2025:CGHC:13779-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 210 of 2021

Pramod @ Nanhu Tiwari S/o Chandrika Prasad Tiwari Aged About 33 Years R/o Village- Kumhari, Police Station Marwahi, District- Bilaspur, Chhattisgarh, At Present District- Gourela-Pendra-Marwahi, Chhattisgarh.

... Appellant(s)

versus

State Of Chhattisgarh Through Police Station Marwahi, District- Bilaspur, Now District- Gourela-Pendra-Marwahi, Chhattisgarh.

... Respondent(s)

For Appellant(s)	**:**	Mr. Y.C. Sharma, Sr. Adv along with Mr. Sachin Nidhi and Mr. Vishal Chandravanshi, Advocates
For Respondent(s)	**:**	Mr. Malay Jain, Panel Lawyer

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

Judgment on Board

***Per* Ramesh Sinha, Chief Justice**

22.03.2025

1. Heard Mr. Y.C. Sharma, learned Senior Advocate along with Mr. Sachin Nidhi and Mr. Vishal Chandravanshi, learned counsel for the

appellant as well as Mr. Malay Jain, learned Panel Lawyer appearing for the State/respondent.

2. This criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") arises out of the judgment of conviction and order of sentence dated 04.02.2021 passed by the learned Special Judge, SC/ST (PA) Act 1989, Bilaspur, District- Bilaspur (C.G.) in Special SC/ST (PA) Act 1989 Case no. 10/2018, whereby the accused-appellant has been convicted and sentenced as under :-

Conviction		**Sentence**
Under Section 366 of the IPC		Rigorous imprisonment for 10 years and fine of Rs.1000/-, in default of payment of fine amount, additional imprisonment for 3 months.
Under Section 6 of the POCSO Act		Rigorous imprisonment for life and fine of Rs.1000/-, in default of payment of fine amount, additional imprisonment for 3 months.
Under Section 3(1) (B-i) (b-ii) of the SC/ST (Prevention of Atrocities) Act.		Rigorous imprisonment for 05 years and fine of Rs.1000/-, in default of payment of fine amount, additional imprisonment for 3 months.
Under Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act.		Rigorous imprisonment for life and fine of Rs.1000/-, in default of payment of fine amount, additional imprisonment for 3 months.
Both the sentences were directed to run concurrently		

3. The prosecution story, in brief, is that, the informant Badan Singh is a resident of village Kumhari under police station Marwahi, presently

in district Gaurela-Pendra-Marwahi and works as a daily wage labourer. The informant has four children namely Nikhlesh 18 years, Om Prakash 16 years, Mahendra Singh 13 years and the victim 06 years. On 07.02.2018, the informant was at home, his wife Parvati had gone to work. The elder son Nikhlesh works in Pune and Om Prakash had gone to work on a tractor and Mahendra Singh had gone to play in the locality. The informant was cooking food in the evening and his wife was taking a bath after coming from work and the victim was playing in the courtyard of the house swinging in a swing made of sari cloth. The informant saw at around 06:00 in the evening that the girl/victim was not there, then he and his wife went out to look for the victim. Kamala Bai was filling water in the tap near Anganwadi, she told that a girl was crying on the Dongri/Choti Pahari, on which the informant left his wife there and went with Narendra Singh Paw of the village towards Dongri/Choti Pahari adjacent to Anganwadi. The informant was going ahead and Narendra Singh Paw was at some distance. The informant saw that the accused Pramod alias Nanhu Tiwari was sitting on the stone and had pulled down his lower and chaddi and had held a biscuit in the victim's hand and was putting his penis in the victim's mouth. The victim was crying on which the informant picked up the girl/victim and took her in his lap and scolded the accused asking why he did this but the accused did not say anything. When the informant brought the victim home at around 6:30 in the evening and asked her, the victim told that she was swinging in the courtyard of the house when the accused came and gave her a biscuit and picked her up and took her towards

Dongri/Choti Pahari and put his penis in her mouth.

