



2025:CGHC:31864-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 390 of 2021

1 - Ajay Verma @ Chhotu S/o Bhoop Singh, Aged About 25 Years R/o Village Kesla, P.S. Palari, District Balodabazar Bhatapara Chhattisgarh.

2 - Shivam Verma @ Monu S/o Anil Verma, Aged About 18 Years R/o Village Kesla, P.S. Palari, District Balodabazar Bhatapara Chhattisgarh.

--- **Appellant(s)**

versus

1 - State Of Chhattisgarh Through Station House Officer, Palari, District Balodabazar Bhatapara Chhattisgarh

--- **Respondent(s)**

For Appellant(s) : Mr. A.S. Rajput, Advocate

For Respondent(s) : Mr. Shailendra Sharma, Panel Lawyer

CRA No. 394 of 2021

Piyush Verma @ Mintu S/o Arun Verma, Aged About 19 Years R/o Village Sakri, Police Station City Kotwali Balodabazar, District - Balodabazar Bhatapara Chhattisgarh.

---**Appellant(s)**

Versus

State Of Chhattisgarh Through - Station House Officer Palari, District - Balodabazar Bhatapara Chhattisgarh.

--- **Respondent(s)**

For Appellant(s) : Mr. A.S. Rajput, Advocate

For Respondent(s) : Mr. Shailendra Sharma, Panel Lawyer

CRA No. 440 of 2021

1 - Sohan Dhruv & Others S/o Bharat Lal Aged About 20 Years R/o Village Kesla, Thana Palari, District Baloda Bazar Bhatapara Chhattisgarh.

2 - Rajendra Kumar Dahriya @ Lala Dahriya @ Rajendra Diamond S/o Bodhram Aged About 23 Years R/o Village Kesla, Thana Palari, District Baloda Bazar Bhatapara Chhattisgarh.

3 - Ukesh @ Rakesh Dahriya S/o Kodu Dahriya Aged About 23 Years R/o Village Kesla, Thana Palari, District Baloda Bazar Bhatapara Chhattisgarh.

4 - Kamlesh @ Rocky Ghritlahre S/o Surendra Aged About 19 Years R/o Village Amera, Thana Palari, District Baloda Bazar Bhatapara Chhattisgarh.

5 - Gopi Sahu S/o Rameshwar Sahu Aged About 19 Years R/o Village Amera, Thana Palari, District Baloda Bazar Bhatapara Chhattisgarh.

---Appellant(s)

Versus

State Of Chhattisgarh Through Thana In Charge Thana Palari, District Baloda Bazar Bhatapara Chhattisgarh.

--- Respondent(s)

For Appellant(s) : Mr. Samir Singh and Mr. Ratnesh Kumar
Agrawal, Advocates

For Respondent(s) : Mr. Shailendra Sharma, Panel Lawyer

CRA No. 820 of 2021

Jagnnath Yadav @ Molu @ Jagdev Yadav S/o Tirith Ram @ Loku Yadav Aged About 24 Years R/o Village Kesla, Thana Palari, District Balauda Bazar Bhathapara Chhattisgarh.

---Appellant(s)

Versus

State Of Chhattisgarh Through Police Station Palari, District Balauda Bazar Bhathapara Chhattisgarh.

--- Respondent(s)

For Appellant(s) : Mr. Vikas Kumar Pandey, Advocate

For Respondent(s) : Mr. Shailendra Sharma, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, CJ

10.07.2025

1. Since the aforesaid four criminal appeals have been filed against the impugned judgment dated 10.03.2021 passed by the learned Special Judge (Atrocities) Balodabazar, District- Balodabazar- Bhatapara (C.G.) in Special Case (Atrocities) No.52/2020, they were clubbed & heard together and being disposed of by this common judgment.

2. Learned State counsel submits that notice has been served to PW-3 (father of the victims) about the pendency of the present appeals filed on behalf of the accused persons.
3. Appellants- Ajay Verma @ Chhotu (A1), Shivam Verma @ Monu (A2), Sohan Dhruv (A3), Rajendra Kumar Dahriya @ Lata Dahriya @ Rajendra Diamond (A4), Ukesh @ Rakesh Dahriya (A5), Kamlesh @ Rocky Ghritlahre (A6), Gopi Sahu (A7), Piyush Verma @ Mintu (A8) and Jagannath Yadav @ Molu @ Jagdev Yadav(A9) have preferred these four criminal appeals under Section 374(2) of the CrPC questioning the impugned judgment dated 10.03.2021 passed by the learned Special Judge (Atrocities) Balodabazar, District- Balodabazar-Bhatapara (C.G.) in Special Case (Atrocities) No.52/2020, by which the Special Judge has convicted appellants as follows:-

Sr. No.	Accused	Conviction under Section	Sentence (Rigorous imprisonment)	Fine imposed	In default of payment of fine amount
1.	Kamlesh @ Rocky Ghritlahre (A6) and Gopi Sahu (A7)	363 IPC	05 years	Rs.3000/-	6 months
		354 IPC	03 years	Rs.3000/-	6 months
		376(f) IPC	03 years	Rs.3000/-	6 months
		8 POCSO Act 2012	03 years	Rs.3000/-	6 months
		Under Section 21 for Violation of Section 19 of the POCSO Act	06 months	Rs.1000/-	1 month
2.	Ajay Verma @ Chhotu (A1), Shivam Verma @ Monu (A2) Jagannath Yadav	341 read with Section 34 IPC	01 month S.I. in relation to PW-1	Rs.500/-	3 days

	@ Molu @ Jagdev Yadav (A9), Sohan Dhruv (A3), Ukesh @ Rakesh Dahriya (A5), Rajendra Kumar Dahriya @ Lala Dahriya @ Rajendra Diamond (A4)		01 month S.I. in relation to PW-2	Rs.500/-	3 days
		376-DA IPC, in respect of PW-2	Life Imprisonment which shall mean imprisonment for the remainder of natural life	Rs.10,000/-	01 year
		376-D IPC, in respect of PW-1	Life Imprisonment which shall mean imprisonment for the remainder of natural life	Rs.10,000/-	01 year
		506 Part-II IPC	5 years in respect to PW-1	Rs.3000/-	06 months
			5 years in respect to PW-2	Rs.3000/-	06 months
		6 POCSO Act 2012, in respect of PW-1	Life Imprisonment which shall mean imprisonment for the remainder of natural life	Rs.10,000/-	01 year
3.	Rajendra Kumar Dahriya @ Lala Dahriya @ Rajendra Diamond	6 POCSO Act 2012, in respect of PW-2	Life Imprisonment which shall mean imprisonment for the remainder of natural life	Rs.10,000/-	01 year
		66(E) I.T. Act 2000	03 years	Rs.10,000/-	06 months

	(A4)				
4.	Piyush Verma @ Mintu (A8)	354(A)(1)(iv) IPC	01 year in respect to PW-1	Rs.5,000/-	01 month
			01 year in respect to PW-2	Rs.5000/-	01 month
		12 POCSO Act 2012	03 years in respect to PW-1	Rs.10,000/-	06 months
			03 years in respect to PW-2	Rs.10,000/-	06 months
		21 POCSO Act 2012	06 months	Rs.1,000/-	01 month

