



2025:CGHC:2735-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1467 of 2021**

Ajeet Singh Porte S/o Late Mansingh Porte Aged About 39 Years R/o Village Dipka, P. S. Dipka, District Korba Chhattisgarh Present R/o Village Worker Colony Tapranga P. S. Tamnar District Raigarh Chhattisgarh

**... Appellant(s)
(In Jail)**

versus

State of Chhattisgarh Through Station House Officer, P.S. Tamnar, District Raigarh, Chhattisgarh.

...Respondent(s)

For Appellant : Mr. Rishi Rahul Soni, Advocate.
For Respondent/State : Mr. Sakib Ahmad, Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

16.01.2025

1. Heard Mr. Rishi Rahul Soni, learned counsel for the appellant. Also heard Mr. Sakib Ahmad, learned Panel Lawyer, appearing for the respondent/State.



2. This criminal appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is directed against the impugned judgment dated 28.08.2021 passed by the learned Additional Sessions Judge, Gharghoda, District Raigarh (C.G.) in Special Criminal Case (POCSO Act) No. 08 of 2020, by which the appellant has been convicted and sentenced as under :

Conviction under Section	Sentence
Section 419 of the Indian Penal Code (<i>for short, 'IPC'</i>)	Rigorous imprisonment (<i>for short, 'R.I.'</i>) for 03 years and fine of Rs. 1,000/-, in default of payment of fine, 02 months R.I. more.
Section 363 of the IPC	07 years R.I. and fine of Rs. 1,000/-. In default, 02 months R.I. more.
Section 365 of the IPC	07 years R.I. and fine of Rs. 1,000/-. In default, 02 months R.I. more.
Section 6 of the Protection of Children from Sexual Offences Act, 2012 (<i>for short, 'POCSO Act'</i>)	Life imprisonment R.I. and fine of Rs.1,000/-. In default, 02 months R.I. more.

3. Case of the prosecution, in brief, is that on 01.05.2020, the father (PW-2) of the victim lodged a written complaint to the Police Station that his daughter was abducted by a person wearing a 'Khaki' uniform,



claiming to be a Police Officer, while the victim was playing with her friends near a primary school. The incident occurred around 6:30 p.m. Based on the written complaint (Ex.P/2), a First Information Report (FIR) vide Ex.P/3 was registered at Tamnar Police Station under Crime No. 164 of 2020, invoking Sections 363 and 365 of the IPC. The investigation led to the recovery of the victim from the custody of the accused, along with the motorcycle and 'Khaki' uniform, which was used in the crime. During the investigation, the birth certificate of the victim was seized. The statement of the victim was recorded under Section 164 of the Cr.P.C., and a medical examination was conducted.

4. After completing the investigation, a charge sheet was filed against the accused under Sections 419, 363, 365, 376 of the IPC and Section 4 of the POCSO Act before the learned Additional Session Judge, Gharghoda, District Raigarh (C.G.) and the case was registered as Special Criminal Case (POCSO Act) No. 08 of 2020. The statements of witnesses were recorded.

5. Learned trial Court framed charges for the offences punishable under Sections 419, 363 & 365 of the IPC and Section 6 of the POCSO Act read over and explained to the accused, who abjured his guilt.

6. In order to bring home the offence, the prosecution examined as many as 09 witnesses and exhibited 12 documents in support of case of the prosecution. The appellant has neither examined any witness in his defence nor exhibited any document.

7. Statement of accused was recorded under Section 313 of



the Cr.P.C. in which he denied all the circumstances appearing against him and stated that he is innocent and has been falsely implicated. The defence has neither examined any witness nor has exhibited any document.

8. The trial Court upon appreciation of oral and documentary evidence on record and considering that it is the appellant who have committed aforesaid offence, convicted and sentenced him in the aforementioned manner, against which the appeal under Section 374(2) of the Cr.P.C. has been preferred by the accused/appellant.

9. It has been argued by the learned counsel for the accused/appellant that the prosecution witnesses have made contradictory statements and there are so many omissions and improvements in their statements and as such the same do not inspire confidence so as to convict the appellant. He further argued that the FIR has been registered against the unknown person and the appellant has been falsely implicated in the present case. He also argued that except victim there is no credible evidence in support of her statement even deposition of her father is based on information given by victim and medical evidence also does not corroborate, therefore, only on the basis of deposition of victim holding guilty to the appellant by the learned trial Court is not sustainable. The learned trial Court has failed to see that the appellant was not identified by the witnesses also. He further submitted that learned trial Court erred in reading MLC report and statement of Dr. Savitri Toppo (PW-9) and has also failed to consider that there is nothing in medical report to show that forcible



sexual intercourse was committed upon the victim. The learned trial Court had not considered the whole evidence in its totality and only appreciated the evidence of victim (PW-1).

