



2025:CGHC:28095-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 2338 of 2023**

Raju Yadav S/o Jagdev Yadav Aged About 22 Years R/o Asola, P.S. -
Ambikapur, District Sarguja (C.G.)

... Appellant(s)**versus**

State Of Chhattisgarh Through Station House Officer P.S. - Ambikapur,
District Sarguja (C.G.)

... Respondent(s)

For Appellant(s) : Ms. Reena Singh, Advocate

For Respondent(s) : Ms. Soumya Rai, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Bibhu Datta Guru, Judge****Judgment on Board****Per Ramesh Sinha, CJ****26.06.2025**

1. This appeal arises out of the judgment of conviction and order of sentence dated 06.11.2023 passed by the Additional Sessions Judge, Fast Track Special Court (POCSO Act), Abmikapur, District- Sarguja (C.G.) in Special Criminal (POCSO) Case



No.77/2020, whereby the appellant has been convicted for offence punishable as under:-

2. The prosecution story, in brief, is that on 30.06.2020, a report was lodged in Ambikapur Police Station by the father of the victim (PW-01) to the effect that his 14-year-old elder daughter, who studies in Class VIII in Asola Pre Madhyamik Shala, left the house on 29.06.2020 at around 7.30 pm saying that she was going for a walk with her village friend Veena and Ragini towards Basti, when she did not return home till 10 pm, Veena and Ragini went to their house in the village and enquired. Veena and Ragini told that they had gone towards Devgarh village while walking and had gone somewhere near Bhuvneshwar's house. He searched for her address on his own level among his relatives and in the neighbourhood but could not find her address. He suspected that Raju of Digma, who comes to his village to visit his elder father Siya Ram Yadav, has lured and taken away the complainant. On the basis of the complaint lodged by the father of the victim, a First Information Report (Ex.P-1) was registered under Section 363 IPC under Crime No. 348/2020 at Ambikapur Police Station and the case was taken up for investigation.
3. The statement of the victim (Ex.P-10) was recorded under Section 164 Cr.P.C.. During the investigation, on the information of father of the victim that his elder daughter/prosecutrix was lured and taken away by the accused, investigator Suresh Chandra Minj



Sub-Inspector (PW-06) registered First Information Report (FIR) Ex.P.-01 under Section-363 IPC under Crime No.-348/2020 at Police Station Ambikapur and counter complaint of the FIR was sent to J.M.F.C., Ambikapur and counter complaint receipt Ex.P.-01A was received. Spot map (Ex.P.-09) of the incident was prepared by Investigating Officer Laxmi Ram. Recovery Panchnama of the accused (Ex.P.-02) was prepared. Before medical examination of the complainant, consent (Ex.P.-03) was obtained from the complainant and her father and written complaint (Ex.P.-16) was sent to Medical College, Ambikapur for examination. Vaginal slide and panty of the complainant were seized and seizure sheet (Ex.P.-17) was prepared. The accused was arrested and arrest sheet (Ex.P.-06) was prepared and information of arrest was given to the family of the accused Hiramani under Ex.P.-06A. An old used brown coloured 75 cm underwear of Dollar Comfort Company was seized from the accused and seizure sheet (Ex.P.-04) was prepared. Complaint (Ex.P.-18 and Ex.P.-19) were sent to Medical College, Ambikapur for examination of the accused and examination of the underwear of the accused. Complaint (Ex.P.-13) was sent to the Headmaster of the primary school, Asola for presenting the attested copy of the Dakhil Kharij register regarding the date of birth of the complainant. On presentation by Headmaster Ayodhya Prasad Jaiswal, the true copy of the Dakhil Kharij register of the complainant was seized and seizure memo (Ex.P.-05) was



prepared, the Dakhil Kharij register is Ex.P.-14, the true copy of which is Ex.P.-14C.

4. During investigation, through Superintendent of Police, Surguja, report (Ex.P.-20) was sent to Joint Director Regional Forensic Science Laboratory, Ambikapur for chemical test of seized property and acknowledgement (Ex.P.-20A) was received and chemical test report (Ex.P.-21) was received. Sub-Inspector Laxmi Ram sent report (Ex.P.-22) to Chief Judicial Magistrate, Ambikapur for recording the statement of the victim under section 164 Cr.P.C. and Tehsildar, Ambikapur was sent to the spot of incident. For preparing the Patwari Nazri map, memo (Ex.P.-23) was prepared. During the investigation, the statements of the witnesses were recorded as per their statements. The statement of the victim was recorded by Sub-Inspector Anita Aayam of Ambikapur women police station and after complete investigation, the charge-sheet was presented in the court by Sub-Inspector Laxmi Ram.
5. The Court had prepared the charge-sheet against the accused under sections 376(3), 376(2)(g) of the Indian Penal Code and Sections-3 (a)/4 (2) & 5 (g)/6 of the Protection of Children from Sexual Offences Act, 2012 and the same was read out and explained to the accused, who has denied the charges and claimed trial.



