



Sonam/Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL APPEAL NO.13 OF 2018**

Martin Soares,  
75 years of age,  
Resident of H. No. 182,  
Ranoi, Quitla,  
Aldona, Bardez,  
Goa-403508.  
Represented by his next friend  
And wife  
Mrs. Regina Celina Ophelia Soares,  
65 years of age,  
W/o Martin Soares,  
H. No. 182,  
Resident of Ranoi, Quitla,  
Aldona, Bardez,  
Goa-403508.

**... APPELLANT**

**V/S**

STATE  
Through Officer-in-Charge,  
Mapusa Police Station,  
Mapusa-Goa.

**... RESPONDENT**

Ms. Annelise Fernandes, Advocate for the Appellant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the  
Respondent-State.

**CORAM : SHREERAM V. SHIRSAT, J.**

**DATE : 8<sup>th</sup> JANUARY, 2026.**

**JUDGMENT:**

1. The present Appeal has been filed challenging the impugned Judgement and Order dated 15.02.2018 passed by the Children's Court for the State of Goa, at Panaji in Special Case No. 50/2012, by which the Appellant stands convicted for the offence punishable under Sections 341, 354, 375(b) and 376(2)(i) of Indian Penal Code, 1860 (IPC) read with Section 2(y)(i) and (ii) punishable under Section 8(2) of the Goa Children's Act, 2003. The Appellant has been sentenced to undergo the following:

- i. Simple imprisonment for one month and fine of Rs. 500/-, in default to undergo simple imprisonment for 5 days for offence punishable under Section 341 of IPC.
- ii. Simple imprisonment for three years and fine of Rs. 5,000/-, in default to undergo simple imprisonment for 1 month for offence punishable under Section 354 of IPC.
- iii. Rigorous imprisonment for ten years and fine of Rs. 2,00,000/-, in default, to undergo simple imprisonment for 2 years for the offence punishable

under Section 376(2)(i) of IPC r/w Section 8(2) of the Goa Children's Act.

**2. BRIEF FACTS OF THE PROSECUTIONS CASE**

- a. It is the case of the prosecution that the complaint has been filed by the mother of the victim (name withheld) and she has stated in her complaint dated 15 May 2012, that on 13 May 2012, she along with her husband, Christopher had been to Mapusa, for a prayer meeting where complainant and her husband met their family friend, Mr. Lenin Nunes and his wife, Mrs Merlin Nunes. It is further the case that they both informed her in the presence of her husband that their daughter (victim) who had come to their residence on 5 May 2012, after swimming at Mapusa had informed about sexual assault on her. They further informed that victim had told them that she had gone to the house of one Martin Soares(the Appellant) in the last month and Martin had forcibly taken her inside his house through back door and then taken her to

the bathroom and forcibly undressed her and made her naked and then forcibly inserted his hand finger in her private part, kissed her on her lips and on her private part. The victim had further stated that she put on her clothes and came running out from the house and at time daughter of Martin was sitting on the computer and when she noticed victim running out of the house, the daughter asked her friend to sit with her, but she got frightened and ran away from the house. It is further the case of the prosecution that when the complainant returned back to her residence and during night hours when she was present in the house with other family members, the victim was asked in confidence about the fact narrated by her to Lenin and Merlin. Upon this, she got scared and when the complainant gave her confidence, the victim informed her that one day in the last month before 20th April in the evening at about 17.30 hours when she was present in the house, she had visited the

neighbouring uncle's house, uncle Martin, who was watering the plants in front garden of his house and his daughter was sitting in front and on seeing her alone, Martin forcibly caught her hand and took her inside the house to the bathroom through rare door and forcefully undressed, her, made her complete naked inside the bathroom, and then put on the shower, making her wet, and then forcefully kissed her on her lips and private part and inserted his finger in the private part, which caused her very bad pain. It is further the case that at that time she tried to kick him. After that, Uncle Martin let her go and that she wore her clothes and ran away from inside house of Martin. At that time, his daughter Luna was sitting in front area of the house and on seeing her running from the house, she asked her to sit with her, but she ran away as she was very frightened and was crying. It is further the case that she was afraid to tell her mother and she did not disclose the incident to

her and that she was having terrible pain in her private part.

b. It is further the case that on 14 May 2012, in the morning hours, she again took her daughter in confidence and asked her to confirm and gave her moral support and then the victim told the same facts about the incident. It is further the case that she called Child Helpline for Help and on 15th May, 2012 upon visit of members of Child Line, she along with members of Child Line and her husband gave confidence to the victim and she narrated the incident to the members of Child Lines in her presence and in the presence of her husband in the house. Thereafter, the complaint came to be lodged.

3. Thereafter investigation was conducted and chargesheet was filed on 16.08.2012. The Children's Court for the State of Goa, at Panaji in Special Case No. 50/2012 framed the charge against the Appellant/Accused for the offence punishable under Section 341, 354, 375(b) and punishable under Section 376(2)(i) of IPC r/w Section 2(y)(i)

and (ii) punishable under Section 8(2) of the Goa Children’s Act to which the Appellant pleaded not guilty and claimed to be tried.

**WITNESSES EXAMINED BY THE PROSECUTION**

4. The prosecution has examined 10 witnesses in support of its case.

PW1	XXX Victim
PW2	Mother of the victim
PW3	XXX (friend of the victim)
PW4	Merlyn Nunes (mother of PW3)
PW5	Nelson Figueiredo (Panch witness to the Disclosure Panchanama)
PW6	Savio Figueiredo (Panch witness to Attachment Panchanama)
PW7	Dr. Chetan Karekar (Doctor who examined the Appellant)
PW8	Dr. Sunil Chimbolkar (Doctor who examined the victim)
PW9	Satish Padwalkar (Investigating Officer)
PW10	Reina Fernandes (Judicial Magistrate First Class who recorded the statement of the

	victim under Section 164 of Cr.P.C.)
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5. Further, statement of the Appellant/Accused under Section 313 of Cr.P.C. was recorded wherein the Appellant denied all the allegations levelled against him and stated that he has been falsely implicated in the present case.

6. The learned Children's Court considering the evidence on record and after hearing the respective parties, convicted the Appellant/Accused under Sections 341, 354, 375(b) and 376(2)(i) of IPC r/w Section 2(y)(i) and (ii) punishable under Section 8(2) of the Goa Children's Act, 2003.