4. The prosecution story, in brief, is that both the victims of the case used mobile number 9691533869 on which on 30.05.2020 at about 11:00 pm, accused Kamlesh alias Rocky called from his mobile number 9826259323. When the call was received by victim (PW-1), the abovementioned accused told her to stay outside the house as he and accused Gopi were coming to pick them up on a motorcycle. Both the victims refused but they started harassing them by calling repeatedly. When both the victims were strolling on the road outside the house, at that time accused Kamlesh Ghritalhar and Gopi Sahu came and forcibly made both the victims sit on their motorcycle and took them to the house of accused Gopi Sahu in village Amera where after sitting for about half an hour, accused Gopi Sahu and Rocky took both the victims near the cremation ground Bhatha of Amera

where for about half an hour victim (PW-2) sat with accused Gopi Sahu and victim (PW-1) sat with accused Rocky. They kept talking and kissing. Thereafter, the accused Rocky and Gopi Sahu were going to leave the two victims in village Kesla on the same motorcycle, when the remaining 6 accused Ukesh alias Rakesh Dahriya, Shivam Verma, Rajendra alias Lala Dahriya, Jagannath Yadav, Sohan Dhruv, Ajay Verma along with juvenile delinquents Sundaram Verma and Kaushal Dhruv forcibly stopped the motorcycle near Kesla gate and in the meantime, the accused Jagannath Yadav pulled the victim (PW-1) off the motorcycle and the accused Ajay Verma pulled the victim (PW-2) off the motorcycle. At the same time, a tractor was coming from village Kesla. Seeing this, the 6 accused abused and chased away the accused Rocky and Gopi. After that accused Ukesh alias Rakesh Dahriya, Shivam Verma, Rajendra alias Lala Dahriya, Jagannath Yadav, Sohan Dhruv, Ajay Verma along with juvenile delinquents raped both the victims one by one and accused Rajendra alias Lala Dahriya made a video of the rape on his mobile No. 6263161367. These 6 accused threatened both the victims that they will kill them and make the video viral if they tell anyone and then left from there. Both the victims came to their house at around 3:00-3:30 in the night but due to fear they did not inform their parents about the incident. The accused gave the video of the rape to accused Piyush Verma of village Sakri who a day or two after the rape, he continuously started

messaging and calling on the mobile phone of father of the victim (PW-3) and when PW-3 picked up the phone, he would disconnect the call and when any of the two victims picked up, he would call her out for sex. On 28.07.2020 at around 1:00 in the afternoon, the accused Piyush Verma from his mobile number 8305348806 called the victim (PW-1) on the mobile number 6260234802 of the father of the victims and said that if she does not come out for sex by 6:00 pm, he will make the video of their rape viral. Then both the victims (PW-1 and PW-2) gave full information of the incident to their father (PW-3) and mother on the same day.

5. On 28.07.2020 at 14:55 hrs., the victim (PW-1) called the women helpline 181 and informed about the above incident. On the same date of 28.07.2020 at around 16:00 hrs., Sakhi Center Balodabazar's center in-charge Tulika Parganiha (PW-6) received information about the incident from Women Helpline 181 Raipur, then she brought the victim (PW-1) and the victim's mother to Sakhi one Stop Center, Balodabazar. The next day on 29.07.2020 at 19:35 hrs, the victim's father (PW-3) filed a First Information Report (FIR) against all the accused in Police Center Palari, on which Deputy Superintendent of Police Milind Pandey, (PW-16) registered a case against the accused under Crime No. 288/2020 under sections 363, 376, 376(D), 376(D,A), 376(F), 341, 354(A), 506 IPC and sections 4, 6, 8 of the Protection of Children from Sexual Offences Act, 2012 and section 3 (2) (V) of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sections 66D, 67 (A) (B) of the Information Technology Act, 2000. During the investigation, on 29.07.2020 at 21:10 hrs., as per seizure memo (Ex.P.-15), a Realme C-1 mobile phone (which had Reliance Jio SIM card 6265010405) was seized from accused Shivam Verma. Similarly, as per seizure memo (Ex.P.-16), a Redmi 6 Pro mobile phone (which had Reliance Jio SIM card 6263161367) was seized from accused Rajendra alias Lala Dahriya at 21:35 hrs. and as per seizure memo (Ex.P.-17), a Micro Max mobile phone (which had SIM card 8269377302) was seized from accused Ajay Verma at 21:45 hrs. On the same date at 22:10, a Redmi Y2 mobile (which had Reliance Jio SIM number 8305348806) was seized from accused Piyush Verma as per seizure memo (Ex.P.-12). Similarly, as per seizure memo (Ex.P.-14), a Redmi Note Pro mobile (which had Airtel SIM number 8305348806) was seized from accused Kamlesh Ghritalhar at 22:20 (SIM number 9826259323 was installed) and as per seizure memo (Ex.P.-13), at 22:30 pm, one Realme 51 mobile (which had Reliance Jio Company's SIM number 6268593229 installed) was seized from accused Gopi Sahu.

6. On 30.07.2020 at 6:00 pm, a Nokia keypad mobile (IEMI No. 356937097814) was seized from accused Jagannath Yadav for the purpose of detecting obscene material in it as per seizure memo (Ex.P.-18). On the same date at 8:15 pm, on the

production of father of victims (PW-3), a Micromax mobile (which had Reliance Jio SIM no.-6260234802 and whose IEMI No. was 911644906388247, 911644906388254) was seized as per seizure memo (Ex.P.-28). On 30.07.2020 at 8:40 AM, Deputy Superintendent of Police Milind Pandey (PW-16), took the accused Kamlesh alias Rocky Ghritalhare into custody and interrogated him and a memorandum of his statement was recorded (Ex.P.-10). In the memorandum (Ex.P.-10), accused Kamlesh Ghritalhare told that he had hidden the motorcycle used in the crime in his rented house in the house of Shailesh at village Chuiha Bhatapara Road, which was recovered at 9:10 AM on his indication as per seizure memo (Ex.P.-11). On 30.07.2020 at 9:30 AM, Investigator Milind Pandey, (PW-16), recorded the seizure memo. According to the arrest memo, the accused Ajay Verma, Gopi Sahu, Ukesh Dahriya, Kamlesh Ghritalhare, Sohan Kumar Dhruv, Shivam Verma, Piyush Verma, Jagannath Yadav, Rajendra Kumar were arrested and their families were informed. On the same date at 9:45 am, the victim (PW-1's) class VIII mark-sheet was seized as per seizure memo (Ex.P.-19) when her father (PW-3) presented it. On 30.07.2020 at 9:50 am, a map of the crime scene (Ex.P.-2) was prepared. On 30.07.2020, after taking consent from the victims (PW-1 and PW-2) and their father (PW-3) for genital examination of both the victims, they were examined at Community Health Center, Palari and on the same date, genital examination of all the said accused was conducted

in which they were found to be capable of sexual intercourse. After examination, the preserved slide and swab of the victim were seized in a sealed packet from constable Leela Sahu at 14.30 hrs as per Ex.P.-82. The statements of the victims was recorded on 31.07.2020 by Judicial Magistrate First Class, Kasdol under Ex.P.-1 and Ex.P.-7 under Section 164 Cr.P.C. On 04.08.2020 at 14:20 hrs, on the presentation of Kotwar Kanshidas Manikpuri (PW-5), as per seizure memo (Ex.P.-21), the Kotwari Birth Register (Ex.P.-41) was seized. On 05.08.2020 at 16:20 hrs, Manisha Tiwari, Manager of Women Helpline, Raipur CDR of calls received from (PW-10) to Women Helpline No. 181 from two mobile numbers 8770011591 (by mother) and mobile number 6260234802 (by PW-1)) were seized along with a pen drive as per seizure memo (Ex.P.-50). On 05.08.2020, Patwari (PW-9) prepared the site map (Ex.P.-3). On 05.08.2020, Manisha Tiwari (PW-10) sent the original copy of case file and real time data of case number CG-9127-W and case number CG-9148-W of Women Helpline to Police Station Incharge Palari (Ex.P.-48). On 08.08.2020 at 17:00 hrs, one mutation register was seized from Savita Dhurandhar, (PW-8), In-charge Headmistress of Government Primary School, Kesla, Police Station Palari, District Baloda Bazar as per seizure memo (Ex.P.-29).

