no such disclosure by the present accused. Thus, the entire evidence, as far as the involvement of the accused is concerned, is doubtful and, therefore, the conviction on the basis of such doubtful evidence, which is not inspiring confidence, is erroneous and liable to be quashed and set aside.

In support of his contentions, learned counsel for the accused placed reliance on following decisions:

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1. Pratap Misra and ors vs. State of Orissa, reported in (1977)3 SCC 41;
2. Emperor vs. Mallangowda Parwatgowda, reported in AIR 1917 130;
3. State of Haryana vs. Ram Singh, reported in (2002)2 SCC 426;
4. Criminal Appeal No.996/2017 with other connected matters (Abhijit @ Rohit Chandrakant Paware vs. State of Maharashtra) decided by this court on 5.1.2024;
5. Sanjay Devaji Ramteke vs. State of Maharashtra, through PSO, reported in 2020 SCC OnLine Bom 431;
6. State of Punjab vs. Madan Mohan Lal Verma, reported in (2013)14 SCC 153, and
7. Mukhtiar Ahmed Ansari vs. State (NCT of Delhi), reported in (2005)5 SCC 258.

12. *Per contra*, learned Additional Public Prosecutor for the State supported the judgment impugned in the appeal. She submitted that the evidence of the victim,

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coupled with evidence of PW2 Naresh Zilpe and PW5 Anil Ade, is supported by the medical evidence and DNA Report sufficiently shows involvement of the present accused in the alleged incident. The prosecution has also examined Chemical Analyzer Savita Khobragade, Chemical Analyst, who in detail, narrated about the procedure adopted by her while conducting the DNA Test. Exh.79 DNA Report connects the accused with the blood stains found on the articles. Thus, the evidence of the victim supported by the other circumstantial evidence sufficiently proves the guilt of the accused.

13. Learned counsel for the victim placed reliance on his written statement and endorsed the same contentions that the evidence of the victim, duly corroborated by the circumstantial evidence, shows involvement of accused in the alleged incident and learned Judge of the trial court

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has appreciated the evidence and rightly convicted the accused.

14. In support of his contentions, learned counsel for the victim has placed reliance on following decisions:

1. **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat**, reported in (1983)3 SCC 217;
2. **State of Punjab vs. Gurmit Singh and ors**, reported in (1996)2 SCC 384;
3. **State of H.P. vs. Shree Kant Shekari**, reported in (2004)8 SCC 153;
4. **State of Karnataka vs. K.Yarappa Reddy**, reported in (1999)8 SCC 715;
5. **Ramesh vs. State of MP**, reported in 2003 LawSuit (MP) 1039;
6. **Sri Narayan Saha and anr vs. State of Tripura**, reported in AIR 2005 SC 1452;
7. **Devraj vs. State of Chhattisgarh**, AIR 2016 SC 3498, and

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8. Pandappa Hanumappa Hanamar and anr, reported in (1997)10 SCC 197.

15. The charge against the accused is that along with the co-accused he has subjected the victim who is a married woman for sexual assault by threatening her and thereby committed offences under Sections 376D and 506 of the IPC. To establish the charge, the prosecution mainly placed reliance on the evidence of the victim examined vide Exh.20. As per her evidence, she is residing along with her husband and children. On 18.5.2022, at about 8:00 am, she had been to Jasapur-Shivar, Samudrapur in a forest for grazing goats. At the relevant time, the present accused and the co-accused came out of the bushes, caught her near her neck, disrobed her, and subjected her for the forceful sexual assault. The allegations of the forceful sexual assault is levelled against both the accused. As per her evidence,

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the alleged incident has taken place adjacent to the field of Ramesh Warade and there were trees and bushes at that place and the alleged incident took place near a nullah. After the incident, she wore petticoat stained with blood and blouse on her person and immediately ran towards the road. On the road, she met PW2 Naresh Zilpe to whom she has narrated the incident. He took her to the road and thereby she went at the house and disclosed the incident to her husband. Thereafter, they approached the police station and lodged the report, which is at Exh.21 and FIR is at Exh.22. She was immediately referred to the Nagpur Medical Hospital and her medical examination was carried out. Article-A saree, Article-B blouse, Article-C petticoat, and Article-D nicker are identified by her. She has also identified both the accused before the court.

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16. To corroborate the version of the victim, the prosecution has examined PW2 Naresh Zilpe, vide Exh.23. He has supported the prosecution case only to the extent that he saw the victim in petticoat and blouse and her saree was in her hand. He disclosed that the victim only disclosed to her that she was subjected for sexual assault, but did not disclose names of the assailants.