6. A total of 08 witnesses were presented by the prosecution in its case, which include the witnesses father of the victim (PW-01), grandmother of the victim (PW-02), the victim (PW-03), Raju Cherwa (PW-04), Ayodhya Prasad Jaiswal (PW-05), Suresh Chandra Minj Sub-Inspector (PW-06), Dr. O.P. Prasad (PW-07), Dr. Roseline R. Ekka (PW-08).
7. After completion of prosecution evidence in the case, the accused was examined under Section 313 of the Cr.P.C. He has pleaded that he has been implicated and that he is innocent and has stated that the victim has implicated another boy in the same manner. The statement of defence witness Chandan Paikra (DW.-01) has been produced as defence evidence by the accused.
8. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in para 1 of the judgment. Hence, this appeal.
9. Ms. Reena Singh, learned counsel for the appellant submits that the impugned judgment, conviction and sentence dated 06.11.2023 awarded by the Trial Court is bad in law, perverse, thus liable to be set aside. The F.I.R. has not been proved by the victim and her parents themselves. There are contradictions and omissions in the testimony of the victim in respect to allegations made in the F.I.R. According to the medical officer, Dr. Rojlin R. Ekka (P.W.-8), there are no signs of recent sexual intercourse or forced intercourse with the victim, hence the fact of rape has not



been proved . While passing the impugned judgment the learned Trial Court has failed to see the FSL report (Ex.P-21) and as per the report there was not semen was found on the under garment of the victim and accused and the prosecution has totally failed to prove the exact age of the victim and there are various contradictory evidences available which conflicted with each other, therefore it would not be safe to rely upon the evidence regarding age of the victim. While passing the impugned judgment of conviction the learned trial Court has failed to consider that even if entire case of the prosecution would be taken in its own face value, even than no case would be made out more than section 363 of IPC. The learned trial Court has gravely erred in convicting the appellant without any legal evidence. The prosecution has completely failed to establish the case beyond all reasonable doubts even from looking of the entire records it reveals that the present is a case which has been fabricated just to rope the appellant with a false charge. The findings given by the learned trial Court against the appellant is perverse and contrary to evidence on records consequently the same is liable to be set- aside. There is a major contradiction in the evidence of prosecution witnesses in the court statement and the statement recorded under section 161 of Cr.P.C. Lastly, at any rate, the conviction and sentences imposed upon the appellant are harsh and excessive looking to the facts & circumstances of case as



well as evidence available on record, therefore liable to be set-aside on these counts.

- 10.** On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt and the prosecutrix (PW-3) has clearly deposed the conduct of the appellant in her statement recorded under Section 164 CrPC and in the Court statement and the learned trial Court after considering the material available on record has rightly convicted and sentenced the appellant, in which no interference is called for.
- 11.** We have heard the learned counsel for the parties and perused the record with utmost circumspection.
- 12.** The issue that arises for consideration in the present appeal is whether the testimony of the victim/prosecutrix deserves acceptance and whether the prosecution has established the case of the appellant beyond reasonable doubt.
- 13.** It is pertinent to observe that the question whether conviction of the accused can be based on the sole testimony of the victim in cases of sexual assault/rape is no longer res integra. The Hon'ble Supreme Court has dealt with the issue in a catena of judgments and has held that the sole testimony of the prosecutrix if found reliable can be the sole ground for convicting the accused and



that the creditworthy testimony of the victim in cases of such nature deserves acceptance.

14. The next issue that arises for consideration in the present appeal is whether the age of the victim on the date of commission of the offence concerned, was below 18 years of age.

