



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 1.4.2024

Judgment delivered on: 24.4.2024

CRA No. 1669 of 2023

1. Suraj Yadav son of Bisan Yadav, aged about 20 years (now aged about 21 years)
2. Mahesh Pasi son of Pardeshi Pasi, aged about 19 years (now aged about 20 years)
3. Suraj Suryavanshi son of Dukhiram Suryawanshi, aged about 21 years (now aged about 22 years)
4. Deepak Nishad son of Ramkumar Nishad, Caste-Kenwat, aged about 27 years (now aged about 28 years)

All are resident of Lalkhandan, Village-Mahmand, Police Station-Torwa, District-Bilaspur (CG)

---- Appellants (in jail)

Versus

State of Chhattisgarh Through the Station House Officer, Police Station – Torwa, District-Bilaspur (CG)

---- Respondent

For Appellants : Mr.Bharat Rajput, Advocate
For State/Respondent : Mr.Vinay Pandey, Dy.Advocate General

Hon'ble Shri Justice Ramesh Sinha, Chief Justice

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

C.A.V. Judgment

Per Ramesh Sinha, CJ

1. This appeal arises out of the judgment of conviction and order of sentence dated 11.07.2023 passed by the Additional Sessions Judge, Second Fast Track Special Court, Bilaspur in Special



Criminal Case (POCSO Act) No.18/2022, whereby the appellants have been convicted and sentenced in the following manner :

Sl. No.	Conviction	Sentence
1.	Under Section 363 read with Section 34 of Indian Penal Code.	Rigorous Imprisonment for 7 years and fine of Rs.1000/- in default of payment of fine further rigorous imprisonment for 4 months.
2.	Under Section 366-A read with Section 34 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1000/- in default of payment of fine further undergo rigorous imprisonment for 6 months.
3.	Under Section 5(g)/6 of the Protection of Children from Sexual Offences Act, 2012	Rigorous Imprisonment for 20 years and fine of Rs.3000/- in default of payment of fine further undergo rigorous imprisonment for 1 year.

2. The prosecution story, in brief, is that 20.01.2022 at about 11.45 P.M. the father of the prosecutrix lodged the report at Police Station Torwa, alleging therein that on 20.01.2022 at about 7.30 P.M., the prosecutrix was returning from Sai Temple at her house, at that time near Lalkhadan under-bridge, the accused persons took her in field side and committed rape with her by accused Suraj and Mahesh Pasi. During that time, two boys were standing next to her, whom accused Suresh and Mahesh addressed as "Suraj" and "Deepak" and asked them to see that no one came to the spot. After that, all four accused left her and went away. On the basis of complaint of the victim's father, FIR (Ex.P-17) was registered against the accused / appellants in Police Station Torwa in Crime No.19/2022



under Sections 363, 366A, 376DA of the IPC and Section 5(g)/6 of the POCSO Act. Statement of the prosecutrix was recorded under Section 164 CrPC before the JMFC, Bilaspur vide Ex.P-1. Spot map was prepared by the patwari vide Ex.P-2. Investigating officer also prepared the spot map vide Ex.P-3. Vaginal slides of the prosecutrix was prepared vide Ex.P-5. The appellants/accused were arrested vide arrest memos vide Exs.P-6 to P-9. Accused Suraj Suryawanshi was examined vide Ex.P-10A where the doctor has opined that he was able to perform the act of sexual intercourse. Accused Mahesi Pasi was examined vide Ex.P-11A where the doctor has opined that he was able to perform the act of sexual intercourse. Accused Deepak Kewat was examined vide Ex.P12A where the doctor has opined that he was able to perform the act of sexual intercourse. Accused Suraj Yadav was examined vide Ex.P-13A where the doctor has opined that he was able to perform the act of sexual intercourse. The prosecutrix was sent for MLC to District Hospital, Bilaspur where Dr.Mamta Saluja (PW-10) examined her vide Ex.P-25 and found following injuries:-

- 1. Red contusion / swelling was present on the upper lip.**
- 2. There was longitudinal abrasion/scratch mark on the right cheek.**
- 3. There was a linear/lengthwise contusion/swelling in the first part below the knee on the left leg, which the victim was experiencing pain on pressing.**



All the above mentioned injuries were of minor nature and occurred within 6 to 12 hours.

Internal examination: The victim's labia, minora and majora on both sides were fully developed and there was light hair on her private parts. There is no injury mark on the victim's genitals.