17. PW5 Anil Ade, is also examined vide Exh.49. His evidence is to the extent that on 18.5.2022 the victim disclosed to him about the incident and, thereafter, he went at the spot where both the accused persons were taking bath and he enquired with them and the co-accused disclosed to him that he committed rape.

18. The victim is cross examined at length. Her cross examination shows that daily she takes her goats for

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grazing. Like her, other villagers also do the same work. The spot where the alleged incident took place is near to the village. The villagers also graze their cattle in the morning. They bring their cattle at 12:00 pm and again at 3:00 pm. The other villagers also observe the same timing as far as grazing of the cattle is concerned. However, she stated that at the time of the incident, there were no goats of other people. The accused were not acquainted to her as they are not residents of the same village. She never met them prior to the incident. As far as the incident is concerned, she deposed that the present accused disrobed her though she resisted his act and they were heavily drunk. She admitted that at the relevant time she was having a stick, but she did not attempt to save herself by using the said stick. Her cross examination further shows that she knows PW2 Naresh Zilpe as she is working in his field. She sustained injury

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on her hand and disclosed the said injury to the medical officer.

Her cross examination further shows that the clothes identified by her were on her person, till filing of the report. She also visited the spot of the incident by wearing the same clothes.

One omission is brought on record that she has not disclosed the police while recording her statement that the present accused pressed her mouth and neck.

19. As already observed, PW2 Naresh Zilpe, though supported the prosecution case, he has not disclosed initially that the victim disclosed to him who has committed rape on her. During cross examination by APP, he admitted that the victim disclosed names of the present accused, but he denied that he has witnessed both the accused taking bath at the nullah.

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During his cross examination by defence counsel, he admitted that when the victim met him, she has not disclosed names of the accused. He also admitted that he met the victim when she was was returning along with the goats. The police station is at 7 to 8 kilometers from the spot of the incident.

20. As far as the evidence of PW5 Anil Ade is concerned, it nowhere shows that it was the present accused who also disclosed to him that sexual assault was committed by him.

His cross examination shows that on the day of the incident he was in the house. The spot of the incident from his village is one and half kilometers. He did not go to the field on 18.5.2022 because there was a marriage in the house. He further admitted that the marriage was in the evening and he was busy in the marriage function.

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He specifically admitted that he is unable to tell which clothes are worn by the present accused.

Thus, his cross examination shows that due to the marriage, he was in the house and was busy in the arrangement of marriage.

21. To corroborate the version of the victim, the prosecution has examined PW3 Dr.Nitin Johnson Laila who examined the victim and both the accused. His evidence shows that in the intervening night of 18.5.2022 and 19.5.2022, the victim was referred to him for medical examination. The history narrated by the victim was taken by him. During examination, he found that there was no injury on her body. There was no fresh bleeding. On examination of the genitals, it revealed old healed tear. There were sand particles on lower back part of the body of the victim. He obtained the samples and opined

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that sexual intercourse/assault cannot be ruled out. Accordingly, he issued medical report Exh.26.

On the same day, he had also examined co-accused Subhash and the present accused. He has not noted any injuries on their persons. As per the evidence, there was nothing to suggest that both the accused are incapable of performing sexual intercourse. The said medical certificates are at Exhs.27 and 29.

His cross examination shows that that there was no injury found either on the body of co-accused Subhash or the present accused. As per the history, the victim was subjected for the sexual assault on 18.5.2022 at 8:00 p.m.. There was no injury on the victim. The injury on the hymen was not fresh. There were no injuries either on the buttock or back. There was no visible bleeding injury on her mouth. He obtained the blood sample. He

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has also obtained Form No.C and Alcohol Examination Form and both the forms reveals that there was no alcohol in the blood of the accused at the time of the examination.

22. PW7 Dr. Shubham Munde, is the another Medical Officer, who testified that on 19.5.2022 he examined co-accused Subhash. He narrated the history. He also ascertained that there is nothing to suggest that the accused is not capable of performing sexual activity. He also admitted that there was no injury found on the persons of the accused and, therefore, question of oozing of blood from internal and external body of the accused does not arise.

23. PW11 Pranali Bhandakkar, is a police constable who testified that on 18.5.2022 she was sent with the victim for medical examination. Duty pass was issued to

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her which is at Exh.82. She took the victim to the Nagpur Medical Hospital in the night around 9:00 to 9:30 pm. The victim was examined after 1-2 hours. The medical officer had given nine samples consisting blood samples and swab samples etc. All the samples were sealed. She handed over the said samples to the investigating officer. Accordingly, seizure panchanama was drawn.

