



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.312 OF 2024

Kalyan Sudam Ramgude,
Age : 42 years, Occu. : Agriculture,
R/o. Shidod, Tq. & Dist. Beed.

... Appellant

Versus

1. The State of Maharashtra,

2. X - Victim

... Respondents

.....
Mr. Sudarshan J. Salunke, Advocate for Appellant.
Mrs. Saie S. Joshi, APP for Respondent No.1 - State.
Mrs. Anita V. Veer Naik, Advocate for Respondent No.2.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 24 APRIL 2026

PRONOUNCED ON : 30 APRIL 2026

JUDGMENT :

1. The correctness of judgment and order dated 26.02.2024 passed by learned Special Judge (POCSO), Beed in Special POCSO Case No.63 of 2022, is questioned in this appeal by the convict, who is held guilty for offence punishable under sections 376(2)(i)(n) and 506 of Indian Penal Code and section 6 of the Protection of Children from Sexual Offences Act, 2012.

By the said judgment, learned trial Court has awarded sentence of 20 years for offence punishable under section 6 of POCSO Act and also awarded compensation by invoking section 357-A of Cr.P.C.

2. Accused - paternal uncle of victim was charge sheeted by Beed Rural Police Station, District Beed in the backdrop of Crime No.90 of 2022 on the premise that, on 28.04.2018 and thereafter, 4 to 5 times by threatening and blackmailing his niece, he had forcible intercourse with her. Initially at native and subsequently at Pimpri Chinchwad, Pune. On information by victim, her mother took her to the police station and on report of victim, crime was registered, which was investigated and on completion of investigation, accused was charge sheeted, tried and finally held guilty by the learned Special Court.

Consequently, there is challenge to the said judgment and order of conviction by way of instant appeal.

SUBMISSIONS

Submissions on behalf of Appellant :

3. Assailing the said judgment and order of sentence, learned counsel Shri Salunke took serious exception to the findings and conclusion reached at by learned trial Court by submitting that there is no convincing or legally acceptable evidence to record guilt.

At the outset, he criticizes the prosecution story on the ground of alleged minority of the victim. According to him, there is no conclusive proof that victim was minor on the date of incident. He

pointed out that, though witness in the capacity of Headmistress was examined by prosecution, mere admission extract has been placed on record. That, moreover, different dates are appearing in the testimony, alleged school admission extract and medical papers. Required document, like birth certificate is not finding place in the prosecution evidence, and for such reasons, he questions the minority of the victim.

4. He would further question the narrative and veracity of the victim's version on the primary ground of inordinate delay in reporting. According to him, alleged occurrence has taken place on 28.04.2018, but there was no reporting to mother or anybody in spite of victim admitting that there were regular talks between both of them and on the contrary mother had admitted that victim was residing happily at native. According to learned counsel, till 23.03.2022 i.e. for more than 3 years there was no reporting to anyone or at any place, and as such, he submits that, possibility of false implication on a concocted narrative cannot be ruled out. He submitted that, only after being caught talking with accused on phone, mother has apparently questioned victim, upon which, there is disclosure out of fear. Thus, it is his submission that, here there is a delay of almost 3 to 4 years in reporting.

5. He pointed out that, even in spite of mother learning

about the alleged incident on 28.12.2020, still there is no prompt reporting either to police or even husband, and therefore, he questions mother's unnatural conduct.

6. It is his further submission that victim is not firm and is rather changing versions at different time and at difference places. In FIR, in statement under section 164 Cr.P.C. and in testimony before the Court and thus he seriously questions the credibility of distinct and improvised versions.

7. On the point of occurrence, he submits that, there is no supportive medical evidence. Rather, according to him, vague allegations are raised about accused maintaining physical relations. He was very vociferous on the use of phrase of 'physical relations' as according to him, it does not denote or signify there to be penetrative sexual relations so as to attract the rigors of section 376 of IPC.

On such count, he seeks reliance on the judgment of the Hon'ble Sikkim High Court at Gangtok in the case of *Depesh Tamang v. State of Sikkim*, 2020 SCC OnLine Sikk 24, and more particularly relied on paragraph Nos. 32 to 34 of the said judgment.

8. In support of defence of accused, he submitted that mother was keen in seeking partition and share in the house and agricultural property, and as such, there is possibility of false

implication on such count. In support of such contentions, he seeks reliance on the testimony of defence witnesses i.e. DW1 father of accused and DW2 a friend and an acquaintance of accused.

9. While summing up, he submitted that prosecution case is not proved beyond reasonable doubt. That, necessary ingredients for attracting charge under section 376(2)(i)(n) of IPC and section 6 of POCSO Act, according to him, are patently missing from the prosecution evidence and testimony of victim failing inspires confidence, he criticizes the judgment and order under challenge and prays to interfere by allowing the appeal.