15. **Concept of age as per the provisions of section-94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, reads as under:-**

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the 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 (i) 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.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

16. Regarding age, the victim (PW-03) has stated in her judicial evidence that her date of birth is 03.01.2007. Regarding the age of the victim, the father of the victim (PW-01) has stated that the date of birth of his daughter/victim is 03.01.2007. The evidence of the above witnesses regarding date of birth has been irrefutable in her cross-examination.
17. On 25.08.2020, when the case was presented by Ayodhya Prasad Jaiswal, Headmaster, the investigator, Sub-Inspector Laxmiram, seized the certified copy of the mutation regarding the date of birth of the victim and prepared seizure memo (Ex.P.-05).
18. In this regard, Headmaster Ayodhya Prasad Jaiswal (PW-05) has stated in his judicial evidence that on the basis of complaint (Ex.P.-13) received for demanding mutation register regarding the birth of the victim who was studying in his school in Crime No.-



348/2020 of Police Station- Ambikapur, he had given the certified copy of mutation register regarding the birth date of the victim to the police on the date of birth, which was seized by the police and seizure memo (Ex.P.-05) was prepared. The witness has further stated that the date of birth of the victim is recorded as 03.01.2006 on Serial No.1284 of the original mutation register. The original mutation register is Ex.P.-14, whose certified copy is Ex.P.-11C. The victim took admission in class I in his school on 25.06.2012 and left the school on 31.07.2017 after passing class V. The witness further stated that he had provided a certificate regarding the date of birth of the victim along with the attested copy of the Dakhal Kharij register and in the said certificate the date of birth of the victim is mentioned as 03.01.2006.

19. Headmaster Ayodhya Prasad Jaiswal (PW-03) has admitted in his cross-examination that he was posted as Headmaster in the Primary School Asola in the year 2012-2013 and the Dakhal Kharij register is recorded in his handwriting and the entry of the name of the victim was made by him in serial No. 1284 on 25.06.2012. Before making the said entry, he had made the entry after seeing the birth certificate or mother and child card of the victim. School documentation generally carries a presumption of accuracy.
20. 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.

21. According to the Dakhil Kharij register, the date of birth of the victim is shown to be 03.01.2006 and the victim and her father have given their evidence. In the said application, the date of birth of the victim is stated to be 03.01.2007 and on calculating the age on the basis of the said date of birth, the age of the victim would be 13 years 05 months whereas on the basis of the date of birth mentioned in the mutation register, the age of the victim is 14 years 05 months. 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.

- 22.** On the basis of all the above circumstances and documentary and oral evidence, it is proved that at the time of the incident, the victim was a minor girl below 16 years of age.
- 23.** The next question for consideration is whether the accused, on the said date, time and place of the incident, take the minor complainant, aged below 16 years, commit rape and commit penetrative sexual assault?
- 24.** In this regard, the evidence of the victim (PW-03) was observed who in her judicial evidence had stated that she knew the accused. She further stated that on the 29.06.2020, she was going to Suraj Pankra's house in the village for a wedding with her sister Ragini and Veena. During that time, the accused came there and caught her and took him to the Kachhar forest. The accused kept her there the whole night and forcibly had physical relations with her and kept her there the whole night. The witness has further stated that in the morning, the accused called his two friends near the Kachhar forest and told his friends to keep her there till he returns. When the accused did not come there and both his friends were nearby, she ran away from there and came home and told her parents about the incident. His parents lodged a report of the incident at the Ambikapur police station. Thus, the victim supported the facts of the incident in her main examination.



- 25.** Regarding the incident, the father of the victim (PW-01) in his judicial evidence has stated that he knew the accused and that on the day of the incident, the victim had gone to see a wedding in the evening with her friend Biga Paikra and Ragini Yadav and the victim did not return home till 8-9 p.m., then on asking the friend of the victim Biga and Ragini, they said that they did not know about her. The witness has further stated that he searched for the victim in the vicinity but could not find her, then he went to the police station and lodged a report of the prosecutrix going missing (Ex.P.-01). The witness has further stated that after filing the report, on asking Biga Paikra again about the victim, he told that when they were going to the wedding party, the accused followed them and took the victim with him.
- 26.** The father of the victim (PW-01) has further stated in his evidence that on the day of filing the report, the victim had come home at 7.30 pm and on being asked, she told that the accused took her to the Kachhar forest by luring her and promising to make her his wife and established physical relations with her and left her in the forest and fled. The next day, he took the accused to Ambikapur police station where the police prepared the recovery panchnama (Ex.P.-02). Before examining the victim, her consent (Ex.P.-03) was taken. The police had prepared the spot map of the incident. Thus, it is clear from the evidence of the said witness that he has not caused unnecessary delay in lodging the missing report of the



victim and also told that he came to know about the incident after the information of the victim.