7. On 14.08.2020, constable Pappu Panagar (PW-11) of Palari police station deposited 9 sealed mobile phones in Cyber

Forensic Lab, Police Headquarters, Raipur for forensic investigation as per Ex.P.-53. On 19.08.2020 at 14:10, a call record (Ex.P.-47) received from women helpline from police inspector CR Chandra (PW-17) was seized by investigator Milind Pandey (PW-16) as per Ex.P.-51. On 20.08.2020 at 15:00, caste certificate of victims was seized from father of the victims (PW-3) as per seizure memo (Ex.P.-22). On 21.08.2020 at 11:00 hrs. Investigator Milind Pandey seized diary (Ex.P.-52) of Crime No. 288/2020 from PW-16. On 24.08.2020 at 18:00 hrs. copy of specimen handwriting of accused Ajay Verma was seized as per seizure memo (Ex.P.-17). On 24.08.2020 at 19:30 hrs. RC Book of motorcycle No. CG 22 P 3402 used in the crime and Aadhar card of Shailesh Jangde were seized as per seizure memo (Ex.P.-25) from Shailesh Jangde (PW-7). On 28.08.2020 at 18.00 hrs. 10 pages of handwriting written by accused Ajay Verma were seized as per seizure memo (Ex.P.-111). On 31.08.2020 at 17:05 hrs. 14 pages of handwriting written by accused Ajay Verma were seized as per seizure memo Ex.P.-112. On the same date at 18:10 hrs. open examination application form was seized from accused Ajay Verma's father Bhoopsingh Verma as per seizure memo (Ex.P.-42).

8. Thus, after completing the investigation and getting sufficient evidence against the accused, offences punishable under sections 363, 376, 376(D), 376 (D,A), 376 (F), 341, 354(A), 506 of the Indian Penal Code and sections 4, 6, 8 of the Protection of

Children from Sexual Offences Act, 2012, hereinafter referred to as the Act, 2012 and section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and sections 66 (D), 67 (A) (B) of the Information Technology Act, 2000 were imposed. On 28.09.2020, the final report was submitted under Section 173 (2) of the Cr.P.C.

9. All the accused denied the allegations levelled against them and claimed trial. In the trial under section 313 of Cr.P.C., it has been stated that they are innocent and have been falsely implicated. Apart from this, accused Shivam Verma has also stated that they had a quarrel with the victim's parents before the incident. No defence evidence has been presented in the defence.
10. In order to establish the charge against the appellants, the prosecution examined as many as 19 witnesses and produced 120 Exhibits. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellants and sentenced them as mentioned in para 3 of the judgment. Hence, these appeals.
11. Mr. A.S. Rajput, learned counsel for the appellants in CRA No.390/2021 and CRA No.394/2021 would submit that the impugned judgment passed by learned trial Court is bad, illegal, perverse and contrary to the law applicable to the facts and circumstances and evidence available on record. The learned trial Court has failed to see that if the entire prosecution story is

taken as it is then the offences punishable under Section 341 read with Section 34 of I.P.C., Section 376-DA of 566 Part II I.P.C., Section 376-D, Section 56-of I.P.C., Section 6 of POCSO Act, 2012 are not made out against the present appellants. Further, there is more than two months delay in lodging the F.I.R. Also, the medical report of PW-1 & PW-2 are not supporting the prosecution story and there are lot of omission and contradiction in statement of prosecution witnesses.

12. Mr. Samir Singh and Mr. Ratnesh Kumar Agrawal, learned counsel for the appellants in CRA No. 440/2021 would submit that the impugned judgment of conviction and Sentence is contrary to law and material available on record, which deserves to be set aside. The learned trial Court has failed to see that the prosecution has not proved the age of the prosecutrix and learned trial Court relied upon the document i.e. mark-sheet which is not proved by its author, recorded the findings against the material evidence available on record. Further, the learned trial Court erred in holding the conviction of appellants because the prosecution sought the independent witnesses who were not supporting the case of prosecution and the version of the prosecutrix is not reliable in light of her 161 and 164 of Cr.P.C. Statement recorded during course of investigation and the statement of her mother. The prosecution case is so weak that conviction of appellants is bad in the eye of law. There is no material on record which proves that such incident has been

taken place and only on the basis of the statement of prosecutrix, the learned trial Court held the appellants guilty, even after many witnesses turned hostile and didn't supported the prosecution.

- 13.** Mr. Vikas Kumar Pandey, learned counsel for the appellant in CRA No.820/2021 would submit that the impugned judgment is contrary to law, facts and circumstances of the case, therefore liable to be set-aside. The learned trial Court has not properly appreciated the facts and evidences available on record while passing the impugned judgment and further the same suffers from factual and legal infirmity and perversity so as to convict the appellants under section 376D, 376DA, 341, 506 of Indian Penal Code 1860, under section 6 POCSO. Further, there is more than two months delay in lodging the F.I.R. Also, the medical report of PW-1 & PW-2 are not supporting the prosecution story and there are lot of omission and contradiction in statement of prosecution witnesses.
- 14.** On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellants and submits that the prosecution has proved that the victims were minor at the time of incident and the same is fortified by Ex. P-44C and Ex.P-118C i.e. School Admission Registers in which the date of birth of victim (PW-1) is mentioned as 05.09.2003 and date of birth of victim (PW-2) is mentioned as 24.06.2005 which makes it crystal clear that the victims were below 18 years of age

on the date of incident i.e. on 30.05.2020. Thus, this is the un-rebutted evidence against the accused / appellants. Therefore, the accused / appellants have been rightly convicted by the learned trial Court and the judgment of conviction is just and proper in the eyes of law and looking to the evidence on record the appellants / accused have rightly been convicted by the learned trial Court. Further, the learned trial Court has properly taken into consideration electronic evidence (Article-A), CDR (Ex.P-75) and prosecution witnesses i.e. father of the victims (PW-3), Smt. Manisha Tiwari, Manager of Women Helpline (PW-10), Tulika Parganiha (PW-6), Vikram Dhruv, Sub-Inspector in Cyber Lab (PW-14), Dr. B.S. Dhruva, Medical Officer (PW-13), Milind Pandey (PW-16) and circumstantial evidences that has been brought on record by the prosecution which leads to the only conclusion that, the accused / appellants have committed offence charges as aforesaid framed against them. He further submits that the charges leveled against the appellants are very serious in nature like committing gang rape of the victim girls in a very brutal manner. The respondent / State further submits that, in Para 42 of the judgment, the learned trial Court has concluded his observation with regard to involvement of the accused / appellants in the aforesaid crime which is just and proper and the defense has not rebutted any of the findings or evidences which were produced during the proceedings of trial. Also, looking to the seriousness of the crime, the appellants are not entitled for any

sympathy by this Court thus, in light of the above submissions made hereinabove, appeals of the appellants is liable to be dismissed as the same are vague, baseless and devoid of merits and accordingly is liable to be dismissed.

15. Learned State counsel also relied upon the judgment ***Himanshu Alias Shammi V. State of Himachal Pradesh*** dated 31.10.2018 before the Hon'ble High Court of Himachal Pradesh, whereby the Hon'ble High Court denunciate as follows;-

"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."

16. We have heard the learned counsel for the parties and perused the record with utmost circumspection.

17. The first question that arises for consideration before this Court is whether the victims were child on the date of incident and belong to Scheduled Caste category.
18. So far as caste of the victims is concerned, in this regard, both the victims during their deposition have said themselves to belong to Scheduled Caste. The father of the victims (PW-3) also gave evidence (Ex.P-23 and 24) i.e. caste certificates of both PW-1 and PW-2. On the point of seizure of this caste certificate from the father as per seizure memo (Ex.P.-22), the evidence of investigator Milind Pandey (PW-16) is on record. Certificates (Ex.P. 23 and 24) are certificates issued by Sub-Divisional Officer Revenue, Balodabazar, on the authenticity of which, no objection has been raised. In the said certificates, both the victims have been mentioned as belonging to Scheduled Caste category. In this way, it is proved that the victims belong to the Schedule Caste category.
19. Now coming to the age of the victims, in this regard, victim (PW-1) has stated her date of birth as 05.09.2003 and victim (PW-2) has stated her date of birth as 24.06.2006 during their examination. This has been held by the Hon'ble Supreme Court in the case of ***Usman vs State of Uttarakhand 2021 SCC OnLine Utt 142***, relying on the guidelines of ***Jarnail Singh vs State of Haryana (2013) 7 SCC 263***, whereby it has been determined that the age of the victim in POCSO cases shall be

determined as per the provision mentioned in Section 94 of the Juvenile Justice (Care and Protection) Act 2015 on the basis of Rule 12 (3) of the POCSO Rules, 2007.