Submissions on behalf of Respondents :

10. In contrast, learned APP while supporting the judgment and order of conviction seeks reliance on the testimony of victim, her mother and for corroboration seeks reliance on the medical expert's evidence.

While elaborating her arguments, she submitted that, accused in the capacity of uncle and guardian had control over the victim, as victim was put up with him during vacation. That, he blackmailed her, threatened her and took disadvantage of the hapless victim and he deflowered her repeatedly by visiting her parent's place at Pimpri Chinchwad. Therefore, there is rape and

sexual assault multiple times. On this count, she took this Court through the evidence of victim and also mother and uncle of the victim and would submit that there is sufficient corroboration to her testimony. She would add that even otherwise, testimony of victim in this case being inspiring confidence, deserves to be relied and was thus rightly taken into account by learned trial Judge for convicting the accused. Learned APP seeks reliance on the judgment of the Hon'ble Apex Court in the case of *Daxaben v. State of Gujarat and Ors. in Criminal Appeal Nos. 1061-1084 of 2022 (Arising out of SLP (Crl.) Nos. 1132-1155 of 2022)*

On the point of age and minority, she seeks reliance on the testimony of Headmistress (PW7) as well as medical evidence i.e. PW8 Dr. Kiran to whom victim was referred for examination.

11. In answer to submissions of learned counsel for appellant that, there is ambiguity in the prosecution story on account of use of phrase as 'physical relations' by the victim, it is her case that, by use of such word, no other meaning than sexual intercourse would be derived. On this count, she also refers to the history noted by medical expert in medical papers.

12. Lastly, she take this court through the observations of the learned trial Court while accepting the case of prosecution and would submit that the findings and conclusion reached at are in

consonance with the evidence on record, and therefore, learned trial Court rightly accepted the prosecution story, and according to her, no error is committed in returning the guilt and so ultimately prays to dismiss the appeal for want of merits.

13. Learned counsel for complainant would also support and justify the findings and conclusion reached at by learned trial Court on the point of minority and offence of rape, and would also pray to dismiss the appeal.

ORAL EVIDENCE ON RECORD

14. Here, there being an appeal against judgment and order of conviction, this court is expected to re-appreciate and re-analyze the evidence on record.

PW1 is the mother of victim, who is examined at Exh.35 and substance of her testimony is that the date of birth of her daughter is 25.06.2003. Accused is her younger brother-in-law. That, during lockdown of Covid period, she along with her husband and their children had come to native. Her daughter, who had appeared for SCC exams, was dropped at native with in-laws and she, her husband and son had returned to Pune. According to her, while her daughter was alone in the house of in-laws, accused blackmailed to defame her for maintaining love relations with him and rather by

giving threats he raped her. Once, she heard the conversation between her daughter and accused on the mobile and when questioned her daughter, she claims that, her daughter disclosed the incident to her i.e. which took place in the native and 4 to 5 times at Pune. She claims to have questioned the accused, but he assured her that he would never commit it in future, however, he continued to call her daughter, issued threats to defame and even threaten to disrupt her marriage life. Therefore, finally she reported the incident to her own mother and brother, and on getting support from them, she approached police with the daughter.

While under cross she admitted that, after SSC exam, when they all came to the village, they stayed for 4 to 8 days and after 4 to 8 days, she along with her son and husband returned back to Pune. She admitted that, after returning to Pune, she was in contact with her daughter on phone and she candidly admitted that her daughter did not tell her anything. That, she was on talking term with her parents-in-law, brother-in-law as well as sister-in-law. She also admitted that, children of her brother-in-law were also residing together in a joint family at village, and that there are many houses around their house in the village including house of her relatives including that of her brother and mother. She admitted that even voice inside the house can be heard from the street. She admitted

that, her daughter was residing happily at the village and that she used to get message that she is happy.

In paragraph 8 of cross examination, she admitted that in their village, they had agricultural land in the name of mother-in-law and also had a house in a village, but she expressed her ignorance whether house is in the name of accused. She denied that, she was demanding share in the house and agricultural land, but admitted that, accused was taking income from agricultural produce. She denied that she was insisting her husband and parents-in-law to seek share.

In paragraph 9 of cross examination, she answered that when she came back to village to pick her daughter up, she stayed for few days. She answered that every day she used to go for work at 8:30 a.m. and came back at 3:30 p.m. She admitted that when her daughter narrated about the incident to her at that time she was alone. She admitted that, on that day she had not informed about the incident to her husband, but after few days later, she informed about the same to her husband. Her answer is that, accused was her real brother-in-law, they did not approach police to lodge complaint and she admitted that she had shared the incident with her family members.