- 27.** The grandmother of the prosecutrix (PW-02) has stated in her judicial evidence that she knew the accused and that on the day of the incident at 7.00 pm, her granddaughter/victim had gone to see a wedding with her friend Biga Paikra and Ragini Yadav and did not return at night and when the victim could not be found even after a lot of searching, her son/prosecutrix's father lodged a report in the police station. The witness has further stated that the next day after lodging the report, her granddaughter/victim returned home and told during interrogation that the accused Raju Yadav had forcibly taken her to the jungle and kept her with him for the whole night. Similarly, the said witness has also given an irrefutable statement that she had heard about the incident from the victim.
- 28.** Regarding the report lodged by the father of the victim and the examination of the victim, the investigating witness of the case, Suresh Chandra Minj, Sub-Inspector (PW-06) has stated in his evidence that he had registered the First Information Report (FIR) (Ex.P.-01) under Section-363 IPC under Crime No.-348/2020 at Police Station Ambikapur on the information given by the father of the victim that his elder daughter/prosecutrix was being lured away by the accused and the counter information report of the FIR was sent to J.M.F.C. Ambikapur and counter information



receipt (Ex.P.-01A) was received. Recovery Panchnama (Ex.P.-02) of the prosecutrix was prepared. Before the medical examination of the victim, consent (Ex.P.-03) was obtained from the victim and her father and written complaint (Ex.P.-16) was sent to Medical College Ambikapur for examination. The vaginal slide and panty of the accused were seized and seizure memo (Ex.P.-17) was prepared. He further deposed that the seized property was sent to the Joint Director, Regional Forensic Forensic Science Laboratory, Ambikapur for chemical testing through the Superintendent of Police, Surguja. Report (Ex.P.-20) was sent and acknowledgement (Ex.P.-20A) was received and chemical test report (Ex.P.-21) was received.

- 29.** Regarding the medical examination of the accused, witness Dr. Rosaline R. Ekka (PW-08) has stated while supporting the examination report (Ex. P-24) that she had examined the victim on 01.07.2020 and found that the victim was physically and mentally healthy, secondary sexual characteristics were in developing stage, no external injury marks were found on her entire body. There were no injury marks on the external genitals and thigh of the victim, her hymen was old and torn. Two slides were prepared from the vaginal discharge and sealed and handed over to the presenting female constable advising chemical examination. The faded navy blue panty worn by the accused was packed and sealed and handed over to the presenting constable. The witness has stated that a definite opinion regarding



immediate sexual intercourse can be given only after chemical examination.

- 30.** Witness Dr. Rosalyn R. Ekka (PW-08) has stated regarding the FSL report that the test report received from the office of Joint Director Regional Forensic Science Laboratory Ambikapur on 28.10.2020 is Ex.P.-21 in which it is reported that human sperm was found on Exhibit-A slide of the prosecutrix and it is reported that semen stains and human sperm were not found on Exhibit B and C panties of the prosecutrix and the accused.
- 31.** Regarding the proceedings and examination of the accused, investigating witness Suresh Chandra Minj Sub-Inspector (PW-06) has stated in his evidence that during the investigation the accused was arrested and arrest sheet (Ex.P.-06) was prepared and information regarding the arrest was given to the family member of the accused Hiramani under Ex.P.-06A. An old used brown coloured 75 cm underwear of Dollar Comfort Company was seized from the accused and seizure sheet (Ex.P.-04) was prepared. For examination of the accused and examination of the underwear of the accused, written complaints (Ex.P.-18 and Ex.P.-19) were sent to Medical College Ambikapur.
- 32.** Regarding the medical examination of the accused, witness Dr. O.P. Prasad (PW-07) has stated while supporting the test report (Ex.P.-18) that he had examined the accused on 01.07.2020 and found that the accused's secondary sex characters were fully



developed, cremative reflexes were present and there was no disease.

According to his opinion, the accused was a person capable of having sexual intercourse. The witness further stated while supporting the underwear test report (Ex.P.-14) that on examining the underwear of the accused, it was found that the underwear was of chocolate colour and the size was 75 cm and Dollar Comfort was written on the waist elastic and there were white spots on the middle part of the underwear, which were circled in red ink and handed over to the presenting constable for chemical examination.

- 33.** Thus, the victim has stated in her main examination that on the date of the incident, the accused caught hold of her and took her to the Kachhar forest and forcibly had physical relations with her at night. The father of the victim has stated that when the victim did not return home at night, he searched for her in the morning and lodged a report on the same date and has stated that he came to know about the incident when the victim told him about it when she returned. Also, the father of the victim has not caused any unnecessary delay in lodging the report regarding the disappearance of the prosecutrix. Hence, there is no basis to doubt the First Information Report.
- 34.** The statement of the victim is that when she was returning from her wedding, the accused caught her and took her to the jungle



and kept her there overnight and had physical relations with her. In this case, it has been proved that the prosecutrix was less than 16 years of age on the date of the incident. Therefore, the victim was under the protection of her parents, and it has been proved that the accused took the victim without the consent and knowledge of her guardian. Therefore, it is sufficient to declare the accused guilty of the crime of kidnapping. Therefore, on the above basis, it is proved that the accused kidnapped the minor prosecutrix on the incident date-29-06-2020 for having illicit sexual intercourse without the consent of her lawful guardian.

