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

**CRIMINAL APPEAL NO.123 OF 2021**

Pundalik @ Bandu s/o Daulat Zalake,  
Aged about 59 Years,  
Occupation : Agriculturist,  
R/o Dhanala/Channa,  
Tahsil : Lakhani,  
District Bhandara. .... APPELLANT

// VERSUS //

The State of Maharashtra,  
Through Police Station Officer,  
Lakhani, Tahsil Lakhani,  
District Bhandara. .... RESPONDENT

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Mr. Yash Venkatraman, Advocate for appellant.  
Mrs. Shamsi Haider, APP for State.  
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CORAM : URMILA JOSHI-PHALKE AND  
RAJ D. WAKODE, JJ.  
RESERVED ON : 11.09.2026  
PRONOUNCED ON : 08.10.2026

**JUDGMENT : [Per : URMILA JOSHI-PHALKE, J.]**

1. By this appeal, the appellant/accused has challenged the judgment and order of sentence passed by the Special Judge (Under POCSO Act), Bhandara in Special Criminal Case (Child) No.28/2019 dated 30.09.2020, by which the appellant/accused is convicted for the offence punishable under Section 6 of the Protection of Children

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from Sexual Offences Act, 2012 and sentenced to suffer life imprisonment i.e. remainder of his natural life and to pay fine of Rs.30,000/-, in default to suffer rigorous imprisonment for one year and for the offence punishable under Section 506 of the Indian Penal Code, the accused/appellant is sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1000/-, in default to suffer simple imprisonment for 15 days.

2. Brief facts which are necessary for disposal of the appeal are as under:

The victim aged about 13 years was residing with her parents at the relevant time. The accused, who is her cousin grandfather residing near to her house in the village Dhanala/Channa, Taluka Lakhani, District Bhandara. In the month of July 2018, the victim, who was studying in 9<sup>th</sup> standard, during the afternoon time, when her parents had been to their agriculture field, was playing with her friends. While playing, she could not find her friends, therefore, she went in the cattle shed of the accused to search them and inquired with the accused as to whether her friends had come there. At that time, the accused was taking out Tanis (heap of paddy) from the upper portion of the cattle shed. It is alleged that the accused came down, pressed her mouth, disrobed her and subjected her for the forceful sexual assault. As the accused

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threatened her, she did not disclose the said incident to anybody. The said incident resulted into pregnancy of the victim girl. Her mother observed that she has not received her menstrual, and, therefore, took her to the Primary Health Center, Pohara, Taluka Lakhani, wherein the Medical Officer give her some tablets, but she could not receive her menstrual.

3. Subsequently, on 01.03.2019, her mother noted swelling from the legs of the prosecutrix, therefore, she took her to the hospital of Dr. Sima Kaware at Bhandara on 15.03.2019. Dr. Sima Kaware examined her and disclosed that victim is pregnant. On which, the parents of the victim took her to the house of her maternal uncle wherein she was inquired and thereafter the victim has narrated the involvement of the accused in the alleged incident. As the mother of the victim was in shock, therefore, the report could not be lodged immediately. It is further stated that the health of the mother of the victim was not good for some days, thereafter, the victim along with the parents went to the Police Station, Lakhani and lodged the report. On the basis of the said report, crime came to be registered.

4. After completion of the formality of the investigation, the Investigating Officer has filed charge-sheet against the present accused in the Special Court. The learned Special Judge, Bhandara

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framed the charge vide Exh.13. The accused denied the charge and claimed to be tried. In support of the prosecution of the case, the prosecution has examined in all 14 witnesses, which are as follows:

|        |       |                                  |         |                                                                                    |
|--------|-------|----------------------------------|---------|------------------------------------------------------------------------------------|
| (i)    | PW-1  | Victim                           | Exh.23  |                                                                                    |
| (ii)   | PW-2  | Mother of victim                 | Exh.32  | Informant                                                                          |
| (iii)  | PW-3  | Ashwini Ravindra Chawhan         | Exh.37  | Sub Registrar of Death & birth & Deputy Chief Officer, Municipal Council, Bhandara |
| (iv)   | PW-4  | Pallavi Ganesh Gomase            | Exh.39  | Panch on spot                                                                      |
| (v)    | PW-5  | Dr. Milindkumar Tatobaji Bhute   | Exh.45  | Medical Officer                                                                    |
| (vi)   | PW-6  | Dr. Sima Ulhas Kaware            | Exh.58  | Medical Officer                                                                    |
| (vii)  | PW-7  | Shalu Dhanraj Bhalerao           | Exh. 60 | Lady Police Constable                                                              |
| (viii) | PW-8  | Amulya Amol Pande                | Exh.62  | Chemical Analyzer                                                                  |
| (ix)   | PW-9  | Dr. Narendradas Dhanraj Kulurkar | Exh.70  | Medical Officer                                                                    |
| (x)    | PW-10 | Sanjay Mahendra Arkase           | Exh.73  | Carrier                                                                            |
| (xi)   | PW-11 | Dr. Dhammadip Govindaji Badole   | Exh.78  | Medical Officer                                                                    |
| (xii)  | PW-12 | Swapnil Shashikant Nirale        | Exh.83  | Investigating Officer                                                              |
| (xiii) | PW-13 | Megha Maroti Gokhare             | Exh.97  | Investigating Officer                                                              |

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|       |       |                              |        |                       |
|-------|-------|------------------------------|--------|-----------------------|
| (xiv) | PW-14 | Damdeo Wamanrao<br>Mandalwar | Exh.98 | Investigating Officer |
|-------|-------|------------------------------|--------|-----------------------|

5. Besides the oral evidence, the prosecution also placed reliance on the following documents:

| Sr.No. | Documents                                       | Exhibits |
|--------|-------------------------------------------------|----------|
| (1)    | D. N.A. Reports                                 | 6        |
| (2)    | Birth Certificate                               | 24       |
| (3)    | Referral letter by Private Medical Practitioner | 33       |
| (4)    | Sonography Report                               | 34       |
| (5)    | Report                                          | 35       |
| (6)    | F.I.R.                                          | 36       |
| (7)    | Letter to Municipal Corporation                 | 38       |
| (8)    | Notice to Panch                                 | 40       |
| (9)    | Spot Panchanama                                 | 41       |
| (10)   | Seizure Memo as to Seizure of Electricity Bill  | 42       |
| (11)   | Seizure Memo                                    | 44       |
| (12)   | Requisition to Medical Officer                  | 46       |
| (13)   | Medical treatment papers of victim              | 50       |
| (14)   | Medical Certificate of accused /appellant       | 54       |
| (15)   | Extract of OPD Register                         | 59       |
| (16)   | Requisition to CA to provide D.N.A. Kit         | 63       |
| (17)   | Requisition to CA                               | 64       |
| (18)   | Identification Form of victim                   | 66       |
| (19)   | Identification Form of child                    | 67       |
| (20)   | Identification Form of accused                  | 68       |
| (21)   | Acknowledgment issued by CA Office              | 69       |