7. Aggrieved by the order of conviction passed by the Children's Court, the present appeal has been filed on various grounds. The State has contested the appeal.

8. The following points arise for determination in the Appeal:

- i. Whether the learned Children's Court, vide its judgment dated 15.02.2018, has erred in its judgment convicting the Appellant for the above stated offences?

- ii. Whether the charges levelled against the Appellant can be said to be proved by the evidence on record?
  - iii. Whether there are any mitigating circumstances to be taken into consideration with respect to the age of the Appellant?
9. Heard the Ld. Counsel Ms Annelise Fernandes, for the Appellant and Ld. Addl. Public Prosecutor Mr Pravin Faldessai, for the Respondent/State.
10. The pivotal witnesses, apart from other witnesses, whose depositions would be relevant to decide the present Appeal are: PW1 – i.e. the victim herself, PW3 – the friend of PW1, PW4 – son of PW 3, PW2 – the mother of victim, PW8 – Doctor who examined the victim, PW9 – the Investigating Officer and PW10 – the JMFC who recorded the statement of PW1 under Section 164 of Cr.P.C.

**SUBMISSIONS OF THE LD COUNSEL FOR THE APPELLANT**

11. It is the submission of the Ld. Counsel for the Appellant that the prosecution has named the daughter of the Appellant as a witness i.e (CW No. 10) in the chargesheet,

but has failed to examine her. It is the submission that the testimony of the daughter of the Appellant would have been of utmost importance to the case, as the victim has herself mentioned that the daughter of the victim was present in the house when the incident occurred and saw her when she left the bathroom. Further, it is submitted that although the daughter of the Appellant was present, but PW<sub>1</sub> did not inform her regarding the incident. It is further argued that the Appellant has been falsely implicated in the case and he is innocent. It is also argued that the medical evidence rules out that there was any sexual assault on the victim and therefore there is nothing to connect the Appellant to alleged offence. It is argued that there is delay in lodging FIR and therefore there are chances of false implication. It is further submitted that the reasoning given by the prosecution for the delay in registration of FIR, does not hold as a good ground as the testimonies of PW 1, PW 2, PW 3 and PW 4 are full of discrepancies. Further it is argued that there are inconsistencies and discrepancies in the evidence of witnesses and there is no corroboration to the evidence of PW<sub>1</sub>. The Learned Counsel for the appellant has submitted

that the offence under Section 341 of IPC is not made out, as the victim girl voluntarily came to the house of the Appellant. It is further submitted that even the ingredients of offence under Section 354 are not made out for using criminal force with an intention to outrage modesty and so also the ingredients of the Section 376 of the IPC are not made out. The Learned Counsel has further submitted the case of the prosecution with respect to the date on which the victim informed PW 3 is also not certain and that PW 3 informing his mother PW 4 smacks of malafide intentions as there is unexplained delay of the circumstantial evidence. The Learned Counsel for the Appellant has further argued that adverse inference needs to be drawn against the prosecution as the material witness has not been examined. It is further submitted that as per the statement of the victim, she had revealed the incident to her cousins who are also not examined by the prosecution. She has further submitted that as per the statement of the victim, the Appellant had caught hold of the victim hands and therefore it would be natural for a child to shout or raise alarm, however, as the victim has not raised any alarm, the case of the prosecution is doubtful. It is

therefore submitted that the Appellant deserves to be given benefit of doubt considering the age of the Appellant.

**SUBMISSIONS OF THE LD ADDL. PUBLIC PROSECUTOR**

12. Per Contra, the Ld. Addl. Public Prosecutor has argued that the offence is very serious and there is no question of falsely implicating the Appellant as there is sufficient material brought on record against the Appellant. He further submitted that testimony of PW1 itself is believable and sufficient to confirm the conviction. He further submitted that absence of medical evidence is not fatal and sole testimony of PW1 is sufficient to confirm the conviction. It is further submitted that although there are omissions but those are not major omissions which will go to the root of the matter or in any manner make the evidence of the victim unbelievable or untrustworthy. It is also argued that age of the Appellant should not be considered as a mitigating factor for either acquitting or reducing the sentence of the Appellant and no interference is warranted in the order passed by the trial Court which has taken the entire evidence into consideration and has convicted the Appellant. The Ld. Addl. Public Prosecutor therefore prayed that the conviction

be confirmed.

13. Considering the arguments raised, it will therefore be necessary to suitably analyse the deposition /evidence of the PW1, who is the victim and other witnesses so that proper conclusion is arrived at whether any credence can be placed in the evidence of PW1 and the other witnesses or that the Appellant has been falsely implicated.

#### **ANALYSIS OF THE EVIDENCE**

14. PW1 in her deposition has narrated that she was studying in the 4<sup>th</sup> standard in Eden Primary School at Mapusa and she knows the Appellant who is her neighbour. She has deposed that in the year 2012, one month after Easter, she had gone to meet the daughter of the Appellant in the evening and as the door of her house was closed, she went to the back door and called out to Luana, the daughter of the Appellant, but she did not answer. PW1 further deposed that at that time the Appellant was watering the plants in his garden and the Appellant told her that he will sprinkle water on her and asked her to go and bring a towel. She was forced to bring towel so she went home and brought

towel which was pink in colour with a girl on it. She further deposed that when she came with the towel, the Appellant did not sprinkle water on her but he dragged her into the bathroom from the back door. She further deposed that the Appellant removed all her clothes and kept the clothes on a rack in the bathroom. At that time, she tried to kick him, but he was holding her hands firmly. He then put his finger inside her private part and kissed on her private part and her lips. She further deposed that she had pain in her private part due to the said act of the Appellant. She has further deposed that the Appellant asked her to stay for some time, but she refused and went home. She further deposed that her mother was watering the garden. She did not tell her mother anything as she was scared that she will shout at her. She further deposed that she sat outside and started crying. She had bath and after having dinner she went to sleep. She had pain in her private part which lasted for two days. PW1 has further deposed that she informed PW3 and then to PW4 about the incident that has taken place. She further deposed that she had narrated the incident to PW3 as if it had happened to one of her friends. However, while narrating

incident to PW4 she has deposed that such an incident has happened to her. She has further deposed that she informed PW3 and PW4 about the incident after two to three days of the incident. Further she has stated that after she had narrated the incident to PW4, the PW4 called her mother, but as her mother was busy, she did not come. She further deposed that on next Sunday PW4 met her mother at the prayer meeting and informed her about the incident. Her mother made inquiry with her and then informed the police. She further deposed that she had also informed about the incident to her cousins Rosel and Russel, but she does not remember the date on which she had informed about the incident to them. She has also identified her signature on her statement recorded under Section 164 Cr.P.C. She further stated that she met Luana who is the daughter of the Appellant after the incident, but she did not tell anything to Luana about the incident. PW1 has even identified her clothes which she had worn on that relevant day and the towel which she had taken to the house of the Appellant.