Underwear of accused Suraj Yadav, underwear of accused Mahesh Pasi and pant of accused Suraj Suryawanshi were seized vide Ex.P-14. Seized articles were sent for chemical examination to FSL vide Ex.P-15 and FSL report is Ex.P-16. As per FSL report, in Article A (slides), Article B (underwear of the victim), Article C (underwear seized from accused Suraj Yadav), Article D (underwear seized from accused Mahesh Pasi), Article E (lower paint) seized from accused Suraj Yadav, and Article F (underwear seized from accused Deepak Kenwat), semen stains and human sperm were found.

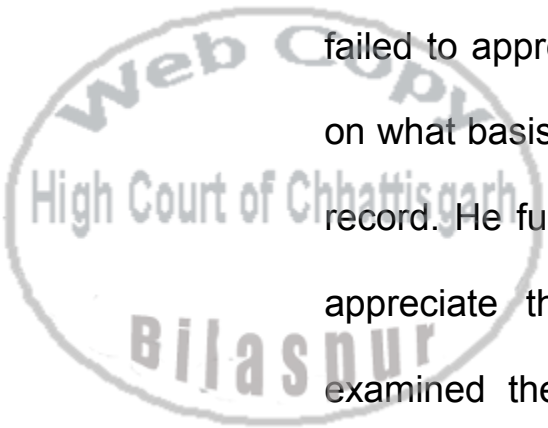
3. After completion of investigation, the charge-sheet was filed before the Additional Sessions Judge Second Fast Track Special Court, Bilaspur for trial in accordance with law.
4. The trial court has framed charges against the appellants under Sections 363/34, 366-A/34 & 376DA of the IPC and Section 5(g)/6 of POCSO Act. The appellants abjured their guilt and pleaded innocence.
5. In order to establish the charge against the appellants, the prosecution examined as many as 14 witnesses. The statements of



the appellants under Section 313 of CrPC were also recorded in which they denied the material appearing against them and stated that they are innocent and they have been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellants and sentenced them as mentioned in para 1 of the judgment. Hence, this appeal.

6. Learned counsel for the appellants argued that the learned trial Court has failed to appreciate that the prosecution has not proved the actual age of the prosecutrix (PW-1). The learned trial Court has failed to appreciate that the prosecution was unable to explain that on what basis the age of the prosecutrix was recorded in her school record. He further submits that the learned trial Court has failed to appreciate that Dr.Mamta Saluja (PW-10) who was medically examined the prosecutrix has not given any definite opinion in respect of sexual assault with the prosecutrix. The learned trial Court has failed to appreciate that the prosecutrix was eloped with one Vikas Pasi and on the date of incident, the accused/appellants have caught raid handed to the prosecutrix and Vikas Pasi, due to which, the prosecutrix has falsely implicated the appellants.

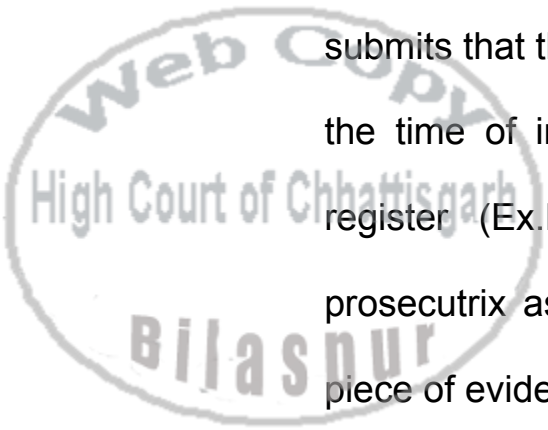
7. He also submits that the learned trial Court has failed to appreciate that accused Mahesh Pasi is HIV positive and if he would have committed sexual intercourse with the prosecutrix, then the prosecutrix would have also HIV positive, but according to medical report, the prosecutrix is not HIV positive. The findings given by the





learned trial Court against the appellants are perverse and contrary to the evidence available on record and consequently, the same is liable to be set aside. He contended that there are material contradictions and omissions in the statements/depositions of the prosecution witnesses, falsifying the case of the prosecution. As such, the appeal deserves to be allowed and the impugned judgment deserves to be set aside.