4. On the informant Badan Singh Paw lodging the first information report of the above mentioned nature in police station marwahi, Crime No. 19/2018 was registered under section 363, 376 IPC (Ex.P-3) and the case was taken into investigation. During the investigation, a map of the place of incident (Ex.P-4) and a spot map (Ex.P-15) were prepared by the Patwari. A notice (Ex.P-12) was served to the victim's father Badan Singh to present the caste certificate of the victim. Documents related to the caste and residence of the victim were seized in front of witnesses as Ex.P-19. The medical examination of the victim was conducted as per Ex.P-3. Oral Fluid Slide of the victim's mouth was seized as Ex.P-1. The victim's birth certificate was seized as Ex.P-17. The victim's caste certificate was seized through Ex.P-24, Birth Certificate through Ex.P-17 and Residence Certificate through Ex.P-18. A letter was issued to the Principal, Government Primary School, Kumhari through Ex.P-20 to the effect that a copy of the entry document regarding the birth of the victim, Dakhil-Kharij Register, be provided on the basis of which a copy of Dakhil-Kharij Register was seized through Ex.P-22-C. An application was sent to the Judicial Magistrate through Ex.P-13 for taking the written statement of the victim and a memorandum was sent to the Mahila Police Station In-charge through Ex.P-21 for taking the statement of the victim under Section 161 of the Indian Penal Code and a letter was sent to the Police Station In-charge, Pendra. Memorandum was issued to the accused through Ex.P-14. The statement of the victim was recorded by the lady inspector through

Ex.P-16. The medical examination of the accused was conducted on the basis of the application of Ex.P-11. Permission for examination of the health and private parts of the victim was obtained from the Sub-Divisional Magistrate, Pendra Road through Ex.P-5 and consent was also obtained from the informant, his wife and the victim through Ex.P-7, Ex.P-6 and Ex.P-8. The liquid from the mouth of the victim was preserved, which was sent to the Regional Forensic Science Laboratory, Bilaspur for examination through application Ex.P-26. Statements of witnesses were recorded. The case against the accused was found to be under Sections 363, 376 of the Indian Penal Code, Sections 4, 6 of the POCSO Act and Sections 3 (1) (b)) 3 (2) (V) (a) of the SCST Act 1989. The accused was arrested as per the arrest memo Ex.P-9 and his family was informed about his arrest through Ex.P-10. On the basis of the entire investigation proceedings and evidence, when evidence of the crime was found against the accused, a charge-sheet was filed.

5. During the trial of the case, the accused was charged under Sections 366, 376 (2) of the Indian Penal Code, Section 6 of the Protection of Children from Sexual Offences Act 2012 and Sections 3 (1) (b-i) (b-ii) and 3 (2) (V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. The accused denied the contents of the charges and even during his own examination under Section 313 CrPC, the accused denied all the adverse facts that came to light in the evidence asked from him and said in his defence that he was innocent and that he was falsely implicated. The defence of the

accused has been that on the date of the incident, he had a dispute with the complainant's relative Mungbai regarding the incident of a chair breaking and a complaint was lodged at the police station. He has been falsely implicated by the complainants with malicious intent on the basis of this dispute.

6. In order to establish the charge against the appellant, the prosecution examined as many as 21 witnesses and exhibited 28 documents. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in paragraph-2 of the judgment. Hence, this appeal.

7. Learned counsel for the appellant submits that the impugned judgment dated 04.02.2021 is contrary to law, facts and circumstances of the case, therefore liable to be set-aside. The impugned judgment of conviction and sentence is contrary to the facts, evidence and law applicable in the facts and circumstances of the case. The finding given by the learned trial court against the appellant is perverse and contrary to evidence on record consequently the same is liable to be set-aside. Further, the learned trial court erred in conviction the appellant only on the basis of assumption and presumption, however there is no clinching evidence on record against the appellant, therefore the impugned conviction is bad in the eyes of law. The learned trial Court also failed to observe that the prosecution has completely failed to prove its case beyond all reasonable doubt and that the medical report does not support the case of prosecution, therefore the impugned judgment of

conviction and sentence dated 04-01-2021 is liable to be set-aside. There are material contradiction and omission in the statement/deposition of prosecution witnesses, falsifying the case of prosecution. Learned counsel vehemently argued that the appellant have not committed any offence with the complainant party knowing fully well that they belong to Scheduled Caste community and, as such, their conviction for offence under Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act is liable to set aside. Hence, the present appeal deserves to be allowed.

8. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellant and submits that the appellant has committed a heinous crime against a minor girl aged about 6 years. He further submits that prosecution has been able to prove the offences beyond reasonable doubt by leading evidence of clinching nature. It is further submitted on behalf of the respondent-State that in view of statements of prosecutrix (PW-3) and eye witnesses PW-13 (father of the victim) and PW-7, wherein they have clearly narrated the incident and implicated the appellant to be the author of the crime in question, coupled with other evidence available on record, the trial Court has rightly convicted the appellant for the offences mentioned hereinabove and it is not a case where sentence of the appellant can be converted or reduced to any extent. Thus, the present appeal is liable to be dismissed.

9. We have heard learned counsel for the parties, considered their

rival submissions made herein-above and went through the records with utmost circumspection.

10. Now, the first question for consideration is whether the victim was a minor girl being below the age of 12 or 18 years on the date of incident.

11. Regarding the age of the victim, Inspector Rajesh Srivastava (PW-12) had given a written complaint (Ex.P-20) to the Principal, Primary School Kumhari on 19.03.2018 to provide a certified copy of the victim's school admission-dismissal register. Teacher Ranu Mishra (PW-15) has supported the statements of this witness and stated that on behalf of the prosecution, in the Crime No. 19/2018 of Police Station Marwahi, in order to know the date of birth of the victim, a letter (Ex.P-20) was sent to the school by the police to provide a certified copy of the admission-dismissal register, in compliance of which a certified true copy of the admission-dismissal register (Ex.P-22) was provided. The name of the victim is recorded in Serial No. 488 of the admission-dismissal register of the year 2016-17, in which her date of birth is mentioned as 23.07.2011. The victim's parents, namely Parvati (PW-2), Kamla (PW-5) and Badan Singh (PW-13) also stated that the victim was 06-07 years old at the time of the incident. The victim herself (PW-3) has stated her age to be about 06 years and that she was studying in the second class during the evidence.

12. According to the documentary evidence presented by the prosecution (Ex.P-17), the birth certificate of the victim was issued on

12.12.2014, which was issued 03 years before the incident date 07.02.2018. Puneet Pradhan (PW-11) former Sarpanch, states that he was posted as Sarpanch in Gram Panchayat Kumhari from the year 2010 to 2020. By his posting, the birth certificate of the victim's father Badan Singh was verified (Ex.P-17), according to which, the date of birth of the victim is stated to be 23.07.2014. In such a situation, there is no justification to raise doubt on the birth certificate of the victim. According to the victim's admission register Ex.P-22 (true copy Ex.P-22C), she was admitted to Class 1 on 01.04.2017 and the victim's date of birth was recorded as 23.07.2011.

13. The age of the victim is proved to be less than 12 years on the date of the incident. Apart from this, the doctor who conducted the medical examination of the victim, Dr. Marco (PW-4) has also stated that the victim's secondary sexual characteristics were not developed. On the basis of oral and documentary evidence presented by the prosecution, it is conclusively proved from the above facts that the victim's date of birth i.e. 23.07.2011, on the date of incident 07.02.2018, the victim was a minor girl of 06-07 years, being 06 years 05 months and 14 days old.

14. Now, the question for consideration would be whether the accused/appellant is the perpetrator of the crime in question, which the learned trial Court has recorded in affirmative by relying upon the testimonies of Dhoblal Sidar (PW-1), Tapaswani Sidar (PW-2), Seema Sidar (PW-3), Sapna Sidar (PW-4), Saraswati (PW-9) as well as Dr.

Prakash Kumar Chetwani (PW-8) and their medical reports (Ex.P/4A, Ex.P/7A, Ex.P/9A and Ex.P/10A) and X-ray report (Ex.P/13A) of Tapaswani Sidar (PW-2).

15. Badan Singh (PW-13), father of the victim has stated that he was at home on the date of the incident. His wife and son Omprakash had gone to work. The victim was swinging in the courtyard by making a sari swing, when the accused came and picked up the victim and took her to Dongri. Hearing the victim's crying voice, he went towards Dongri/Chhota Pahad and saw that the accused had completely removed the victim's clothes and his own clothes and was putting his penis in the victim's mouth. When he reached there, the victim started crying saying Papa-Papa, then the accused ran away from there, then the victim also told him about the incident. This witness further stated that after that he took his daughter victim to Marwahi police station and lodged a report of the incident Ex.P-3. On the report, the police came to the village and after interrogating him, prepared the spot map Ex.P-4. His consent regarding the treatment of his daughter was taken through Ex.P-7.