15. The said deposition of the victim is reproduced below:

*“Thereafter, he put on the shower. When he removed my clothes, I tried to kick him. But he was holding my hands firmly. Martin Soares then put his finger inside my private part and rubbed. Then he kissed on my private parts and on my lips. I experience pain in my private part, due the acts of Martin Soares.*

*Martin Soares told me to stay for some more time, but I refused. I put on my clothes and went home. My mother was watering the garden. I did not tell my mother. I sat outside and started crying. I did not tell my mother, as I was scared that she will shout at me.*

*I went in to the bathroom, had a bath and after having my dinner, I went to sleep. The pain in my private part lasted for two days.”*

16. PW1 was cross examined by the learned Counsel for the Appellant. However, after going through the cross examination, it can be seen that nothing has been brought on record by the Appellant to disbelieve the evidence of PW1. The evidence has not been shaken in the cross examination. PW1 has narrated the incident in apposite manner without leaving any scope to doubt her testimony. Although there are few omissions, for instance omission with respect to the Appellant forcibly telling her to go and get the towel, which does not find place in her statements recorded under Sections 161 and 164 of Cr. P.C, likewise PW1 informed her

aunt (CW8) at the swimming pool has not been recorded in her statement recorded under Sections 161 and 164 of Cr.P.C. Further, there are two other omissions, viz. that after the incident, PW1 met Luana as she was in the hall, but she did not tell her anything is not recorded in her statements recorded under Sections 161 and 164 of Cr.P.C. and lastly the omission that she had told about this incident to her cousins, does not find place in her statements recorded under Sections 161 and 164 of Cr.P.C. Even if it is considered that these are omissions which have come on record in the cross examination, the same are not in any manner causing any dent to the testimony of PW1. Even if these omissions are considered, it does not in any manner effect the deposition about actual happening of the incident, which PW1 has narrated. Needless to mention that the omission/s should be such so as to create a serious doubt about the truthfulness or credit worthiness of a witness which is not the case here. The evidence of PW 1 does not seem to be tutored by anyone to falsely implicate the Appellant. Further PW1 has even identified her clothes which she had worn on that relevant day and the towel which she had taken to the house of the

Appellant, however she he has not been cross examined on that particular aspect as well. Therefore, the deposition of PW1 inspires total confidence and there is no reason for PW1 to falsely implicate the present Appellant.

17. The evidence of PW2, who is the mother of PW1 has also supported the prosecution's case. PW2 has stated that she knows the Appellant who is her neighbour. She has deposed that on 13.05.2012, she and her husband had been to Asro, Mapusa, for attending a prayer meeting on one Sunday where they met their friends PW4 (CW8) and CW9 and at that time it was informed to her that PW1 was sexually molested by the Appellant. She has further deposed that PW1 had gone to stay with PW4 and CW9 in the month of May and during that visit, she had informed their son (PW3) about the incident. She has further deposed that PW1 had told PW4 (mother of PW3) about the incident as if it has happened to someone else. Further PW2 has deposed that PW1 had informed PW3 about the incident and PW3 had informed his mother (PW4) and thereafter PW4 had inquiry with PW1 who disclosed that the incident has taken place with her. PW2 has further deposed that PW1 informed PW4

that the Appellant had molested her in his house between 08.04.2012 to 20.04.2012. She has further narrated that after coming back home, she took PW1 in confidence and made inquiry with her and PW1 then narrated the incident to her that she had gone to the house of the Appellant and the Appellant was watering plants. She further deposed that the Appellant told PW1 that he will sprinkle water on her and asked her to get towel, so PW1 came home and took the towel and went back to the house of the Appellant. Further she informed that the Appellant dragged her to the backdoor and took her to the bathroom. During her deposition, as recorded, PW2 became quite emotional and she was in tears and unable to speak. Hence, she was asked not to disclose the incident narrated to her by PW1. She has further deposed that she was shocked to hear about the incident and once again inquired with PW1 about the incident and then called Childline, who after talking to PW1 lodged the complaint at Mapusa Police Station. She has identified her signature on the complaint, which is marked Exh. C-13. She has further deposed that she has handed over the clothes of the victim to the police on 15.05.2012. The clothes were washed prior to

that. The clothes consisted of a pink towel with blue border and pink T-shirt. She has identified the clothes in the Court when it was shown to her. PW2 has also produced the Birth Certificate of PW1 which is marked as Exh. C-17. No objection was raised by the Ld. Counsel for the Appellant and the age is also not disputed. The said witness was cross examined at length by the Ld. Counsel for the Appellant. However, nothing adverse came to be elicited in the cross examination. The thrust of the cross examination was about the time period when PW1 was staying with PW4. However, nothing has been brought on record to disbelieve the testimony of the present witness.

18. Upon analysing the evidence of PW3, who is a friend of PW1, it can be seen that PW3 was studying in the same school and they were family friends. He has deposed that he along with his family had gone for swimming at Peddem swimming pool in the evening and PW1 and her parents had also come to swimming pool. PW3 has further deposed that from the swimming pool, they all went to his house and at that time PW1 called him to the bedroom and told him that one man had taken off the underpants of one of her friends

and had kissed her down (private part). It is further deposed that PW3 told his mother about the said incident. In the cross examination what was being tried to be brought on record was that the parents of PW1 were also present at his place at the time when PW1 told him about the incident. The submissions of the Ld. Counsel for the Appellant were that PW2 has nowhere stated in her deposition that PW2 and her husband had visited the house of PW3. PW3 has further deposed that they all had dinner together and parents of PW1 proceeded back home after having dinner. No doubt, there is discrepancy in the evidence of PW2 and PW3 to the extent that PW2 has not narrated that they have been to the house of PW3. However, the said discrepancy cannot be considered to be major or material discrepancy as PW3 does not say that PW2 was informed about the incident on that day. PW2 had stated that she was informed on 13.05.2012 by the mother of PW3 when they had gone for prayer meeting at Mapusa. Even if these minor discrepancies are there, it does not in any manner cause any dent to the prosecution case. It was tried to be brought on record in the cross examination that PW1 had stated that the incident has taken place with one of

her friends, thereby suggesting that the act was not committed on her. However, said witness PW3 has in categorical terms in his deposition had deposed that PW1 narrated the incident to him initially when she stated that the said incident had happened with her friend and this was informed to PW4 who is mother of PW3.