- 20.** Sub-section (2) of Section 94 of the Juvenile Justice (Care and Protection) Act 2015 provides that –

94(2)- In case, committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available, and in the absence thereof.

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (1) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

- 21.** Thus, for determining the age of a child victims under the POCSO Act, the date mentioned in his/her school certificate or matriculation or equivalent certificate from the concerned examination board shall be taken into consideration first and if any of these is missing, then the birth certificate issued by the Corporation or Municipal Officer or Panchayat shall be considered and failing that, the age shall be determined through ossification test.

Here in the present case, for determining the age of PW-1, the evidence of Class-VIII mark-sheet as Ex.P.-20 and Dakhil Kharij register as Ex.P.-44C was seized and for determining the age of PW-2, the evidence of Dakhil Kharij register as Ex.P.-118C was seized. In Ex.P.-20 (Class-VIII mark-sheet), the date of birth of PW-1 is mentioned as 05.09.2003.

- 22.** On the point of date of birth of PW-1, the evidence of Smt. Savita Dhurandhar (PW-8), the in-charge head teacher of Government Primary School, Kesla, who, during her examination on 16.12.2020, brought with her the admission and dismissal register of the said school from the year 2005 till date in original copy on which Ex.P.-44 and after matching, its photocopy was seized as Ex.P.-44C. In this register also, the date of birth of PW-1 is mentioned as 05.09.2003. Similarly, for determining the age of PW-2, Smt. Savita Dhurandhar (PW-8) again appeared on 25.02.2021 with the Dakhil Kharij register related to the said

victim PW-2. During her examination, Ex.P.-118 was marked on the Dakhil Kharij register of the said school from the year 2005-06 to 2020-21 brought by PW-8 with her and after matching, Ex.P.-118C was marked on its photocopy. In this register, the date of birth of PW-2 is mentioned as 24.06.2005. Since the presented Dakhil Kharij registers are maintained in the normal course of nature, no question mark has been raised on their reliability.

23. In this regard, the judgment of the Hon'ble Supreme Court in ***State of M.P vs Preetam AIR 2018 S.C. 4212*** is noteworthy. According to which, "School register is an authentic document kept in the official curriculum, which is attributed great weight until proved otherwise." Similarly, where the admission and dismissal register of the primary school of the plaintiff is presented in relation to her date of birth, the entry of the primary school of the plaintiff will be considered valid. In this regard, the judgment of the Hon'ble Supreme Court - ***Ashwani Kumar Saxena vs State of M.P*** on 13 September, 2012 is noteworthy. According to which-

45. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.

- 24.** According to the Dakhil Kharij registers (Ex.P-44C and Ex.P-118C), the date of birth of the victim (PW-1) is shown to be 05.09.2003 and the date of birth of the victim (PW-2) is shown to be 24.06.2005. Further, the date of incident is 30.05.2020 and on calculating the age on the basis of the said date of birth, the age of PW-1 was below 18 years and the age of PW-2 was below 16 years. On the basis of the said two dates of birth also, the age of the victim is shown to be less than 16 years. The Headmaster has also accepted in the cross-examination that the entry in the mutation register of the victim was made in his handwriting.
- 25.** On the basis of all the above circumstances and documentary and oral evidence, it is proved that at the time of the incident, the victims were a minor girl below 18 years of age, which is covered under Section 2 (d) of the Protection of Children from Sexual Offences Act. The child fell within the category of "child" as defined. Therefore, the essential ingredient of commission of the offence under Section 6 of the POCSO Act is attracted against the accused.
- 26.** Now the next question that arises for consideration before this Court is whether the accused Kamlesh alias Rocky Dhrtlahare and Gopi Sahu took victims PW-1 and PW-2 from their guardianship on the alleged date, time and place without the consent of their lawful guardian?

27. With regard to this question, victim (PW-1) has deposed in her statement that on the night of 30.05.2020, she was walking with victim (PW-2) in front of her house in village Kesla when she received a call from accused Kamlesh Dhrtlahare on her mobile No. 9691533869. He asked both the sisters to go for a ride with him and accused Gopi on a motorcycle. When she refused, accused Kamlesh Dhrtlahare started calling repeatedly and after some time accused Kamlesh Dhrtlahare and Gopi Sahu came near her house on a motorcycle, then both the accused took both the victims/sisters on the motorcycle to accused Gopi Sahu's house at Bajrang Chowk, Amera. After staying there for half an hour, they took them to the crematorium in Amera. PW-2 also said that accused Kamlesh @ Rocky had called PW-1 on mobile and then both the accused came on motorcycle and took both the sisters with them to village Amera on their bike, then from there, they took them to cremation ground of Amera.

28. In this regard, it has been provided in Section 361 of the Indian Penal Code that-

Section 361 Kidnapping from lawful guardianship:

"Whoever takes or entices any minor under [sixteen] years of age if a male, or under [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

29. Thus it is clearly shown that even if both the accused, PW-1 and PW-2, had agreed to go with Kamlesh and Gopi voluntarily, yet these accused had no right to take them in this manner at night without the consent of the lawful guardian of PW-1 and PW-2. This right can be exercised under Section 361 of the IPC. According to the provisions of the CrPC, this could be done only under certain conditions, out of which the most important condition was the consent of the lawful guardian. It is noteworthy that at the time when PW-1 and PW-2 were taken away by these two accused, they were in their house, i.e. under the guardianship of their lawful guardian father (PW-3) and during the examination of the father (PW-3), no such fact has come to light which shows that with his consent, the two accused took PW-1 and PW-2 with them at night. As far as the question of accused Kamlesh Dhrtlahare calling PW-1 and 2 on mobile number 9691533869 from mobile number 9826259323 is concerned, it is clearly evident from the CDR (call detail report) (Ex.P.-105) of the said mobile number 9691533869 that between 23:12:18 hrs on the night of 30.05.2020 to 23:56:41 hrs on the night of 30.05.2020 and at 00:01:20 and 00:02:40 hrs on the morning of 31.05.2020, a total of 9 calls were received from the said mobile number 9826259323 on the said mobile number of the victims. Thus, the last call came on 30.05.2020 at 12:02:40 in the night after which the victims went with the accused Kamlesh and Gopi.

- 30.** The victim (PW-1) further deposed that after the incident of gang rape, the accused Piyush used to repeatedly message and call on her mobile number i.e. PW-1's father (PW-3) and ask both the sisters to come to meet him or else he threatened to make their video viral. On 28.07.2020 at about 1:00 pm, the accused Piyush Verma called again, then she i.e. PW-1 told her father PW-3 about the incident. Then a call was made to the women helpline number 181 and then the next day, the father of the victim (PW-3) lodged a report in Palari police station. Father of the victims (PW-3) has stated that he had filed report of Ex.P.-9 in Palari police station on 29.07.2020 at around 7:00 pm
- 31.** It is clearly shown that in the present case, accused Kamlesh and Gopi have used criminal force on PW-1 and PW-2 by kissing and have sexually assaulted both the victims who are below 18 years of age by touching their bodies with sexual intent.
- 32.** Now the next question that arises for consideration before this Court is whether the accused persons on 30.05.2020 committed aggravated penetrative sexual assault by raping the victim girls below 18 years of age in turns on the said date, time and place of incident?
- 33.** In this regard, both the victims (PW-1 and PW-2) say that they know all the accused Shivam Verma, Ajay Verma, Sohan Dhruv, Rajendra alias Lala Dahriya, Jagannath Yadav, Ukesh alias Rakesh Dahriya by name and face. When the accused were

taken out of their dock and identification proceedings were conducted behind the curtain, both victims (PW-1 and PW-2) identified all the 6 accused by name.