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|      |                                                                                       |                  |
|------|---------------------------------------------------------------------------------------|------------------|
| (22) | Requisition to Medical Officer to obtain blood samples of accused                     | 71               |
| (23) | Requisition to Medical Officer to obtain blood samples of victim and child            | 72               |
| (24) | Duty Pass                                                                             | 74               |
| (25) | Requisition to Medical Officer                                                        | 79               |
| (26) | Letter by Medical Officer Primary Health Center(PHC), Pohara to Investigating Officer | 80               |
| (27) | Extract of OPD register                                                               | 81               |
| (28) | General Diary Entry                                                                   | 84 &<br>85       |
| (29) | Arrest panchanama                                                                     | 86               |
| (30) | Letter to Sarpanch /Secretary                                                         | 87               |
| (31) | Requisition to Headmaster                                                             | 90               |
| (32) | Requisition to Block Development Officer (BDO)                                        | 91               |
| (33) | Requisition to Tahsildar to draw Map                                                  | 92               |
| (34) | Covering letter from Circle Inspector                                                 | 99               |
| (35) | Map                                                                                   | 100              |
| (36) | General Diary Entry                                                                   | 101<br>to<br>106 |
| (37) | 7/12 extract of land of accused                                                       | 116<br>to<br>118 |
| (38) | 7/12 extract of land of father of victim                                              | 119<br>to<br>122 |
| (39) | N. C. lodged by son of accused                                                        | 127              |
| (40) | Complaint to Police Station by son of accused                                         | 129<br>to<br>131 |

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6. All the incriminating evidence is put to the accused in order to obtain explanation, the defence of the accused is of a total denial and false implication. In support of the defence, the accused himself entered into the witness box as DW-1 vide Exh.111 and also examined his wife DW-2 Manorama Pundalik Zalke Exh.123 and his son DW-3 Vinod Pundalik Zalke Exh.126.

7. The learned trial Court appreciated the entire evidence and held the accused guilty on the basis of oral as well as scientific evidence and convicted as aforestated.

8. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the appellant/accused on the ground that the implication of the accused is false due to the previous enmity between the parents of the victim and the accused. There is no evidence as to the proper custody of the samples and despite of the same, the learned trial Court relied upon the DNA report and held the accused guilty.

9. Heard learned counsel Mr. Yash Venkatraman for the accused/appellant. He has taken us through the entire evidence and submitted that the medical evidence on record shows that the accused was incapable of having sexual activity. There is inordinate delay in lodging the First Information Report and the said delay is not

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properly explained by the prosecution. He submitted that there is no evidence as to the proper custody of the samples since its collection till its analysis. He invited our attention towards the cross-examination of the PW-1 victim and submitted that at the relevant time accused was residing along with his wife, two sons, daughter-in-law and two grand-sons. The spot of incident is near to his house. Whatever narrated by the victim is not at all probable when the entire family was residing nearby to the spot of incident. He submitted that PW-1 victim has admitted this fact during the cross-examination. Moreover, there were no injuries found on the person of the PW-1 victim. Similarly, PW-2 the mother of the victim has also stated regarding the dispute between the two families, which is sufficient reason to implicate the accused falsely in the alleged offence. He submitted that though the evidence of the Investigating Officer and the Medical Officer shows that the blood samples were collected and the same was analyzed as per the evidence of PW-8 Amulya Amol Pande on 22.03.2019 and completed on 19.08.2019. There is no evidence that during this period the said samples were in intact condition and there was no possibility of tampering the same. In view of the absence of the evidence regarding the chain of the custody, the said evidence of DNA deserves to be discarded. On the basis of the above submission, he claims acquittal of the accused.

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10. Per contra, learned APP strongly opposed the said contentions and submitted that the evidence of the PW-1 victim and PW-2 her mother is consistent. It is corroborated by the DNA report. She submitted that the entire evidence shows that PW-10 Sanjay Mahendra Arkase was sent to bring the DNA kit on 22.03.2019, on the same day, the DNA kit was brought and the blood samples of accused, PW-1 victim and her newly born child were obtained. On the same day, the said samples were forwarded to the chemical analysis and the evidence of the Analyzer also shows that on 22.03.2019 itself said samples are received in the Forensic Science Laboratory. The DNA report further discloses that on 22.03.2019 itself the analysis was started. Thus, considering the consistent evidence which shows that the samples were not kept in the Police Station for a single day. The guidelines of the Hon'ble Apex Court in the case of *Kattavellai Vs. State of Tamilnadu* reported in *MANU/SC/0917/2025* are followed while forwarding the said samples. For the above said reasons, the evidence adduced by the prosecution is cogent, reliable and no interference is called for.

11. Learned counsel Mr. Yash Venkatraman for the appellant/accused in support of his contention placed reliance on the following decisions:

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(1) **Thulia Kali Vs. The State of Tamil Nadu** reported in (1972) 3 SCC 393,

(2) **Tridip Chakma Vs. State of Tripura** reported in 2026 SCC OnLine Tri 83,

(3) **Nirmal Premkumar and Another Vs. State Represented by Inspector of Police** reported in (2024) 20 SCC 293.

(4) **Kattavellai @ Devakar Vs. State of Tamilnadu** reported in 2025 SCC OnLine SC 1439, and

(5) **Nivrutti Vs. State of Maharashtra Through Police Officer and Another** reported in 2024 SCC OnLine Bom 3068.

12. The prosecution has come with a case that at the relevant time PW-1 victim was 13 years of old and minor. To prove her age, the prosecution placed reliance on the evidence of PW-1 victim herself, who narrated her birth date as 05.04.2005. Her original Birth Certificate is at Exh.24 and Bonafide Certificate is at Exh.25. PW-2 mother of the victim has also narrated her birth date as 05.04.2005, who stated that her birth date is registered in the Municipal Council, Bhandara as her birth took place at Civil Hospital, Bhandara.

13. To prove the said fact, prosecution placed reliance on the evidence of PW-3 Ashwini Ravindra Chawhan vide Exh.37, who was serving as Deputy chief Officer at Municipal Council, Bhandara. She deposed that she is working as a Deputy Chief Officer at Municipal

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Council, Bhandara as well as working as Sub-Registrar of Death and Birth. On 04.05.2019, she received the letter from Police Station, Lakhani Exh.38 for obtaining the Birth Certificate of PW-1 victim. She verified the register as per the requisition received from the police and found the entry at Serial No.1753 in the name of the PW-1 victim. As per the said entry, she has issued the Birth Certificate Exh.24, which bears her signature and seal of the office. She has verified the contents of the birth certificate from the original birth noted which was found correct. Despite the effective cross-examination, nothing transpired to falsify the version of PW-3 Ashwini Ravindra Chawhan. Thus, the evidence of PW-1 victim, PW-2 mother of the victim and PW-3 Ashwini Ravindra Chawhan, Sub-Registrar of Death and Birth and Deputy Chief Municipal Council, Bhandara, consistently shows that the birth date of the victim is 05.04.2005. On perusal of the said birth certificate, it seems that the said birth date was registered immediately on 25.05.2005 at Serial No.1753. The said birth certificate is issued under Sections 12 and 17 of the Registration of Births and Deaths Act, 1969 and Rules 8 and 13 of the Maharashtra Registration of Births and Deaths Rules, 2000.

14. As far as the law regarding the birth entries is concerned is settled, the birth certificate was issued by the Municipal Corporation, Bhandara under Sections 12 and 17 of the Registration of Births and

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Deaths Act, 1969 and Rules 8 and 13 of the Maharashtra Registration of Births and Deaths Rules. The said birth certificate shows the date of birth of the victim as 05.04.2005 and it was registered on 25.05.2005 that is approximately within one and half month. The names of the parents are mentioned in the said birth certificate.