10. On the other hand, learned State Counsel opposed the submissions of learned counsel for the appellant and submitted that the offences committed by the appellant were heinous in nature and thus, the trial court had rightly convicted him. He submitted that the trial Court had considered all the arguments made by the appellant and there was sufficient evidence to prove his guilt beyond a reasonable doubt. Moreover, the victim was minor and aged about 09 years 06 months and 07 days at the time of incident which is proved by the birth certificate (Ex.P/12) of the victim which contains the date of birth of the victim as 25.10.2010, as such, it is not possible for her to recognize the name of the accused, therefore, FIR has been lodged against the unknown person wearing the police uniform, but the accused appellant was duly identified by the victim through video-conferencing while recording her deposition. The evidence of the victim need not be required for any corroboration and on the sole testimony of the victim the conviction can be made. Therefore, there is no illegality or infirmity in the findings of the learned trial Court and the impugned judgment of conviction and order of sentence needs no interference.

11. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the learned trial Court with utmost circumspection and carefully as well.



12. In the instant case conviction of the accused/appellant is substantially based on the testimonies of the victim (PW-1), father of the victim (PW-2) and evidence of Sangeeta Bhagat (PW-4) and Arvind Patnayak (PW-5), who are the police personnel and birth certificate (Ex.P/12) of the victim.

13. As per case of the prosecution, the date of birth of the victim is 25.10.2010 on this basis on the date of incident *i.e.* 01.05.2020, the age of the victim was 09 years 06 months and 07 days. The victim (PW-1), has stated in her deposition that her date of birth is 25.10.2010, and the incident occurred on 01.05.2020. The father (PW-2) of the victim, corroborated the date of birth of the victim and the date of the incident. During cross-examination, the statements of these witnesses were not disputed.

14. The father (PW-2) of the victim also produced the birth certificate (Ex.P/12) of the victim, which was issued by the Registrar of Birth and Death, Municipal Corporation, Raigarh, in accordance with the rules of the Chhattisgarh government. The birth certificate confirms the date of birth of the victim is 25.10.2010. Although the witness acknowledged during cross-examination that the birth certificate was not obtained within 30 days of the birth of the victim, the statement of witness and the birth certificate were not disputed. However, the birth certificate (Ex.P/12) was issued on 06.10.2012, and the registration date is 08.11.2010, indicating that the certificate was prepared long before the incident. Therefore, there is no reason to distrust the birth certificate of the victim.



15. Thus, on the basis of aforesaid oral and documentary evidence, we find that the learned trial Court has rightly held in paragraph 11 of the impugned judgment that on the date of incident the victim was child and aged about 09 years 06 months and 07 days.

16. PW-1, who is victim in the case, in her examination-in-chief has stated that it is correct to say that the incident occurred on 01.10.2020 and the on the said date, at around 6:00 p.m., she left the house after telling her father that she was going for a walk with her friends. Thereafter, they headed towards Budiya Road for walk and by around 6:30 p.m., they reached near the Primary School at Bagbadi. At the same time, the accused arrived on a motorcycle wearing Police-like clothes. He claimed to be a Policeman and asked why they were roaming around during the lockdown. Thereafter, the accused offered to drop her home, the victim refused, but he forcibly pulled her onto his motorcycle and took her to a field beyond the village. In paragraph 08 of her deposition, the victim further stated that the accused began to molest her, touching her chest with his hands and inserting his finger into her private parts. He also attempted to remove her lower garments from behind and insert his private part into her anus. Further, the victim has also stated in paragraph 09 of her deposition that when she started crying, the accused threatened her to keep quiet. He then made her sit on the motorcycle and was taking her towards Mahaloi Basti. At that time, she was crying and asking the accused to leave her. In Mahaloi Basti, they met with Police personnel, who caught the accused along with his motorcycle. The statement of the victim clearly indicates that



when the perpetrator was taking her away on his motorcycle towards Mahaloi Basti, the Police caught him. This part of the statement of victim remains unchallenged. However, the statements of the victim made in response to the suggestion of the prosecution remained unchallenged and uncontroverted even during cross-examination.

