



Judgment

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

CRIMINAL APPEAL NO.748 OF 2023

Imtiyaj s/o Kayyum Ansari,
aged : 28 years, occupation – Nil,
r/o Near Dinesh Kirana, Ganga Nagar
Police Station – Gittikhadan, Nagpur. **Appellant.**

:: VERSUS ::

State of Maharashtra,
through Police Station Officer,
Police Station – Gittikhadan, Nagpur. **Respondent.**

Shri Amit Choube, Counsel for the Appellant.
Shri V.A.Thakare, Additional Public Prosecutor for the
Respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 05/03/2025

PRONOUNCED ON : 08/04/2025

JUDGMENT

1. By this appeal, the appellant, who is original accused No.1, (the accused) has challenged judgment and order dated 24.8.2023 passed by learned Extra Joint District Judge and Additional Sessions Judge, Nagpur

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(learned Judge of the trial court) in Special (POCSO) Case No.94/2017.

2. By the said judgment impugned, the accused is convicted for offence punishable under Section 5(1) read with Section 6 of The Protection of Children from Sexual Offences Act, 2012 (the POCSO Act) and sentenced to undergo rigorous imprisonment for 20 years and to pay fine Rs.5000/-, in default, to undergo rigorous imprisonment for 2 months.

He is also convicted for offence punishable under Section 366 of the IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay fine Rs.3000/-, in default, to undergo rigorous imprisonment for 1 month.

He is further convicted for offence punishable under Section 363 of the IPC and sentenced to undergo rigorous imprisonment for 3 years and to pay fine

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Rs.2000/-, in default, to undergo rigorous imprisonment for 15 days.

He is further convicted for offence punishable under Section 344 of the IPC and sentenced to undergo rigorous imprisonment for 2 years and to pay fine Rs.2000/-, in default, to undergo rigorous imprisonment for 15 days.

He is also convicted for offence punishable under Section 506(2) of the IPC and sentenced to undergo rigorous imprisonment for 1 year and to pay fine Rs.1000/-, in default, to undergo rigorous imprisonment for 7 days.

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

The victim girl aged about 16 years was residing at Ganga Nagar, near Ansari Kirana Shop, Nagpur in 2017 along with her parents and was studying n 10th Std. at

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Friends Convent and Highschool, Nagpur and used to attend the tuition class at Virchakra Colony. On 30.1.2017, she left the house to attend the tuition class, but did not return back till 8:30 pm. Therefore, her father, who is informant, searched her by visiting her tuition class to make enquiry and he was informed that she has not attended tuition class on that date. On due search, she was not found and, therefore, he lodged missing report vide Exh.60 at Gittikhadan Police Station

4. After registration of the crime, the investigating officer visited the tuition class of the victim girl and drawn spot panchanama. During search, she was found on 3.3.2017 at Hudkeshwar at plot No.71 along with the accused. They both were brought at the Gittikhadan Police Station. On enquiring with the victim, she informed that when she was proceeding to attend her tuition class, co-accused Mohd.Arif and his wife Aaliya

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took her to Kamptee at parents house of Aaliya and, thereafter, they took her at Sai Mandir, Kanhan. She met the present accused at the parents house of Aaliya. They all took her at Ajmer. Though she resisted to join them to proceed to Ajmer, they threatened her and forcefully took her at Ajmer. On 2.2.2017, co-accused Bhima received a phone call of his father and he came to know that police are searching them. Thereafter, the co-accused obtained a room on rent at Ajmer and they all resided there for 5 to 6 days. Thereafter, the victim girl was brought at Nagpur and the accused started residing with the victim girl in rented premises and subjected her for forceful sexual assault against her consent. After recording her statement, she was referred for medical examination. The provisions of the POCSO Act were added as well as offences were also registered under Sections 376(2)(n) and 506 read with 34 of the IPC. The accused was

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arrested. During investigation, the medical reports of the victim girl and the accused were collected. Their samples and clothes were seized and forwarded to the Chemical Analyzer. After completion of investigation, the chargesheet was submitted against the accused.

