



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 724 OF 2024
WITH
CRIMINAL APPLICATION NO. 3690 OF 2024
IN APEAL/724/2024**

Rahul @ Kalidas Arun Gholap,
Age. 29 years, Occ. Labour,
R/o. Yeli, Tal. Ausa,
Dist. Latur.

At present : In front of Peshve Hospital
Jijamat Nagar, Tuljapur,
Tal. Tuljapur, Dist. Dharashiv.

...Appellant.

Versus

1. The State of Maharashtra,
Through Tuljapur Police Sation,
Tal. Tuljapur, Dist. Dharashiv.

2. X.Y.Z.

...Respondents.

...

Advocate for Appellant : Mr. Sushant Baburao Choudhari
APP for Respondent No. 1 : Mr. V.K. Kotecha
Advocate for Respondent No. 2 : Mr. Shridhar Kulkarni

...

**CORAM : RAJNISH R. VYAS, J.
DATE : 04TH MARCH, 2026**

ORAL JUDGMENT :

1. Heard learned counsel Mr Choudhari, for the appellant,
learned APP Mr Kotecha, and learned counsel Mr Kulkarni for the
victim.

2. This appeal takes an exception to the judgment passed by the learned Sessions Judge, Osmanabad, dated 25.07.2024, in Sessions Case No. 74/2018, by which, the appellant is convicted for commission of offence punishable under Section 376 (1), 452 of the Indian Penal Code (hereinafter would be referred to as 'the IPC' for the sake of brevity). The details of conviction, sentence and acquittal awarded are reproduced as follows:

Rank of the accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr.P.C.
1.	Rahul @ Kalidas Arun Gholap	4 th Nov., 2017	27 th Dec., 2017	U/Sec. 376(1), 452, 354, 354-D, 323 & 506 of I.P.C.	Convicted for the offence punishable under section 376 (1) & 452 IPC and acquitted for the offence punishable under section 323, 354,	Rigorous imprisonment of ten years and fine of Rs.5,000/- I.D. to suffer S.I. for one month, for the offence punishable under Section 376 (1) IPC Rigorous Imprisonment of six months	1 month 23 days.

					354-D and 506 IPC	and fine of Rs.500/- I.D. to suffer S.I. for 5 days, for the offence punishable u/s. 451 IPC	
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3. In short, it is the case of prosecution that on 03.11.2017 at about 10:30 p.m., when the victim, who was twenty three years old, was sleeping along with her grandparents in a tin shed, the appellant removed one tin sheet, entered into the house, pushed the grandparents, and committed rape on the victim.

4. This incident, which is narrated in brief, resulted in the registration of the first information report no. 372/2017 dated 04.11.2017, against the appellant for the commission of offences punishable under Sections 376, 452, 506 of the IPC. The accused was arrested for the crime on 04.11.2017. During the course of the investigation, a spot panchnama was drawn, the clothes of the appellant and the victim were seized, and they were forwarded for medical examination. The incriminating material was forwarded for chemical analysis. After completion of the investigation, the chargesheet no. 19/2018, dated 26.01.2018, was filed.

5. The trial Court framed a charge below Exhibit 15 for the commission of offences punishable under Section 376 (1), 452, 354, 354 D, 323, 506 of the IPC, to which the appellant pleaded not guilty. To prove the appellant's guilt, the prosecution examined 13 witnesses.

Rank	Name	Nature of Evidence	Exhibit
PW 1	Kiran Ramling Bali	Spot Panch.	24.
PW 2	Ranjeet Avinash Salunke	Panch on seizure of clothes of the accused.	28.
PW 3	Satish nagnath Londhe	Witnesses.	31.
PW 4	Ravikant Ajibabu Bhandari	Police Witness.	32.
PW 5	Asif Sikandar Shaikh	Eye witnesses.	38.
PW 6	Gorakh Bhagwat pardhe.	Eye witnesses.	39.
PW 7	Sulbha Ramchandra Patil	Member of Mahila Dakshata samiti in whose presence statement of the victim was recorded.	40.
PW 8	Vanita Rangnath Kashid	Police officer of Bharosa Cell recording statement of the victim.	45.
PW 9	Dr. Sindhu Anant kadam	Medical Officer.	47.
PW 10	Yogesh Bansidhar Khatane	I.O.	55.
PW 11	Seemali Kalyani Koli	I.O.	58.

PW 12	Sudhakar Raosaheb Sathe	Police witness attached to Cyber Cell.	65.
PW 13	“L”	Victim.	67.