17. Thus, it is evident from the testimony of the victim that when the accused was bringing the victim back after the incident, he was caught by the Police, which is fully supported by the statements of Sangeeta Bhagat (PW-4) and Arvind Patnayak (PW-5). The statements of these witnesses do not reveal any facts suggesting that the incident was not committed by the accused or that there was another accused. Instead, the sequence of events proves that it was the same accused who was caught by the Police while bringing the victim back. This clearly establishes the identity of the accused, confirming that he was the one who committed the crime. Therefore, the argument raised by the learned counsel for the appellant that the accused was not identified or someone else committed the crime is not acceptable.

18. Dr. Savitri Toppo (PW-9), the medical officer who has examined the victim, has deposed that on 02.05.2020, the victim, aged about 10 years from Bagbadi village was brought before her for examination by Lady Constable, namely, Sangeeta Bhagat, No. 250 of the Police Station Tamnar, District Raigarh (C.G.). The victim had a distinctive brown mole on her left hand. The examination was conducted in the presence of the mother of the victim. Upon examination, she found that the victim was slightly overweight compared to other children of her age



group. Her blood pressure and pulse were normal, and her chest development was also normal. There was no hair in her armpits. There were no signs of injury or scratches on her body. She had 22 teeth. Upon examination of the private parts of the victim, she found that there was no hair. There were no signs of injury or trauma to the private parts. The hymen was intact, but vaginal examination was not done. In her opinion, based on the medical examination, there was no evidence of sexual intercourse with the victim. The medical examination report of the victim is exhibited as Ex.P/11.

19. Section 3 of the POCSO Act defines “penetrative sexual assault” as an act where a person: (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child; or (b) makes a child do the same; or (c) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child; or (d) manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any other part of the child's body; such acts shall also be considered as penetrative sexual assault.

20. Similarly, Section 5(d) of the POCSO Act states that whoever commits penetrative sexual assault on a child below 12 years of age shall be considered to have committed aggravated penetrative sexual assault. From the provisions mentioned above and the testimony of the victim, it is clear that the accused inserted his finger into the vagina of the victim and attempted to penetrate her anus with his penis, which falls under the category of penetrative sexual assault. Thus, the actions of the accused fall under the category of aggravated penetrative sexual



assault. It is not necessary for the victim to have suffered physical injury or damage to her vagina for the actions of the accused to be considered a crime. From a forensic medical perspective, the actions of the accused are sufficient to establish the offense under Sections 3 and 5 of the POCSO Act. Therefore, the argument of the learned counsel for the appellant that the medical evidence does not prove the incident is unacceptable.

21. In view of above discussion, we also affirm finding recorded by the trial Court that the appellant is the perpetrator of instant crime.

22. The Hon'ble Supreme Court in the case of ***State of Punjab vs. Gurmit Singh***, reported in ***(1996) 2 SCC 384***, while considering the reliability of the statement of the victim has held that "*minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault was enough for conviction and does not require corroboration unless there were compelling reasons for seeking corroboration. The Court may look for some assurances of her statement to satisfy judicial conscience*". The same was reiterated in ***Pappu vs. State of Uttar Pradesh***, reported in ***2022 SCC OnLine SC 176***.

23. Learned counsel for the appellant during course of argument also raised objection that except victim there is no credible evidence in support of her statement even deposition of her father is based on information given by victim and medical evidence also does not corroborate, therefore, only on the basis of deposition of victim holding



guilty to the appellant by the learned trial Court is not sustainable. We are not inclined with the said submission made by learned counsel for the appellant as it is settled proposition of law that conviction of the accused could be based on sole testimony, without corroboration and it has also been held that the sole testimony of victim should not be doubted by the Court merely based on assumptions and surmises.

24. In the case of ***Ganesan vs. State***, reported in ***(2020) 10 SCC 573***, the Hon'ble Supreme Court observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the victim is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. In the aforesaid case, the Hon'ble Supreme Court had an occasion to consider the series of judgments on conviction on the sole evidence of the victim. In paragraphs 10.1 to 10.3, it was observed and held as under:

“10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay [Vijay vs. State of M.P., (2010) 8 SCC 191], it is observed in paras 9 to 14 as under: (SCC pp. 195-98)

“9. In State of Maharashtra vs. Chandraprakash Kewalchand Jain [State of Maharashtra vs. Chandraprakash Kewalchand Jain, reported in (1990) 1 SCC 550] this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested



with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)

'16. A prosecutrix of a sex offence cannot be put on a 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 alive to and 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 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 shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose 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.'