15. As per provisions of Rule 9 of the Maharashtra Registration of Births and Deaths Rules, 1976, this Certificate is issued by the Sub-Registrar acting under the provisions of the Registration of Births and Deaths Act, 1969. Section 7 thereof deals with appointment of Registrars for each local area comprising the area within the jurisdiction of the Municipality, Panchayat or other local authority. It is the duty of the Registrar to register every birth and every death which takes place in his jurisdiction. This Act mandates that the Registrar should discharge his duties carefully. Section 8 of this Act mandates each head of the house to report birth in the family to the Registrar. The Act provides for maintenance of register for recording birth and death within the local area. That is how, certificate came to be issued by the Sub-Registrar as per provisions of Sections 12 and 17 of the said Act. The Birth Certificate, as such, is issued by the Public Officer and it is a document forming the record of the acts of the Public Officer and therefore the same is a public document within the meaning of the said term as per provisions of Section 74 of the Indian

Evidence Act, 1872. The same is admissible in evidence by mere production thereof in view of provisions of Section 77 of the Evidence Act.

16. Section 17 of the Registration of Births and Deaths Act, 1969, provides for search of Birth Register and supply of extract thereof by certifying the same by the Registrar or other authorized officer. Section 17 of the said Acts provides that such extract shall be admissible in evidence for the purpose of proving birth or death to which the entry relates. The birth certificate is, in fact, the extract of Birth Register in respect of entry of birth of the victim child and as such, admissible in evidence. Section 35 of the Indian Evidence Act, 1872 makes it clear that if entry is made by public servant in the official book in discharge of his official duty, then such entry becomes the relevant fact and admissible in evidence. Section 35 of the Indian Evidence Act, lays down that entry in any public, official book, register, record stating a fact in issue or relevant facts and made by public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by

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

17. Thus, considering the evidence on record, the prosecution succeeded in proving that the victim was below 18 years of age i.e. 13 years at the time of incident. This fact is not seriously challenged by the accused, therefore, we have no hesitation to hold that prosecution proved that victim was minor at the time of the incident.

18. The accused is facing charge on allegation that he has subjected a minor girl for forceful sexual assault and thereby committed an offence punishable under Section 6 of the POCSO Act. To prove aspect of sexual assault on the minor girl, the prosecution mainly placed reliance on the evidence of PW1 victim who narrated categorically that at the relevant time, she was studying in 9<sup>th</sup> Std.. Her school timing was from 7:30 am to 12:00 noon. After coming from the school, she used to play along with her sister and friends and her parents usually used to remain in agricultural field during afternoon time. She further deposed that on the day of the incident, when she

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was playing with her friends game of hide-&-seek, and while searching her friends, she went to pen of accused (cattle shed) to search them, which was adjacent to the house of the accused. At the relevant time, the accused was taking out “tanis” (dry grass) from the upper store of the house. She made enquiry with him. He came down, pressed her mouth, removed her clothes, and subjected her for forceful sexual assault. She specifically narrated the exact act committed by the accused. Her evidence further shows that due to the said act, she could not receive her menstrual cycle and, therefore, her mother took her at PHC, Pohara. However, the Medical Officer gave some pills. After taking the pills also, she could not receive her menstrual cycle and on 1.3.2019, her mother observed swelling on her both legs. Therefore, she was taken to hospital of PW6 Dr.Sima Kaware at Bhandara on 15.3.2019. PW6 Dr.Sima Kaware examined her and disclosed that she is carrying pregnancy. Her parents took her to her maternal uncle’s house whereat she was enquired and she disclosed the incident to her parents. Her evidence further shows that initially, she has not disclosed the incident as she was threatened by the accused. Her evidence further shows that after lodging the report, she delivered a male child. Her evidence further discloses that after her disclosure regarding the incident, health of the mother was not good and, therefore, there was delay in lodging the FIR. Her evidence further discloses that after she

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delivered a child, the Medical Officer has obtained her blood samples and blood samples of her child. Her signatures were also obtained on the form.

19. The nature of the cross examination shows that at the relevant time, the accused was also residing along with his family members i.e. his wife, daughter-in-law, and son in the said house.

The victim further admitted that she or her friends was not using anybody's house to hide. It further came in her evidence that the cattle shed was constructed by walls and doors.

20. To ascertain whether she has disclosed the incident to her sister immediately, she was cross examined and she admitted that relationship between her and her elder sister is cordial. However, she has specifically stated that she was not sharing everything to her sister as she was having apprehension that she would tell her parents and she would get scolding from her parents. Therefore, she was not telling those facts to her elder sister which will be turned into scolding by her parents. She further admitted that after the incident, her friends and sister enquired with her as to why she did not search them, but she has not disclosed them anything.

21. Thus, an attempt made during the cross examination that despite her sister was playing along with her, she has not disclosed the

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incident to her sister. The accused was residing, at the relevant time, with other family members in his house, which is adjacent to the cattle shed and, therefore, such type of the incident by the accused is improbable and unacceptable.

22. To corroborate the version of the victim, the prosecution has examined her mother vide Exh.32. The evidence of the mother of the victim shows that she observed swelling on the legs of the victim on 15.3.2019 and, therefore, she took her to the hospital of PW6 Dr.Sima Kaware. On examining, PW6 Dr.Sima Kaware disclosed that the victim is pregnant of 32-34 weeks and PW6 Dr.Sima Kaware also referred her daughter to Civil Hospital, Bhandara vide referral letter Exh.33. The evidence of the mother of the victim further shows that due to the said disclosure by PW6 Dr.Sima Kaware, she as well as her husband were frightened and they were not well by hearing the same. Therefore, they went to her brother's house and the victim was enquired there and she disclosed the incident to them. After hearing the said incident, as her health was not good, they were also having fear of defamation in the society and, therefore, they stayed in the house of her brother. On 20.3.2019, they approached the Lakhani Police Station and lodged the report Exh.35. Her evidence further shows that the health of her daughter became serious in the police station and, therefore, her daughter was taken to the hospital wherein her daughter delivered a

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male child. The blood samples of the victim as well as the male child were obtained.

During her cross examination, omission that she has not stated birth date in her statement is brought on record. She has also not stated in her statement that due to fear of defamation, they stayed at Tawepar. She has also not stated that the police took her daughter to the hospital. All these omissions are brought on record by the defence. She denied that on 11.3.2019, they carried the daughter to the hospital of PW6 Dr.Sima Kaware. She stated that it was wrongly mentioned in the report Exh.35 that on 11.3.2019, they carried her daughter to the hospital of PW6 Dr.Sima Kaware.

During further cross examination, an attempt was made to show that the agricultural fields of the accused and the parents of the victim are adjacent, which is denied by her. It is also denied that there is a way from her agricultural field to approach the agricultural field of the accused and on that count, there is a dispute. The same is also denied. However, she admitted that on 4.7.2019, quarrel took place between the accused on the count of right of way and report was lodged in the police station by the son of the accused. Her cross examination further shows that she was aware about the menstrual cycle of her daughter.

23. Thus, the entire cross examination is on the issue that there is delay in lodging the FIR as well as there is a dispute between the family of the accused and the victim's parents. Referral letter Exh.33 issued by PW6 Dr.Sima Kaware is placed on record. Similarly, the medical examination report of the victim by PW6 Dr.Sima Kaware (Exh.34) dated 15.3.2019 is also placed on record.