In paragraph 12 of cross examination, she admitted that

even after she shared the incident with husband, she did not lodge the complaint.

In paragraph 13 omissions are brought to the extent that after her daughter returned to Pune from her village, accused threatened on phone to kill her; that after few days, accused again started calling her daughter and giving threats; that accused threatened her that he would not allow them to perform marriage of her daughter and if marriage would be performed, he will share the incident of rape committed by him to her in-laws; and that accused again called her and daughter, and humiliated them.

PW2 Victim deposed at Exh.41, gave her date of birth as 25.06.2003 and stated that, after SCC exam in the vacation, on 25.04.2018, she had come to village to stay with parents of her father and then she reported that accused checked her mobile and prevented her from talking with her friend and to maintain love relations with him and he rather expressed that he liked her and even proposed her. According to her, he said that if she refused, he will inform her father regarding her talks with male friend and according to her, due to fear she had said 'yes' to him. Then on 28.04.2018, while she was alone in the house and watching T.V., accused initially teased her and forcefully kept physical relations with her in the afternoon, and thereafter, threaten to kill, if she

disclosed the said incident to anyone. She further deposed that, after vacation, she went back to her house Pimpri Chinchwad, whenever accused came there and whenever she was alone, he frequently visited her house and kept forceful physical relations with her 4 to 5 times. Once when accused called her on phone and while she was speaking, her mother asked her to whom she was speaking, and that time, she disclosed the entire incident to her mother and they gave understanding to accused, but he still issued threats to defame her and that he would not allow to perform her marriage and would also kill her and her parents, and therefore, she and her mother approached police where she lodged FIR Exh.42. She further deposed about her statement being recorded by learned Magistrate, which she identified to be at Exh.43 and she being physically examined at Civil Hospital.

In paragraph 8 of the cross examination, she admitted that, accused had grown up children and name of his wife was Sakhrabai. In paragraph 9 she admitted that, her maternal uncle also resides at Shidod i.e. 01 k.m. away from the house of her grandfather. That, at such house, maternal uncle, his wife and grandmother were residing and that they are in talking terms with maternal uncle.

In paragraph 11 of the cross examination regarding the

incident she answered that for two months she stayed in village during SSC vacation, and at such times, she helped her grandparents in domestic work. She also admitted that her parents when came to drop her at village, they had stayed for 8 to 10 days.

In paragraph 12 of the cross examination she admitted that she had another mobile number at the time of incident and she spoke with her male friend on mobile. She admitted that police did not seize the said mobile. She admitted that till lodgment of FIR dated 23.03.2022 she regularly went to the college. Rest is all denial.

PW3 and **PW4** are Panchas to the spot.

PW5 is her maternal uncle, who at Exh. 52 deposed that he learnt from his sister about accused committing rape on his niece and even threatening to defame her by informing her would be in-laws, and therefore, he asked his sister to lodge complaint which they accordingly did.

While under cross examination, he admitted that his sister informed about the incident that had happened in 2018 and she told him about the incident on 21.03.2022. To a question he answered that, while lodging FIR, police did not record his statement, but admitted that his statement was recorded on 26.03.2022. To a further question that he himself did not go to the police to give

statement, he answered that, after lodging complaint he has asked police, but they didn't record the statement. Rest is all denial.

PW6 panch to spot panchanama at Pimpri Chinchwad.

PW7 is the Headmistress of the primary school where victim studied and she placed on record extract of school admission register (Exh.63).

She admitted that she is unable to tell in whose handwriting admission form of victim was filled. She answered that whatever documents she had, she filed before the Court. She admitted that as per the say of parents, the then Headmaster mentioned the date of birth in the general register.

PW8 Dr. Kiran is the medical expert, who deposed at Exh.69, who had occasion to examine the victim on 24.03.2022 and he noted the history, physically examined the victim and found old hymnal tear and issued report Exh.71.

He admitted about not taking ossification test or not referring the victim for age determination. Rest is all denial.

PW9 Dr.Deepali is the medical expert, who examined accused.

PW10 PSI Tupe is the Investigating Officer, who deposed

about carrying out investigation on receipt of complaint and on its completion, filing charge sheet against accused.

15. After section 313 of Cr.P.C. accused has adduced evidence of father of victim and their acquaintance as **DW1** and **DW2**.

DW1 father of accused and grandfather of victim, who deposed that, his son 'S' resided at Alandi, Pune. His other son accused 'K' resided at Beed and he ran a shop in Beed. 'S' used to come to the native in vacations with his family. He had come to the village with his family during Covid lockdown. According to him, since 5 to 7 years, wife of his son 'S' was demanding a share in the house and farm, to which she had refused, and therefore, she had quarreled with them. He deposed that, his said son 'S', his wife and daughter never told him anything about his accused son 'K' and daughter of 'S'.