19. Upon analysis of evidence of PW4, it can be seen that she is the mother of PW3 and she has deposed that her family had gone for swimming at Peddem swimming pool, family of the victim had also come to the swimming pool. She further deposed that PW1 had told PW3 that one of her friends was molested and was taken to the bathroom by one man and was kissed on her private part. This was informed by PW3 (son of PW4) to her after which she took PW1 in confidence and while talking to her PW1 told that the incident had happened to her. PW1 had told her that incident had happened in the house of her neighbour. PW4 further deposed that she spoke to her husband and informed the parents of the victim about the incident narrated by PW1 when they had met the parents of PW1 after a week at Asro Damade, where they usually meet for prayers. Even if the

cross examination is considered, no doubt that there is minor discrepancy as to, who was present at the house of PW4 as PW3 has stated that PW4 and family of PW2 had come for dinner. Even if this discrepancy is taken into consideration, it does not in any way demolish the deposition of PW4 to the extent that PW1 had narrated the incident to her. As far as that aspect is concerned, PW4 has then categorically stated that PW1 had told her about the incident and even named the Appellant. There is no cross examination on this aspect and therefore her deposition has virtually gone unchallenged. PW4 is consistent that it was only during the prayer meet, the mother of the victim was informed.

20. The other witnesses whose depositions can be said to be relevant is PW8 who has examined the victim. It was argued by the Ld. Counsel for the Appellant that there are no injuries on the private part and therefore, it can be concluded that the said incident had not taken place. As per the deposition of PW1, the incident had taken place somewhere in the month of April and which was narrated to PW3 in the month of May 2012. As per the deposition of PW2, the incident had taken place in the house of the Appellant

between 08.04.2012 to 20.04.2012. The deposition of PW8 states that on general examination there were no injuries present over the body and on genital examination, genitals were well developed for age. On vaginal examination, there were no injuries seen on labia majora and labia minora. The said witness has further deposed that no injuries were seen to the anterior and posterior commissure. It is further deposed that on physical and genital examination of the victim and in absence of positive findings for sexual assault, no opinion can be given to that effect. The doctor has further categorically deposed that it is possible that it can take around 7 to 10 days to heal genital injury. This is possible as the incident had taken place in the month of April, 2012 and she was examined on 15.05.2012, the injury must have been healed. Therefore, the submission of the Ld. Counsel for the Appellant that since there are no injuries, the incident did not take place cannot be accepted. Surprisingly, there was no cross examination, although opportunity was given.

21. A profitable reference can be given to the latest Judgment of the Hon'ble Apex Court in the case of *Deepak*

***Kumar Sahu V/s State of Chhattisgar, 2025 INSC 929.*** The

relevant paras are quoted below:

*“5.5 In cases of offences committed under Section 376, IPC, when the story of the victim girl as told in the evidence is found credit-worthy, the apparent insufficiency of medical evidence pitted against acceptable testimony of the victim, the latter would prevail. In **State of Punjab vs. Gurmit Singh [(1996) 2 SCC 384]** it was observed:*

*In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case.*

*(Para 16)*

*5.5.1 In **State of Himachal Pradesh vs. Manga Singh, [(2019) 16 SCC 759]**, which was also a case in relation to the offence committed under Section 376, IPC where the prosecutrix was minor girl aged 9 years, she was staying in her aunt’s house pursuing her studies. When the offence of rape was committed against her, she narrated the story to her teacher. The High Court gave the benefit of doubt to the accused on the ground, inter alia, that the medical evidence of the doctor was not conclusive to hold that the prosecutrix was subjected to sexual intercourse.*

*5.5.2 This Court observed that if the evidence of the victim does not suffer from any basic infirmities and the factor of probability does not render it unworthy evidence, the conviction could base solely on the evidence of the prosecutrix. It was further observed that as a general rule there is no reason to insist on the corroboration accept in certain cases, it was stated.*

*5.5.3 The medical evidence may not be available in which circumstance, solitary testimony of the prosecutrix could be sufficient to base the conviction.*

*“The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the Courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.”*

*5.5.4 It may be true that in the present case the evidence of the medical officer (PW-17) spoke about absence of external injury marks on the genitals of the victim. However, the proposition that the corroboration from the medical evidence is not sine qua non when the cogent evidence of the victim is available, was reiterated in a recent judgement of this Court in **Lok Mal alias Loku vs. State of Uttar Pradesh**, [(2025) 4 SCC 470], observed:*

*“Merely because in the medical evidence, there are no major injury marks, this merely cannot be a reason to discard the otherwise reliable evidence of the prosecutrix. It is not necessary that in each and every case where rape is alleged there has to be an injury to the private parts of the victim and it depends on the facts and circumstances of a particular case. We reiterate that absence of injuries on the private parts of the victim is not always fatal to the case of the prosecution.*

*(Para 4)*

*5.5.5 Akin to the facts of the present case, it was stated in Lok Mal (supra), according to the version of the prosecutrix, that the accused overpowered her and pushed her to bed in spite of her resistance and gagged her mouth using a piece of cloth. Thus, considering this very aspect, it is possible that there were no major injury marks. The appellant made an attempt to raise the defence of false implication, however, he was unable to support his defence by any cogent evidence.*

*5.5.6 The credible and reliable evidence of prosecutrix could not be jettisoned for want of corroboration including the corroboration by medical report or evidence. The Court observed in **Manga Singh (supra)** that “in absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix”. It was stated that it is well settled that in the cases of rape it is not always necessary that external injury is to be found on the body of the victim.*

*5.6 It is an opt-reiterated dictum of law that in cases of rape, the testimony of the prosecutrix alone may be sufficient and sole evidence of the victim, when cogent and consistent, could be properly used to arrive at a finding of the guilt. In the State of Himachal Pradesh vs. Manga Singh, (2019) 16 SCC 759, this Court in terms stated that conviction can be rested on the testimony of the prosecutrix alone.*

*The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the Courts to insist for corroboration of her statement.*

*Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.”*

(Para 10)