6. After the recording of evidence was completed, the appellant was questioned under Section 313 of the Code of Criminal Procedure (hereinafter referred to as ‘the Cr.P.C.’ for the sake of brevity), in which he denied the charges and took the defence of false implication. The trial Court convicted the appellant, heard the appellant on the point of sentence and ultimately convicted and sentenced the appellant, as stated above.

7. Learned counsel for the appellant, Mr Choudhary, has contended that the medical evidence would show that there was absolutely no injury to the person of the victim to prove the offence of rape. He further contended that the story advanced by the victim in the first information report and in her evidence before the Court is totally different. Furthermore, he argued that the independent witnesses, though available, were not examined.

8. He has also relied upon the judgments, which would be discussed in the latter part of the judgment.

9. Learned APP Mr Kotecha has contended that the testimony of P.W. 13 – Victim inspires confidence, and the absence of medical evidence will not go to the root of the matter. The prosecution has proved its case on the basis of the witnesses examined, and the non-examination of other witnesses will not make much difference. Mr Kotecha further contended that if the appellant's case is that the prosecutrix advanced different stories at two different stages, then the accused should have attempted to confront the witnesses, with said part of evidence; however, this was not done.

10. Learned counsel Mr Kulkarni, for victim, has contended that the testimony of the victim is cogent and reliable. The manner in which the offence was committed clearly reveals that the appellant was the aggressor, and that, while committing the act, injuries were caused not only to the appellant but also to the victim. He relied upon the testimony of the Medical Officer.

According to him, the victim's story is consistent, and no material or testimony supports the defence/plea of false implication.

11. In this background, I have tested the arguments of the respective counsels and have gone through the record of the case.

12. Thus, it will have to be examined whether the prosecution, by the examination of witnesses, has proved the ingredients of the offences. In this regard, the testimony of P.W. 13, the prosecutrix, is required to be looked into, who, in her examination-in-chief, submitted that she was residing in a house constructed of tin sheets along with her grandparents, who were 70 to 72 years old. On 03.11.2017 at about 10:30 p.m., when she was sleeping in the house with her grandparents, one person arrived, removed the tin shed, and entered the house. He then pushed the grandparents out of the house, gagged the mouth of the victim, threatened her, removed her clothes, tore them, and thereafter committed forcible sexual intercourse by penetrating his penis into the vagina. At that time, grandparents were shouting outside, and the accused had latched the door from inside.

13. The victim has deposed that thereafter, one person opened the door forcibly, and when the appellant attempted to run away, he was caught by the persons and taken to the police station.

14. In the Police Station, her statement was recorded, which was below Exhibit 33, and on the printed FIR, she identified her signature below Exhibit 34. She then submitted that she was medically examined, for which she gave her consent, and she identified her signature on exhibit 48. She deposed that she had sustained injuries to her hand, as well as on her chest and at that time, she was raising shouts. She further submitted that her statement was recorded in the Court at Tuljapur.

15. Victim has further stated that at the time of the incident, she was wearing a blue-coloured top and a green-coloured sweater, as well as blue pant salwar and under garments. She identified the clothes and specifically stated that her top was torn, which was given Article 7. The salwar was at Article 8, the underwear at Article 10, and the bra at Article 9; she also identified the sweater, which was torn on the shoulder. She submitted that the police also seized the blanket.

16. The victim further stated that the clothes she was wearing at the time of the incident were also handed over to the police, and that she had shown the spot to them. In her testimony, she deposed that her parents have died, as have her grandparents. She stated that the accused used to keep an eye on her whenever she fetched water. On one occasion, the accused came to the victim's house to demand water; the request was refused, and the accused abused the victim.

17. In cross-examination, she had admitted that she had completed education up to 10th standard, and that one Nitin Londhe, Satish Londhe, and Gorakh Pardhe are from her community. An attempt was made by way of cross-examination to bring on the record that there were several houses situated adjacent to the spot of the incident, and there was also traffic. She also admitted knowing one Vijay Borade and denied the suggestion that she had lodged a complaint against him. The other suggestions given to this witness were denied.

18. In further cross-examination, the victim – P.W. 13 had admitted that she had stated in the statement that she had received

the injuries on her chest and also on her hand. In short, the defence sought to bring the omissions to the court's attention.