24. Besides the oral evidence, the prosecution placed reliance on the evidence of PW5 Dr.Milindkumar Bhute examined vide Exh.45. As per his evidence, on 20.3.2019, the victim along with her parents was brought to the hospital by Lady Constable. The victim was having labor pains. No Gynaecologist was available in the hospital, but meanwhile, the victim delivered a male child. On the police requisition, he took footprints of the child on the paper. He has also produced all medical treatment papers of the victim Exhs.49 and 50. His evidence shows that due to severe pains, she delivered a male child at about 10:05 pm at Rural Hospital, Lakhani.

On 24.3.2019, he has also examined the accused and on examination, he gave an opinion that the accused is capable of performing sexual activities. The requisition letter for examination of the accused is at Exh.53 and medical certificate is at Exh.54. He has admitted during the cross examination that he has not mentioned test

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conducted for determining sexual ability in the case papers. He has also narrated eight scientific methods of determining the sexual ability.

25. The prosecution has also examined PW6 Dr.Sima Kaware. As per her evidence, she is practising in medical profession since last 24 years at Bhandara. On 15.3.2019, the victim along with her mother came to her hospital complaining that there was swelling to her legs. On examination, she found that the victim is pregnant of 32 to 34 weeks. When she disclosed the same, the parents of the victim became unconscious. She also referred the victim to the Government Hospital vide referral letter Exh.33. She has also placed on record the extract of the OPD Register, which is at Exh.59.

Despite her cross examination, nothing incriminating is brought on record. Exh.59 shows that the name of the victim in the said register was mentioned at serial No.12.

26. PW11 Dr.Dhammadip Badole is another Medical Officer examined vide Exh.78. As per his evidence, he was working as Medical Officer at PHC, Pohara since 4.10.2018. On 7.5.2019, he received a letter from Lakhani Police Station to obtain medical papers of the victim. He verified the OPD Register and gave extract of the said OPD Register to the police Exhs.80 & 81.

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He was also cross examined and nothing incriminating is brought on record, during his cross examination.

27. Another Medical Officer examined by the prosecution is PW9 Dr.Narendradas Kulkurkar. As per his evidence, in the year 2019, he was attached to the Rural Hospital at Lakhani. On 22.3.2019, he received two letters from the Lakhani Police Station for collection of DNA Samples of the accused. The requisition is at Exh.71. He has also received other requisition for collection of blood samples of the victim and her child. The said letter is at Exh.72. The victim and her newly born child were in the hospital. He obtained the blood samples for DNA Test of the victim and her small child as well as of the accused. Initially, he labelled DNA Kits by mentioning names of the accused, the victim girl, and baby of the victim girl on those tubes. Firstly, he has collected the blood samples of the accused in presence of three witnesses and kept the same in DNA Kits. The said DNA Kits were sealed and the same were affixed on his identification form. The identification form of the accused is at Exh.68. He has adopted the similar procedure after collecting the blood samples of the victim and her child. The identification forms of the victim and her child are at Exhs.66 and 67. Thereafter, he handed over the DNA Kits to Police Constable PW10 Sanjay Arkase along with three identification forms.

His cross examination shows that initially, he filled up forms Exhs.66, 67, and 68 and then collected the blood samples. Though he is cross examined and attempt was made to show that there is discrepancy in the collection of the blood samples, the entire cross examination nowhere discloses that there was any discrepancy while collecting the said blood samples.

28. Besides these medical evidence, the material witness examined by the prosecution is PW7 Shalu Bhalerao, who is Lady Police Constable of Lakhani Police Station. As per her evidence, on 20.3.2019, she was attached to the Lakhani Police Station. After registration of the crime, the victim was having pain in her stomach and, therefore, she took the victim in the Rural Hospital at Lakhani along with her mother with requisition letter Exh.46. Due to the labor pain, the victim was taken by the Medical Officer for the medical examination and the victim has delivered a male child. The medical certificates Exhs.50 and 52 are the same.

During her cross examination, only fact brought on record is that entry in respect of taking the victim to the hospital required to be taken in the station diary and she stated that in this case also the said entry was taken.

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29. Similarly, Police Constable PW10 Sanjay Arkase is the carrier, who is examined vide Exh.73. He testified that on 22.3.2019, he was attached to the Lakhani Police Station as NPC. When he was on duty, he was assigned with duty to bring DNA Kits. Accordingly, letter was issued to him. Immediately, on 22.3.2019 itself, he visited Forensic Science Laboratory at Nagpur and brought three DNA Kits and and three identification forms. He handed over the same DNA Kits and identification forms to the investigating officer and the investigating officer has handed over the same to the medical officer. After some time, he got three sealed DNA Samples and three identification forms from the medical officer. He immediately carried it to the Chemical Analyzer's Office at Nagpur and handed over the same to the Chemical Analyzer's Office at Nagpur. The identification forms are at Exhs.66 to 68. The duty pass is at Exh.74. From his cross examination, it came on record that on 22.3.2019, he did not get duty pass for bringing DNA Kits from the Chemical Analyzer's Office at Nagpur. While receiving the DNA Kits, that fact was noted in the Chemical Analyzer's Office at Nagpur. It further came on record that on 22.3.2019, he proceeded to Nagpur at about 7:27 am and returned back at about 21:05 hours. He stated that he reached the Chemical Analyzer's Office at about 10:00 am and from the Chemical Analyzer's Office to Rural Hospital at

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Lakhani at 12:30 pm. He denied that he got both letters Exhs.63 and 64 simultaneously.

30. To establish chain of custody of the samples, the prosecution has also examined Chemical Analyzer PW8 Amulya Pande, vide Exh.62. As per the evidence of the said witness, she has completed her education in B.Sc. (Microbiology) and M.Sc. in Chemistry. Since 12.9.2015, she was working as Assistant Chemical Analyzer in The Regional Forensic Science Laboratory, Nagpur. She has analyzed more than 800 DNA Cases. On 22.3.2019, she received requisition from Lakhani Police Station in connection with Crime No.70/2019 and for obtaining the DNA Kits. Accordingly, three DNA Kits were provided by their office. The requisition letter received by her office is at Exh.63. On 22.3.2019 itself, her officer received three sealed cloth parcels along with forwarding letter of Lakhani Police Station and identification forms of the victim, the accused, and the newly born baby delivered by the victim vide Exh.64. The identification forms are at Exhs.66 to 68. After receiving three sealed cloth parcels, they have issued invoice challan, which is at Exh.69. She has received articles as follows:

“(i) blood in vials wrapped together in cloth labeled (the name of the victim is mentioned);

(ii) blood in vials wrapped together in cloth labeled, Pundlik/Bandu Daulat Zalke; and

(iii) blood in vials wrapped together in cloth labeled baby of (name of the victim is mentioned). The said cloth parcels bear signatures of the doctor.”

She deposed that DNA was extracted from the blood samples of the victim, accused, and the newly born child. The same was analyzed by using PCR Amplification Technique. She prepared profiles in a tabular form in the report. By analyzing three profiles, she opined that the victim and the accused are concluded to be biological parents of the the baby delivered by the victim. The said DNA Report is at Exh.6. She admitted the contents of the said DNA Report.

Her cross examination shows that DNA Kits consist of two tubes in a Kit. There are norms of manner for collecting of the blood in DNA Tubes. There is official record of sending and receiving the DNA Kits. The Laboratory issued DNA Tubes Sr.Nos.239 to 244. She has received the samples of DNA from The Assistant Director of Regional Forensic Laboratory. She has admitted that DNA findings are machine generated.