In cross examination, he admitted that, his son 'S' went to Pune for livelihood, and thereafter, got married and that he was running a tempo. He answered that, he has 2 Acre land, but it is not ancestral. He admitted purchasing land and house in the name of his wife. He admitted that, while purchasing house and land, 'S' had given money. He admitted about selling 01 guntha land and 'S' and his wife not objecting to him.

In paragraph 4 of the cross examination, he admitted that in the village he lived with his wife, his son 'K' and children. He admitted that 'K' is helping him in the farm and also doing labour work and that whenever 'S' and his family came, during vacation, they were residing in his house. Rest is all denial.

DW2 gave evidence at Exh.87 about knowing father of victim and hearing from him about quarrel between father of victim and her uncle i.e. accused on account of share in the farm and dispute between both brothers on such count, and thereafter, he had made father of victim and her mother sit in the bus, but he denied knowing what happened between accused and victim.

In cross examination, he answered that he has built a house of accused 'K' in the village and so he knew him. The agricultural land of accused 'K' and 'S' is in the name of their parents. He answered that, as accused 'K' is his friend, therefore he was aware about quarrel between 'K' and 'S'. To all further suggestions, there is denial.

ANALYSIS AND CONCLUSION

16. The fundamental grounds raised by appellant are that, ***firstly***, FIR is after inordinate delay raising suspicion over the accusations. ***Secondly***, testimony of victim failing to inspire

confidence it being vague and not being specific about actual occurrence coupled with variances while giving FIR, while giving statement under section 164 of Cr.P.C. and while deposing before the Court. According to him, she merely stated that accused maintained **physical relations** and it is vague terms which does not suggest there to be any penetrative sexual assault. *Thirdly*, there to be no independent corroboration either from mother or from medical evidence.

Specific defence of appellant - accused in trial Court is that **PW1** mother of victim had demanded share in the agricultural land and house property standing in the name of mother of accused, who is her mother-in-law.

17. As usual, there being charge under the provisions of POCSO Act, it is to be seen whether prosecution has substantiated that victim was minor.

In support of her minority, prosecution in trial Court seems to have relied on testimony of mother, victim and then of Headmistress. On visiting testimony of both mother and victim, it is clearly emerging that they have given date of birth as 25.06.2003. Prosecution has adduced evidence of **PW7** Headmistress.

18. Dispute is raised by the appellant on the point of age by

stating that, in medical papers age of the victim reported is distinct than the one given by informant's mother and Headmistress. He pointed out that, month of birth stated by witnesses is 25.06.2003, but in medical papers it is 25.08.2003. This difference could be attributed to inadvertence, and therefore, no benefit could be derived by the accused on such count.

19. As stated, both mother and victim have quoted date of birth as 25.06.2003. PW7 headmistress has carried original admission register maintained by the school and she has placed extract of the same on record. Such school record shows that date of birth of victim is 25.06.2003 and she was admitted in 1st standard on 16.06.2009. In numerous recent judgments including that of *P. Yuvaprakash v. State Rep. by Inspector of Police*, decided in July 2023 hierarchy of documents which assume priority for determination of age, there is reference of certificate issued by first school where victim studied. Here also, PW7 has placed on record extract of admission register of the 1st standard.

Yet again in the recent judgment of the Hon'ble Apex Court in the case of *Shivkumar @ Baleshwar Yadav v. State of Chhattisgarh*, 2025 LiveLaw (SC) 1006, in paragraph 16 to 19 has held as under :-

16. *PW-9 is the material witness whose deposition is*

crucial to ascertain the age of the victim. He is the teacher at the Government Primary School, Sarnapara Marhatta P.S. Pratappur, District Surajpur (C.G.). PW-9 deposes that on the demand of the DSP, who came to the school, he gave the admission register of the school. The admission register is 192 pages and admissions were mentioned in Sl. Nos. 1 to 281. The victim's name was mentioned at Sl. No. 209 and the date of birth was shown as 15.09.2004. The admission register and the certificate given regarding the fact of the date of birth were seized under Ext.P-11. In court, the admission register was marked as Article B/C. In cross examination, PW-9 deposed that the father of the victim did not produce any document regarding the date of birth. First in cross, the witness deposed that the father of the victim has not mentioned the date of birth at the time of admission but immediately the witness himself stated that the father mentioned her age as six years on the date of the admission.