19. In further cross-examination, she admitted that there was one cot in the house, and besides the cot, there was enough space to sleep for three persons. If the testimony of the aforesaid witness is perused, it would be crystal clear that the incident had taken place in November 2017 at 10:30 p.m., which is winter time. The grandparents were 70 to 72 years old. witness has further categorically stated that the appellant forcibly entered the house by removing a tin sheet, pushed the grandparents out of the house, latched the door from inside, and committed forcible sexual intercourse, it was only when a person broke open the door that the victim was rescued. The victim has also stated her clothes were torn, and when produced in court during cross-examination, she identified them. The cross-examination at the hands of the accused, though, tried to prove the omissions, but the fact remains that those omissions were not put to the Investigating Officer. At this stage, it is necessary to note that the police officer who recorded the victim's statement was examined before the victim's testimony

was recorded. Therefore, there was no opportunity at that time to put the omission to the witness. Still, there was no hurdle for the defence to recall that witness or examine the said person in defence. The defence did not attempt, and, therefore, those omissions cannot be relied upon.

20. Since the victim had deposed that her grandparents had died, the testimony of a person who broke open the door is of vital importance.

21. P.W. 5 is Asif Shaikh, who stated that on 03.11.2017, when he was returning home after performing his duty, at about 10:00 to 10:30 p.m., an old man and woman were shouting on the road, saying that a man was inside their house. At that time, Anna was with him as well. He then went to the house, a tin shed, and heard the girl's screams inside. He tried to open the door and, thereafter, used force to open it. He noticed that the girl was crying and her clothes were torn, and an accused was inside. The girl then disclosed that the accused had forcibly entered the house and had done 'Jabardasti'.

22. P.W. 5 then caught hold of the accused and made a phone call to his employer, who arrived at the scene of the incident along with a few other persons. The persons who gathered assaulted the accused. He identified the accused who was present in the Court. He submitted that his employer and one Gorakh Pardhe were present there , who made a phone call to the police, and the police arrived and took the accused into custody. He deposed that when he entered the house, he saw the accused was having his pants pulled down.

23. This witness was cross-examined, in which he stated that when people gathered and started beating the accused, the accused then ran away and went to the road before Bhosale's shop, and the boys followed him, caught him and brought him back. The other suggestions given to this witness were denied. Omissions were then brought to this witness's attention regarding the fact that the old man and the woman were crying. But he clarified that crying and shouting are the same thing. The omissions that he was on a motorcycle, stopped a vehicle, went to home, Anna was with him, P.W. 5 then kicked to open the door, that boy was in front of

me, the girl was crying, and her clothes were torn, and Gorakh Pardhe made a phone call to the police, were put to him. This witness deposed that he could not assign any reason for not including it in his statement. He also admitted that he had stated to the police that when he saw the accused, the pants of the accused were half pulled down.

24. At this juncture, to see whether the omissions are proved or not, the testimony of P.W. 11 is required to be seen. It is necessary to consider the testimony of P.W. 11, who had admitted that while the statement of Asif Shaikh / P.W. 5 was recorded, he did not state that, "I was on a motorcycle. I stopped the vehicle and went home. Anna was with me; I kicked to open the door. That boy was in front of me; that girl was crying, and her clothes were torn. Londhe Mama and Gorakh Pardhe made a phone call to the police, when I saw the pants of the accused were half pulled down. He had received a phone call from Shinde and Asif Shaikh, who said they had caught one man". Thus, it is crystal clear that the omissions stated above are duly proved.

25. Learned counsel for the appellant's contention is that if the testimony of P.W. 13, P.W. 4 and P.W. 11 is considered, it would reveal that the entire story is full of omissions and contradictions. In this regard, it is necessary to mention that, there are no proven improvements or omissions in the victim's testimony. In fact, the testimony would reveal that the victim has categorically stated that the act was committed. So far as the testimony of P.W. 4 is concerned, though there are omissions, as discussed above, and are duly proved through P.W. 11 – Investigating Officer, the question is whether those omissions would be sufficient to discard the victim's testimony. The minor omissions would not undermine the prosecution's core case as testimony will have to be read holistically. It is a well-settled principle of law that if the testimony of the prosecutrix is cogent and reliable, then no corroboration is required. The question whether the testimony of the prosecutrix inspires confidence is also to be examined from the record of the case.

26. In this regard, it is necessary to take into consideration that the fact that the accused was caught at the spot of the incident

is not disputed in the cross-examination. According to the prosecution, the incident occurred at 10:30 p.m. on 03.11.2017, and the first information report was registered on 04.11.2017 at about 04:07 a.m. Thus, it is crystal clear that there is absolutely no delay in lodging the first information report.