24. Police Constables PW21 Shailendra Mankar and PW13 Tushar Salam, took both the accused for medical examination. Their evidence is formal in nature.

25. PW4 Krushna Banabakode, acted as a pancha on various panchanamas including clothes, seizure of the victim, clothes seizure of both the accused, and spot panchanama. As per his evidence, he along with the police went to Jasapur-Shivar near the field of Ramesh Warade. They visited the said place at 9:00 pm. The spot

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was shown by the woman which was at the side of nullah. There was big grass. The police seized the grass and simple soil. Accordingly, panchanama was drawn at Exh.44. The photographs are also taken at the spot. His evidence further shows that in his presence at the police station the clothes of the victim were seized and kept on the table. Accordingly, panchanama was drawn which is at Exh.41. On the same day, clothes of co-accused Subhash and clothes of the present accused were seized and panchanama was drawn vide Exh.43. In his presence, samples of the victim as well as the accused are also seized and the seizure memos are at Exhs.45 to 47.

The said witness in his cross examination admitted that he was called at the spot and at the police station. He also admitted that the clothes were on the table which were seized.

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Thus, his evidence shows that the clothes were not produced in his presence.

26. Perusal of the spot panchanama, shows that the alleged spot of the incident was situated at Jasapur-Shivar. There were agricultural lands adjacent to the alleged spot of the incident. There were trees and bushes near the spot of the incident.

27. PW6 Bandu Sarate, another witness from the village, deposed that on 18.5.2022, at about 8:00 to 8:30 pm, he has seen both the accused near the nullah. He enquired with the present accused who informed him that he is going to drink liquor and, thereafter, he came near the nullah. His cross examination shows that he was proceeding by vehicle along with the gunny bag of pulse. The evidence, that he met the accused and enquired with

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them, was not narrated by him before the investigating officer.

Thus, his evidence is brought in the form of omissions.

28. PW8 Arvind Titare, the police constable, was deputed on duty on 18.5.2022 at Bela Police Station. As per his evidence, the victim approached the police station at about 5:00 pm to 5:30 pm and lodged the report. The said report was reduced into writing by PW11 Pranali Bhandakkar. A representative of Mahila Dakshata Samiti was also present.

Thus, his evidence is only to the extent that in his presence the victim approached the police station.

29. PW9 Pankaj Waghode, another police officer, has reduced into writing the report of the victim. His evidence is also formal in nature.

His cross examination shows that the team which went to draw the spot panchanama was returned to the police station at 10:00 pm.

30. Chemical Analyzer PW14 Savita Khobragade, at the relevant time, was serving in Regional Forensic Science Laboratory at Nagpur. She received a letter dated 20.5.2022 Exh.73. The blood samples for DNA Analysis are received. The blood stains on the clothes of the victim and on the grass along with blood samples of the accused and the victim were forwarded for DNA Analysis. The forwarding letter is At Exh.88. She extracted the DNA from the above samples by using the PCR Technique. She also generated DNA Profile by using STR Technique. She did the comparative study of DNA Samples of the accused and victim and opined that DNA Profiles obtained from blood detected on Exh.3 saree, Exh.5 nicker, Exh.6 petticoat, in Bn/2063/2022 are identical and from one

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source and the same source of male origin and matched with DNA Profile obtained from Exh.5 prepared blood stain of co-accused Subhash in Bn/2065/2022. DNA Profile obtained from blood detected on Exh.2 underwear in Bn/2063/2022 is of a male origin and matched with Exh.5 prepared blood stains of the present accused in Bn/2066/2022. Control Female DNA Profile is obtained from Exh.1 prepared blood stain of the victim in Bn/2064/2022. Accordingly, she issued report Exh.79.

Though the said witness is cross examined at length, nothing incriminating is brought on record to shatter the evidence as to the DNA examination is concerned.

31. Investigating Officer PW10 Puja Gaikwad, narrated about the investigation carried out by her. She deposed that after registration of the crime, the accused were

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arrested and the investigation was handed over to her. During investigation, she seized clothes of the both accused in presence of panchas which are at Exhs.42 and 43. She has also seized clothes of the victim vide Exh.41. The victim has shown spot of incident. The spot panchanama was drawn in presence of the victim. The victim was referred for medical examination and her medical examination was carried out. The samples obtained by the medical officer are forwarded to the Chemical Analyzer. After completion of the investigation, she filed chargesheet.

