



2026:CGHC:18364-DB

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 281 of 2024**

Ravindra Kumar Bareth S/o. Late Suresh Kumar Bareth, Aged About 23 Years R/o Ward No. 4, Baradwar Road, Sakti, Police Station Sakti, District : Sakti, Chhattisgarh

--- Appellant(s)

**versus**

State Of Chhattisgarh Through Sho, Police Station Sakti, District Janjgir Champa, Now District Sakti Chhattisgarh.

--- Respondent(s)

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For Appellant(s) : Mr. Manoj Paranjpe, Sr. Adv. With Mr. Rishabh Gupta, Advocate

For Respondent(s) : Ms. Anusha Naik, Dy. G.A.

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**CRA No. 413 of 2024**

Yuvraj Sahu S/o Late Raghunandan Sahu Aged About 23 Years R/o Ward No. 4, Bajarpara, Sakti, District Janjgir-Champa, C.G. (Now This Time District Sakti)

---Appellant(s)

**Versus**

State Of Chhattisgarh Through The Police Station Sakti, Dist. Janjgir-Champa, C.G. (Now This Time District Sakti)

--- Respondent(s)

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For Appellant(s) : Mr. Chandrikaditya Pandey, Advocate

For Respondent(s) : Ms. Anusha Naik, Dy. G.A.

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**CRA No. 470 of 2024**

Vicky Sagar S/o Shri Paramanand Sagar Aged About 30 Years R/o  
Ward No. 04, Sakti P.S. Sakti, Dist. Sakti, C.G.

---Appellant(s)

**Versus**

State Of Chhattisgarh Through Aarakshi Kendra Sakti, Dist. Janjgir-  
Champa (Now Dist. Sakti), C.G.

--- Respondent(s)

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For Appellant(s) : Mr. Jitendra Pali, Advocate

For Respondent(s) : Ms. Anusha Naik, Dy. G.A.

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**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Shri Ravindra Kumar Agrawal, Judge**

**Judgment on Board**

**Per Ramesh Sinha, CJ**

**22.04.2026**

1. Since the aforesaid three criminal appeals have been filed against the impugned judgment dated 16.01.2024 passed by the learned Special Judge (FTSC), Sakti, District- Janjgir-Champa (C.G.) in Special Criminal Case No.29/2023, they were clubbed & heard together and being disposed of by this common judgment.
2. Today, these matters have been listed for hearing on I.A. No. 01/2024 which are application for suspension of sentence and grant of bail to the respective appellants. However, with the consent of learned counsel appearing for the parties, the appeals are being heard finally.
3. The appellants have been convicted for the offences as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 366 of the IPC.	Rigorous Imprisonment for 03 years and fine of Rs.1,000/-, in default of payment of fine amount, additional R.I. for 06 months.
Under Section 376D of the IPC.	Rigorous Imprisonment for 20 years and fine of Rs.10,000/-, in default of payment of fine additional R.I. for 01 year.
<i>Both the sentences were directed to run concurrently</i>	

4. The prosecution case, in brief, is that on 13.05.2023, the daughter of the complainant (hereinafter referred to as the “victim”), after having dinner, had gone for a walk outside her house. It is alleged that at about 09:30 PM, while she was outside, accused Yuvraj Sahu approached her, induced her to accompany him, and made her sit on his motorcycle. At that time, co-accused Ravindra Bareth was also present on the said motorcycle.
5. It is further the case of the prosecution that both the accused persons took the victim to a place near Bandhava Pond at Kanchanpur, where they subjected her to forcible sexual assault. Upon her return home at around 11:30 PM, the victim disclosed the incident to her family members.
6. On the basis of a written complaint (Ex.P-4) submitted by the complainant at Sakti Police Station, FIR bearing No. 136/2023 (Ex.P-5) was registered against the accused persons under

Section 376D of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), and investigation was set into motion.

7. During the course of investigation, the statement of the victim was recorded under Section 161 of the Code of Criminal Procedure by a woman police officer, and subsequently, her statement under Section 164 CrPC was recorded before the Judicial Magistrate First Class (Ex.P-1).
8. On the basis of the material collected, offences under Sections 363 and 366 of the Indian Penal Code and Section 6 of the POCSO Act were also invoked, as it was found that the accused persons, along with co-accused Vicky Sagar, had enticed and taken the victim away and committed sexual assault upon her.
9. The victim was medically examined with due consent, and her medical examination report was prepared (Ex.P-14). Similarly, the accused persons Ravindra Bareth, Yuvraj Sahu, and Vicky Sagar were also subjected to medical examination, and their reports were marked as Ex.P-12, Ex.P-13, and Ex.P-16, respectively.
10. During investigation, a spot map was prepared by the Investigating Officer (Ex.P-3), and a site plan was also prepared by the Patwari (Ex.P-28). Various articles were seized, including biological samples and clothing of the victim, under seizure memo (Ex.P-17). The motorcycle allegedly used in the commission of the offence, bearing registration No. CG-11 BB/9853, was seized

vide Ex.P-15. The undergarments of accused Yuvraj Sahu and Ravindra Bareth were seized under Ex.P-18 and Ex.P-19, respectively. Relevant documentary evidence, including revenue records, was also seized (Ex.P-7).