16. Narendra Singh Paw (PW-7) has stated that he knows the accused, he is called Nanhu Maharaj in the village. He also knows the victim and her father. The incident took place in the month of February 2018 at 6:00 p.m. He was sitting with his friend near the courtyard where there is a solar energy tap. Badan Singh of the village came to look for his daughter, the victim, who was swinging in her house. The victim's mother was also looking for her. The victim's father Badan

Singh came there and asked him about the victim, to which he replied that he did not know. Meanwhile, the sound of a child crying came from the direction of Dongri, so he and Badan Singh went towards that sound where the accused had made the victim sit on a stone and had opened his full pants, had given biscuits to the victim and had put his penis in the victim's mouth. Then Badan Singh went and took the victim in his lap. When Badan Singh asked the accused why he did this, the accused fled from there. After that Badan Singh brought the victim home and asked her about the incident.

17. Kamla Bai (PW-5) has stated that she knows the victim and her parents. The victim is currently about 6-7 years old. She also knows the accused, who is called Nanhu Maharaj in the village. The victim belongs to the Paw tribal caste, the accused also knows this because they are from the same village. This witness has stated that the incident took place about a year ago. She was filling water with solar energy at 6.00 pm in front of the village's anganwadi, when the victim's parents came there looking for the victim, then she told them that the sound of a child crying was coming from the direction of Dogri. That Dogri is situated behind the anganwadi. The victim's parents had gone beyond the Anganwadi to Dongri to look for the victim.

18. Parvati (PW-2), who is the mother of the victim, stated that her daughter/victim is 7 years old and studies in class 2. She belongs to the Paw caste which is a tribal community. She knows the accused because he is from their village, who is a Maharaj and she knows their caste. The incident is 1 year old, she was taking bath in her house at 6:00 in the

evening. Her daughter victim was swinging in the house, her daughter was not there, on which she quickly wore her clothes and looked around but could not find him, then at some distance from her house, Kamla Bai was filling water from the solar power tap, then she told that some child is crying towards Dongri, then her husband went towards Dongri where he found the daughter crying, the accused ran away from there, then her husband picked up the daughter and brought her home. The girl was scared, then those people made her sleep to drive away her fear. Further the witness states that at that time the Sarpanch of the village etc. had come to their house and when the victim daughter was questioned in front of them, she told that she was swinging in a sari swing at home when the accused came and picked her up in the name of feeding biscuits and took her away and put his urinary organ in her mouth. Later the police took her daughter to the doctor and took her permission for the treatment of the child.

19. The statement of the most important witness/victim of the case, PW-3, aged 6-7 years, who is a child witness, is very important and decisive. The age of the victim has been mentioned to be about 6-7 years on the date of evidence. Being a child witness, to test her thinking and understanding, the trial Court asked some questions and when the victim gave correct answers, her statement was recorded without administering oath, in which the victim stated that she belongs to the Paw caste and lives in her house with her parents and three brothers. She recognizes the accused present in the court, whose name is Pramod, in the village he is called by the name Nanhi. When she was

studying in the first class and on the date of the incident, she was swinging in her house in a sari swing. It was evening time, at that time her mother was bathing in the garden and father was inside the house. When she was swinging, the accused came and said to her to come and have biscuits and took her in his lap to Dongri and there he put his urinary organ in her mouth, on which she started crying, then the accused pressed her mouth and was telling her to sleep in his house. Then after that, her father came and took her home in his lap. The villagers came and asked her about the incident, then she told the villagers about all the above incidents. After that, she went to Marwahi police station with her parents and later the doctor also examined her.

20. This witness is a child witness and nowhere in her clear and simple statement is it reflected that she has presented a false story against the accused on the instructions of her parents. A child's mind is a very simple mind, if it is taught falsehood and is confronted with the truth, it cannot remain steadfast on falsehood and will reveal the truth only. It does not arise in the mind of a child that in order to cash in on the hatred or dislikes of elders, it can resort to falsehood and involve someone in falsehood. Therefore, in the absence of any contradiction, the victim's statement is found to be completely simple, straightforward and true, which exposes the actions of the accused.