17. We have seen Ext.P-11 which attests to the factum of the seizure. We have also seen Article B/C marked by PW-9. The first entry is at Sl. No. 207 and the victim's entry occurs at 209. The admission register has 13 columns containing serial No., student's name, father or guardian's name and address, mother's name, caste or religion, local address, if parents or guardian is residing outside the city, student's date of birth, date of admission, class admitted, date of leaving the school, the class in which

the student was when she left the school, reason for leaving the school and special details. The entry at Serial No. 209 has the victim's name, the name of father and mother. They all tally. The date of birth is mentioned as 15.09.2004 (in both words and figures). The date of admission is 01.07.2011 and the victim was admitted that day in the first class. The victim left the school on 02.04.2016, after passing the fifth standard.

18. The evidence of the father PW-1, the evidence of the teacher PW-9 and the school admission register seized under Ext.P-11 and marked by PW-9, inspires confidence in us to hold that the victim as on the date of the incident, namely, 14.05.2018 was a minor. We have no reason to disbelieve the finding of the trial Court and the High Court having independently considered the evidence and perused the trial court records.

(emphasis laid)

*19. In State of **Chhattisgarh v. Lekhram**, (2006) 5 SCC 736, this Court held as under:*

“12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW 5, who was an Assistant Teacher in the said

school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. The father of the prosecutrix also deposed to the said effect.

13. The prosecutrix took admission in the year 1977. She was, therefore, about 6-7 years old at that time. She was admitted in Class I. Even by the village standard, she took admission in the school a bit late. She was married in the year 1985 when she was evidently a minor. She stayed in her in-laws' place for some time and after the "gauna" ceremony, she came back. The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. It may be true that an entry in the school register is not conclusive but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix.

14. Only because PW 3 the father of the prosecutrix could not state about the date of birth of his other children, the same, by itself, would not mean that he had been deposing falsely. We have noticed hereinbefore, that he, in answer to the queries made by the counsel for the parties, categorically stated about the year in which his other children were born. His

statement in this behalf appears to be consistent and if the said statements were corroborative of the entries made in the register in the school, there was no reason as to why the High Court should have disbelieved the same. We, therefore, are of the opinion that the High Court committed a serious error in passing the impugned judgment. It cannot, therefore, be sustained. It is set aside accordingly.”

Therefore, in the light of the above observations, relying on extract Exh.62 placed on record, there is no hesitation in holding that victim on the date of occurrence was around 16 years of age.

FIRST GROUND : DELAYED FIR

20. Now, in view of arguments advanced before this Court it is to be seen whether there is any inordinate delay in filing FIR ?

On complete re-appreciation of evidence of victim, it is emerging that significantly and apparently occurrence dated 28.04.2018 is reported on 23.03.2022 i.e. almost after 03 years and 10 months. Victim has reported her mother after she was caught talking with accused while she was with mother at Pimpri Chinchwad. Mother in her examination-in-chief, in paragraph 1, has stated that, after 1 to 1 ½ years of the incident, one day on mobile of her daughter, she heard recording of the conversation between her

daughter and accused. If above deposition of mother is taken into account regarding she learning after 1 and 1 ½ years of the incident, which could be around November 2019, still surprisingly there is no prompt complaint by mother and rather complaint is of March 2023. In examination-in-chief she has stated that, they went to accused to question him, but according to her, he sought pardon and assured that he will never commit. But according to her, few days after again accused started calling her daughter on phone and started issuing threats to defame her. Surprisingly, even after such few days, in spite of receiving threats, apparently there is no complaint by mother.

While under cross examination in paragraph 9, she has admitted that, when her daughter narrated the incident to her, at that time, she was alone, but on that day, she admits about not informing her husband also and rather claims to have informed him after few days. Though both victim and mother claimed to have received threats on mobile call, surprisingly said mobile has not been seized by the police, which could have supported their version. She also admitted in cross that, accused being brother-in-law, they did not immediately approach police. In paragraph 11 of cross examination, again she has admitted that, even after sharing incident with her husband, she did not lodge complaint with police.

Resultantly, here there is no prompt complaint by mother

in spite of learning about the incident from victim daughter, even after about two years from the occurrence dated 28.04.2018. Rather, complaint is after over 3 years and 10 months.

Consequently, for above reasons, there is indeed force in the submission of appellant that there is hopelessly inordinate delay in reporting. It is true that in cases of such nature, delay is not significant, but here, in spite of knowledge by mother in November 2019, there was no reporting either to husband or police. Delayed FIR thereby raises suspicion over the credibility of FIR.

OFFENCE OF RAPE :

21. Now, in view of challenge to the very occurrence and specific ground that victim is changing versions time to time and therefore unworthy of credence, her testimony is visited. However, before advertng to it to test its veracity, it would be profitable to give brief account of the settled law on the point of credence given to sole testimony of prosecutrix.