27. It is further required to be noted that for proving the offence of rape, the prosecution is not required to prove the offence; solely through medical evidence. The opinion given by the Doctor / Medical Officer who examined the victim is not the gospel truth, and even in the absence of medical evidence, the offence of rape can be said to have occurred. There is a world of difference in medical jurisprudence and statutory provision of rape.

28. P.W. 9 is the Medical Officer who examined the victim and the accused. P.W. 9 – Dr. Sindhu had stated that on 04.11.2017, she had received a letter from the concerned police station requesting medical examination of the victim of rape and, accordingly, she carried out the medical examination and noticed no biting but pinching abrasion on hand with emotional abuse and no luring, there were injuries on her person (1) abrasion to right

hand two in numbers each about $\frac{1}{2}$ X $\frac{1}{2}$ cm (2) abrasion on left hand dorsally $\frac{1}{2}$ X $\frac{1}{2}$ cm, (3) abrasion on chest on left breast 3 in numbers, each about 1 X $\frac{1}{8}$ th cm. According to her, the injuries were simple in nature, caused by a hard and blunt object, and occurred within 24 hours. There was emission of semen. There was touching and fondling. No condom was used. The victim had not changed clothes, but underwear was at home. She had not taken a bath nor douched. She had passed urine. She had rinsed her mouth. It happened 7 to 8 hours ago. She stated there was a history of pain on touch. In the general examination, the parameters were normal. She noted the injuries on the body. On examination, the external genital hymen was absent. On PS, the findings of the cervix and vagina were normal. Annus rectum and cavity were normal. Nothing abnormal was noticed in systemic examination. She collected a sample of nail clippings from both hands and blood for grouping. Samples of pubic hairs, valval swab, and vaginal swab were collected. She categorically stated that there was no evidence of any forced sexual intercourse. According to her, the physical injuries noticed were consistent with sexual assault. She expected injuries to the private parts of the victim and,

therefore, gave the opinion that there was no forced sexual intercourse. She proved the victim's medical examination report below, Exhibit P48/PW9. She identified her signature on it and deposed that its contents were true and correct.

29. She also examined the appellant and proved the medical examination report of the accused, below exhibit P50/PW9, and issued a certificate. So far as the injuries of the accused are concerned, she has deposed as under :

“He had blunt trauma to the chest, having no external injury, abrasion on the left cheek ½ X ½ cm, caused by a hard and blunt object, age within 24 hours, simple in nature, contusion in the forehead in front, 3 X 2cm, caused within 24 hours by a hard and blunt object, simple in nature.”

30. She stated that such injuries can be caused in the case of sexual assault in an effort to get rescued by the victim of assault. blood samples, pubic hairs and nail clippings were taken. She deposed that the chemical analyser's report was marked below P52,

P53 and P54. In cross-examination, she admitted that there was no external injury noticed on the private part of the victim. In response to the question of whether she noticed any injury to the victim's body part? She replied affirmatively and specifically stated that it was on the breast. She admitted that presence of semen in vaginal swab determines the offender. She also admitted that she had not noted down the presence of smegma on the glans penis of the accused. She also admitted that the injuries noticed on the person of the accused are possible by kicks and fist.

31. For appreciating the contention of learned counsel for the appellant that medical evidence clearly shows that there was absolutely no evidence of any forced sexual intercourse, it is required to be stated that not only, the medical findings are required to be taken into consideration, but also the testimony of the victim, in light of the other evidence . As already mentioned above, the victim had categorically stated that the act was against her will and that the accused forcibly entered the house, pushed the grandparents outside, latched the house from inside, and thereafter committed forcible sexual intercourse. If, in light of the

aforesaid background, the injuries on the bodies of the victim and the accused are taken into consideration, it is crystal clear that the injuries on the body of the accused are the result of resistance. Whereas, the injuries on the body of the victim can be called as an act of violence committed by the accused. The accused has not explained the injury to his person whatsoever.

32. Learned counsel for the appellant submitted that the possibility cannot be ruled out since the accused was arrested and assaulted by the persons, which is also admitted by P.W. 5, the injuries might have been sustained. He may be right, but that defence will have to be built with by the defence, either through cross-examination of the witnesses or by answering the questions put under Section 313 of Cr.P.C. If the questions put to the accused under Section 313 of Cr.P.C. are perused, more particularly question nos. 183, 184 and 185, it would be crystal clear that, except stating that case is false, nothing else has been brought on record. Thus, it is very difficult to say that the injuries were sustained by the accused at the hands of the persons who had beaten him.