21. Section 29 of the Protection of Children from Sexual Offences Act, 2012 provides that where a person is being prosecuted for committing or abetting the commission of any offence under Sections 3, 5, 7 and 9 of this Act, the Special Court shall presume that such person has

committed the offence unless the contrary is proved. Similarly, in a prosecution for an offence under Section 30 of this Act which requires culpable mental state on the part of the accused, the law shall presume such mental state, but it shall be a defence for the accused to prove that he did not have the mental state in relation to the act charged with the offence for which the prosecution is making an offence. In this case, the defence has failed to show any particular contradiction in the testimony of the prosecution witnesses so as to raise doubts in the case of the prosecution, the prosecution evidence has remained unrebutted.

22. Thus, on the basis of evidence presented by the prosecution in the case, it is shown that on 07.02.2018, at about 06:00 pm, when the victim was swinging in a sari swing in the courtyard of the house, the accused came and took her in his lap towards Dongri, saying that he would feed her biscuits, and after removing his and the victim's clothes, inserted his penis in the victim's mouth. The mere attempt by the accused to insert his penis in the victim's mouth appears to have amounted to rape and aggravated penetrative sexual assault on the victim. Since the victim was only a 06-year-old girl, taking her to Dongri without the consent of her guardian with the intention of having sex was merely an act of kidnapping and abduction for inappropriate sex.

23. Thus, the above act of the accused is to kidnap the victim from the custody of her lawful guardian with the intention of compelling or luring her for illicit sexual intercourse and to commit rape by inserting his penis in the mouth of the victim when she was below 16 years of age at that time and the act of committing aggravated penetrative sexual assault by

inserting his penis in the mouth of the victim is the same as the act of committing aggravated penetrative sexual assault. As such, we hereby affirm the finding of the trial Court that it is the appellant who has committed such offence and he is the perpetrator of the crime in question.

24. 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...".

25. 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***.

26. 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.

27. The Supreme Court in the matter of ***Ranjit Hazarika v. State of Assam, AIR 1998 SC 635*** has held that the evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice.

28. 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."

29. In the case of ***Ganesan v. State***, ***(2020) 10 SCC 573***, the Supreme Court observed and held that that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.

30. In the case of ***State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575***, it was observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It was further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises.

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

32. Applying the law laid down by the Supreme Court in the aforementioned cases, to the facts of the case on hand and as observed herein-above, we see no reason to doubt the credibility and/or trustworthiness of the victim. She is found to be reliable and trustworthy.

Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the victim can be sustained.

33. The view taken by the learned trial Court that the appellant is the author of the crime is a pure finding of fact based on evidence available on record and we are of the opinion that in the present case, the only view possible was the one taken by the learned trial Court.

34. Hence, there is no manner of doubt that the appellant is guilty of the offence of penetrative sexual assault. However, the question for consideration would be whether the learned trial Court has justified in convicting the appellant under Section 6 of the POCSO Act and sentenced him for rigorous imprisonment for life as the date of offence is 07.02.2018 and the said Section has been amended on 16.08.2019 ?

35. Before amendment, under Section 6 of the POCSO Act, the minimum jail sentence was 10 years. It would be beneficial to reproduce the aforementioned Section of the POCSO before amendment for better appreciation of the case, which is as under:

> "***Section 6 of the POCSO Act:***
> "*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 extent to imprisonment for life and shall also be liable to fine."*

36. After amendment of Section 6 of the POCSO Act w.e.f. 16.08.2019, it reads as under:-

> "***Section 6 of the POCSO Act:***
> "*6. Punishment for aggravated penetrative sexual assault. - (1) Whoever commits aggravated penetrative sexual assault 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 natural life of that person, and shall also be liable to fine, or with death."*

37. The co-ordinate Bench of this High Court in the matter of ***Satish Kumar Dhruv vs. State of Chhattisgarh 2023 SCC OnLine Chh 3631*** has held as under:-