- 34.** The Supreme Court in the matter of **Malkhansingh and others v. State of M.P.** reported in **(2003) 5 SCC 746** held as under:-

“7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure, which obliges the investigating agency to hold, or confers a right upon the accused to claim, a

test identification parade. They do not constitute substantive evidence and these parades are essentially governed by section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (Emphasis supplied).”

- 35.** Further, the evidence of both the victims is that while returning from the crematorium Amera with both the accused Kamlesh and Gopi, the above mentioned 6 accused had stopped their bike at Tigaduga Chowk Kesla. Victim (PW-1) stated that accused Ajay Verma caught hold of her hair and pulled her down and in the meanwhile accused Jagannath Yadav caught hold of her and took her down from the bike. Then all the accused threatened to beat up the two accused Kamlesh Dhrtlahare and Gopi Sahu and chased them away and beat up both the sisters with their hands and fists. There all the accused turned on the flash light of their mobile phones and in the meantime seeing a tractor coming from village Kesla, accused Ajay Verma dragged PW-2 down the road towards the bushes fearing to be identified in its light. The remaining accused dragged PW-1 to the other side of the road. Then all the accused raped both the sisters one by one. According to PW-1, accused Rajendra Dahriya among the accused made a video of the other accused raping both the

sisters. Victim (PW-1) further stated that after the incident both the sisters were in a lot of pain and they returned home with great difficulty.

- 36.** The evidence of PW-2 is that both the sisters were returning to village Kesla on a motorcycle with the two accused Kamlesh and Gopi, when the above mentioned 6 accused stopped their motorcycle near the breaker at Kesla turn. Accused Ajay Verma caught hold of her hand and pulled her towards the bush and the remaining accused took her sister PW-1 towards the bush. Then all the 6 accused forcefully raped her and her sister. According to the witness, before the incident, seeing a tractor coming from their village Kesla, the accused Gopi Sahu and Rocky Dhritlahare ran away fearing to be identified in its light. According to PW-2, the above mentioned accused kept doing bad things with both the sisters till about 3:00 in the night. Victim (PW-1), on being asked in paragraph 24 of cross-examination, accepts that no street light was lit at the place of incident, but voluntarily stated that it was a moonlit night. In the examination of the two sisters, nothing has come to light which gives rise to the suspicion that both of them were alive at the time of the incident.
- 37.** The father of the victims (PW-3) stated in his cross-examination that on coming to know about the incident after 1:00 pm on 28.07.2020, he did not immediately go to Palari police station and file a report, he voluntarily says that he has to think over it. He

admits that he did not report to the police station the next day on 29.07.2020 morning. He voluntarily says that PW-1 and her mother were both in Balodabazar (at Sakhi Centre) and he was waiting for them, so he could not report in the morning. He accepts that the family had a discussion before filing the report and admits that the accused Ajay Verma and Shivam Verma are his neighbours. Thus, this witness is also considered to be a reliable witness.

38. Now if we look at the map of the place of incident (Ex.P.-3) attested by Patwari Sukhram Sahu (PW-7), then it shows the rape of victim (PW-2) at the place marked in red ink as A and rape of victim (PW-1) at the place marked in red ink as B1, B2 and B3 and there is a road in between the two. According to the witness, he had made the said map as per the instructions given by the victims. There is no material contradiction in the record between the said map and the evidence of the victims, rather the evidence of the victims is supported by the said map. Deputy Superintendent of Police Milind Pandey (PW-16) has testified that the map (Ex.P.-2) was made by him as per the instructions given by the victims and this map is also in accordance with the evidence on record.
39. The Hon'ble Supreme Court in its judgment in the matter of ***Deepak Gulati vs. State of Haryana (2013) 7 SCC 675*** has held that-

"Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks."

40. Considering the above guidelines in the context of the above, it is noteworthy that according to the prosecution, the above incident was confirmed by the accused Rajendra alias Lala Dahariya. The prosecution also argued that the video made by PW-14 on his Redmi 6 Pro mobile phone at the time of the incident is shown as Exhibit-A, the data of which was retrieved by Cyber Cell Police Officer (PW-14) during the investigation and has also been duly produced as evidence. The prosecution also argued that when the said video clips and images present in Exhibit-A were shown to PW-1 and PW-2 during their examination, they confirmed that the video clips and images were of the incident, thereby confirming the prosecution's story.

- 41.** Deputy Superintendent of Police/Investigator Milind Pandey (PW-16) (the then police station in-charge, Palari), stated that he had seized Rajendra alias Lala Dahriya's Redmi 6 Pro company mobile as per seizure letter (Ex.P.-16) on 29.07.2020 and sent the said mobile (Exhibit-A) of accused Rajendra alias Lala Dahriya along with a total of 9 seized mobiles to Cyber Cell, Balodabazar through memorandum of (Ex.P-65) to retrieve the data present in it and a total of 28 blank hard disks were also sent. According to the witness, there was no tampering with the mobile phones seized by him. A certificate was given regarding the same which is Ex.P.-99. According to Deputy Superintendent of Police Siddharth Baghel (PW-19), all those 9 mobiles were marked as Ex.A to I and sent in sealed condition along with the hard disk to Police Headquarters, Raipur through letter dated 18.08.2020 of Ex.P.-113.
- 42.** In this regard, the evidence of Police Sub Inspector Vikram Dhruv (PW-14) posted in the said lab is that he has been posted as Sub Inspector in the Cyber Lab since the year 2012. According to the witness, on 10.08.2020, Assistant Inspector General of Police, Technical Services/Telecommunication, Police Headquarters, Naya Raipur, examined a total of nine mobile phones seized from him and sought his opinion, which is letter (Ex.P-65). According to the witness, he had examined the sealed Redmi company mobile Exhibit-A (seized from Rajendra alias Lala Dahriya) whose model No. was 6 Pro and IMEI No. was 861454041292779,

861454041292787, which was mentioned as Exhibit A. According to the witness, UFED VER.7.34 software was used for testing the said mobile and it was tested through UFED system on File Extractions were done through system method in which call log, contact, Whatsapp chat, installed application, audio, video image and deleted data were retrieved. According to the witness, he found during the investigation that the data retrieved from the Redmi company mobile seized from Rajendra alias Lala Dahriya contained rape related video and images in the said exhibit A which was saved in a folder named Suspected. In this regard, the witness has produced his certificate under section 65B of the Indian Evidence Act as exhibit P.-67. On this certificate, the evidence of PW-14 is that the report of the said retrieved data has been prepared in the pen drive without distorting the original form of the electronic evidence. He has also testified that he certifies that no change has been made with the electronic evidence in the entire process and the facts mentioned in the certificate are completely true as per his knowledge. Thus, the electronic evidence having been duly proved as per the requirements of Section 65B of the Evidence Act, as mentioned above, is admissible. It is noteworthy that during the examination (camera proceedings) of PW-1 and PW-2, they were shown the data retrieved from the mobile of the said Exhibit A, i.e. video clips and images. When PW-1 was shown the VID_20200531_023449.mp4.vdmpvf present in the suspected

folder of the 32GB pendrive (Article-A) attached with the charge-sheet, on playing it on the computer, he said that the girl seen in it was his sister (PW-2) and expressed that he could not identify the boy as he could not see him clearly. Similarly, when VID_20200531_025408.mp4.vdmpvf present in the said Article-A was played on the computer, PW-1 said that the girl seen in it was she herself and identified the boy as accused Rajesh Dahriya (actually Ukesh alias Rakesh Dahriya). It is noteworthy that during the evidence, Rajesh Dahriya was typed erroneously, but during the examination of PW-1 and PW-2, Rajesh Dahriya was considered as Ukesh alias Rakesh Dahriya and cross-examined. Besides, in the court also, the victims have identified the accused Ukesh alias Rakesh present. On being shown VID_20200531_023215.mp4.vdmpvf, the witness has said that the girl seen in it is she herself and PW-2 and has identified a boy seen in it as accused Jagannath Yadav who was not wearing upper clothes. On being shown photo_blob.o_embedded_315.jpg present in the same folder, the witness has said that the girl seen in it is herself. On being shown photo_blob.0_embedded_316.jpg and photo_blob.o_embedded_318.jpg in the computer, the witness has identified the girl seen in it as herself and the boy seen in it as accused Rajesh Dahriya (actually Ukesh alias Rakesh Dahriya). When photo_blob.o_embedded_319.jpg was shown in the computer, the witness has said that the girl seen in it is PW-2.