33. This takes me to the testimony of one Gorakh Pardhe/P.W. 6. This witness was not an eyewitness to the incident but arrived when he received a phone call from Mr Shinde. P.W. 6 stated that P.W. 5 had caught hold of one man. On being enquired, P.W. 5 informed that the said man committed rape on the victim. The testimony of this witness shows that the incident occurred at a tin-shed house. In cross-examination, he stated that his statement was recorded after 2 to 3 days of the incident. So far as omissions were concerned, i.e., “ I had received a phone call from Shinde, and Asif Skaikh had caught one man,”. were put to P.W. 11, who had proved the said omissions. The said omissions would not go to the root of the matter, and even if they did, this witness is not an eyewitness.

34. Coming to the spot of the incident, it is necessary to go through the testimony of witnesses, as well as the spot of the incident. The spot of the incident is at exhibit 25, which the prosecution proved through P.W. 1. P.W. 1 stated that on 04.11.2017, the police called him to prepare the panchnama, and another panch, Gapat, was present. He then visited the spot, which

had a tin shed, where they saw **three tin boxes**, one bed, a blanket, and a tin sheet. Then blanket was seized, which was given Article 1 for identification, and the panchnama below Exhibit 25 was prepared.

35. In cross-examination, this witness admitted that he is not in a position to provide the crime number of the case or the names of other witnesses. He denied the suggestion that the blanket produced in the Court was not the one seized. He stated that he is not in a position to disclose the shed's boundaries. He denied the other suggestions.

36. Thus, the spot panchnama and the testimony of the aforesaid witness also support the testimony of the prosecutrix that by removing the tin sheet, the accused had entered the house.

37. P.W. 10, who at the time of the incident, was attached to Tuljapur police station as PSI, who prepared the spot panchnama on 04.11.2017 at 17:45 to 18.15 hours in the presence of panchas Kiran Mali and Vikas Gapat. He was shown exhibit P25, on which he identified his signature, as well as those of the

panchas. In cross-examination, the only suggestion is given that the false panchnama was prepared, and it was dark when he conducted the spot panchnama. The said suggestion was denied by P.W. 10. There is nothing to show that investigation of the crime was tainted, and there was any illegality committed by the investigating officer.

38. Coming to the CA report, it is necessary to note that exhibits P52 to P54 are the description of articles containing the parcels. Report dated 10.12.2018 of exhibit P52 states that exhibit 2 has blood stains, each of about 0.2 cm in diameter, on the right front portion. Exhibit 3 is stained with blood in the upper middle portion and appears washed. Exhibit 5 shows a few blood stains, ranging from about 0.1 cm to 5 cm in diameter, in the middle portion. Exhibit 6 shows a few blood stains, 0.1 to 5 cm in diameter, on the left front upper portion. Exhibit 7 has two blood stains, each of about 0.2 cm in diameter, one on the front middle portion and another on the left front lower portion. Exhibit 9 shows a few blood stains, ranging from about 0.1 cm to 2 cm in diameter, mostly on the left leg, front portion. Exhibit 10 has three

blood stains, each of about 1 cm in diameter, at one end. Blood was not deducted from exhibits 1, 4 and 8, and semen was not deducted from exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10. Hair was found on exhibits 6, 7, 8, 9 and 10, and blood detected on exhibits 2, 3, 5, 6, 7, 9 and 10 was human. Blood group deduction on exhibits 2, 3, 5, 6, 7, 9 and 10 was conclusive, and hair in exhibits 6, 7, 8, 9 and 10 is human hair and is dissimilar to exhibit 2 of the ML case.

39. To co-relate the findings, it is necessary to state that the exhibit 1 was the Sweater (torn), exhibit 2 was Kurta (torn), exhibit 3 was Salwar, exhibit 4 was Bressier, exhibit 5 was Jangya, exhibit 6 was Full open shirt (torn), exhibit 7 Sandow baniyan, exhibit 8 was Knicker, exhibit 9 was Full pant and exhibit 10 was Chadar. Exhibits 1 to 5 were clothes of the victim, whereas exhibits 6 to 9 were of the accused.