31. On the basis of this cross examination, an attempt was made to show that the chain of custody of the said blood samples was not established by the prosecution.

32. Besides the oral evidence of the victim and the medical and scientific evidence, the prosecution further placed reliance on the evidence

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of PW4 Pallavi Gomase, who acted as pancha on the spot panchanama. Her evidence shows that she is working in Panchayat Samiti, Lakhani as a Peon. On the requisition of the police, she was deputed along with Shri Tekam to act as a pancha. She also received notice from the police Exh.40. Accordingly, she along with other pancha visited the spot of the incident, which was pen (cattle shed) of the accused. The spot was shown by the victim. Accordingly, the panchanama was drawn. The electricity bill of the house of the accused was seized from his son, which is at Exh.43 and seizure panchanama is at Exh.42. In her presence, the police have also seized two prescriptions and referral letter of PW6 Dr.Sima Kaware. The seizure memo is at Exh.44.

During the cross examination, she denied that there is no door to the pen of the accused, but she admitted that the pen of the accused is adjacent to his house. She has also admitted that one can see everything in the pen from eastern side of the road of it. She has also admitted that everything in the pen can be seen from the house of the accused.

33. PW12 Swapnil Nirale, PW13 Megha Gokhale, and PW14 Damdeo Mandalwar all are Investigating Officers.

PW12 Swapnil Nirale deposed regarding the investigation carried out by him. As per his evidence, on 20.3.2019, he received case diary of Crime No.70/2019 for investigation purpose. The victim was having pain

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in her stomach and, therefore, she was immediately referred to the hospital wherein she delivered a baby boy. The entries regarding the said information were taken in the station diary, which are at Exhs.84 and 85. His evidence further shows that he arrested the accused on 21.3.2019 by drawing arrest panchanama Exh.86. On 22.3.2019, he sent Police Constable PW10 Sanjay Arkase to the Chemical Analyzer's Office at Nagpur for bringing DNA Kits along with letter Exh.63. He brought the DNA Kits and three identification forms, which were handed over to the medical officer. Thereafter, requisition was given to the medical officer for collecting blood samples of the accused, the victim, and the newly born baby of the victim. The letters are at Exhs.71 and 72. Thereafter, Medical Officer PW9 Dr.Narendradas Kulkurkar collected the blood samples of the accused, the victim girl, and the newly born child of the victim in separate DNA Kit and handed over the same to Police Constable PW10 Sanjay Arkase in a sealed condition along with three identification forms. Thereafter, Police Constable PW10 Sanjay Arkase was handed over the said kits along with duty pass to proceed to the office of the Chemical Analyzer at Nagpur along with DNA Kits. Police Constable PW10 Sanjay Arkase has given Invoice challan regarding depositing of the said muddemal.

His cross examination shows that while recording the statement of the mother of the victim, she has not narrated the birth date of the victim. She has also not stated regarding apprehension of defamation.

Thus, omission of the mother of the victim is proved by PW12 Swapnil Nirale. The station diary entries proved through PW12 Swapnil Nirale show that the victim was admitted in the hospital on 20.3.2019 and she delivered a male child.

34. PW13 Megha Gokhale, is another Investigating Officer who recorded statement of the victim in civil uniform. In her cross examination, nothing incriminating is brought on record.

35. PW14 Damdeo Mandalwar, is another Investigating Officer who has collected the medical papers of the victim. In his cross examination also, nothing is brought on record. The map of the spot of the incident is at Exh.100. The station diary entry Exh.101 bearing No.3 dated 22.3.2019 taken at 5:57 am shows that the police constable Bakkal No.587 was sent to bring DNA Kits. The station diary entry Exh.102 shows that police constable having Bakkal No.587 PW10 Sanjay Arkase brought the DNA Kits and the said entry was taken on 22.3.2019 at 13:39 pm. The station diary entry No.21 dated 22.3.2019, taken at 12:42 pm, shows that the accused was taken by the Police Constable having Bakkal No.671 and Police Hawaldar having Bakkal No.749 for obtaining DNA Samples to the hospital. The said station diary is at Exh.103. The station diary entry Exh.104 taken on 22.3.2019 at 14:19 pm shows that the samples of the accused obtained for DNA purpose were sealed by the medical officer and

handed over to Police Constable PW10 Sanjay Arkase. The general diary entry Exh.105 bearing No.27 dated 22.3.2019 shows that Police Constable PW10 Sanjay Arkase proceeded towards Chemical Analyzer's Office at Nagpur for handing over the said DNA samples and Exh.106 taken on 22.3.2019 bearing No.3838 shows that Police Constable PW10 Sanjay Arkase returned by handing over the samples to the police station at 19:09 and the entry was taken to that effect.

36. The defence of the accused is of total denial and of false implication. It is the defence of the accused that due to inimical terms, he is implicated falsely. To substantiate the said defence, he placed on record 7/12 extracts of his agricultural land, his son, and father of the victim. He has also examined himself vide Exh.111 and stated that due to enmity on account of right of way, he is implicated. His son has lodged report regarding that quarrel in the Lakhani Police Station. He has also examined his wife and his son. They have also stated about the inimical terms between them and the parents of the victim. The complaints lodged by the son of the accused subsequent to lodging of the FIR, are at Exh.130 and 131.

37. On the basis of the above said oral as well as the scientific and medical evidence, the prosecution claimed that the prosecution has proved its case beyond reasonable doubt. As already observed, the age of the

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victim is already proved by the prosecution that she was below 18 years of age i.e. 13 years at the time of the incident.

38. The aspect of sexual assault on the victim, as per the prosecution, is established not only by the evidence of PW1 victim but also by the evidence of PW2 the mother of the victim and the evidence of PW5 Dr.Milindkumar Bhute who conducted delivery of the victim and PW6 Dr.Sima Kaware who examined the victim first time and disclosed about her pregnancy. The contents of the FIR are proved by the prosecution through the evidence of PW2 the mother of the victim.

39. Learned counsel for the accused vehemently submitted that Medical Officer PW5 Dr.Milindkumar Bhute, who has examined the accused, specifically stated during the cross examination that there are 8 scientific tests for determining sexual ability. He has not mentioned kind of tests he has carried out to ascertain that the accused is capable of having sexual ability. Thus, he submitted that there is no evidence on record to show that the accused was capable of having sexual ability considering his advanced age of 59 years. He further harped upon the chain of custody as far as samples collected and forwarded are concerned. He further canvassed that delay in lodging the FIR. He submitted that as per the FIR, for the first time this incident came to knowledge of the informant on 15.3.2019 when PW6 Dr.Sima Kaware has examined the victim and

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disclosed that she is pregnant. The exact date of incident is neither narrated by the victim nor her mother. As per the FIR, the alleged incident took place in July 2018. Whereas, the FIR was lodged on 20.3.2019. He submitted that even accepting that first time the informant came to know about the incident on 15.3.2019 and, thereafter, also there is 5 days delay which is not explained either by the victim or by the mother of the victim or by the prosecution and thus, there is inordinate delay in lodging the FIR and in absence of the evidence that the accused was capable of having sexual activities and chain of custody of samples is not established by the prosecution, the entire prosecution case fails and, therefore, the accused deserves to be acquitted.