5. Learned Judge of the trial court framed the charge against the accused vide Exh.54. In support of the prosecution case, the prosecution has examined in all 12 witnesses namely :

PW Nos.	Names of Witnesses	Exh. Nos.
1	the father of the victim	58
2	the victim	62
3	Jiwanlal Harinkhede, pancha on spot panchanama and seizure memos	69
4	Shahid Ansari	82
5	Dr.Nelson Kumar	97
6	Dr.Swati Dodke	101
7	the mother of the victim	109
8	Dhanshree Samarth, Chemical Analyzer	114

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9	Sharvari Kulkarni, the Chemical Analyzer	124
10	Prakash Mathankar, carrier	127
11	Nitin Madankar	132
12	Dr.Ratifur Pathan	147

6. Besides the oral evidence, the prosecution placed reliance on birth certificate Exh.59, report Exh.60, FIR Exh.61, statement under Section 164 of the victim girl Exh.63, spot panchanama Exhs.70 and 71, seizure memos Exhs.72 to 75, CA Reports Exhs.89 to 92, DNA Report Exh.93, medical certificate of the accused Exh.98, medical certificate of the victim girl Exh.102, letter to CA Exh.115, letter to CA Exhs.116 and 117, arrest panchanama Exh.133, requisition to CA Exh.136, station diary entries Exhs.139 and 140, live birth report Exh.148.

7. On the basis of the said oral as well as the documentary evidence, the prosecution claimed that it has proved the case against the accused. Defence of the

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accused is of total denial and of false implication. It is further contended that it was a consensual act by the victim girl out of love affair.

8. Heard learned counsel Shri Amit Choube for the accused and learned Additional Public Prosecutor Shri V.A.Thakare for the State. They have taken me through the entire evidence and record.

9. Learned counsel for the accused submitted that though the prosecution examined in 12 witnesses, no independent corroboration is there to the testimony of the victim girl. Sole testimony of victim is not trustworthy and is not inspiring the confidence. Though she had an opportunity to raise the voice, as she is forcefully taken by the accused, she has not made her grievances at any point of time. The medical evidence is also not sufficient to connect the accused with the alleged offence. He has

taken me through the entire evidence and submitted that the victim girl was on the verge of attaining the age of majority. She herself went with the accused while leaving her parents house. Thus, as far as the evidence as to the “taking” is concerned, the same is not sufficient to attract the offence of “kidnapping”. On the basis of the same evidence, the co-accused are acquitted by learned Judge of the trial court. On the similar evidence, the present accused cannot be convicted. As far as the offence of the sexual assault is concerned, though the victim girl was shown to be minor, she was at the verge of attaining the age of majority and at the age of 17 years she left the house and joined the company of the accused and stayed along with the accused. Thus, no offence is made out against the present accused. In view of that, the appeal deserves to be allowed.

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10. *Per contra*, learned Additional Public Prosecutor for the State vehemently submitted that no reason comes forward to show that why the accused is implicated in the alleged incident if he is not involved in the crime. The entire evidence shows that the victim girl was not known to the accused. It was co-accused Aarif who brought her at his house wherein she got acquaintance with the present accused and they all took her at Ajmer and the present accused subjected her for sexual assault. Thus, it is not the case wherein out of love affair, they came together and physical relationship was developed between them. The evidence shows that the victim girl was taken by the present accused from the lawful guardianship of her parents and the present accused subjected her for forceful sexual assault which is evident from the DNA Report also. Thus, the evidence adduced by the prosecution and the victim girl, though she is a sole

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witness, inspires the confidence. The independent corroboration is not at all required. In view of that, the appeal is devoid of merits and liable to be dismissed.

11. After hearing both the sides and perusing the material evidence, issue came for determination is, whether the victim girl is minor at the relevant time.

12. To prove the said aspect, the prosecution mainly placed reliance on the evidence of PW1 the father of the victim girl, PW2 the victim girl, and PW12 Dr.Ratifur Pathan. The father of the victim girl disclosed the date of birth of the victim girl as 12.5.2000 and also deposed that birth certificate is filed on record which is at Exh.59. As to his cross examination, the birth date of the victim is not challenged during the cross examination.