- 43.** Similarly, during the examination of PW-2, when the video containing VID_20200531_023449.mp4.vdmpvf present in 32GB pendrive Article-A1 was played on the computer, the witness said that the girl seen in it was herself and the boy was accused Ajay Verma. She has given the same evidence which has been given by PW-1. Apart from this, it has also been said that the motorcycle seen at the scene of the incident belongs to the accused Gopi Sahu and Kamlesh Dhrtlahare. The evidence of both the sisters is the same in relation to photo images 315.jpg, 316.jpg and 318.jpg and 319.jpg.
- 44.** Thus, the above evidence corroborates the evidence of PW-1 and PW-2 that both the sisters were present at the scene of the incident. Although all the 6 accused are not visible in it, only accused Rajesh Dahriya (actually Ukesh alias Rakesh Dahriya), Jagannath Yadav, Ajay Verma and Shivam Verma are visible, so it is natural that the recording is as it was done at the time of the incident. This is the reason that accused Sohan Dhruv is not visible and accused Rajendra alias Lala Dahriya is not visible because he was recording on his mobile. Not only this, some of the accused were also holding belts and sticks in their hands. One accused was not even wearing upper clothes. These facts corroborate the prosecution story.
- 45.** Now coming to the medical evidence adduced, according to Dr. Anita Verma, posted at Community Health Center, Palari, District-

Balodabazar (PW-12), on 30.07.2020 at 1:00 pm, female guard Leela Sahu brought PW-2 for examination. According to PW-12, the victim's last menstruation had occurred 8-10 days before the examination. Similarly, according to PW-12, she had examined PW-1 at 1:25 p.m., her last menstruation had also occurred 8-10 days before the examination.

According to the witness, there were no marks of struggle on the bodies of both the victims, which is natural if it is not present after two months of the incident. Besides, PW-12 has stated that the secondary sexual characteristics of both the victims had developed normally.

According to the witness, the hymen of both was old and filled, the duration of which was at least more than three weeks. According to the witness, she did not find any sign of immediate intercourse in any of the victims, which is natural. She prepared two slides from the vaginal and vulval secretions of both, sealed them and handed them over to the lady constable for sending them to FSL Raipur for chemical examination. PW-12 in her test report (Ex.P.-54, 55), has stated that she has signed on A to A. In the cross-examination, she refuted the suggestion that after the hymen is damaged, its wound heals completely after 15 days. She further says that the vaginal injury of the victim PW-1 was at least 21 days old. Thus, this medical evidence also partially confirms the prosecution story. It is noteworthy that

according to the FSL report (Ex.P.-120), If no human sperm is found in the seized slide, then their non-detection after 2 months of the incident will be considered natural.

- 46.** Thereafter, all the above 6 accused were capable of having sexual intercourse has been confirmed by Dr. B.S. Dhruv, posted as Medical Officer at Community Health Centre, Palari, (PW-13), who on examining all the above 6 accused on 30.07.2020, has testified that their secondary sexual characteristics were fully developed, penile filaments were absent and all of them were capable of having sexual intercourse and were used to having sexual intercourse.
- 47.** So, as far as the delay in FIR (Ex.P.-9) is concerned, it is true that in this case, according to the prosecution, the FIR for the incident that took place on the intervening night of 30.05.2020 and 31.05.2020 was registered on 29.07.2020. In this regard, it has been held by the Hon'ble Supreme Court in the matter of State of H.P. vs. Gian Chand 2001 SCC (Cr.) 980 that -

"The following proposition of law is laid down by the Supreme Court for appreciation of explanation of delay in filing F.I.R. Delay in lodging F.I.R. cannot be used as a ritualistic formula for doubting the prosecution case and discarding it. Delay has the effect of putting the court on its guard to search if any explanation has been offered, and if offered, whether or not it is satisfactory. If prosecution fails to satisfactorily explain the delay and there is possibility

of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution case. However, if the delay is explained to the satisfaction of the court, it cannot by itself be ground for disbelieving and discarding the entire prosecution case. It is common knowledge and also judicially noted fact that incidents like rape, more so when the perpetrator of the crime happens to be a member of the family or related therewith, involve the honour of the family and therefore there is reluctance on the part of the victim's family to report the matter to the police and carry it to the court. When the accused is a close relation of the father of the victim of rape, and the mother of the victim did not get support of the in-laws who tried to settle the matter within the four-walls of the family, and the F.I.R. was lodged due to moral support of the village panch to the mother of the victim, the Supreme Court held that the delay in lodging the F.I.R. was explained satisfactorily from the sequence of events soon after the crime.

- 48.** Similarly, in the matter of Tara Singh & others vs. State of Punjab AIR 1991 SC 63, the Hon'ble Supreme Court has held that-

"Unless there are indications of fabrication, the court cannot reject the prosecution version as given if the F.I.R. Where names of the accused were consistently mentioned throughout there was absolutely no ground to hold that the FIR was brought into existence subsequently during investigation and the mere delay in lodging the report by itself cannot give scope for an adverse inference leading to rejection of the prosecution case outright.

49. Now considering in the context of the above guidelines, PW-1 has clearly stated in her main examination that when she told accused Jagannath that she would inform the police about the incident, Jagannath had said that she would be killed if she informed anyone about the incident and accused Jagannath and Ajay Verma had also threatened that if she informed anyone about the incident, they would make the video of her rape viral. PW-2 has also stated in that the above two accused had threatened to kill her. PW-1 has also stated that after the incident, accused Ajay Verma Kaushal Dhruv had come to her house in village Kesla and had threatened her that if she tells anyone about the incident, they have already committed murder and will not delay in committing murder again and had also said that they will not let both the sisters take admission in any school.

Now if we keep in mind the above threats and the fact that the victims in the case are minor girls, then it seems natural for them to get scared after such a big incident happened to them and not tell anyone about the incident due to shame and fear. It is noteworthy that according to the prosecution, after the incident, accused Piyush Verma continuously pressurized both the victims to have physical relations with him i.e. accused Piyush Verma or else he has a video of the incident which he will make viral, then the victims told their father (PW-3) about the incident and then an FIR was registered in the case. In this regard, PW-2 has stated in paragraph 4 of her examination-in-chief that on the second day of

the incident, PW-1 had gone to village Telasi with her mother, and at home only she, i.e. PW-2 and her brother were present. Then on the same day, accused Piyush Verma came in front of her house and called on her father PW-3's mobile (Reliance Jio Company SIM no. 6260234802) and when PW-1 received the call, he said that he has the video of the incident and if she does not come to meet him, he will make that video viral. Even after that, accused Piyush Verma kept on calling continuously. On 28.07.2020 at 2 pm, accused Piyush Verma called PW-1 and asked her to meet. She further says that when accused Piyush Verma used to call on her father PW-3's mobile number, he did not talk when her father received the call but when any of the two sisters received the call then accused Piyush Verma used to talk. According to PW-1, on 28-07-2020 accused Piyush Verma called and said that both the sisters should come to meet him. Then she told her father about the incident and then on the same day at 02:30 pm she called on Sakhi Centre's No. 181 and reported the incident. Information was given regarding the same. On the same day, the people from Sakhi Centre came to the house in the evening and took her, i.e., PW-1 and her mother to Sakhi Centre. The next day, PW-2 went to Sakhi Centre. Then the father of the victims (PW-3) went to Palari police station and registered a report regarding the incident. In this regard, Deputy Superintendent of Police Milind Pandey (PW-16), himself, on the suggestion of the defence, has accepted that both the victims

used to use the mobile number 9691533869 jointly. It is also accepted that the mobile number of the victims' father, PW-3, is 9753589823. Then the witness has voluntarily clarified that both the victims used to use their father's mobile number also. Thus, the use of the said mobile number 9691533869 by both the victims has remained unchallenged but has been accepted.