40. In support of his contentions, learned counsel for the accused placed reliance on the decision in the case of **Thulia Kali vs. State of Tamil Nadu (supra)** wherein the importance of prompt lodging of the FIR is canvassed by the Hon'ble Apex court. It is held that, "..... Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained."

On the similar point, he has further placed reliance on the decision in the case of **Tridip Chakma Vs. State of Tripura** (supra) wherein the Tripura High Court held that, “the explanation for delay in lodging the FIR is that the accused-appellant promised her to marry therefore the FIR was not filed. In cases where the sole testimony of the prosecutrix is available, it is very dangerous to convict the accused, specially when the prosecutrix could venture to wait for 7 months for filing the FIR for rape.”

On the aspect of corroboration to the evidence of the victim, he placed reliance on the decision in the case of **Nirmal Premkumar and anr** (supra) wherein the Hon’ble Apex Court held that, “when considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version.”

It is further held in paragraph No.39 that, “however, an alleged offence of sexual harassment in a public place, as opposed to one committed within the confines of a room or a house, or even in a public place but away from the view of the public, stands on somewhat different premise. If any doubt arises in the Court's mind regarding the veracity of

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the victim's version, the Court may, at its discretion, seek corroboration from other witnesses who directly observed the incident or from other attending circumstances to unearth the truth.”

On the aspect of reliability of the DNA Reports, he placed reliance on the decision in the case of **Nivrutti Nagorao Hange vs. State of Maharashtra, reported in (2009)13 SCR 858.**

41. The submissions of learned counsel for the accused require to be examined in the light of the well settled law as well as the recorded evidence.

42. As already noted, the victim has categorically narrated about the act of the accused regarding the sexual assault. There is no dispute that the alleged incident resulted into pregnancy of the victim.

43. The children are the greatest gifts to humanity and sexual assault on children is the most heinous crime.

44. The sum and substance of the evidence of the victim on record shows that the victim of young age of 13 years was subjected for sexual intercourse and in the result she delivered a child. The DNA Reports disclose that the accused and the victim are biological parents of the child delivered by the victim. Though it was contended by learned counsel for the accused that due to previous enmity, on account of right of way from

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the agricultural field of the parents of the victim, he is implicated in the alleged incident, the said defence is not supported by any concrete material to show that the enmity was such a nature that the parents of the victim were having intention to implicate the accused falsely in the alleged incident. Though the victim and her mother were extensively cross examined on this aspect, except the admission that there was quarrel, on account of right of way, nothing is brought on record to show that it was the motive of the parents of the victim as well as the victim to implicate the accused in the alleged offence. On the contrary, the evidence of the victim supported by the scientific evidence sufficiently shows that the victim was subjected for penetrative sexual assault, which was resulted into her pregnancy and she has delivered a male child.

45. The sexual activities with young girls of immature age have a traumatic effect on them which persist throughout their lives and often destroy their whole personality. The victim of a sexual assault is not an accomplice, but she is a victim of lust of another person. She stands at a higher pedestal than that of an injured witness. Evidence of victim of rape case is required to receive same weight as is attached to evidence of an injured witness.

46. It is well settled that corroboration to evidence of victim is not required. It is also well settled that when the evidence of the victim

inspires confidence, no further corroboration is required to corroborate her case. Even, in the case of **Nirmal Premkumar and anr** (supra) also, as relied upon by learned counsel for the accused, the Hon'ble Apex Court held that, "if any doubt arises in the Court's mind regarding the veracity of the victim's version, the Court may, at its discretion, seek corroboration from other witnesses who directly observed the incident or from other attending circumstances to unearth the truth."

47. In the present case, the alleged sexual assault on the victim girl by the accused, who is her cousin grandfather, took place in a cattle shed. The disclosure by the victim to her mother and the evidence of the mother of the victim corroborate her narration by the victim. Therefore, as far as the evidence of the victim is concerned, no contrary evidence is brought on record to show that there was any motive on the part of the victim and her parents to implicate the accused in the alleged offence. There is nothing on record to doubt the version of the victim. The evidence of the victim reveals that she is granddaughter of the accused and was subjected for sexual assault by him at a very tender age. She has not disclosed the said fact to her mother that she was assaulted sexually as she was threatened by the accused. There was no disclosure by the victim to her sister due to fear of her parents. Thus, the explanation given by the victim for non-disclosure of the incident appears to be natural.

48. As already observed, the defence of the accused is of total denial and of false implication on account of a dispute between him and the parents of the victim. As already observed, it is not substantiated by any material. Mere previous enmity without any substantial material would not be sufficient to discard evidence of victim and especially in the light of fact that it was corroborated by medical evidence.

49. The evidence of PW6 Dr.Sima Kaware shows that on examination, she found the victim is pregnant and referred her to the Primary Health Centre. PW5 Dr.Milindkumar Bhute examined the victim and he has also confirmed that the victim is pregnant and immediately, after her examination, the victim has delivered a male child. Thus, the evidence of PW5 Dr.Milindkumar Bhute and PW6 Dr.Sima Kaware corroborates the evidence of the victim. The oral evidence of PW6 Dr.Sima Kaware substantiated by the extract of the register shows that the victim was examined by her. PW5 Dr.Milindkumar Bhute also testified that on 20.3.2019 the victim was referred to him and on the same day, she delivered a male child. The requisition letters, medical certificates, casualty medical papers Exhs.46, 49, and 50 substantiate the evidence of the victim as well as the Medical Officers. PW5 Dr.Milindkumar Bhute, further examined the accused on 24.3.2019 and certified that he is capable of performing sexual activities.

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50. The evidence of the victim is further corroborated by PW9 Dr.Narendradas Kulkurkar, who has obtained samples of the victim, her newly born child, and the accused on 22.3.2019 on requisition of the police. He has also filled identification forms of the victim, her newly born child, and the accused.

51. The evidence of PW8 Amulya Pande also shows that on 22.3.2019, her office has received requisition letter and on the said requisition letter, three DNA Kits were provided to Lakhani Police through Police Constable PW10 Sanjay Arkase. The same DNA Kits were again received by her office on 22.3.2019 by which the identification forms and the blood samples for DNA examination were forwarded to her for analysis along with identification forms. On the same day, she has started the analysis and concluded that the victim and the accused are biological parents of the child delivered by the victim.

The said evidence is further corroborated by Police Constable PW10 Sanjay Arkase who testified that he was deputed on duty to bring DNA Kits. Accordingly, on 22.3.2019, he went to the Forensic Science Laboratory to bring DNA Kits. On the same day, he brought 3 DNA Kits and handed over the same to the Investigating Officer. After some time, he got 3 three sealed DNA Samples and three identification forms, which he has handed over to the Forensic Science Laboratory on the same day.