13. The victim girl has also deposed her birth date as 12.5.2000 and stated that at the time of incident, she was

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studying in 10th Std. and her birth certificate is filed on record. Her cross examination also shows that her birth date is not challenged during the cross examination.

14. Thus, the evidence of PW1 the father of the victim girl and PW2 the victim girl, as to birth date of the victim girl, remained unchallenged. In addition to that, the prosecution has examined PW12 Dr.Ratifur Pathan who was serving as Medical Officer in Nagpur Municipal Corporation and was holding the charge of Deputy Registrar (Births and Deaths). He produced on record extract of live birth register, live birth report, and original birth certificate. He deposed that extract of live birth register was prepared on the basis of the live birth register. As per the record, birth of the victim girl is 12.5.2000. Her birth has taken place at Kalbande Nursing Home at Nagpur. The said nursing home informed his department as to the birth of child. The names of the

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parents are mentioned in the said live report. The name of the hospital is also mentioned in the said report. On the basis of the said information, entry of birth was taken and birth certificate issued. Though he is cross examined, nothing incriminating is brought on record as to challenge the genuineness of the said birth certificate.

15. Thus, the evidence on record sufficiently shows that the victim girl was below 18 years of age at the relevant time. The birth certificate is issued in view of the provisions of Sections 12 and 17 of the Registration of Births and Deaths Act, 1969. 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. The Act mandates that the Registrar should discharge duties in view of Section 7 of the said Act. Section 8 of the said Act mandates that each

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head of the house to report birth in the family to the Registrar. The Act provides for maintenance for recording births and deaths within local area that is how certificate came to be issued by the Sub Registrar as per the provisions of Sections 12 and 17 of the Registration of Births and Deaths Act, 1969. The birth certificate as such is issued by the public officer and it is a document forming record of the acts of the public officer and, therefore, the same is a public document within the meaning of Section 74 of the Indian Evidence Acts and the same is admissible in evidence in view of Section 77 of the Indian Evidence Act . Section 17 of the said Act provides for search of birth and death registers and supply of extract thereof by certifying the same by the Registrar or other authorized officer. In view of Section 17, such extract shall be admissible in evidence for the purpose of proving birth or death to which the entry relates. The

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birth certificate is in fact the extract of birth register in respect of entry of birth of the victim child and as such admissible in evidence. Section 35 of the Evidence Act makes it clear that if entry is made by public servant in the official book in discharge of his official duty, such entry becomes the relevant fact and admissible in evidence. Section 35 of the Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact.

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

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

17. Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 also states that in every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii)

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or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

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18. In the light of the above legal position, the birth entry taken by the office of PW12 Dr.Ratifur Pathan sufficiently proves the age of the victim girl which shows that she was below 18 years of age and is admissible in evidence in view of Section 35 of the Indian Evidence Act.

19. Now, let us examine the evidence of the victim girl and the father of the victim as to the “kidnapping”.

20. This is one more case of sexual molestation and sexual assault of a child. To prove the offence of “kidnapping”, the prosecution mainly placed reliance on the victim girl who narrated that at the relevant time, she was studying in 10 Std. and was attending the tuition class. She was acquainted with co-accused Aarif and Bhima as they are residing in the same locality at a distance of 4-5 houses from her house. On 30.1.2017, when she was proceeding at about 3:00 pm to attend the

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tuition class, co-accused Aaliya asked her to accompany her to proceed to her parents house at Kamptee. Therefore, she went along with them. At about 8:00 pm, she insisted co-accused Aarif to drop her at her house, but he asked her to stay there. At the relevant time, the present accused also came there. She was forced to stay at the parents house of Aaliya over night. On the next date, she was taken at Sai Mandir. The victim girl was under impression that she was taken at home, but she was taken at the said Sai Mandir. Thereafter, they insisted her to accompany them to proceed at Ajmer. She resisted and asked them to drop her at her house and also disclosed that her parents are not aware that she came along with them. But, they brought her at Nagpur Railway Station. She was repeatedly asking them to drop at home, but they forcefully took her at Ajmer and also threatened her. The accused persons obtained a room in a lodge. In the

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meantime, co-accused Bhima received a phone call of his father and they came to know that police are searching them. Thereafter, she was brought at Nagpur and kept at the house of co-accused Aarif. The present accused has also started staying with her and subjected her for the forceful sexual assault. He was also threatening her. As she was not having mobile phone, she could not disclose the incident to anybody and thereafter on 3.2.2017 the Gittikhadan Police came there and took them to the police station.