- 50.** Father of the victims (PW-3) has also given the same evidence that on 28-07-2020 at about 01:00 pm, accused Piyush Verma called on his mobile number 6260234802, which was received by PW-1 and then, fed up of Piyush Verma's pressure for physical relationship, PW-1 told him, i.e. her father, about the entire incident in detail.
- 51.** Now, so far as the question of accused Piyush Verma making the above call is concerned, CDR (Ex.P.-75) relating to the mobile No. 8305348806 used by him has been considered to be proved in the above paragraph on the basis of certificate (Ex.P.-73) under Section 65B of Sanjeev Nema (PW-18) Nodal Officer of Reliance Jio Company. On perusal of the said CDR (Ex.P.-75), it is clearly visible that accused Piyush Verma made a call from mobile No. 8305348806 to mobile No. 6260234802 (operated by father PW-3).
- 52.** In this regard, the evidence of PW-1 is that some accused had given the mobile number of his father (PW-3) to accused Piyush on which Piyush used to message and call repeatedly and tell

them i.e. the victims to come to meet him or else he would make their video viral. According to PW-1, when accused Piyush Verma used to call on her father's mobile number and her father (PW-3) used to pick up the mobile, he did not talk but when she i.e. PW-1 or her sister PW-2 used to pick up the mobile, then accused Piyush Verma used to talk. PW-1 further says that on 28-07-2020 accused Piyush Verma called and said that both the sisters should come to meet him, then she i.e. PW-1 told her father PW-3 about the incident.

- 53.** The evidence of PW-2 in this regard is that on the next day of the incident, her sister PW-1 had gone to village Telasi with her mother. She i.e. PW-2 and her brother were in their house in village Kesla. So on the same day, accused Piyush Verma came in front of them and called on her father's mobile which she i.e. PW-2 received. Then accused Piyush Verma told her that whatever happened with him, He has kept the video of the incident with him and if she does not come to meet him then he will make it viral. According to PW-2, even after that accused Piyush Verma used to call them. Thus, from the said evidence it appears that accused Piyush Verma started calling the victims right after the incident. It has been proved above that after the incident on the intervening night of 30 and 31.05.2020, a call was made from the mobile phone of accused Piyush Verma to the mobile phone of father of victims (PW-3) between 21:39:32 hrs to 21:39:55 hrs on 02.06.2020 and the conversation lasted for a

total of 24 seconds. Similarly, it has also been proved above that thereafter continuous calls and missed calls were made by accused Piyush to the mobile phone of father (PW-3) till 28.07.2020.

Thus, the evidence of PW-1 and PW-2 is corroborated by the said electronic evidence. It is true that the fact of accused Piyush Verma calling before 28.07.2020 is not mentioned in the FIR and police statements of the witnesses but the judicial evidence of the victims states that accused Piyush Verma had been calling them continuously since the incident and if this evidence is corroborated by the said electronic evidence, then it will be believed.

On the basis of all this evidence, the delay in registering FIR (Ex.P.-9) in the case will be considered sufficiently explained and FIR (Ex.P.-9) will be believed. Thus, the evidence of both the victims in relation to the incident of gang rape is fully trustworthy.

- 54.** Manisha Tiwari, Manager of 181 Women Helpline, Chhattisgarh, Raipur (PW-10) stated that on 28-07-2020 at 14:55 hrs., PW-1 called on Women Helpline No. 181 from mobile no. 6260234802 and she told that in the first week of June 2020, 10 people raped her and made a video. PW-1 also told that she has not informed her family about this and she is being forcibly called to meet by threatening to make the video viral. According to PW.-10, PW-1

had sought necessary help from Women Helpline. PW-1 had told the names of Ajay Verma and Shivam Verma among the accused involved in the gang rape. PW-10 has given the above case log file (Ex.P.-45). Further, according to PW-10, on 30-07-2020 at 17:05, mother of PW-1 called on women helpline No. 181 from mobile No. 8770011591 and told that an incident of gang rape has happened with PW-1 for which a case has been registered, but after the said case came to light, her younger daughter PW-2 told her that an incident of gang rape has happened with her too. This witness has produced the original copy of the call detail records (CDR) of the call received on 181 on 28-07-2020 as Ex.P.-47. Thus, the evidence of PW-10 is related to the call made to the women helpline by PW-1 and PW-10 in connection with the same incident. Further, the evidence of PW-10 is based on the fact that the original copy of the case file and real time data was made available to the police station in-charge Palari as per Ex.P.-48 and its voice record is Ex.P.-49.

- 55.** Centre Administrator of Sakhi Center located in Collectorate Complex Balodabazar, Tulika Parganiha (PW-6) has given the evidence that on 28-07-2020 in the evening at around 04:00 pm, she received a call from Women Helpline 181 Raipur on her personal mobile No. 8103483736 in which it was told that about two months back a girl of village, Kesla, police station- Palari was gang raped and there is a possibility of a similar incident happening again today at 06:00 pm. On receiving information

about the incident through e-mail, after gathering the necessary information she went to village Kesla and brought the victim PW-1 and her mother to Sakhi One Stop Center, Baloda Bazar and kept them safe there.

- 56.** Thus, from the above discussion, it is clear that both the victims, PW-1 and PW-2, were returning from Amera to their village Kesla in the night with accused Kamlesh and Gopi on their motorcycle, when the above-mentioned 6 accused, Ajay Verma, Shivam Verma and Jagannath Yadav, Sohan Dhruv, Rajendra Kumar and Ukesh alias Rakesh Dahriya forcefully stopped the motorcycle and forcibly made both the victims get down. Due to being stopped on the way, both the victims could not go to their house where they had the right to go. In this regard, in section 339 of IPC, wrongful obstruction has been defined as-

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.

- 57.** Thus, the act of the said 6 accused in stopping PW-1 and PW-2 constitutes the offence under Section 341 of the IPC. Similarly, the presence of the said 6 accused together at the scene of incident and all of them raping the two victims PW-1 and PW-2 one by one proves the fact that a group was formed by the said 6 accused only to have sexual intercourse with PW-1 and PW-2

and then all the members of this group raped PW-1 and PW-2. Out of these two victims, the age of PW-1 being less than 18 years on the date of incident and the age of PW-2 being less than 16 years on the date of incident has already been proved in this case above.

58. Having regard to these facts and circumstances of the case, the offence under Section 375 and 376(3), 376-D and 376-DA provide the following -

Section 375. A man is said to be 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 person; under the circumstances falling under any of the following seven descriptions :-

XXXXXXX

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

XXXXXXX

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.

Section 376(3) - Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this subsection shall be paid to the victim

Section 376(D) - Gang rape- Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine;

provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim :

Provided further that any fine imposed under this section shall be paid to the victim.

Section 376-DA- where a woman under sixteen years of age is raped by one or more persons constituting a group or acting In furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of the person's natural life, and with fine.