Her cross examination shows that, she reached at 7:30 am in the police station and she has issued letter to the Tahsildar for calling panchas. She denied that the victim was not knowing the accused. She further admitted that in panchanama Exhs.41, 42, and 43 nowhere it is mentioned that the clothes were seized. In

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the seizure panchanama of samples it is also not mentioned that samples were in sealed condition. There was no specimen of seal in the panchanama. Rest of the cross examination is in the denial form.

32. As per the prosecution, the alleged incident has taken place on 18.5.2022 at about 9:00 to 9.30 am. FIR is allegedly registered at 9:15 pm. The information was received at the police station at 18:38 (6:38). The general diary entry also discloses the information as to receipt of the information at about 18:38 pm. The evidence of the victim shows that after the incident, she immediately went at home, narrated the incident to her husband and they approached the police station.

33. The evidence of PW8 Arvind Titare, the police constable, shows that the victim approached the police station at about 5:00 pm to 5:30 pm. PW11 Pranali

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Bhandakkar, the police constable, took her for the medical examination at about 9:00 pm to 9:30 pm and the evidence of Medical Officer PW3 Dr.Nitin Johnson Laila shows that the victim was examined at about 2:00 am.

34. In the light of the above circumstances, the evidence of the victim is to be appreciated.

35. As per the evidence of the victim, both the accused persons were unknown to her. Prior to the incident, she never met both the accused. They are not from her village. First time, she met the accused. She specifically admitted that there was no acquaintance with the accused as they do not reside near to her house. She never met the accused prior to the incident. She has not seen them earlier and first time she saw them on the day of the incident.

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Thus, this cross examination shows that the accused and the co-accused were completely unknown to her.

Whereas, in the cross examination of Investigating Officer PW10 Puja Gaikwad has denied that the accused were unknown to the victim. The test identification parade of the accused is not held by the investigating officer.

The further cross examination of the victim shows that the alleged incident has occurred in the forest near the agricultural field of one Ramesh Warade during the day time i.e. about 9:00 am to 9:30 am when she had been to graze her goats. Her evidence further shows that several villagers came at the said spot for grazing their goats. She further admitted timing of grazing of the goats is also similar. In specific words, she admitted that the

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goats are to be brought for grazing in the morning and other villagers also do the same work during the said period. The other villagers residing adjacent to the village also follow the same timing. Her evidence further shows that the alleged spot of the incident is surrounded by agricultural field. The spot panchanama which is drawn and proved by the prosecution also shows that the alleged spot of incident is surrounded by agricultural lands of various agriculturists.

Thus, this evidence is sufficient to show that the alleged spot of incident is not an isolated place.

The evidence of the victim further shows that there was sand and soil at the spot of the incident.

The evidence of Medical Officer PW3 Dr.Nitin Johnson Laila also shows that he has seen some sand particles on the back of the victim. Admittedly, no single

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injury was found on the person of the victim though allegedly she was subjected for the forceful sexual assault by both the accused. The evidence of the medical officer sufficiently shows that there was no injury on her body. There was no fresh bleeding. No injury is seen by him on examination of genitals. However, he has opined that the evidence of sexual intercourse/assault cannot be ruled out. Admittedly, the victim is a married lady. Neither Medical Officers PW3 Dr.Nitin Johnson Laila nor PW7 Dr.Shubham Munde, has witnessed any injuries either on the person of the victim or on the person of the accused persons.

The cross examination of the victim further shows that at the relevant time she was holding a stick, but she has not resisted the act of the accused by using that stick. Even, accepting that she was overpowered by the accused, but not a single scratch or abrasion was witnessed on the

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person of the victim. The cross examination of the victim further shows that the work in the field is to be carried out from 8:00 am to to 12 pm. No independent witness came forward to narrate about the presence of the victim or the accused at the spot of the incident.

36. As per the evidence of the victim, after the incident, she immediately came out of the forest and met PW2 Naresh Zilpe to whom she narrated the incident. PW2 Naresh is examined. He has not supported the version of the victim as far as disclosure of the names by the victim are concerned. Though he admitted during cross examination that the victim disclosed to him that those persons were accused who subjected her for sexual assault, but during cross examination by defence he admitted that the victim has not disclosed to him the names of the accused. His cross examination further shows that when he met the victim, she was returning along with the goats.