52. The oral evidence of these witnesses is further corroborated by the general diary entries. The general diary entry dated 20.3.2019 taken at 21:53 shows that the victim was admitted in the hospital and she delivered a child. Though Police Constable PW10 Sanjay Arkase has admitted that he has not received duty pass for bringing DNA Kits, Exh.101 general diary entry bearing No.3 dated 22.3.2019 taken at 5:57 am shows that Police Constable PW10 Sanjay Arkase having Bakkal No.587 was forwarded to Chemical Analyzer, Nagpur for bringing the DNA Kits. Exh.102, general diary entry bearing No.23 dated 22.3.2019 shows that the said police constable returned to Lakhani from Nagpur along with DNA Kits. Exh.103, the general diary entry bearing No.21 dated 22.3.2019 taken at 12:42 pm shows that the accused was forwarded for obtaining his DNA Samples to the Government Hospital. Exh.104, general diary entry No.24 shows that on 22.3.2019 at about 14:19, the DNA Samples were handed over to Police Constable PW10 Sanjay Arkase to hand over the same to Chemical Analyzer's Office at Nagpur. Exh.105, general diary entry bearing No.27 dated 22.3.2019 taken at 14:28 shows that Police Constable PW10 Sanjay Arkase proceeded to hand over the DNA Samples to the Chemical Analyzer's Office, Nagpur and Exh.106 general diary entry bearing No.38 dated 22.3.2019 taken at 19:09 discloses that Police Constable PW10 Sanjay Arkase has returned to the police station by handing over the said DNA Samples and taken the entry.

This evidence is further corroborated by the evidence of PW8 Amulya Pande who specifically stated that the DNA Samples were received on 22.3.2019 and acknowledgment was issued by her office, which is at Exh.69 disclosing the case file number, date of receipt of case 22.3.2019, name of the investigating officer, reference number, crime number, penal sections under which the offence was registered, name of the police station, name of carrier, and the name of the person who received the said parcel.

53. Thus, the entire chain shows that the requisition to provide DNA Kits to obtain samples of the victim, newly born child and the accused was issued on 22.3.2019. The DNA Kits were handed over to Police Constable PW10 Sanjay Arkase on 22.3.2019. After receipt of the DNA Kits, on 22.3.2019 itself, the samples were collected by Medical Officer PW9 Dr.Narendradas Kulkurkar. The identification forms and samples were handed over by the Medical Officer on 22.3.2019 at about 1:30 pm. The blood samples of the victim, newly born child of the victim, and the accused were handed over to Police Constable PW10 Sanjay Arkase on 22.3.2019 itself at about 14:19 pm. Police Constable PW10 Sanjay Arkase proceeded to hand over the samples at about 14:28 pm and the said Police Constable PW10 Sanjay Arkase returned by handing over the said samples to the police station at 19:09.

54. Thus, as far as custody of blood samples and forwarding the same to the Chemical Analyzer's Office are concerned, though it is challenged by learned counsel for the defence, the entire evidence, which is oral as well as documentary, establishes chain as to custody of the said samples. It reveals that the samples were never kept at the police station. On 22.3.2019 itself, the same were collected and forwarded on the same day.

55. The evidence of PW8 Amulya Pande discloses that her office has received the said samples on 22.3.2019 itself. Moreover, the DNA Report Exh.6 also shows that the analysis started on 22.3.2019 and completed on 19.8.2019. Despite cross examination of PW8 Amulya Pande and other witnesses, the said chain of custody was not shattered and there was no evidence on record to show that there was any chance of tampering with the said blood samples.

56. The Hon'ble Apex Court in the case of **Kattavellai @ Devakar vs. The State Of Tamil Nadu (supra)** has issued guidelines as far as collection of DNA Samples are concerned. The Hon'ble Apex Court held that, "The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The document recording the collection shall have the

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signatures and designations of the medical professional present, the investigating officer and independent witnesses. The absence of medical witnesses shall not be taken to be compromising to the collection of evidence. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the police station or hospital for forensic laboratory not later than 48 hours. If in any case, 48 hours time-line cannot be complied with, reason for delay shall be duly recorded in the case diary. DNA Samples are stored pending trial appeal etc.. No package shall be opened, altered or resealed without express authorisation of the Trial Court. Thus, from the point of collection to the logical end i.e. conviction or acquittal of the accused, the chain of custody register shall necessarily be annexed as a part of trial court.”

57. In view of the above said guidelines, in the present case, the entire requirements narrated by the Hon’ble Apex Court in the aforesaid judgment are complied with and the chain of custody is established by the prosecution.

58. The DNA evidence Exh.6 and the evidence of PW8 Amulya Pande show that she has analyzed the said samples by using PCR Technique and her interpretation disclosed in Exh.6 shows that (1) for all 15 different genetic systems and analyzed with PCR, putative father matched the obligate paternal alleles present in baby of the victim (the

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name of the victim is mentioned), at all 15 STR Loci and (2) similarly for all 15 different genetic systems analyzed with PCR, the victim's name matched the obligate maternal alleles present baby of the victim at all 15 STR Loci; and opined that the victim and the accused are concluded to be biological parents of baby delivered by the victim.

59. The DNA evidence is now a predominant forensic technique for criminals when biological tissues are left at scene of crime. DNA testing on samples such as saliva, skin, blood, hair or semen not only helps to convict the accused but also serves to exonerate. The sophisticated technology makes it possible to obtain conclusive results. The DNA is the genetic blueprint for life and is virtually contained in every cell. The DNA Testing can make a virtual positive identification when two samples are matched. Thus, the DNA Report is helpful inculpate as well as exculpate the accused.

60. Here, in the present case, the prosecution has established the chain of sampling and collection etc.. Though the accused has taken a defence of total denial, this scientific evidence is sufficient to show his involvement in the alleged offence.

61. Learned counsel for the accused vehemently submitted that the chain of custody is not established. However, this contention is not sustainable in view of the evidence discussed above. He has also placed reliance on the decision in the case of **Nivrutti Nagorao Hange** (supra).

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Having gone through the said decision and considered reasoning recorded by the court in the said case, it reveals that there was distinction in the status of “STR Locu/Loci” and, therefore, the court came to conclusion that the possibility of samples getting contaminated cannot be ruled out. However, in the present case, custody of the samples is very well established by the prosecution.

62. On appreciation of the evidence, it reveals that 13 years old girl was subjected for sexual assault by the accused who is her cousin grandfather. Learned counsel for the accused also vehemently submitted that there is a delay in lodging the FIR. However, considering fact that the delay is properly explained in the present case. It is well settled that when delay is properly explained, it is not fatal to the prosecution.

63. As far as the delay is concerned, it is now settled law that the delay is not fatal to the prosecution when it is properly explained.

64. The evidence of the mother of the victim; the victim, and PW6 Dr.Sima Kaware shows that after hearing that the victim is pregnant, the parents of the victim got scared. PW6 Dr.Sima Kaware specifically stated that they became unconscious when she disclosed the fact of pregnancy of the victim to them. The mother of the victim has also stated that they were having an apprehension of defamation due to pregnancy of the victim and, therefore, they have not immediately approached the police station.

65. It is observed by the Hon'ble Apex Court in the case of **State of Himachal Pradesh vs. Gian Chand, reported in (2001)6 SCC 71** that, "delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case."

66. In the case of **State of Punjab vs. Gurmit Singh and ors, reported in (1996)2 SCC 384** wherein also it has been held that, "the grounds on which the trial court disbelieved the version of the prosecutrix are not at all sound. The findings recorded by the trial court rebel against realism and lose their sanctity and credibility. The court lost sight of the fact that the prosecutrix is a village girl. She was a student of 9<sup>th</sup> Class."

It has further been held that, "the trial court fell in error for discrediting the testimony of the prosecutrix on that account. If there was some delay, the same has not only been properly explained by the

prosecution but in the facts and circumstances of the case was also natural.”