> *"17. Following the decision of the Supreme Court in Vipul Rasikbhai (supra) and considering the fact that the age of the appellant was 25 years on the date of offence, he is in custody since 06.07.2013 and he has not committed any jail offence and it is not the case of the prosecution that it is likely that the appellant would convert himself into a hardened criminal and further considering the fact that minimum sentence for offence under Section 6 of the POCSO Act at the time of offence was 10 years, which was enhanced upto 20 years w.e.f. 16.08.2019, we hereby award the sentence of 14 years to the appellant for offence punishable under Section 6 of the POCSO Act and also for the offence punishable under Section 376 of I.P.C. in place of life imprisonment as awarded by the trial Court while*

maintaining the conviction and sentence of the appellant for the offence under Section 363 of I.P.C. However, the fine sentence and default sentence as imposed by the learned trial Court shall remain intact and all the sentences shall run concurrently"

38. Earlier, before amendment, Section 6 of the POCSO Act provided that whoever commits rape on a woman when she is under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but 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. After amendment, i.e. w.e.f 16.08.2019, the said Section provides for rigorous imprisonment for a term which shall not be less than 20 years. The incident took place on 07.02.2018 and as such, Section 6 of the POCSO Act, which stood as before 16.08.2019 would be applicable in the present case and as such, this Court is of the view that instead of convicting the appellant for the offence under Section 6 of the POCSO Act and sentencing him to maximum sentence of rigorous imprisonment for life with fine of Rs.1,000/-, the appellant be sentenced to rigorous imprisonment for 14 years, which would meet the ends of justice.

39. Now the question would be whether the learned trial Court is justified in convicting the appellant for offence under Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, for which, they have been sentenced for life imprisonment, as contended by learned counsel for the appellant ?

40. In order to answer this plea, it would be relevant to take note of the fact that the date of incident in the instant case is 07.02.2018, whereas Section 3(2)(v) of the Act of 1989 was amendment w.e.f. 26.01.2016 by Act 1 of 2016. Prior to its amendment w.e.f. 26.01.2016, Section 3(2)(v) stood as under:

> "**3. Punishment for offences of atrocities -**
>
> (1) xxx xxx
>
> (2) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe -
>
> (i) to (iv) xxx xxx
>
> (v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property <u>on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member</u>, shall be punishable with imprisonment for life and with fine;"

Prior to its amendment w.e.f. 26.01.2016, the unamended portion of Section 3(2)(v) was:

> **"**on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member**"**

After the amendment, the substituted portion of Section 3(2)(v) is:

> **"**knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or

such property belongs to such member.**"**

41. The unamended provision of Section 3(2)(v) of the Act of 1989 came to be considered before the Supreme Court in the matter of ***Patan Jaman Vali*** *v.* ***State of Andhra Pradesh***[1] wherein their Lordships have held that it has to be established by the prosecution on the basis of evidence adduced that the accused has committed sexual intercourse/crime on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe community and held as under:**-**

> "**58.** ….We agree with the Sessions Judge that the prosecution's case would not fail merely because PW1 did not mention in her statement to the police that the offence was committed against her daughter because she was a Scheduled Caste woman. However, there is no separate evidence led by the prosecution to show that the accused committed the offence on the basis of the caste identity of PW2. While it would be reasonable to presume that the accused knew the caste of PW2 since village communities are tightly knit and the accused was also an acquaintance of PW2's family, the knowledge by itself cannot be said to be the basis of the commission of offence, having regard to the language of Section 3(2)(v) as it stood at the time when the offence in the present case was committed. As we have discussed above, due to the inter-sectional nature of oppression PW2 faces, it becomes

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difficult to establish what led to the commission of the offence – whether it was her caste, gender or disability. This highlights the limitation of a provision where causation of a wrongful act arises from a single ground or what we refer to as the single axis model.

59. It is pertinent to mention that Section 3(2)(v) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26 January 2016. The words "on the ground of" under Section 3(2)(v) have been substituted with "knowing that such person is a member of a Scheduled Caste or Scheduled Tribe". This has decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction…

60. xxx xxx xxx

61. However, since Section 3(2)(v) was amended and Clause (c) of Section 8 was inserted by Act 1 of 2016 with effect from 26 January 2016 these amendments would not be applicable to the case at hand. The offence in the present case has taken place before the amendment, on 31 March 2011. Therefore, we hold that the evidence in the present case does not establish that the offence in the present case was committed on the ground that such person is a member of a SC or ST. The conviction under Section

3(2)(v) would consequently have to be set aside.**"**

42. After the amendment to the provision of Section 3(2)(v) of the Act of 1989, the wording of the substituted portion is "*knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member*". The word "knowing" has been defined in the Black's Law Dictionary, Eighth Edition, Page 888, — "1. Having or showing awareness or understanding; well-informed. 2. Deliberate; conscious".