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37. PW5 Anil Ade, is the another witness who though stated that after disclosure by the victim, he went at the spot where he witnessed both the accused taking bath and the co-accused admitted before him that he had sexual intercourse with the victim, there is no whisper that the present accused has also disclosed about his participation in the sexual assault.

The cross examination of this witness shatters his evidence as he has admitted that on the day of the incident he was at home. He did not visit his field as there was marriage in the house.

38. PW6 Bandu Sarate, another witness from the village, has also allegedly seen both the accused at Jasapur nullah and the communication between him and both the accused narrated by him. His evidence shows that on 18.5.2022 between 8:00 pm to 8:30 pm, he was going by

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vehicle and due to the nature's call, he stopped the vehicle and went near the nullah whereat he has seen the present accused informing him that he is going to drink liquor, is an omission proved through the evidence of the investigating officer.

39. As observed earlier, no injuries are found on the person of the victim when she was medically examined, though as per her evidence, the alleged spot of incident was surrounded by bushes and trees and there were the sand and soil at the spot of incident. Her evidence further shows that she was disrobed by the accused and, thereafter, she was subjected for the forceful sexual assault. Admittedly, the spot of the incident is near the agricultural field and the surface was hard and rough. Despite she was subjected for sexual assault by two persons, she has not sustained a single abrasion on her person, is the issue requires to be considered.

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40. To corroborate the version of the victim, the prosecution placed reliance on DNA Evidence also.

41. Exh.3 is the blood stained saree and Exh.5 is blood stained nicker and Exh.6 is the blood stained petticoat of the victim. Exh.12 is the blood stained underwear of the present accused. Exh.1 is the prepared blood stains of victim and Exh.5 is the prepared blood stain of co-accused Subhash and Exh.5 is prepared blood stain of the present accused. The DNA Analysis shows that DNA Profiles obtained from blood detected on Exh.3 saree, Exh.5 nicker and Exh.6 petticoat in Bn No.2063/2022 are identical and from one and the same source of male origin and matched with the DNA Profile obtained from Exh.5 prepared blood stains of Subhash.

42. Thus, it reveals that the blood stains detected on saree, nicker, and petticoat are matched with the DNA

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Profiles obtained from prepared blood stained of co-accused Subhash and the same appears to be of same source of male origin.

43. As far as the present accused is concerned, the DNA Report shows that blood detected on Exh.12 underwear matched with Exh.5 prepared blood stain of his own. Thus, blood stains found on the underwear of the present accused Gaurav are of his own blood stains. Exh.43 is the seizure panchanama of the clothes of the present accused. The said seizure memo nowhere shows that any blood stains are found on the clothes especially underwear of the accused.

44. The testimony of the victim of sexual assault is vital and unless there are compelling reasons, which requires 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. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. The corroborative evidence is not an imperative component in every case of rape.

45. In the present case, the admitted position is that the victim is fully grown up lady having children and

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habituated to sexual activities. The opinion of the medical expert shows that there were no injuries on her person. On appreciating the circumstances, that the alleged incident has taken place at a hard and rough surface, the evidence of the victim itself shows that there was sand and soil at the spot of the incident. Though two persons subjected her for forceful sexual assault by disrobing her and especially when the alleged spot was only having hard and rough surface and was also surrounded by the trees and bushes and no injuries are found on the persons of the victim, the same is difficult to accept. As per the evidence of the victim, the clothe i.e. her petticoat was stained with blood after the incident. Within 24 hours, she was examined by the medical officer and the medical officer has not noted fresh bleeding, the same requires to be appreciated. It is difficult to accept that when the blood stains were found on the clothes of

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the victim especially nicker and her petticoat, no fresh blood was witnessed by the medical officer while examining her, which also creates a doubt about the evidence of the prosecution. Admittedly, sole testimony of the prosecutrix could be relied upon if it inspires confidence. If the version given by the prosecutrix is unsupported by any medical evidence or whole surrounding circumstances are highly improbable and belie the case set up by the victim, the court shall be extremely careful in accepting the sole testimony of the victim when the entire case is improbable and unlikely to happen.

46. Learned counsel for the victim placed reliance on catena of decisions wherein basic principles laid down are that the testimony of the victim of a sexual assault is vital and unless there are compelling reasons looking for her statement, the court should find no difficulty in acting on

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the testimony of the victim. There is no disagreement to the proposition laid down by the Hon'ble Apex Court. At the same time, it is also well settled that the version of the prosecutrix if believed and found to be credible and consistent, the same would form the basis of conviction. Corroboration is not *sine qua non* for conviction in rape. However, if the evidence of the prosecutrix suffers from discrepancies and found unworthy, the benefit of doubt would go to the accused.