- 11.** Statements of witnesses were recorded under Section 161 CrPC. Upon completion of the investigation and finding sufficient material against the accused persons, a charge-sheet was filed before the competent Court under the aforementioned provisions.
- 12.** Charges were framed against the accused persons under Sections 363, 366, and 376D of the Indian Penal Code, as well as Sections 4(2) and 6 of the POCSO Act. The contents of the charges were read over and explained to the accused, who denied the same and claimed to be tried.
- 13.** In order to establish the charge against the appellants, the prosecution examined as many as 19 witnesses and exhibited 33 documents. The statements of the appellants under Section 313 of CrPC were also recorded in which they denied the material appearing against them and stated that they are innocent and they have been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellants and sentenced them as mentioned in para 2 of the judgment. Hence, these appeals.
- 14.** Learned counsel for the appellant in CRA No. 281/2024 submits that the impugned judgment and order dated 16.01.2024 is

illegal, erroneous, and contrary to law, and is therefore liable to be set aside. It is contended that the learned trial Court has failed to appreciate the evidence on record in its proper perspective and has recorded findings which are perverse and unsustainable, particularly in light of the medical evidence. The conviction is stated to be based on conjectures and surmises, without the prosecution having established its case beyond reasonable doubt. It is further submitted that the testimony of the victim is not reliable, as it suffers from material contradictions, omissions, and embellishments, and is not corroborated by other prosecution evidence or by medical findings. Learned counsel submits that the statements of the victim under Sections 161 and 164 of the Code of Criminal Procedure, as well as her deposition before the Court, are inconsistent and indicative of exaggeration. It is also contended that the medical evidence, particularly the testimony of PW-8 (Dr. Soumya Jain) and the report (Ex.P-14), does not support the allegation of forcible sexual assault, and no conclusive medical opinion has been rendered in that regard. Emphasis is laid on the fact that several prosecution witnesses, including the parents of the victim, have not supported the prosecution case and have been declared hostile, thereby weakening the prosecution version. It is further argued that the prosecution has failed to conclusively establish that the victim was a minor on the date of the incident, rendering the conviction under the provisions of the POCSO Act unsustainable. Learned

counsel also submits that the circumstances on record indicate that the victim had accompanied the appellant voluntarily, and no alarm was raised either at the time of the alleged incident or thereafter, even when she was dropped near her residence, thereby supporting the defence of consent. It is contended that the investigation suffers from serious infirmities, as reflected in the testimony of the Investigating Officer (PW-11). In totality, it is urged that the prosecution has failed to prove the charge beyond reasonable doubt and that the appellant has been falsely implicated. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Santosh Prasad v. State of Bihar, reported in 2020 (3) SCC 443*** to contend that conviction cannot be sustained in the absence of cogent and reliable evidence. It is lastly submitted that the appellant has remained in custody since 14.05.2023, which may also be taken into consideration.

15. Learned counsel for appellant in CRA No. 470/2024 submits that the conviction and sentence recorded by the learned trial Court are flawed, improper, and contrary to the evidence available on record. It is contended that the name of the present appellant does not find mention in the written complaint lodged by PW-12, nor in the First Information Report, despite the fact that the victim, along with her parents and PW-12, was present at the police station at the relevant time. It is further submitted that even though PW-03 and PW-12 are projected as material witnesses by the prosecution, neither of them named the present appellant at

the earliest point of time. Learned counsel argues that the victim, for the first time, introduced the name of the present appellant during her deposition before the Court, thereby materially improving and altering her earlier version. It is also contended that the statement of the victim recorded under Section 161 of the Code of Criminal Procedure does not contain any allegation against the present appellant, indicating a significant omission which goes to the root of the prosecution case. Attention is drawn to the inconsistencies in the version of the victim, particularly with regard to the presence of her parents at the time when she was allegedly taken away, as well as the absence of any such narration in the FIR or in the statements of her parents, including PW-01 (mother), who has admitted that neither she nor her husband witnessed the incident or identified the accused persons. It is further submitted that the victim stated that she had first informed PW-12 about the incident; however, PW-12 has not supported the prosecution case and has been declared hostile. Learned counsel also assails the reliance placed by the trial Court on the testimony of the victim in the absence of corroboration, especially when the medical evidence, as deposed by PW-08 (Medical Officer), does not indicate any conclusive finding of penetrative sexual assault and records absence of injuries on the private parts. It is contended that the conviction is based solely on the uncorroborated and inconsistent testimony of the victim, along with the report (Ex.P-32) indicating presence of

seminal traces on certain garments, which by itself is insufficient to sustain conviction in the absence of reliable and cogent evidence connecting the present appellant to the alleged offence. On these grounds, it is urged that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt, and the conviction deserves to be set aside.