35. According to the medical report of the prosecutrix, the hymen of the victim was already torn and there was no injury on it. Also, according to the received FSL report (Ex.P-21), it is reported that human sperm was found in the seized slide of the victim. In this regard, the judgment of the *Hon'ble Supreme Court in B.C.Deva@ Dyava V. State of Karnataka (2007) 12 SCC 122* is noteworthy, in which it has been held that in the absence of injury on the rape victim, it cannot be concluded that the accused has not forcibly committed sexual intercourse. Even in the absence of external injury, the oral evidence of the victim that she was raped cannot be ignored. Therefore, in this case also, there is no injury on the internal organs of the victim. If it is not found, then her statement does not become unreliable. Also, in the medical report of the accused, it has been reported that the accused was found capable of having sexual intercourse. Therefore, the evidence of



the victim is also supported by her medical report. On the basis of which it is proved that the accused committed the incident of rape with the victim.

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

“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 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."

37. In the matter of **Alakh Alok Srivastava v. Union of India & Ors.**, (2018) 17 SCC 291, in paras 14 and 20, it is observed as under:

"14. At the very outset, it has to be stated with authority that the Pocso Act is a gender legislation. This Act has been divided into various chapters and parts therein. Chapter II of the Act titled "Sexual Offences Against Children" is segregated into five parts. Part A of the said Chapter contains two sections, namely, Section 3 and Section 4. Section 3 defines the offence of "Penetrative Sexual Assault" whereas Section 4 lays down the punishment for the said offence. Likewise, Part B of the said Chapter titled "Aggravated Penetrative Sexual Assault and Punishment therefor"



contains two sections, namely, Section 5 and Section 6. The various subsections of Section 5 copiously deal with various situations, circumstances and categories of persons where the offence of penetrative sexual assault would take the character of the offence of aggravated penetrative sexual assault. Section 5(k), in particular, while laying emphasis on the mental stability of a child stipulates that where an offender commits penetrative sexual assault on a child, by taking advantage of the child's mental or physical disability, it shall amount to an offence of aggravated penetrative sexual assault.”

“20. Speaking about the child, a three Judge Bench in M.C. Mehta v. State of T.N. (1996) 6 SCC 756 “1. ... “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.”

- 38.** 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.”

- 39.** 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.”

40. 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.”

41. 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.”

- 42.** On the basis of analysis of evidence presented by the prosecution, it is evident that at the time of the incident, the victim was a minor below 16 years of age. It is proved that the victim is a



girl child and that the accused, knowing that the victim was a girl child below 16 years of age at the time of the incident, kidnapped her and kept her in his wrongful custody and committed the crime of rape, forcible penetration, sexual assault and rape on the girl/victim below 16 years of age. Thus, the said crime of rape, penetrative sexual assault on a minor girl below 16 years of age by the accused falls under the category of aggravated penetrative sexual assault.

- 43.** Lastly, considering the statement of the the victim (PW-03), father of the victim (PW-01), grandmother of the victim (PW-02), Raju Cherwa (PW-04), Ayodhya Prasad Jaiswal (PW-05), Suresh Chandra Minj, Sub-Inspector (PW-06), Dr. O.P. Prasad (PW-07), Dr. Roseline R. Ekka (PW-08) and further considering the statement of the victim recorded under Section 164 CrPC (Ex.P-10) and FSL report (Ex.P-21), the material available on record and the principle of law laid down by the Supreme Court in the above-stated judgments, we are of the considered opinion that the learned Special Judge has rightly convicted the appellant for offence under Section 363, 366 and under Section 3(a) / 4(2) of the Protection of Children from Sexual Offences Act, 2012. We do not find any illegality and irregularity in the findings recorded by the trial Court.
- 44.** In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all



reasonable doubts against the appellant. The conviction and sentence as awarded by the trial court to the appellant is hereby upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.

45. It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.
46. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the Appellant is undergoing the jail term, 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.
47. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice



Headnote

“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 or doubt as has been dealt with in the present case.”