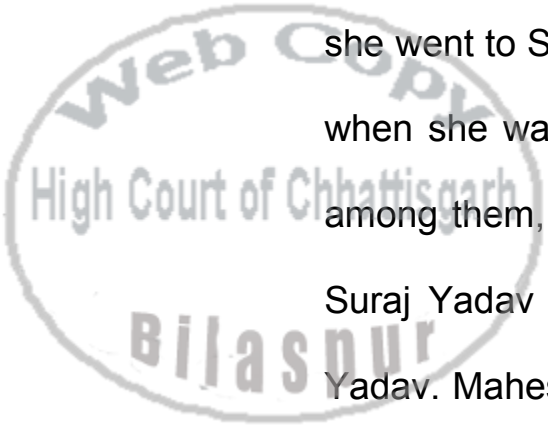
8. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellant and submits that the prosecutrix was minor and below 18 years of age at the time of incident, which is proved by the School dakhil-kharij register (Ex.P-21C) which contains the date of birth of the prosecutrix as 18.08.2008. The dakhil-kharij register is admissible piece of evidence to determine the age of the prosecutrix. He further submits that the trial Court has rightly convicted and sentenced the appellants, in which no interference is called for by this Court.
9. We have heard the learned counsel for the parties and perused the record with utmost circumspection.
10. In order to consider the age of the prosecutrix, we have examined the evidence produced by the prosecution. The prosecution relied upon the School dakhil-kharij register (Ex.P21C) which is sought to be proved by PW-9 Smt.Manorama Dewangan, Headmistress of Government Primary School, Lalkhadan. Smt.Manorama Dewangan (PW-9) has stated in para 5 of her deposition that verified copy of





dakhil-kharij register attached to the case was matched with the original dakhil-kharij register, in saral No.1451 of dakhil-kharij register, name of the victim, parents of the victim, date of birth was 18.08.2008, date of admission in school was 19.09.2016, in which class she was admitted – class first, the date of leaving the school is 22.07.2022, 5th class is mentioned as absent, original dakhil-kharij register is shown as Ex.P-21 and the attested copy of dakhil-kharij register attached in the case is Ex.P21C.

11. The prosecutrix in her 164 CrPC statement (Ex.P-1) has stated that she went to Sai Temple on Thursday 20.01.2022 at about 6.30 P.M. when she was returning back, she met four boys near the culvert, among them, Suraj Yadav told her to go to the temple to eat food. Suraj Yadav comes to their locality to sell coal. Apart from Suraj Yadav. Mahesh Pasi, Suraj Suryawanshi and Deepak Kenwat were with him on the day of the incident. Mahesh Pasi, Suraj Suryawanshi and Deepak Kenwat also used to come to her locality to sell coal that is why she knew them. In para 3 of her statement, she has stated that when she refused to go to Sai Temple, all four of them caught hold of her forcefully. Two accused i.e. Suraj Yadav and Mahesh Pasi held her feet and two accused i.e. Suraj Suryawanshi held her hands and forcibly took her to bush. When she was screaming, they closed her mouth and slapped her, due to which her face got swollen. Mahesh Pasi and Suraj Yadav did wrong things to her by taking her near the bush. Those accused had





committed sexual intercourse with her. The remaining two accused i.e. Suraj Suryawanshi and Deepak Kenwat were standing there and seeing that no one else came there. They did wrong things to her for about one to one and half hours. After that, they left her from there. She came to her house around 9-9.30 P.M., at that time her father met her near shop whom she narrated the incident. Thereafter they went to the police station and lodged the FIR.

12. The prosecutrix has been examined as PW-1 before the trial Court.

She has stated in para 2 of her evidence that the incident is of 20.01.2022. She returned with prasad from Sai Temple, then all four accused were standing near underbridge, accused Suraj Yadav told her to go and bring bhog from Sai Temple. Then both Suraj Yadav and Mahesh Pasi held her feet, Suraj Suryawanshi, Deepak Kenwat held her hands and took her towards the field and accused Suraj Suryawanshi and Deepak Kenwat stand next to her and seeing that no one else came there. Accused Suraj Yadav and Mahesh Pasi removed the clothes which she was wearing and committed sexual intercourse with her. In para 3, she has stated that she screamed, but accused Suraj Yadav and Mahesh Pasi committed sexual intercourse with her for about one and half hours, she kept refusing. The accused had beaten her. After that, the accused left her there in the field. Then she was coming home and on the way she met with her father who took her home. She came home and told the entire incident to her parents. She has denied in para 7 of his cross-

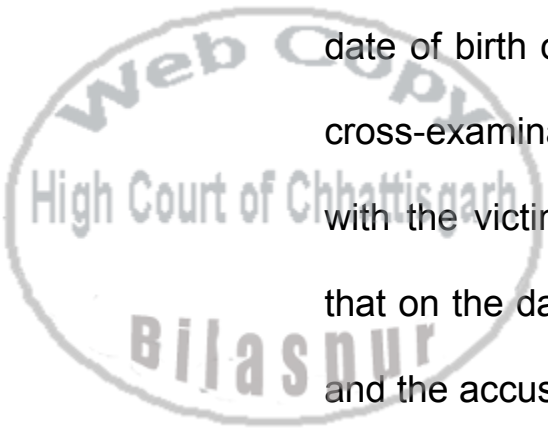




examination that she was more than 18 years of age at the time of incident. In para 15 of her cross-examination, she has stated that she was not aware that Vikas Pasi has any enmity with the accused or not. She has also denied that she along with Vikas Pasi have filed a false complaint against the accused. She has also denied that when she had gone to meet Vikas Pasi, accused Mahesh Pasi and Suraj Yadav had seen her and Vikas Pasi.