21. To shatter the evidence of the victim girl, she was cross examined at length and an attempt was made to show that she travelled by public transport, but she has not disclosed the incident to anybody. She stated that she made an attempt to disclose the fact to the co-passengers. She has also made an attempt to disclose fact to one lady passenger also, but the said lady passenger told her that

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she would not interfere. Only once, she was taken to Ajmer Durgah. Rest of the time she was confined in one room. Thus, the cross examination shows that she has made an attempt to disclose the incident to the co passenger, but she could not disclose the same due to some reasons which she has narrated in the evidence.

22. As far as the offence of “kidnapping” is concerned, it is defined under Section 361 of the IPC which states that whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

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23. Thus, ingredients of the offence “taking” or “enticing” away a minor out of keeping of lawful guardianship are essential ingredients of the offence of “kidnapping”.

24. The evidence of the victim girl shows that she was acquainted with co-accused Aarif as he was residing in the same locality at a distance of 4-5 houses. On 30.1.2017, when she was proceeding to attend the tuition class, Aaliya, who is wife of co-accused Aarif, took her at Kamptee wherein she first time met with the present accused. Her evidence shows that despite her resistance, she was taken by Aaliya at her parents house. She was constrained to stay there and, thereafter, she was forcefully taken to Ajmer. Her cross examination further shows that attempt was made by her to disclose the incident to a female passenger, but as she could not get the response, the helpless girl went with the present

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accused at Ajmer. Though the attempt was made that the victim girl was on the verge of attaining the age of majority and she herself went along with the accused, the same is not supported by her during her cross examination. Thus, the evidence of the victim girl which is tested during the cross examination also shows that she was taken and enticed from the lawful guardianship of her parents. The evidence on record nowhere shows that she willingly accompanied the accused.

25. The aspect of “taking” or “enticing” is dealt with by the Hon’ble Apex Court in the case of **S.Varadarajan vs. State of Madras, reported in 1965 SC 942** wherein it has been held that it must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can

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the two be regarded as meaning the same thing for the purposes of Section 361 of the Indian Penal Code. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls

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short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

26. The case before me is that the victim girl left the house to attend the tuition class, but she was taken by Aaliya, the wife of co-accused Aarif, with whom the victim girl was having acquaintance on the pretext of visiting her parents house and, thereafter, she was constrained to stay there and forcefully taken at Ajmer. The cross examination itself shows that the victim girl attempted to disclose the incident to one female co-passenger, but she could not get the response and, therefore, there was no alternative before her but to go along with the accused. Her evidence further shows that she was confined in a room at Ajmer. So, no opportunity was there for her to disclose the incident to the people who are staying in the said locality. No reasons came forward to show that the

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victim girl is having any hidden agenda to implicate the accused falsely. Thus, the evidence on record sufficiently shows that the victim girl was taken by enticing her and, therefore, offence under Section 363 of the IPC is made out against the accused.

27. The victim girl allegedly was subjected for the sexual assault. The evidence of the victim girl is material which shows that after she returned from Ajmer, she was kept at the house of co-accused Aarif at Hudkeshwar. The present accused also started residing in the same house and by threatening her subjected her for forceful sexual assault repeatedly. Though she is cross examined by the present accused, as to the sexual assault, nothing incriminating is brought on record. Even, the cross examination shows that she was kept at the house of co-accused Aarif at Hudkeshwar wherein she was subjected for the sexual assault.

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28. Learned counsel for the accused vehemently submitted that there is no independent corroboration as far as allegation of sexual assault is concerned.