59. Section 6 of the POCSO Act provides that -

Section 6- Punishment for aggravated penetrative sexual assault-

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

60. "Penetrative Sexual assault" under Section 3 of the POCSO Act is defined so that-

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

(b) he 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 makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any pan of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

61. In Section 5 of the POCSO Act, it has been provided in relation to "aggravated penetrative sexual assault" that -

XXXXXXX

(g) whoever commits gang penetrative sexual assault on a child.

Explanation-When a child is subjected to sexual assault by on or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone.

- 62.** Thus, on the basis of evidence on record, the learned trial Court has concluded that the prosecution has succeeded in proving beyond all reasonable doubts that the accused Ajay Verma, Shivam Verma, Jagannath Yadav, Sohan Dhruv, Rajendra Kumar and Ukesh alias Rakesh Dahriya voluntarily obstructed the path of PW-1 and PW-2 between 11:00 pm on the night of 30.05.2020 and 3:00 am on 31.05.2020 and prevented both of them from going in the direction in which they had the right to go. In this way, due to voluntarily and wrongfully obstructing PW-1 and PW-2, all the above 6 accused are liable to be convicted under the charges leveled against them.
- 63.** It is clear from the evidence of victims (PW-1 and PW-2) that they kept the incident hidden from everyone for about 2 months because they were threatened with death. It is clear from this that the threat had a very deep impact on the minds of both the minor girls. Despite such a big incident happening to them, how they must have suppressed it in their minds, only they can understand. If they would have gone to a relative's house or somewhere else

with their mother or father after the incident, then it will be considered their attempt to keep themselves normal so that no one comes to know anything. In this way, considering the crime of section 506-B of IPC to be proved in respect of both PW-1 and PW-2, all the above 6 accused deserve to be convicted for this charge also.

- 64.** 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...”.

65. 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)**.

66. 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.

- 67.** 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."

68. 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.”

- 69.** When considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free

from doubt, there is hardly any insistence on corroboration of that version. In **State of H.P. v. Shree Kant Shekar (2004) 8 SCC 153** the Hon'ble Supreme Court held as follows:

"21. 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 without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on 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 suffice."

70. On these lines, the Hon'ble Supreme Court in **Shivasharanappa and Others v. State of Karnataka, (2013) 5 SCC 705** observed as follows:

"17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The

principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable.”

71. The Supreme court in the matter of **State of UP v. Sonu Kushwaha, (2023) 7 SCC 475** has held as under :

“12. The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology “shall not be less than....”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the

obnoxious act on the mind of the victim/child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court.”

- 72.** As per the statement of the victims (PW-1 and PW-2) before the trial Court, on the night of 30.05.2020, PW-1 was walking with victim (PW-2) in front of her house in village Kesla when she received a call from accused Kamlesh Dhrtlahare on her mobile. He asked both the sisters to go for a ride with him and accused Gopi on a motorcycle. When she refused, accused Kamlesh Dhrtlahare started calling repeatedly and after some time accused Kamlesh Dhrtlahare and Gopi Sahu came near her house on a motorcycle, then both the accused took both the victims/sisters on the motorcycle to accused Gopi Sahu's house at Bajrang Chowk, Amera. After staying there for half an hour, they took them to the crematorium in Amera. Thereafter, when both the sisters were returning to village Kesla on a motorcycle with the two accused Kamlesh and Gopi, the above mentioned 6 accused stopped their motorcycle near the breaker at Kesla turn. Accused Ajay Verma caught hold of victim (PW-2) hand and pulled her towards the bush and the remaining accused took her sister (PW-1) towards the bush. Then all the accused raped both the sisters one by one. According to PW-1, accused Rajendra

Dahriya among the accused made a video of the other accused raping both the sisters. Victim (PW-1) further stated that after the incident both the sisters were in a lot of pain and they returned home with great difficulty. PW-1 has clearly stated in her main examination that when she told accused Jagannath that she would inform the police about the incident, Jagannath said that she would be killed if she informed anyone about the incident and accused Jagannath and Ajay Verma had also threatened that if she informed anyone about the incident, they would make the video of her rape viral. PW-2 has also stated in that the above two accused had threatened to kill her. PW-1 has also stated that after the incident, accused Ajay Verma Kaushal Dhruv had come to her house in village Kesla and had threatened her that if she tells anyone about the incident, they have already committed murder and will not delay in committing murder again and had also said that they will not let both the sisters take admission in any school.

- 73.** It is an established principle that there is no legal impediment in convicting a person on the basis of the sole testimony of the prosecutrix in sexual offences, if her statement inspires confidence. In the present case, the victims (PW-1 and PW-02) have clearly stated in their judicial examination that on the incident dated 30.05.2020, the accused persons gang-raped them in turns without their will and consent. It is difficult for a child who is subjected to sexual offence to forget the original nature of

the incident, and in the present case, the victims have presented the incident that happened to her before the trial Court concerned through her irrefutable evidence, which has been confirmed by other electronic evidence (Article-A), CDR (Ex.P-75) and prosecution witnesses i.e. father of the victims (PW-3), Smt. Manisha Tiwari, Manager of Women Helpline (PW-10), Tulika Parganiha (PW-6), Vikram Dhruv, Sub-Inspector in Cyber Lab (PW-14), Dr. B.S. Dhruva, Medical Officer (PW-13), Milind Pandey (PW-16).

- 74.** On the basis of the above analysis of evidence, the prosecution has been able to prove beyond reasonable doubt that on the date of the incident, both the victims were below 18 years of age and fell in the category of "child" and the accused, at the said date, time and place of the incident, committed aggravated penetrative sexual assault by gang-raping the minor victim girls, who were below 18 years of age, in turns, without their will and consent.
- 75.** As per above, gang rape as defined in section 376D and the facts and circumstances of the case fully satisfy the fact that each of the accused have directly contributed to the commission of this crime.
- 76.** Considering the evidence of the victims (PW-1 and PW-2) who have specifically stated the role of each of the appellants and other prosecution witnesses and electronic evidence on record, 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 trial Court has rightly convicted appellants- Ajay Verma @ Chhotu (A1), Shivam Verma @ Monu (A2), Sohan Dhruv (A3), Rajendra Kumar Dahriya @ Lata Dahriya @ Rajendra Diamond (A4), Ukesh @ Rakesh Dahriya (A5), Kamlesh @ Rocky Ghritlahre (A6), Gopi Sahu (A7), Piyush Verma @ Mintu (A8) and Jagannath Yadav @ Molu @ Jagdev Yadav(A9) for offence mentioned in the impugned judgment. We do not find any illegality and irregularity in the findings recorded by the learned trial Court.

77. 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 trial court to the appellants is hereby upheld. The present criminal appeals lacks merit and are accordingly **dismissed**.
78. The appellants Piyush Verma @ Mintu, Kamlesh @ Rocky Ghritlahre and Gopi Sahu, are on bail. Their bail bonds are cancelled and sureties are discharged. They shall surrender forthwith before the concerned trial Court for serving sentence as awarded by the learned trial Court, failing which, they shall be taken into custody and sent to jail by the trial Court.
79. The appellants, namely, Ajay Verma @ Chhotu, Shivam Verma @ Monu, Sohan Dhruv, Rajendra Kumar Dahriya @ Lata Dahriya

@ Rajendra Diamond, Ukesh @ Rakesh Dahriya and Jagannath Yadav @ Molu @ Jagdev Yadav are stated to be in jail, they shall serve out the sentence as awarded by the learned trial Court.

- 80.** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the Appellants are undergoing the jail term, to serve the same on the Appellants informing them that they are 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/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Manpreet

HEAD NOTE

Where a victim is raped by one or more persons forming a group or acting in furtherance of a common intention, each member of such group shall be deemed to have committed the offence of rape, in accordance with the principles of joint liability and common intention as defined under the applicable laws.