47. In the case of **Sadashiv Ramrao Hadbe vs. State of Maharashtra and anr**, reported in (2007)1 SCC Cri 161, the Hon'ble Apex Court reiterated that the sole testimony of the prosecutrix could be relied upon if it inspires confidence of the court.

48. In the light of the well settled principles of law, if the quality of the evidence of the victim is tested, it shows

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that the alleged incident has taken place near the agricultural field of Ramesh Warade. Her cross examination shows that the other villagers used to come at the same place for grazing cattle. The spot of incident is also surrounded by agricultural fields. The cross examination further discloses that several villagers use the said place for grazing cattle. However, on that day, nobody was present, is difficult to accept. She further admitted that during morning times, villages carry out their agricultural operations. Thus, the spot of the incident was not an isolated. The medical evidence nowhere corroborates as far the sexual assault on her is concerned as no fresh injury was seen by the medical officer. Medical Officer PW3 Dr.Nitin Johnson Laila observed old healed in hymen and there was no fresh blood witnessed by him. PW2 Naresh Zilpe has not supported as far as disclosure as to the names of the

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accused persons are concerned. The DNA Report exculpates the present accused as no blood stains origin of the victim was found on the clothes of the present accused. The blood stains found on the clothes of the victim are matched with blood samples of the co-accused.

49. In **Mukesh Singh vs. The State (NCT of Delhi)**, reported in AIR 2017 SC 2161, known as **Nirbhaya's** case, it is observed that DNA is the abbreviation of Deoxyribo Nucleic Acid. It is the basic genetic material in all human body cells. It is not contained in red blood corpuscles. It is, however, present in white corpuscles. It carries the genetic code. DNA structure determines human character, behaviour and body characteristics. DNA profiles are encrypted sets of numbers that reflect a person's DNA makeup which, in forensics, is used to identify human beings. DNA is a complex molecule. It has a double helix

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structure which can be compared with a twisted rope 'ladder'.

It has been further held that DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. Modern DNA testing can provide powerful new evidence unlike anything known before. DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the Court accrued information about the tending features of identification of criminals. It is further observed that there is 100 % accuracy regarding DNA results. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA.

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Only care is to be taken to ascertain whether there was any possibility of tampering of the samples.

50. PW5 Anil Ade and PW6 Bandu Sarate, another witness from the village, though disclosed that they have seen the accused taking bath, the evidence of PW5 Anil Ade is shattered during cross examination as he admitted that on the day of the incident he was at home and not visited his agricultural field as there was marriage in the house. The evidence of PW6 Bandu Sarate is in the nature of omission.

51. There is a discrepancy as far as timing of medical examination of the victim is concerned.

52. As per the evidence of PW11 Pranali Bhandakkar, the police constable, she took the victim for medical examination at 9:00 pm to 9:30 pm and as per her evidence, the medical examination was carried out within

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1 or 2 hours. Whereas, the timing shown in the medical examination is of 2.00 am.

53. Thus, the evidence of the victim does not inspire the confidence. It is doubtful. The presence of the victim at the spot of the incident along with the accused is not corroborated by any independent witnesses. It is also not corroborated by the circumstantial evidence as, though the alleged incident has taken place at hard and rough surface, not a single scratch was found on the person of the victim though she was subjected for the forceful sexual assault by two persons by disrobing her. When there are allegations of rape by two persons and no injury is noticed, certainly the same is an important factor and if the prosecutrix version is credible, no such corroboration is necessary.

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54. Considering these circumstances, the prosecution failed to establish the charges levelled against the accused and, therefore, the accused is entitled for benefit of doubt.

55. On re-appreciation of the entire evidence, I have no hesitation in my mind to hold that the prosecution failed to establish the charges against the accused and there is no reasonable ground to come to conclusion that it is the only accused who has committed the sexual assault on victim and, therefore, the appeal deserves to be allowed, as per order below:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The judgment and order dated 2.4.2024 passed by learned Additional Sessions Judge-13, Nagpur in Sessions Case No.539/2022 is hereby quashed and set aside.

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(3) The accused is acquitted of offences for which he is convicted and sentenced.

(4) The accused be set at liberty forthwith, if he is not required in any other offence.

(5) Fees of learned counsel Shri K.G.Rathi appointed for the victim be quantified and the same be paid to him as per Rules.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!