*5.6.1 It was further asserted that corroboration is not an essential requirement for conviction in the cases of rape.*

*It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the*

*circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the Court.*

*(Para 11)*

*5.6.2 In Gurmit Singh (supra) it was observed to reiterate that in all cases, the corroboration to the statements made by the victim in her evidence could not be insisted upon as a rule of thumb:*

*In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not overlook.*

*(Para 8)*

*5.6.3 It was asserted that only compelling reasons would justify rejection of testimony of a rape victim, and not otherwise:*

*“....the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.....”*

*(Para 8)*

*5.6.4 From a recent decision in Raju alias Umakant vs. State of Madhya Pradesh, (2025 SCC OnLine SC 997), following observations could be noticed:*

*“.....a woman or a girl subjected to sexual assault is not an accomplice but a victim of another person's lust and it will be improper and undesirable to test her evidence with suspicion. All that the law mandates is that*

*the Court should be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of charge levelled by her and if after keeping that aspect in mind if the Court is thereafter satisfied that the evidence is trustworthy, there is nothing that can stop the Court from acting on the sole testimony of the prosecutrix. [See State of Rajasthan v. N.K. the Accused, (2000) 5 SCC 30, Rameshwar v. State of Rajasthan, 1951 SCC 1213, State of Maharashtra v. Chandraprakash Kewal Chand Jain, (1990) 1 SCC 550, State of Punjab v. Gurmit Singh, (1996) 2 SCC 384]"*

(Para 18)

*5.6.5 As early as in State of Maharashtra vs. Chandraprakash Kewalchand Jain, [(1990) 1 SCC 550], this Court observed that the prosecutrix of a sex offence cannot be put on a par with the accomplice, it was further observed that she is a victim of crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. It was further observed that evidence of a rape victim must receive the same weight as is attached to an injured in cases of physical violence. It was stated that there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 of the Evidence Act which may require it to look for corroboration.*

22. Further analysis of the evidence of PW 10, the Civil Judge, Junior Division and JMFC E Court, Mapusa who recorded the statement under Section 164 of CRPC has confirmed that she had recorded the statement of the victim as per say on 8.6.2012.

From the above, it is therefore clear that evidence of PW1 is

not only clear and consistent in the narration of the incident but natural as well. The events such as narration of the incident to PW3 and PW4 can also be corroborated with the evidence of PW1. The absence of injury on the private part is also not of much significant, in the facts of the present case, as PW8 has categorically deposed that the injury to the genitals must have been healed due to lapse of time, as it takes around 7 to 10 days to heal such an injury. There is no cross examination on this aspect. There are no major contradictions in the deposition of PW1, PW2, PW3 and PW4 and the witnesses inspire confidence. There are also no serious contradictions and omissions which materially affect the prosecution case. There is no material brought on record to come a conclusion that the Appellant has been falsely implicated either due to any previous enmity or any other reason. Thus evaluating the total evidence, in the light of the principle of law, with the evidence of the victim, it can be safely stated that the evidence of PW1 is probable, natural and trust worthy and it cannot be said that her evidence is tutored. There is no reason to disbelieve and discard her testimony. The issue that she had not narrated the incident

to the daughter of the Appellant or her mother immediately can be said to be quite natural and that she informed PW3 who is of her age also cannot be said to be unnatural conduct on the part of the victim. There is no delay in lodging of FIR. Needless to mention that as far as delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint.

23. As far as minor omissions and contradictions are concerned, a profitable reference can also be made to the judgment of the Apex Court in the case of ***Sunil Kumar Sambhudayal Gupta (Dr.) and others vs. State of Maharashtra (2010) 13 SCC 657*** wherein it is observed as under:-

*“While appreciating the evidence, the Court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters*

*without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.”*

24. Reference can also be made to the Judgment of the Hon'ble Supreme Court in the case of ***Vahitha Vs State of Tamil Nadu, (2023) 11 SCC 338***, wherein in paragraphs 41 and 43 has observed as under:-

*“41. As regards inconsistencies and/or discrepancies in the version of the witnesses, in Shyamal Ghosh [Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685] this Court has explained the distinction between serious contradictions and omissions which materially affect the prosecution case and marginal variations in the statement of witnesses in the following terms : (SCC p. 673, para 68)*

*“68. From the above discussion, it precipitates that the discrepancies or the omissions have to be*

*material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradistinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon*

*the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution.”*

*43. In Gangadhar Behera [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] , this Court again highlighted that the normal discrepancies in evidence are of natural occurrence in the Court, while observing as under : (SCC p. 393, para 15)*

*“15. ... normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a*

*party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar [Krishna Mochi v. State of Bihar, (2002) 6 SCC 81 : 2002 SCC (Cri) 1220].”*

**JUDGMENTS RELIED UPON BY THE APPELLANT.**

25. In support of her submissions, the Ld. Counsel for the Appellant has relied upon the following judgments.

*i. Golu Vs The State of Madhya Pradesh, 2024MPHC-IND-28481,*

*ii. Janardhan Pandurang Kapse Vs The State Maharashtra, Appeal No. 838 of 2019.*

*iii. Vijay s/o Manoharrao Jawanjil Vs State of Maharashtra, Criminal Appeal No. 185 of 2021 dated 14.8.2024 passed by High Court of Bombay, Nagpur Bench.*

*iv. Pravin Ruprao Harde Vs State of Maharashtra, Criminal Appeal No. 67 of 2021 dated 29.7.2024 passed by High Court of Bombay, Nagpur Bench.*

*v. Parkash Chand v/s State of Himachal Pradesh, AIR 2019SC 1037.*

*vi Hari Narayan v/s State of Madhya Pradesh, Criminal Appeal No. 2446 of 2005 dated 17.1.2024 decided by Madhya Pradesh High Court at Jabalpur.*

*vii. State of Orissa v/s Ardu Chendreya, Manu/OR/0525/2010.*

*viii. P. N.Krishna Lal and Ors v/s Govt of Kerala and Ors.MANU/SC/1007/1995*

*ix. Davinder Singh v/s State of Punjab, Criminal Appeal No. 12 of 2015 dated 22.06.2023 passed by Hon'ble Supreme Court.*

*x. Nirmal Premkumar and Ors v/s State rep. by Inspector of Police, Criminal Appeal No. 1098 of 2024 passed by Hon'ble Supreme Court.*

ANALYSIS OF THE JUDGMENTS RELIED UPON BY THE APPELLANT.