29. Perusal of the evidence reveals that the prosecution has examined PW3 Jiwanlal Harinkhede, who acted as a pancha on the spot panchanama as well as on the seizure memo. Though he has not supported the prosecution case, he admitted that on 5.3.2017 in his presence the clothes of the victim girl are seized by obtaining the same from the mother of the victim. The seizure memo also shows that clothes of the victim were seized in presence of the panchas from the mother of the victim.

30. The material evidence adduced by the prosecution as to the medical examination of the victim is of PW6 Dr.Swati Dodke who testified that on 3.3.2017 the victim was brought in casualty ward for her medical

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examination. Her mother was along with her. On obtaining the consent, the victim narrated the history that she went to Kamptee with the family of the accused on 30.1.2017, then to Ajmer and stayed there and then came to Nagpur wherein she was subjected for sexual assault. On genital examination, she found that her hymen was old torn. She obtained the samples of the victim i.e. valval swab, vaginal swab, blood samples and EDTA and handed over lady Police Constable Kalpana along with Form-B. She opined that on perusal of FSL Report there was a sexual violence with the victim girl. During cross examination, she admitted that there is correction as to the date at point No.6 in a medical report and overwriting as to the timing. Except this cross examination, rest of the cross examination is in the denial form. She has admitted that rupturing of hymen is possible by cycling, jumping, and taking part in sports and activities apart

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from sexual intercourse. However, the victim is not cross examined to show that victim was doing cycling or the sports activities in the school.

31. The evidence of PW7 the mother of the victim also shows that the clothes of the victim are seized from her. Thus, the evidence of PW7 corroborated by PW3 Jiwanlal Harinkhede, pancha on spot panchanama and seizure memos, reveals that clothes were seized by the investigating agency.

32. The evidence of PW6 Dr.Swati Dodke shows that she obtained samples and sealed it and handed over to the lady police constable.

33. After arrest of the accused, PW5 Dr.Nelson Kumar, attached to the Government Hospital, deposed that on 4.3.2017 the accused was produced before him for medical examination. During physical examination, he

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found that he was fit and capable to perform sexual activities. He has obtained the samples like blood samples, nail samples, pennial swab, sealed it and labeled it and handed over to the police constable. No fruitful cross examination was carried out of this witness.

34. The prosecution further placed reliance on the evidence of PW8 Dhanshree Samarth and PW9 Sharvari Kulkarni, working as Chemical Analyzers.

35. The evidence of PW8 Dhanshree Samarth shows that on 6.3.2017 the articles i.e. samples and clothes of the victim and the accused are forwarded for chemical analysis. The letters of medical officer Exhs.116 and 117 show samples were obtained, sealed and labeled. Evidence of PW8 shows that she received samples and muddemal properties which were in a sealed condition. There were five sealed parcels of victim's samples and

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three sealed parcels of the accused and one sealed test tube of the accused. Initially, these aforesaid properties were in the custody the Assistant Chemical Analyzer and same were kept in four degree temperature in refrigerator. She received samples on 2.1.2018 for biology. After receiving the parcels, she verified and checked whether the seal was intact and names were correct and after being satisfied, she opened the parcels. After opening three parcels, i.e. two of the victim and one of the accused, she found there were clothes i.e. nicker and leggins of the victim girl and under garments of the accused. She verified whether there were blood stains and semens. On verification, she found blood stains mixed with suspected semen on the undergarments of the victim. To find out whether the said blood stains were of human or not, she carried out process of electrophoresis. The blood stains were of human. She cut down the

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portion of undergarments of the victim and sent the same for DNA profiling. The letter received from police station is at Exh.115, Form-B are at Exhs.116 and 117, and copy of the forwarding letter to DNA Section is at Exh.119. She did grouping by absorption and illusion motion, and found that blood sample of the victim girl was of Group “B”. She also sent blood samples of the victim for DNA profiling. On analysis, she found the blood sample of the accused was of Group “A”. Accordingly, she issued Chemical Analyzer’s Reports Exhs.89 to 93.

Her cross examination shows that except invoice challan, she had not issued any receipt to the police. It is confirmed during cross examination that initially she had done biological test and, thereafter, referred to DNA Examination. It further came in cross examination that DNA Department gives separate number to the Articles. CA Reports Exhs.89 to 90 show number 98/89.