JUDICIAL PRECEDENT / LAW :

22. It is fairly settled position that, sole testimony of a victim if found to be reliable and trustworthy, it requires no corroboration and guilt or conviction can be returned on its basis alone. Law to this extent is clarified by the Hon'ble Apex Court in number of judgments

and in the recent case of *Ganesan v. State represented by its Inspector of Police*, (2020) 10 SCC 573. However, equally in numerous judgments, there is a note of caution by the Hon'ble Apex Court that, if sole testimony of victim is to be relied, then it should be of "sterling quality".

23. As to what is meant by "sterling quality" has been discussed in the judgment of *Rai Sandeep alias Deepu v. State (NCT of Delhi)*, (2012) 8 SCC 21 and the relevant paragraph no. 22 is borrowed and reproduced as under :

"22. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any

length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

24. Again way back in 1957, the Hon'ble Apex Court, in the

case of **Vadivelu Thevar Vs. The State of Madras**, AIR 1957 SC 614, has categorized oral testimony in three categories viz.

- “(i) wholly reliable
- (ii) Wholly unreliable
- (ii) Neither wholly reliable nor wholly unreliable.

The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.”

25. Yet again in the judgment of **Krishan Kumar Malik v. State of Haryana**, (2011) 7 SCC 130, in paragraph 31 and 32, the Hon’ble Apex Court, has observed as under :

“31. No doubt, it is true that to hold an accused guilty for commission of offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. *Indeed there are several significant variations in the material facts in her **Section 164** statement, **Section 161** statement Cr.P.C., FIR and deposition in Court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who are present in the house at the time of her alleged abduction. The record shows that, Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant.”*

26. The Hon’ble Apex Court in the case of ***Nirmal Premkumar and Another v. State represented by Inspector of Police***, (2024) 20 SCC 293, after reproducing the above observations in the case of ***Krishan Kumar Malik*** (Supra), in paragraph 24, observed as under :

“24. What flows from the aforesaid decision is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the court should strive the find out true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. While victim’s testimony is usually enough for sexual offence cases,

an unreliable or insufficient account from the prosecutrix marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”

27. Further again, in the case of ***R. Shaji v. State of Kerala***, (2013) 14 SCC 266, held as under :-

“26. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 CrPC can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 Cr.P.C.. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.

27. So far as the statement of witnesses recorded under Section 164 is concerned, the object is twofold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement; and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a

statement of a witness is recorded under Section 164, his evidence in court should be discarded, is not at all warranted. ”

Guided by the above settled law as aforesaid and in order to ascertain whether testimony of victim is at all of ‘sterling quality’ and as such whether it deserves to be accepted without corroboration, available evidence is re-appreciated.

28. In FIR, she reported that, after her parents dropped her at native on 25.04.2018 and went to Pune, her accused uncle checked her mobile and suggested her not to talk with his friend, but to love him, and in spite of questioning him for saying so, he did not spare her and repeatedly said to her, if she refuses, he would tell her parents the name of the boy with whom she talked and so out of fear, she said ‘yes’ to him. At 2:00 p.m. of 28.04.2018 while she was watching T.V. by sitting on the cot, accused came and had maintained forcible relations with her and thereafter he threatened to kill her, if she informs to anyone. Even after she went to Pimpri Chinchwad, he came to their house, and 4 to 5 times maintained physical relations with her. Last physical relations were in December 2020. On 28.12.2020 while she was talking with accused, her mother asked her what he was saying, and therefore, she reported her and thereafter, her parents came to the native and gave understanding to

him, but still accused used to call up on phone, and threatened her parents to defame her and further threatened her that he would kill them. On her such story, crime was registered bearing No.90 of 2022.

29. During investigation, her statement was also recorded by producing her before the learned Magistrate i.e. under section 164 of Cr.P.C. and it would be apt to also reproduce the contents of her such statement before the learned Magistrate dated 25.03.2022. The translated version of her statement is as under :