26. By referring to the judgment of *Golu v/s State of Madhya Pradesh*(supra), it was submitted that there was a delay of 6-9 days in registration of the FIR from the incident and the Court has held that since it is a case of attempt to rape, a delay of 1-2 days is possible but a delay of 6-9 days from a major prosecutrix is unnatural. Upon going through

the judgment, it can be seen that the facts of the said case are different. It was a case of attempted rape. The FIR was lodged after a delay of 6 to 9 days of the incident, and the Court had come to the conclusion that in a case of attempt to rape delay of one or two days is possible, but delay of 6 to 9 days by a major prosecutrix is unnatural. In the facts of the case, the Court had come to a conclusion that the testimony of the prosecutrix is having contradiction and material exaggeration and that there was a previous enmity of land dispute between the parties and further no specific evidence or DNA regarding attempt to rape is produced by the prosecution. The Court has further observed that even the MLC report was delayed by seven days and the incident was neither supported by any independent witness nor by any medical testimony. It was in the backdrop of the facts and circumstances of that case that the Court came to the conclusion that the prosecution had failed to prove the offences alleged.

27. By referring to the judgment of ***Janardan Pandurang Karpse v/s The State of Maharashtra*** (supra), it was tried to be argued that the accused was acquitted as the prosecution's

version was full of contradictions and lacked medical or independent corroboration, creating clear, reasonable doubt. However, in the facts of the said case the Court has observed that the victim had admitted in her cross-examination that her parents were present at the time of recording a statement under Section 164 of CRPC and her parents had told her how to give the statement. It is also further observed that when she was questioned by the police about the incident, her mother had given answers which were taken down in writing. She has admitted that her parents had told her how to depose before the Court. The Court has further observed that PW2 on her own admission was a tutored witness and hence the Court has not placed reliance on her evidence. The Court has also observed that the PW2 had noticed the injury on the private part of the victim and that she was passing reddish colour urine, but had not taken the victim to the doctor till the lodging of FIR, and therefore the Court had come to a conclusion that the conduct was unnatural and had cast doubt on the truthfulness and credibility of the entire prosecution witness. The ruling in this case will not be of any aid to the case of the Appellant, as the facts are totally

different. In the present case, there is nothing to suggest that the victim was in any manner tutored nor are there any major omissions which would cast doubt on the truthfulness and credibility of the entire prosecution witness.

28. By referring to this judgment of *Vijay Jawanjal v. State of Maharashtra* (supra), it was submitted that what has been noted by the Hon'ble Court that in this case that the victim girl after facing such an ordeal could not have behaved normally. Upon reading the entire judgment it can be seen that in the facts of the case, the version of the victim has been disbelieved by the Court. The Court has observed that her mother had told her to tell before the Court that the accused had caused harassment to her and that her mother had told her to depose as per her say, otherwise she would punish her. It is further observed that it was the mother who had told the name of the accused, and therefore, the Court came to the conclusion that she was tutored. The witness was tutored to depose against the accused. The Court in the facts of the case and on appreciation of evidence, had come to a conclusion that the evidence adduced by the prosecution is not cogent, convincing and trustworthy, and that the evidence was not

sufficient to prove the guilt of the accused beyond a reasonable doubt and that the attending circumstances were sufficient to doubt the credibility and trustworthiness of the witness. The Court has also observed that there was no concrete evidence about penetrative sexual assault and hence the Court had quashed the order of conviction. The facts of the present case are different. The conduct of the 9 years old child confiding in the child of same age and not to her parents, cannot be said to be unnatural and just because the behaviour of the victim was normal, it cannot be construed that the incident has not taken place.

29. By referring to the judgment of *Pravin Ruprao Harde vs State of Maharashtra* (supra), it was submitted that the Court acquitted the Appellant because the medical evidence did not corroborate the prosecution's version and material inconsistencies in witness testimonies raised reasonable doubts about the alleged assault. The Court in the facts of the case has come to the conclusion that there are material omissions and inconsistencies in their evidences on the vital aspect of the case of the prosecution and the statements recorded under Section 164 are also inconsistent as to the

occurrence of the incident and the actual act committed by the accused and therefore the Court was of the opinion that the prosecution had failed to prove the guilt of the accused beyond reasonable doubt. The Court has observed that the inconsistent evidence of the witnesses on material aspect is sufficient to doubt the credibility and trustworthiness of the witnesses and therefore, in the teeth of such doubtful evidence, the Court came to a conclusion that the prosecution has failed to prove the guilt of the accused and therefore had given a benefit of doubt and therefore even this judgment and its observations are not helpful to the Appellant.

30. By referring to the judgment of *Parkash Chand v/s State of Himachal Pradesh* (supra), it was submitted that there was a delay in filing the FIR for 7 months and when vital evidence is not appreciated, the Courts can interfere. This ruling can be distinguished in the facts of the case as there was a delay of 7 months in lodging FIR and the victim was not a minor. The Hon'ble Apex Court in the facts of the said case came to conclusion that it would be unsafe to base a conviction solely on the testimony of the prosecutrix and

accordingly extended the benefit of doubt to the Appellant. The said case can be distinguished as there is no inordinate delay. The victim in the present case has confided in the child of her age at the available opportunity and which in turn was communicated to her mother who without any loss of time and after properly ascertaining from the victim has lodged the complaint and therefore even this case will not be of any avail to the Appellant.

31. The case of *Hari Narayan v/s State of Madhya Pradesh* (supra), was cited which talks about independence of witnesses. The necessity of examination of all witnesses is material to unfold the genesis of the incident. In the said case, the offence was under Section 354 of IPC. The victim was not a minor and the issue was whether oral dying declaration can be relied upon in absence of documentary evidence. Emphasis in this case was on the difference between a related witness and an interested witness and therefore, this judgment will not aid the Appellant in any manner.

32. By referring to the judgment of *State of Orissa v/s Ardu Chendreya* (supra), it was submitted that the Hon'ble Court

has taken into consideration the mitigating circumstances like the convict has no criminal background, no adverse report has been submitted during detention by the jail authorities and urged before the Court that Appellant is 83 years old and that his advanced age be considered, further he has no criminal history or any other litigation pending against him and therefore these factors may be considered as mitigating circumstances and the Appellant be acquitted. Whilst taking into consideration the age of the Appellant, the Court cannot be oblivion to the age of the victim who has undergone the ordeal and which must have left an indelible mental scar for her lifetime.