13. PW-12 is father of the prosecutrix. He has stated in para 1 of his evidence that the victim was 13 years old at the time of incident and date of birth of his daughter / victim is 18.8.2008. In para 12 of his cross-examination, he has denied that Vikas Pasi had love affair with the victim and she used to go to meet him. She also denied that on the date of incident, the victim had gone to meet Vikas Pasi and the accused had seen him in suspicious condition.

14. In the Indian society refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the

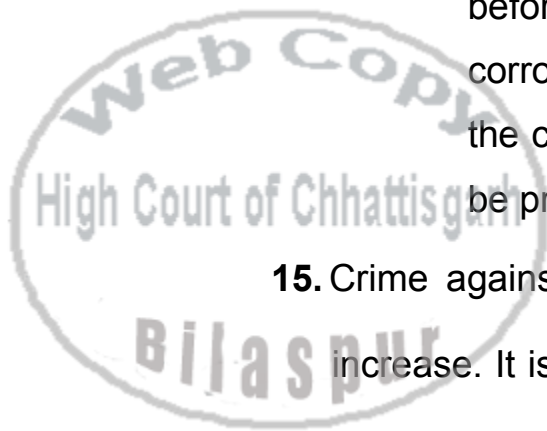




best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in **Rameshwar v. The State of Rajasthan (AIR 1952 SC 54)** were:

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...”.

15. Crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault -- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulders a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The





Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. This position was highlighted in **State of Punjab v. Gurmeet Singh (1996 (2) SCC 384)**.

16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the



evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

17. The Supreme Court in the matter of **Rai Sandeep @ Deenu v. State of NCT of Delhi, 2012 (8) SCC 21** held as under:-

“In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any



hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said





witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

18. The Supreme Court in the matter of **Nawabuddin v. State of Uttarakhand** (CRIMINAL APPEAL NO.144 OF 2022), decided on 8.2.2022 has held as under:-

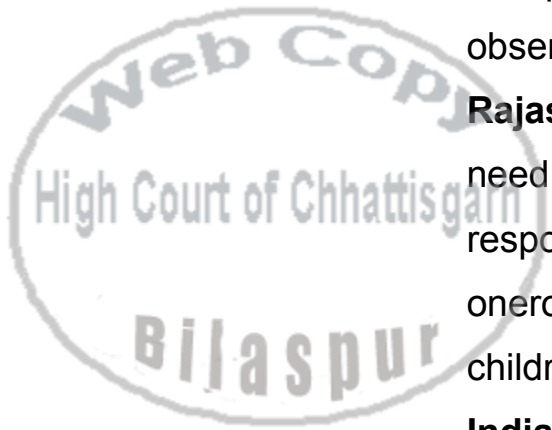
“10. Keeping in mind the aforesaid objects and to achieve what has been provided under Article 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent





children are not spared in pursuit of such debased sexual pleasure.

Children are precious human resources of our country; they are the country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. As observed and held by this Court in the case of **State of Rajasthan v. Om Prakash, (2002) 5 SCC 745**, children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. In the case of **Nipun Saxena v. Union of India, (2019) 2 SCC 703**, it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.”



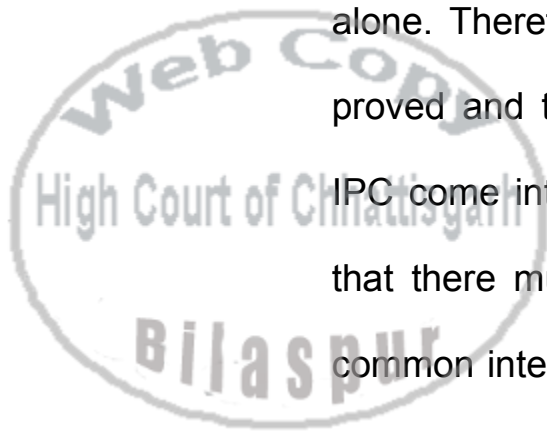


19. Section 34 the IPC reads as under:-

“34. Acts done by several persons in furtherance of common intention.-When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

20. From perusal of Section 34 of the IPC, it appears that when a criminal act is done by several persons with a common intention each of the person is liable for that act as it has been done by him alone. Therefore, where participation of the accused in a crime is proved and the common intention is also established, Section 34 IPC come into play. To attract Section 34 IPC, it is not necessary that there must be a prior conspiracy or premeditated mind. The common intention can be formed even in the course of the incident i.e. during the occurrence of the crime.