43. In the matter of ***Shashikant Sharma & Ors.*** *v.* ***State of Uttar Pradesh & Anr.***[2]*,* Section 3(2)(v) of the Act of 1989 came to be considered before their Lordships of the Supreme Court, wherein it has been held that in order to commit offence punishable under Section 3(2)(v) of the Act of 1989 (as amended), there must be allegation that the accused not being a member of Scheduled Caste or Scheduled Tribe committed an offence under the provision of IPC punishable with imprisonment for 10 years or more on a member of Scheduled Caste or Scheduled Tribe knowing that such person belongs to the said community.

44. Bearing in mind the aforesaid principle of law laid down by their Lordships of the Supreme Court qua Section 3(2)(v) (as amended w.e.f. 26.01.2016), it is quite vivid that from the entire material available on record, it is evident that no legally admissible evidence has been led to prove that appellant has committed an offence knowing fully well that

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she belongs to Scheduled Caste/Scheduled Tribe community. Section 3(2)(v) of the Act of 1989 (as amended) can be pressed into service only if it is proved beyond reasonable doubt that the offence has been committed on a member of Scheduled Caste or Scheduled Tribe community knowing that such person belongs to the said community. The prosecution could have brought legal evidence on record to show that the appellant had the knowledge that victim belongs to Scheduled Caste/Scheduled Tribe community, therefore, having regard to the ingredients of Section 3(2)(v) of the Act of 1989 as it stood after its amended w.e.f. 26.01.2016, the prosecution has failed to lead separate evidence to demonstrate that appellant has committed the offence in question knowing fully well that the victim belong to Scheduled Caste community hence, in light of the decision of ***Shashikant Sharma*** (supra) and ***Patan Jaman Vali*** (Supra), the conviction of the appellants for offence punishable under Section 3(2)(v) of the Act of 1989 and the sentence of imprisonment for life, as awarded by the trial Court, is not sustainable and liable to be set aside.

45. As a result, the conviction and sentence of the appellant for offence punishable under Section 3(2)(v) and under Section 3(1) (B-i)(b-ii) of the SC/ST (Prevention of Atrocities) Act, as imposed upon him by the learned trial Court, is hereby set aside.

46. Accordingly, the conviction as awarded by the trial Court under Sections 6 of the POCSO Act and Section 376(2) of the IPC, are hereby upheld, however, as the learned trial Court has awarded

sentence only for the offence under Section 6 of the POCSO Act in view of Section 42 of the POCSO Act, we are also of the view that the appellant be sentenced only under Section 6 of the POCSO Act. Considering the submission advanced by learned counsel for the appellant, also considering the evidence of the victim (PW-3) and the material available on record, particularly the fact that amendment to Section 6 of the POCSO Act has taken place w.e.f. 16.08.2019 and before amendment under Section 6 of the POCSO Act, the minimum jail sentence was 10 years and date of incident is 07.02.2018, this Court is of the view that the sentence of life imprisonment, which would mean imprisonment for rest of the natural life, is too harsh and instead, the appellant is sentenced to undergo rigorous imprisonment for 14 years for the offence under Section 6 of the POCSO Act. However, Section 3(2)(v) and Section 3(1) (B-i)(b-ii) of the SC/ST (Prevention of Atrocities) Act, are hereby set aside. However, the fine amount imposed under Section 366 of the IPC and Section 6 of the POCSO Act by the learned trial Court, shall remain intact.

47. The appellant is stated to be in jail. He is directed to serve out the sentence as modified above.

48. The criminal appeal is **partly allowed**. The impugned judgment of conviction and order of sentence dated 04.02.2021 is modified to the extent indicated herein-above.

49. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his

jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

50. Let a certified copy of this judgment along with the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-	**Sd/-**
(Ravindra Kumar Agrawal)	**(Ramesh Sinha)**
Judge	**Chief Justice**

Manpreet

HEAD NOTE

The offences under the Atrocities Act can only be attracted if it is proved beyond reasonable doubt that the offence has been committed on a member of Scheduled Caste or Scheduled Tribe community knowing that such person belongs to the said community.