33. In the case of *P. N. Krishna Lal and Ors v/s Govt of Kerala and Ors.* (supra), reliance is placed on this judgment to canvass an argument that the burden is on the prosecution to prove the offence beyond reasonable doubt. The learned Counsel has submitted that the it is a settled law even under a general criminal jurisprudence that Section 105 and 106 of the Evidence Act, places a part of the burden of the accused to prove the fact which are within his knowledge when the prosecution establishes the ingredients of the offence

charged, the burden shifts on the accused to prove certain facts within his knowledge or exceptions to which is entitled to. She has further submitted the test of proof of preponderance of probability is extended criminal jurisprudence and the burden of proof is not as heavy as on the prosecution and that once the Accused succeeds in showing by preponderance of probability that there is reasonable doubt in his favour, the burden shifts again on the prosecution to prove for the case against the accused beyond reasonable doubt, if the accused has to be convicted. There can be no doubt about this proposition of law, however in the present case, the Appellant has never entered the witness box or led any evidence to disprove the case of the prosecution. Even in the cross examination there is nothing to discredit the evidence of the victim. Therefore, this ruling also does not come to the aid of the Appellant.

34. By referring to the judgment of *Davinder Singh v/s State of Punjab*, (*supra*), it has been submitted that the accused has been acquitted by the Hon'ble Supreme Court based on the absence of concurrent findings that there was an inordinate delay in filing the complaint. The said case can

be distinguished on the facts of the case as in the case cited, the victim was not a minor. The only eye witness was not examined. There was a delay of 28 days in filing the complaint and the reasons assigned was not acceptable. Further there was no recovery of knife when the specific case was that he committed the offence by threatening to the prosecutrix. Taking these factors as well as other factors into consideration, the Appellant was acquitted. This case also will not be of any avail to the Appellant as there is sufficient evidence to indicate the complicity of the Appellant which has been elaborately discussed above.

35. The Ld. Counsel has also referred to the judgment of the Apex Court in the case of *Nirmal Premkumar and Ors v/s State rep. by Inspector of Police* (supra) and has submitted that conviction undoubtedly can be recorded on the sole evidence of a victim of crime. However, it has to undergo scrutiny through a well settled legal principles as established by this Court and has therefore submitted that even in the said case, the evidence has been marked by inadequacies, omissions, and contradictions, and therefore, the evidence of the victim should be taken into consideration with proper

circumspection. In the opinion of this Court, the Hon'ble Apex Court in the said case, after taking into consideration the prosecution case came to the conclusion that the prosecution's case has been marked by a lacklustre effort, revealing a poorly executed endeavour that gives rise to substantial doubts regarding the integrity of the case. The Court has also observed that there have been material contradictions apparent in the deposition of prosecution witnesses, including the victim, thereby undermining the credibility of the prosecution's version and therefore in the facts of that case, was pleased to set aside the conviction. Such is not the fact in the present case. The version of the victim inspires total confidence and her evidence has not been shaken in the cross-examination and therefore, the present ruling cited by the Appellant cannot come to the rescue of the Appellant.

36. In the case of *Takhaji Hiraji v/s Thakore Kubersing Chamansing and Ors.* (supra), this judgment is relied upon by the Appellant to point out that if a material witness, which would unfold a genesis of the incident or an essential part of the prosecution case not convincingly brought to fore or not

examined the witness although available, then the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witnesses would have been examined, it would not have supported the prosecution's case. The answer to this lies in the same judgment where the Court has also observed that if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. The Court has further observed that if the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable, the Court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present case, the evidence of the victim is unimpeachable and therefore, assuming that the prosecution has not examined the daughter of the Appellant, for the reasons best known, the same will not be fatal to the prosecution's case.

37. The trial Court has rightly relied upon the judgment of

*B C Deva v State of Karnataka, 2007 (12) SCC 122*, wherein it is observed that the medical evidence was not corroborating the alleged forced sexual intercourse and the conviction was based solely on oral evidence of prosecutrix and her subsequent conduct. The conviction was upheld by the Hon'ble Supreme Court and it is held that when the oral testimony of victim is found to be cogent, reliable, convincing and trustworthy and when her evidence is corroborated by other witnesses and the narration of events in the FIR, the matter can result in conviction, even when the medical examination of prosecutrix does not disclose evidence of sexual intercourse and when no injury marks are found on the accused or the victim.

**INGREDIENTS OF THE OFFENCES ARE MADE OUT**

38. The prosecution has proved all the ingredients of the offences with which the Appellant was charged for.

39. Section 339 of IPC which is the defining Section and Section 341 of IPC which is penal Section is reproduced herein below:-

***“Section 339: Whoever voluntarily obstructs any person so as to prevent that person from proceeding***

*in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.*

**Section 341** Punishment for wrongful restraint.—  
*Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.”*

40. The material brought on record conclusively proves the minor victim girl was 'wrongfully restrained' in the bathroom of the house of the Appellant by the Appellant, by preventing her from proceeding out from that place. It has come in evidence of PW No 1 that when the Appellant removed her clothes, she tried to kick him but he had held her hand firmly. Therefore, the victim was trying to move but was prevented by the Appellant. There is no cross examination on this aspect as well. Therefore, the offence of wrongful restraint as defined in Section 339 of IPC and punishable under Section 341 IPC is duly proved.

41. Section 375 defines “Rape” [375. Rape.-- *A man is said to commit "rape" if he--*

*(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*

*(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*

*(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*

*(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:*

*First. Against her will.*

*Secondly. Without her consent.*

*Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is*

*interested, in fear of death or of hurt.*

*Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

*Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

*Sixthly. With or without her consent, when she is under eighteen years of age.*

*Seventhly. When she is unable to communicate consent.*

*Explanation 1. For the purposes of this Section, "vagina" shall also include labia majora.*

*Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:*

*Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.*

*Exception 1. A medical procedure or intervention shall not constitute rape.*

*Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape*

***Section 376 : Punishment for rape (1) Whoever, except in the cases provided for in sub-Section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which 1 [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].....***

42. The Appellant by removing the clothes of PW1, inserting his finger in her private part, kissing her private part and lips, clearly amounts to an offence of 'rape', under Section 375(b) of IPC, punishable under Section 376(1) of the IPC.