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36. PW9 Sharvari Kulkarni, another Chemical Analyzer, testified that on 30.1.2018 she received blood mixed with semen stains cutting from undergarment of the victim bearing no.958/2017 along with the reference letter from biological division. On analysis, by using PCR Amplification Method, she obtained DNA profile from blood mixed semen stains cutting from nicker labeled BN9582017/02 and DNA Profile from prepared blood stains of victim BN No.958/2017/04 and prepared blood stains of the accused of case No.BN960/2017/01. Then she complied the report in form of chart and observed that blood mixed semen stains cutting from the nicker contains both DNA profile obtained in BN959/2017/04 and BN 960/2017 and opined that mixed DNA profile is obtained from Exh.2 i.e. blood mixed semen stains cutting from nicker in BN NO.958/2017 contains DNA profile obtained from prepared blood stains of the victim in BN

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No.959/2017 and DNA Profile obtained from prepared blood stains of accused in BN No.960/2017. Accordingly, she issued DNA Report Exh.93. Her cross examination shows that there are other methods also for DNA profile apart from the method which she used in this case.

37. The evidence of PW10 Prakash Mathankar shows that on 6.3.2017 he carried muddemal properties total 12 parcels in a sealed condition to FSL Nagpur for chemical analysis along with requisition letter. It is at Exh.115 and invoice challan is at Exh.120. Out of 12 parcels, three were sealed packets of clothes, 8 sealed packets of samples and one was sealed test tube. The only thing brought on record is that muddemal properties were not packed and sealed in his presence.

38. PW11 Nitin Madankar, is the Investigating Officer who testified that the victim was taken for the medical

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examination on the same day when she was traced i.e. on 3.3.2017 along with lady police constable. On the same day, her samples were obtained and the said constable handed over the same to him which he seized in presence of panchas vide Exh.72. The accused was also forwarded for medical examination on 4.3.2017. His samples were obtained on the same day which were seized by him in presence of panchas vide Exh.74 on 4.3.2017. The clothes of the victim and accused were also seized on 4.3.2017. All the muddemal articles, clothes, and samples were forwarded by him to the Chemical Analyzer on 6.3.2017.

39. Thus, the evidence shows that the victim got missing on 30.1.2017, she traced on 3.3.2017, on the same day she was referred for medical examination and her samples were obtained on 3.3.2017, the samples of the accused were obtained on 4.3.2017, the clothes of the

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victim and accused are seized on 5.3.2017, and the samples and clothes are immediately forwarded to Chemical Analyzer on 6.3.2017 and received in the office of the Chemical Analyzer on 6.3.2017. Initially, the samples were received by the Assistant Chemical Analyzer on 6.3.2017. The same was handed over to PW8 Chemical Analyzer Dhanshree Samarth for analysis on 2.1.2018. PW8 forwarded the said samples to DNA on 30.1.2018. Chemical Analyzer PW9 Sharvari Kulkarni analyzed and submitted DNA Report on 26.11.2018. The letters of Medical Officer Exhs.116 and 117 show that samples were obtained in sealed and labelled. Exh.120 also shows parcels were received which were sealed. Evidence of PW8 Chemical Analyzer Dhanshree Samarth also shows that the samples were kept in degree temperature. Thus, the evidence shows that since the seizure of the samples till the same were analyzed were in

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a sealed condition and kept in a proper temperature to protect it from damaging the said samples. The cross examination by the accused nowhere shatters this evidence as to the sampling, sealing, and analyzing and the evidence is consistent as far as sealing, sampling and analyzing are concerned. The evidence consistently shows that the samples were in a sealed condition through out.

40. The evidence of Investigating Officer PW11 Nitin Madankar narrates about the investigation carried out by him. His cross examination also nowhere shatters the prosecution case.

41. On appreciation of the evidence, it reveals that the victim was taken by Aaliya, the wife of co-accused Aarif. She was constrained to stay with them and, thereafter, she was taken to Ajmer and brought to Nagpur. The cross

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examination of the victim discloses that she attempted to disclose the incident to one female co-passenger, but she could not get response. Her evidence further shows that she was confined in one room at Ajmer. After returning back, she was kept in the house of co-accused Aarif at Hudkeshwar whereat police traced her and she found along with the present accused and both were taken to the police station.