67. If facts and circumstances of the present case and sequence of events are taken into consideration, it shows that it has properly explained the delay. It is common knowledge that the incident like rape, more so when the perpetrator of the crime happens to be member of family or related therewith, which involves honour of the family and, therefore, there is reluctance on the part of the victim’s family to report the matter to the police and carry it to the court and, therefore, there is delay in the present case. It is an obvious on the part of the parents of the victim that they were reluctant to lodge the report due to apprehension of defamation or stigma to her family as well as to the victim. Therefore, merely because there is a delay in lodging the FIR that by itself is not sufficient to discard the evidence of the victim.

68. The children are the greatest gifts to humanity. Sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children which is free from abuse and exploitation. Article 15(3) of the Constitution has provided the State with the power to make special

provisions for women and children. Article 21A of the Constitution mandates that every child in India shall be entitled to free and compulsory education upto the age of 14 years. The word "life" in the context of Article 21 of the Constitution has been found to include "education" and accordingly this Court has implied that "right to education" is in fact a fundamental right. Article 23 of the Constitution prohibits traffic in human beings, beggars and other similar forms of forced labour and exploitation.

69. The Juvenile Justice Act was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters.

70. The POCSO Act is enacted with a specific object that the law should operate in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage to ensure healthy physical, emotional, intellectual, and social development of the child. The object is also that the person of culpable state of mind should be punished for harassing the child and keeping the society child-friendly.

71. From the evidence on record, it reveals that the accused who is cousin grandfather of the victim subjected her for forceful sexual assault at her tender age. The evidence further discloses that the victim has

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undergone mental trauma. She could not disclose the incident to anybody as her cousin grandfather was involved and she was threatened by him. The evidence shows that the trust which the child carries about his/her grandfather itself is betrayed by the accused. The accused who was protector has ruined the physic as well as state of mind of the victim who is his own granddaughter and destroyed her future life. He degraded the very soul of helpless girl.

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

73. The entire case revolves around the evidence of the victim and and the DNA evidence. As already observed, the evidence of the victim is corroborated not only by the scientific evidence but also by the medical evidence.

74. It is well settled that a man can speak lie but not circumstances. The circumstances like the victim has carried the pregnancy and on collection of the samples and analyzing the same, it reveals that the victim and the accused are biological parents of the child

delivered by the victim. As already observed, the DNA evidence is now a predominant forensic techniques for identifying criminals are helpful.

75. After appreciating all the facts and the evidence on record, the prosecution has established involvement of the accused in the said crime. Admittedly, the victim has a fundamental and human rights to live free from any kind of fear, threat, danger, and security at the hands of the members of the society. The trial court, after appreciating the evidence, has rightly come to conclusion that the offence was established against the accused and considering the nature of the offence, convicted the accused by sentencing him for life imprisonment i.e. till remainder of his life.

76. Admittedly, when an offence was proved against accused, he is to be sentenced and while sentencing, the doctrine of proportionality and imposition of suitable and deterrent punishment that commensurate(s) with the gravity of offence is required. While awarding the punishment, balance between two sides and count upon twin test of (i) deterrent effect or (ii) complete reformation for integration of the offender in civil society requires to be strike. The criminal law had viewed on a dimensional play when the courts were required to adjudicate between the accused and the State. The victim de facto sufferer of a crime had no say in the adjudicatory process and was

made to sit outside the Court as a mute spectator. The cries of the victim should not go unheard.

77. Considering the above principles and by applying the same to the facts of the present case, it reveals that the victim was subjected for sexual assault by the accused who is her cousin grandfather in a very tender age. The accused being in a position of trust and dominance over the victim took undue advantage of these circumstances and committed the heinous crime to fulfill his lust.

78. Section 5 of the POCSO Act deals with aggravated penetrative sexual assault. Sub clause (n) of the said Section speaks that whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child is said to commit aggravated penetrative sexual assault.

The punishment for aggravated penetrative sexual assault given under Section 6 of the POCSO Act, which reads as under:

“6. Punishment for aggravated penetrative sexual assault. - Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”

79. Thus, minimum punishment provided is imprisonment which shall not be less than 20 years.

80. The POCSO Act was enacted to provide more stringent punishment for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8, and 10 of the POCSO Act for various categories of sexual assaults on children.

81. The Hon'ble Apex Court in **State of U.P vs. Sonu Kushwaha, reported in AIR 2023 SC 3210** has observed that Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology "shall not be less than...", the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the

respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the victim child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim.”

82. In the present case, there is no dispute that the age of the victim was less than 14 years at the time of the incident. The trial court has awarded maximum sentence i.e. imprisonment for remainder of his natural life. Admittedly, the trial court has not assigned any reason why the maximum punishment is imposed. Under Section 6 of the POCSO Act, minimum sentence provided is imprisonment upto 20 years. The courts have been given discretion to award punishment of sentence of minimum 20 years or imprisonment for life. Where by using discretion, the punishment awarded is life, the same shall be imprisonment for remainder of person’s natural life. Hence, there is no mandate of law that under this provision, the convict must be awarded life imprisonment.

83. The principle of proportion between crime and punishment is a principle of just decision that serves as the foundation of every criminal sentence, that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. The criminal law adheres in general to the

principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each cases. The theory behind awarding the sentence is that wrong doer is to be deterred from committing a similar crime. Sometimes, the sentence is awarded looking to the desirability of keeping the accused out of circulation i.e. the preventive theory and sometimes the reformatory theory or the retributive theory is to be applied.

84. Thus, the measure of punishment in a given case must depend upon the nature of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering position of appropriate punishment. Showing undue sympathy and imposing inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the courts do not protect the victim, the victim will lose the faith in the judicial system and, therefore, awarding lesser punishment when the offence is proved, would affront to the society. Therefore, it is the duty of the every court to

award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed and the circumstances of the offender. The object of sentencing to see that the crime does not go unpunished and the victim of the crime as also the society have the satisfaction that the justice has been done to it.

85. The penal code prescribes the maximum punishment for “rape” as imprisonment for ten years which may extend to life. Thus, legislative’s intent is that in extreme cases of “rape” the sentence to be imposed should be of imprisonment for life. Obviously, in cases less than the extreme, the sentence should be less. What would be instances of extreme cases of “rape”; first and foremost would be the acts of brutality which may accompany a “rape”.

Second would be the “trauma” inflicted other than the “trauma” of “rape”, e.g. where the “rape victim” is beaten and threatened with death etc...

Third would be, whether the offender is in a dominating position and breaches the confidence of the victim, e.g. in near relation of the victim being the offender.

86. In this background, considering the circumstances and the age of the accused, we feel that ends of justice would be served by reducing the

(54)

sentence of life imprisonment for remainder of life to a term of 20 years. Therefore, we allow the appeal partly to the extent of modification of sentence and, therefore, we pass following order:

**ORDER**

- (1) The criminal appeal is **partly allowed**.
- (2) The judgment and order dated 30.9.2020 passed by learned Special Judge (Under POCSO Act), Bhandara in Special Criminal Case (Child) No.28/2019 is hereby modified.
- (3) The accused is convicted for offence punishable under Section 6 of the POCSO Act and sentenced to suffer rigorous imprisonment for 20 years and to pay fine Rs.10,000/-, in default, to suffer further simple imprisonment for one year.
- (4) In view of Section 42 of the POCSO Act, no separate punishment is required for the offence under Section 376 of the IPC.
- (5) The accused is entitled for set-off under Section 428 of the CrPC.

Appeal stands **disposed of**.

(RAJ D. WAKODE, J)

(URMILA JOSHI-PHALKE, J)

*sarkate/BrWankhede*