“In summer vacation, on 25.04.2018, she came with her parents at Shidod, where her parents stayed for two to three days, and thereafter, on account of work they returned back to Pune, whereas she stayed with her grandparents. The very next day, after her parents left, accused checked her mobile, read the chatting conversation with her friend and said to her that instead of loving friend, she should love him and proposed her, but she refused. In spite of refusal, he did not give up and threatened to say ‘yes’ or else he would kill her brother. After some days, on 28.04.2018, when she was alone in her grandparent’s house, accused came, pulled her from the cot, removed her odhani (veil), started touching his hands on her chest, abdomen, and thereafter, at that time, she pushed him and ran out of the house. Thereafter, when she went to Pune her parents place, he used to call her on phone and suggest meeting, but she prevented him from coming to them, but still on the next day, when no one was in the house, he came at Pimpri,

bolted the door while she was sitting in the bedroom and in spite of her refusal, by pulling her forcibly maintained physical relations with her by disrobing her. She claims that, in the building everyone goes for work and accused pressed her mouth, due to which she could not raise shout. In spite of her repeated attempt to push him, he maintained physical relations with her and thereafter, after every five - six days, he started coming to Pimpri and beat her, maintained physical relations with her by threatening her, he did not permit her to disclose it to her parents. That, out of fear of her parents committing suicide, she did not inform anyone. On 28.12.2020 when her mother heard her talking with accused and her mother heard the recording of their conversation, she cried and informed her mother that accused maintained forcible relations with her and since thereafter accused did not come to them and in spite of her mother, informing her father, he did not say anything and therefore, her mother informed her maternal uncle, grandmother and maternal aunt and thereafter accompanied her mother to police station.”

30. If we juxtapose the contents of the **FIR** at her end, her **statement before the Court** at Exh.41, and her **statement under section 164 Cr.P.C.** before the learned Magistrate, apparently there are variances.

In FIR dated 23.03.2022, she has reported that on 25.04.2018, her uncle checked her mobile and told her not to talk to

her friend, but instead expressed his love and threatened her that, if she refuses to say 'yes', then he would inform the name of the boy to her parents. Before the court, in Exh.41 she has stated that, accused after checking her mobile, prevented her from talking to his friend and rather expressed his liking for her and even proposed her. Here, according to her, he said that, if she refused, he would inform her parents that she was talking to the male friend, whereas in statement under section 164 of Cr.P.C. she gave statement that he checked her mobile, read the chatting conversation and thereafter said that instead of loving her friend, she should love him and when she refused he allegedly issued threats to kill her brother. Therefore, her version to such extent of threats to kill her brother are not finding place either in the FIR or her testimony before the Court.

Similarly, in statement under section 164 of Cr.P.C., she reported that, while she was alone on 28.04.2018 and watching television in the house of her grandparents, accused came, pulled her on the cot, removed her odhani (veil) and started touching her chest and abdomen with his hands, after which she claims to have pushed him and ran out of the house. Thus, here in 164 statement there are allegation of molestation. However, in testimony before the Court as well as in FIR, she has stated that on 28.04.2018 at 2:00 p.m. accused initially teased her and maintained physical forceful

relations with her.

Again, it is noticed that, in her statement under section 164 of Cr.P.C. after visit to her house at Pimpri Chinchwad, it is her version that, out of fear that her parents would commit suicide, she did not inform anyone. Such is not her story in FIR or in testimony before the Court at Exh.41.

31. Further, in medical papers i.e. "Medico-Legal Examination Report of Sexual Violence (Exh.71), which is drawn by PW8, in clause no.(vii), regarding description of the incident in the words of the narrator, it is noted that victim reported that, "*I had been to village after 10th standard vacations, that time, accused teased her and thereafter, after seven months he came to Pune and three times maintained physical relations with her and then returned back to village, but repeatedly came to Pune and teased her. Last relations were developed in December 2020.*" A remark over which she has affixed her thumb impression.

Consequently, from above discussion, it is clear that, victim is not consistent in her FIR, testimony before the Court and statement before the learned Magistrate under section 164 of Cr.P.C. Apparently, there are variances in each of the statements.

Bearing in the mind the observations of the Hon'ble Apex

Court in the case of *R. Shaji v. State of Kerala* (Supra), in paragraph 26 and 27 and *Krishan Kumar Malik* (supra), in paragraph 31 and 32, here also, this witness cannot be said to be of 'sterling quality' as she is changing her versions and she is rather found to be vacillating at different time and different place and hence in the considered opinion of this court, it is unsafe to lend complete credence on her sole testimony without corroboration.

32. Though victim was referred for medical examination, and though said expert has noticed old hymenal tear, as examination was done on 24.03.2022 i.e. after two years of last alleged sexual relation of December 2020, the said tear cannot be directly attributed to accused. Resultantly, there is no complete corroboration from medical evidence.

33. Here, it is pertinent to note that, it is the very case of prosecution that accused checked mobile of the victim and realized her relations with one boy and thereafter he allegedly started threatening and blackmailing her. Victim herself states that, he checked her conversation with her friend. Even mother testified that she noticed her daughter talking over phone and she also heard recording of conversation between her daughter and accused. If this was so, then mobile of victim was a vital piece of evidence. Surprisingly, the same has not been seized by the Investigating

machinery so as to lend credence to the above story of victim as well as her mother.