10. In **State of U.P. vs. Pappu [State of U.P. vs. Pappu, reported in (2005) 3 SCC 594]** this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as



under: (SCC p. 597, para 12)

'12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.'

11. In State of Punjab vs. Gurmit Singh [State of Punjab vs. Gurmit Singh, reported in (1996) 2 SCC 384], this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court



may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21)

'8. ...The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ...The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. 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. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

21. ...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.'

12. In **State of Orissa vs. Thakara Besra** [**State of Orissa vs. Thakara Besra**, reported in (2002) 9 SCC 86], this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In **State of H.P. vs. Raghbir Singh** [**State of H.P. vs. Raghbir Singh**, reported in (1993) 2 SCC 622], this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in **Wahid Khan vs.**



State of M.P. [Wahid Khan vs. State of M.P., reported in (2010) 2 SCC 9] placing reliance on an earlier judgment in ***Rameshwar vs. State of Rajasthan [Rameshwar vs. State of Rajasthan, reported in AIR 1952 SC 54]***.

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”

10.2. In *Krishan Kumar Malik vs. State of Haryana [Krishan Kumar Malik vs. State of Haryana, reported in (2011) 7 SCC 130]*, it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

10.3. Who can be said to be a “sterling witness”, has been dealt with and considered by this Court in *Rai Sandeep vs. State (NCT of Delhi) [Rai Sandeep vs. State (NCT of Delhi), reported in (2012) 8 SCC 21]*. In para 22, it is observed and held as under: (SCC p. 29)

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



any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and 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 every one 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 such similar tests to be applied, can it 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.”

25. In the case of ***State (NCT of Delhi) vs. Pankaj Chaudhary***, reported in ***(2019) 11 SCC 575***, it was observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It was further observed and held that sole testimony of victim should not be doubted by Court merely on basis of assumptions and surmises. In paragraph 29, it was observed and held as under:

“29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu vs. State of Maharashtra [Vishnu vs. State of Maharashtra, reported in (2006) 1 SCC 283]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down 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, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan vs. N.K. [State of Rajasthan vs. N.K., reported in (2000) 5 SCC 30].”

26. In the case of ***Sham Singh vs. State of Haryana***, reported in ***(2018) 18 SCC 34***, the Supreme Court observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It was further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it was observed and held as under:

“6. We are conscious that the courts shoulder 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 the 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 court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See *State of Punjab vs. Gurmit Singh* [**State of Punjab vs. Gurmit Singh**, reported in (1996) 2 SCC 384] (SCC p. 403, para 21).]*

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. 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. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, 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. (See Ranjit Hazarika vs. State of Assam [Ranjit Hazarika vs. State of Assam, reported in (1998) 8 SCC 635]).”

27. Considering the aforesaid facts and circumstances of the case, particularly the evidences of the victim (PW-1), father of the victim (PW-2) and birth certificate of the victim (Ex.P/12) and also as per evidence of Sangeeta Bhagat (PW-4) and Arvind Patnayak (PW-5), it is quite clear from the documentary and oral evidence presented by the prosecution on record and its analysis that the accused/appellant abducted the victim from her lawful guardianship and she was subjected to penetrative sexual assault by the accused/appellant. The prosecution has also been successful in proving beyond reasonable doubt that on the date of the incident the victim was minor *i.e.* below the age of 12 years and the accused on the said date, time and place, committed penetrative sexual assault with the minor victim. Thus, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant.

28. Consequently, the conviction and sentence as awarded by the trial Court under Sections 419, 363 and 365 of the IPC is hereby upheld. So far as the conviction under Section 6 of the POCSO Act is concerned, the same is also upheld, however, this Court is of the view that the sentence of life imprisonment which would mean imprisonment for rest of the natural life, is too harsh and instead, the same is converted to



rigorous imprisonment for 20 years. The imposition of fine amount and the default sentence is upheld.

29. The appellant is stated to be in jail since 01.05.2020 being the date of arrest. He is directed to serve out the sentence as modified above.

30. The criminal appeal is **partly allowed** to the extent indicated hereinabove.

31. Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial court concerned forthwith for necessary information and compliance and also send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice



Head-Note

The conviction can be based on testimony of the victim, who is a minor, supported by other corroborative piece of evidence led by the prosecution.