40. Thus, findings of noticing the blood at exhibits 2, 3, 5, 6, 7, 9 and 10 assume importance, as the victim as well as the accused had sustained injuries as stated above, which were fresh, and, therefore, the possibility cannot be ruled out that the clothes

were stained with blood. Though the learned counsel for the appellant argues that blood group is inconclusive, the fact remains that it will not go to the root of the matter. Even otherwise, independent of these CA reports, the prosecution has proved the accused's guilt beyond a reasonable doubt.

41. Coming to the conviction of the appellant for the commission of an offence under Section 451 of the IPC, the prosecution has rightly proved that the accused had committed the house trespass to commit the offence punishable with imprisonment. The fact that the P.W. 5 saw the accused inside and caught hold of him. The testimony of the prosecutrix that the accused forcibly entered, so also the aspect though spot panchanama shows removal of tin sheet from north south corner of the tin shed shows that the entry of the accused amounts to criminal trespass, and it was with an intention to commit an offence, i.e. offence of rape.

42. Learned counsel for the appellant has relied upon law laid down by the Hon'ble Apex Court in the case of **Santosh Prasad @ Santosh Kumar Versus State of Bihar**, reported in AIROnline

2020 Supreme Court 187, more particularly, paragraph no. 6

which read as under :

“6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 O’clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW5 - prosecutrix, it is unfortunate that the said witness

has failed to pass any of the tests of “sterling witness”. There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix – PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt.”

43. He then contended that if there are material contradictions, delay in lodging first information report, then it would reveal that the testimony to the prosecutrix, cannot be termed as a sterling quality.

44. The perusal of aforesaid judgment would reveal that the victim had stated that initially she had lodged an oral report

and, thereafter, she stated that the written report was filed. Again, in that case, one Shanti Devi, the witness on whom the prosecution relied, turned hostile. Even, it was brought on the record that there was enmity/dispute between both parties. It is in this background that the Hon'ble Apex Court has stated that the testimony of the victim was not of sterling quality.

45. In the case in hand, as already stated, the victim has categorically stated the act committed whereas the defence has not brought anything on record to show that it was a case of false implication. independent witness / P.W. 5 and the injuries on the person of the victim and the accused point toward the guilt of the accused.

46. So far as judgment in the case of **Sanjay Shriram Joshi Versus State of Maharashtra, 2008 All M.R. (Cri.) 2514**, delivered by the Bombay High Court and relied upon by the appellant is concerned, suffice it to say that in that case the initial complaint was for teasing and not even for attempt to rape. The Court had stated that, according to the version of the prosecutrix, the act committed by the accused was of 'chedchad', which would at the

most be described as outraging modesty. There was a delay in lodging the first information report in that case.

47. In the present case, the testimony of the prosecutrix is cogent and consistent. There is no delay in lodging the first information report. Thus, it cannot be said that the prosecution suppressed the genesis of the crime.

48. As far as law laid down by this Court in case of **Bhagat alias Rikhmal Mahabal Maurya Versus State of Maharashtra, reported in 1985 LJ Soft (Bom) 188** is concerned. In that case the facts of the case were totally different since the child was subjected to the illegal act and the medical evidence indicated that no rape was committed. It is in this background that the child's testimony was considered, and the story was disbelieved. In case in hand, the victim of crime was major in the eyes of law.

49. At the cost of repetition, it is stated that in the present case, the spot of the incident, the manner in which the offence was committed, the timing at which it was done, the injuries on the persons, clearly show that the accused is guilty of the crime. Thus,

a judgment decided on the factual aspect will not come to the rescue of the appellant / accused.

50. The trial court has discussed the evidence available on record in the right perspective and, thereafter, has given the findings which resulted in the conviction of the accused. Not building a defence either in the cross-examination or by answering the statement under Section 313 of Cr.P.C., also shows that the defence made a fragile attempt to convince the Court that it was a case of false implication. Prompt lodging of the first information report, injuries on the person of the accused as well as the victim, testimony of an independent witness / P.W. 5, clearly shows that there is a ring of truth in the case advanced by the prosecution. The prosecution has proved the case beyond a reasonable doubt and, therefore, I conclude that the appeal is meritless. Accordingly, the following order is passed :

ORDER

- i. Criminal Appeal is dismissed.
- ii. At this stage, it is necessary to observe that Mr Kulkarni, appointed counsel for the victim, was thoroughly

prepared with the case and did not seek any adjournment, so also assisted the Court in arriving at a conclusion. His fees are quantified at Rs. 12,000/-.

iii. Pending Criminal Application also stands disposed of.

(RAJNISH R. VYAS, J.)

SPC