43. Sections 2(y) and 8(2) of the Goa Children's Act, 2003 are reproduced herein below:-

**Section 2(y):** 'Sexual offences' for the purposes of awarding appropriate punitive action means and includes,— (i) –Grave Sexual Assault<sup>11</sup> which covers different types of intercourse; vaginal or oral or anal, use of objects with children, forcing minors to have sex with each other, deliberately causing injury to the sexual organs of children, making children pose for pornographic photos or films, and also includes rape;

(ii) Sexual Assault which covers sexual touching with the use of any body part or object, voyeurism, exhibitionism, showing pornographic pictures or films to minors, making children watch others engaged in sexual activity, issuing of threats to sexually abuse a minor, verbally abusing a minor using vulgar and obscene language

**Section 8(2)-** Whosoever commits any [child abuse or sexual assault] as defined under this Act, shall be punished with imprisonment of either description for a term that may extend to three years and shall also be liable to fine of

*Rs.1,00,000/-.* Whoever commits any Grave Sexual Assault shall be punished with imprisonment of either description for a term that shall not be less than "[ten years] but which may extend to [life imprisonment] and shall also be liable to a fine of Rs. 2,00,000. Whoever commits incest shall be punished with imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and also a fine which may extend to Rs.2,00,000/- [Statement of the child victim shall be treated on par with the statement of a child rape victim] under Section 375 of the IPC, as laid down by the Supreme Court of India.”

44. The said act of the Appellant causing injury to the sexual organ and sexual touching with use of finger also amounts to 'grave sexual assault', under Section 2(y)(i)(ii) of the Goa Children's Act, 2003.

45. Sections 354 of IPC is reproduced herein below:-

***“354. Assault or criminal force to woman with intent to outrage her modesty.—***

*Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.”*

46. The said act of the Appellant also amounts to outraging the modesty of the minor victim girl, by use of criminal force, under Section 354 of I.P.C, and therefore considering the evidence that has come on record the trial Court has rightly convicted the Appellant.

47. Another aspect which cannot be lost sight of is that the stand taken by the Appellant is that he has been falsely implicated however there is no explanation given as to why the Appellant has been falsely implicated. Even in cross examination nothing has been brought on record by the Appellant to substantiate its claim that he has been falsely

implicated. The opportunity to explain his stand was available to him while recording statement under Section 313 of Cr.P.C. however, the same has not been availed of. No doubt the Appellant has a right to maintain silence even before the Court during the examination under 313 of Cr.P.C. however, the Court would be entitled to draw an inference including adverse inference as may be permissible. Reference can be made to the judgment of the Hon'ble Supreme Court in the case of **Vahitha Vs State of Tamil Nadu**, (supra) wherein in paragraph 45 the Court has been pleased to observe as under:-

*45. In Ramnaresh [Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382] , this Court has, though recognised the right of the accused to maintain silence during investigation as also before the Court in the examination under Section 313CrPC but, at the same time, has also highlighted the consequences of maintaining silence and not availing opportunity to explain the circumstances appearing against him, including that of the permissibility to draw adverse inference in accordance with law. This Court observed and held as under : (SCC pp. 274-75, paras 49 & 52)*

*“49. In terms of Section 313CrPC, the accused has the freedom to maintain silence during the investigation as well as before the court. The accused may choose to maintain silence or complete denial even when his statement under Section 313CrPC is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law.*

\* \* \*

*52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313CrPC is upon the court. One of the main objects of recording of a statement under this provision of CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law.”*

*(emphasis supplied)*

48. The Appellant has also not rebutted presumption under section 29 of the Act. A presumption that the accused has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved, is provided by virtue of Section 29 of the POCSO Act, which the accused has to rebut by leading evidence so as to establish his innocence beyond all manner of doubt. In the present case, the Appellant, other than offering a bald denial, has not lead any evidence whatsoever so as to rebut the testimony of the victim.

49. For the reasons stated above, this Court is of the opinion that the trial Court has rightly convicted the Appellant of the offences for which he was charged for as the same is duly proved beyond reasonable doubt by cogent evidence. The trial court has evaluated and appreciated the entire evidence in an absolute apropos manner and arrived at the only possible conclusion i.e. the guilt of the accused. The impugned judgment does not suffer from any illegality, infirmity or irregularity whatsoever warranting interference by this Court

50. This Court does not find the age of the Appellant, who is 83 years, a mitigating circumstance to reduce the sentence in such offences, as the Court also cannot also turn a Nelson's eye to the age of the victim and the ordeal the victim has undergone.

51. A useful reference can be made to the judgment of the Apex Court in the case of ***Sumer Singh Versus Surajbhan Singh and others reported in 2014 Supreme (SC) 327*** wherein it has been observed that

*“32. Having discussed about the discretion, presently we shall advert to the duty of the court in the exercise of power while imposing sentence for an offence. It is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed*

*faith in the court of law to curtail the evil. While imposing the sentence it is the Court's accountability to remind itself about its role and the reverence for rule of law. It must evince the rationalized judicial discretion and not an individual perception or a moral propensity. But, if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined. Law cannot tolerate it; society does not withstand it; and sanctity of conscience abhors it. The old saying "the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. True it is, it has its own room, but, in all circumstances, it cannot be allowed to occupy the whole accommodation. The victim, in this case, still cries for justice. We do not think that increase in fine amount or grant of compensation under the Code would be a justified answer in law. Money cannot be the oasis. It cannot assume the*

*centre stage for all redemption. Interference in manifestly inadequate and unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society.”*

52. In the case of *State of Rajasthan v. Om Prakash* reported in **2002 Supreme(SC) 614** in paragraph 19, the Apex Court has observed thus

*“19. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such*

*protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. The overturning of a well-considered and well-analysed judgment of the trial court on grounds like non-examination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt was not called for"*

53. The Appeal stands dismissed and the conviction of the Appellant is upheld.

54. The Appellant shall forthwith surrender to serve his sentence. Bail bond stands cancelled.

55. Appeal stands disposed of accordingly.

**SHREERAM V.SHIRSAT, J.**

## JUDGMENT CONTINUED

56. At this stage, Ms. Fernandes, the Ld. Counsel appearing for the Appellant, prays for stay of the judgment and order for a period of six weeks, submitting that the Appellant was on bail throughout the trial and during appeal period.

57. Upon considering the submissions advanced by the learned Counsel for the Appellant and having regard to the nature of the offence and the findings recorded in the impugned judgment, this Court is not inclined to grant any stay of the order. The request for stay is, therefore, rejected.

**SHREERAM V. SHIRSAT, J.**