34. It is also noticed that, after getting knowledge in 2020, victim parents have come to the village to give understanding to the accused and according to mother, he sought pardon, but thereafter continued to make phone calls and issued threats to defame. Still there does not seem to be any complaint in 2020 itself.

Another variance i.e. noticed here is that in statement under section 164, victim stated that, during SSC vacation, she had come with her parents to native on 25.03.2018 and according to her, her parents stayed for 2 to 3 days at native, but her own mother in cross-examination in paragraph 7 answered that, after SSC examination they all came to village and stayed for 4 to 8 days and she further admitted that, during said 4 to 8 days period, her daughter was with her. Therefore, mother and victim are not consistent and are not lending support to each other. Consistency was expected because according to victim after coming to native on 25.03.2018 accused by threatening and blackmailing her had forceful sexual relations on 28.03.2018 i.e. after three days of arrival at native. However, victim in cross examination, in paragraph 11 admitted that, after coming to native her parents stayed for 8 to 10 days. Similarly, mother in her cross examination admitted that, they

had spent almost 4 to 8 days at native with their daughter. Therefore, for the more reason, alleged occurrence dated 28.03.2018 regarding forceful sexual relations itself comes under shadow of doubt.

35. Further there are material omissions in the testimony of mother on the point of accused issuing threats on phone to kill her daughter after she returned to Pune; about after few days, accused again started calling her daughter and issued threats to daughter or about issuing threats to herself and that he would not allow performance of marriage of her daughter and if marriage of his daughter is performed, then he will share the incident of rape committed by him to her in-laws.

36. For above reasons, to sum up apart from immense delay in reporting, there being variances in victim's statement under section 164 of Cr.P.C. and testimony before the Court on the point of occurrence and number of episodes rendering, it is unsafe to place complete reliance on her testimony.

In above referred judgments, the Hon'ble Apex Court has clearly cautioned that a Court would rely on sole testimony of victim without corroboration only if her testimony is of "sterling quality", but rider is that, her such testimony must be of exceptionally high quality, otherwise it would be unsafe to place complete reliance on it

to convict accused. Here, for reasons in aforesaid paragraphs, victim's testimony is not free from doubt and being full of variances, is unworthy of complete credence.

37. Further, specific defence of accused is that, there is false implication to seek share in the house and agricultural property. DW1 father of accused in examination-in-chief has stated that, from 5 to 7 years, wife of 'S' PW1 was demanding share in the house and farm and he had refused, and at that time, PW1 had quarreled with them and had gone to Pune. In his cross, it is brought on record that he has 2 Acres land in the village and he had purchased land in the name of his wife and that he had residential house and he also admitted that, victim's father had given him money. Likewise DW2 friend of father of victim has in his evidence at Exh.87 stated that there was quarrel between 'S' and accused on account of share in the farm i.e. since 2018-2019. He further claims that, when 'S' had come to the village, again there was quarrel between him and accused and he had made 'S' and his wife board bus, but he is ignorant about incidence with daughter of 'S'. Even in cross examination, he has answered that, as he is friend of accused also, he is aware about the quarrel between 'S' and accused.

38. Therefore, in the light of above material in the form of defence witnesses attempt is indeed made to probabilize the defence

that there was false implication so as to seek share in the agricultural land and house.

39. To conclude, here, firstly though victim is shown to be below 18 years of age, her testimony about forceful sexual relations fails to inspire confidence and is not of sterling quality so as to place complete reliance on the same, on account of variance in deposition before the Court and statement under section 164 Cr.P.C. before the learned Magistrate rendering it to be contrary to each other on material count. Further, defence is also probabalized. To sum up, prosecution case is not proved beyond reasonable doubt. Hence, this is a fit case for intervention at the hands of this Court. Accordingly, the following order is passed :

ORDER

- (I) Criminal Appeal stands allowed.
- (II) The conviction awarded to appellant Kalyan Sudam Ramgude in Special POCSO Case No.63 of 2022 by the learned Special Judge (POCSO), Beed, on 26.02.2024 for offence punishable under sections 376(2)(i)(n) and 506 of Indian Penal Code and section 6 of the Protection of Children from Sexual Offences Act, 2012, stands quashed and set aside.
- (III) The appellant stands acquitted of the offence punishable under sections 376(2)(i)(n) and 506 of Indian Penal Code

and section 6 of the Protection of Children from Sexual Offences Act, 2012.

- (IV) He be set at liberty, if not required in any other case.
- (V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.
- VII) Fees of learned Advocate, who is appointed to represent cause of respondent no.2 is to be paid by the High Court Legal Services Sub-Committee, Aurangabad as per rules.

(ABHAY S. WAGHWASE, J.)