21. The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention *qua* its existence is a question of fact and also requires an act “in furtherance of the said intention”. One need not search for a concrete evidence, as it is for the court to come to a conclusion on a

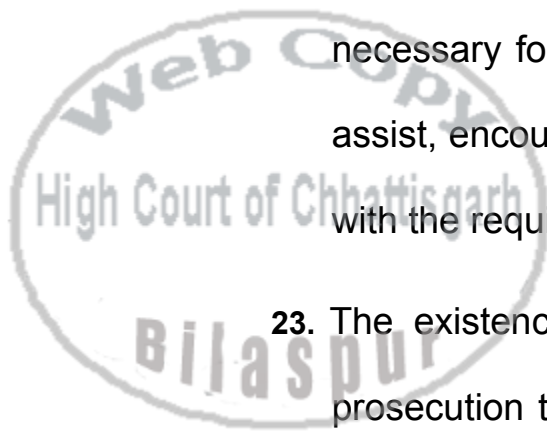




cumulative assessment. It is only a rule of evidence and thus does not create any substantive offense.

22. The word “furtherance” indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion. Here may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offense. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

23. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention *per se* may not attract Section 34 IPC, sans an action in furtherance. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to

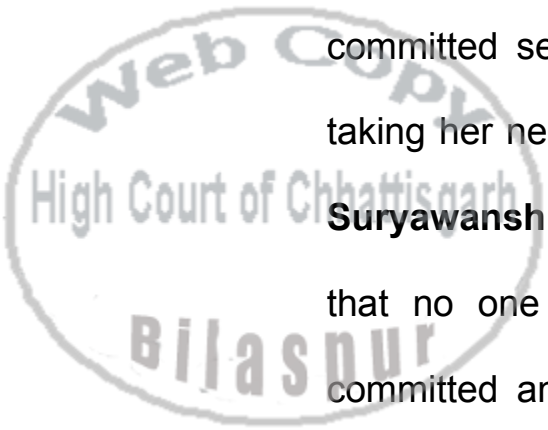




specifically raise such a plea in a case where adequate evidence is available before the Court.

24. As per the statement of the prosecutrix (PW-1), when she refused to go to Sai Temple, all four accused caught hold of her forcefully. Two accused i.e. **Suraj Yadav** and **Mahesh Pasi** held her feet and two accused i.e. **Suraj Suryawanshi** and **Deepak Kenwat** held her hands and all of them forcibly took her to bush. When she was screaming, they closed her mouth and slapped her, due to which her face got swollen. Accused **Mahesh Pasi** and **Suraj Yadav** have committed sexual intercourse with her for one and half hours by taking her near the bush and the remaining two accused i.e. **Suraj Suryawanshi** and **Deepak Kenwat** were standing there and seeing that no one else came there. As such, all the accused have committed an offence with common intention and thereafter they fled away from the spot. She came to her house around 9-9.30 P.M., at that time her father met her near shop whom she narrated the incident. Thereafter she along with her parents went to the police station and lodged the FIR.

25. Considering the evidence of the prosecutrix (PW-1) who has specifically stated the role of each of the appellants, evidence of her father (PW-12), evidence of Headmistress Smt. Manorama Dewangan (PW-9), further considering the FSL report (Ex.P-16), also considering the evidence of Dr. Mamta Saluja (PW-10), the material available on record and the law laid down by the Supreme





Court in the above-stated judgments, we are of the considered opinion that the learned Special Judge has rightly convicted the appellants for offence under Section 363/34, 366-A/34 of the IPC and Section 5(g)/6 of the POCSO Act. We do not find any illegality and irregularity in the findings recorded by the trial Court.

26. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellants. The conviction and sentence as awarded by the Special Judge to the appellants is hereby upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.

27. It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.

28. The Registry is directed to transmit the certified copy of this judgment along with the record to the trial Court concerned for necessary information and compliance.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Order date : 24th April, 2024



HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1669 of 2023

Suraj Yadav and others

-Versus-

State of Chhattisgarh

Head-Note

The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