42. Learned counsel for the accused vehemently submitted that the evidence of the victim does not inspire the confidence and, therefore, the same is liable to be discarded. In support of his contentions, he placed reliance on the decision in the case of **State (GNCT of Delhi) vs. Vipin alias Lalla**, reported in 2025 SCC OnLine SC 78 wherein it is observed that the only worthwhile evidence which has been produced before the Court by the prosecution is the deposition of the prosecutrix

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herself. No injuries were detected. She has contradicted her statement and, therefore, the Hon'ble Apex Court observed that it is absolutely true that in the case of rape, conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness which is given a very high value by the Courts. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the Court.

He further placed reliance on the decision in the case of **Sadashiv Ramrao Hadbe vs. State of Maharashtra and anr, reported in (2006)10 SCC 92** wherein also the version of the prosecutrix was unsupported by the medical evidence and, therefore, it was disbelieved.

He further placed reliance on the decision of this court in the case of **Pravin @ Khanna Pavlas Waidande vs. State of Maharashtra (Criminal Appeal No.996/2017)** along with connected appeals. The same is also not helpful to the defence.

Similarly, the decision in the case of **Jitendra Suresh Gabhane and ors vs. State of Maharashtra, reported in 2017(4) Bom CR (Cri.) 289 Nagpur Bench** is also not helpful as the DNA analysis report therein was doubtful.

43. Coming to the present case, the evidence of the victim is not only corroborated by the medical evidence but also it corroborated by the expert evidence of DNA analyzer. After going through the FSL Report, PW6 Dr.Swati Dodke opined that the victim was subjected for sexual assault. The evidence of PW8 Dhanshree Samarth

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and PW9 Sharvari Kulkarni, Chemical Analyzers, shows that they received a sample in a sealed condition. The communications Exhs.116 and 117, letters of Medical Officer, show samples obtained were sealed and labelled. Exh.120 shows that parcels received were sealed. The samples were kept in a proper condition by maintaining temperature, as per the evidence of PW8 Dhanshree Samarth. The evidence further shows that she received samples in a sealed condition.

44. Thus, the basic requirement, that the samples were kept in a proper condition and were in a sealed condition till the same were taken for analysis, is established by the prosecution. It is further established by the prosecution that Chemical Analyzer PW8 Dhanshree Samarth forwarded the same for the DNA analysis and Chemical Analyzer PW9 Sharvari Kulkarni has analyzed the same and submitted report.

45. 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 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

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

46. In the present case, there is no evidence of the tampering of the samples. The DNA Report is acceptable as a proper sample is proved and there is no evidence of tampering. Being DNA Report is absolutely free from

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tampering and proved to be that sampling is proper, it is acceptable in support of the prosecution case.

47. On appreciation of the evidence, it established that at the relevant time, the victim was below 18 years of age. She was taken by the accused and the present accused has subjected her for forceful sexual assault. As far as her evidence is concerned, it is well settled that the victim of sexual assault is not an accomplice. She stands at higher pedestal than that of injured witness. Her evidence is required to be received the same weightage as is attached to evidence of injured witness.

48. If totality of circumstances emerging from the record are considered, it would disclose that the victim of such crime especially in the present case does not have any motive to falsely implicate the accused. Her evidence is trustworthy and nothing is on record to show that she

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has any oblique motive to implicate the accused falsely. As such, it is not required to seek corroboration to her evidence and it is to be accepted. Broader probabilities of the prosecution case are examined and nothing is brought on record to disbelieve the version of the victim. Thus, the prosecution has proved the charges against the accused.

49. After re-appreciating the entire evidence, it reveals that the victim was not only “kidnapped” but also subjected for sexual assault by the accused. Learned Judge of the trial court appreciated the evidence by considering all these aspects and rightly convicted the accused.

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

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appeal. As such, the appeal being devoid of merits is liable to be dismissed and the same is **dismissed**.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!