- 16.** Learned counsel for appellant in CRA No. 413/2024 submits that the impugned judgment and order dated 16.01.2024 is bad in law, illegal, perverse, and contrary to the facts and circumstances of the case, and is therefore liable to be set aside. It is contended that the learned trial Court has erred in convicting the appellant in the absence of cogent, reliable, and legally admissible evidence establishing his involvement in the alleged offence. Learned counsel submits that there is no positive evidence to prove that the appellant committed sexual assault upon the victim, and that the prosecution has failed to establish the essential ingredients of the offences under the POCSO Act. It is further argued that the statements of the prosecution witnesses suffer from material contradictions, omissions, and improvements, and thus do not inspire confidence so as to warrant conviction. Attention is drawn to the alleged inconsistencies in the version of the victim, including her statement that one accused contacted another through a mobile phone, despite no such device having been seized during investigation, as well as allegations of unnatural sexual assault without any corresponding charge having been

framed under Section 377 of the Indian Penal Code. It is also contended that the medical evidence, particularly the testimony of PW-08 (Dr. Soumya Jain), does not support the prosecution case, as the medical report does not indicate any conclusive signs of sexual assault and records absence of injuries suggestive of forcible intercourse, except for a solitary injury on the back for which no opinion regarding its duration has been given. Learned counsel further submits that, considering the alleged time frame of the incident, it appears improbable that the occurrence, as narrated by the victim, could have taken place in the manner alleged, thereby casting serious doubt on the prosecution case. It is also argued that no alarm was raised by the victim during the alleged incident, which further weakens the prosecution version. Placing reliance on general principles laid down by the Hon'ble Supreme Court with regard to the standard of proof in offences under Section 376 of the Indian Penal Code, it is contended that in the absence of clear and convincing evidence establishing commission of the offence, the conviction cannot be sustained. On these grounds, it is urged that the appellant has been falsely implicated and is entitled to acquittal.

17. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellants and submits that the impugned judgment of conviction and order of sentence passed by the learned trial Court is well-reasoned, legally sound and based on proper appreciation of the entire

evidence available on record, and thus warrants no interference by this Court in exercise of appellate jurisdiction. It is contended that the testimony of the victim (PW-2) is clear, consistent and inspires full confidence, as she has categorically narrated the manner in which she was taken away and subjected to sexual assault by the accused persons. It is further submitted that her statement finds due corroboration from her statements recorded under Section 161 Cr.P.C. (Ex.D-1) and Section 164 Cr.P.C. (Ex.P-1), as well as from the prompt lodging of the FIR (Ex.P-5). Learned State counsel emphasizes that it is a settled principle of law that conviction can be based solely on the testimony of the victim, if it is found to be reliable and trustworthy, and that minor discrepancies or omissions, which do not go to the root of the case, are liable to be ignored. It is further argued that the forensic report (Ex.P-32), which confirms the presence of seminal stains and human sperm on the samples and clothing of the victim, lends strong scientific corroboration to her version, thereby fully establishing the prosecution case beyond reasonable doubt.

- 18.** It is further submitted that the defence has failed to elicit any material contradiction in the testimony of the victim so as to discredit her version, and the alleged inconsistencies pointed out are trivial in nature and attributable to normal variations in human recollection. Learned counsel contends that the medical evidence (Ex.P-14), though not conclusive in itself, does not in any manner negate the prosecution case, and it is well settled that absence of

injuries or a definite medical opinion is not sufficient to discard otherwise reliable ocular testimony. It is also submitted that merely because some of the witnesses have turned hostile, the prosecution case does not fail, particularly when the core version is consistently established through the victim and corroborated by other evidence on record. Learned State counsel therefore submits that the learned trial Court has rightly appreciated the evidence in its proper perspective, correctly applied the settled principles of law, and has recorded findings of conviction which are neither perverse nor contrary to record, and hence the present appeals, being devoid of merit, deserve to be dismissed.

- 19.** We have heard the learned counsel for the parties and perused the record with utmost circumspection.
- 20.** The first question that arises for consideration before this Court is whether the victim was child on the date of incident.
- 21.** Upon due consideration of the evidence on record and the findings returned by the learned trial Court, this Court finds that the trial Court has undertaken a detailed appreciation of the material pertaining to the age of the victim, including the school records (Ex.P-9 and Ex.P-10) and the oral testimonies of the relevant witnesses. The trial Court has assigned cogent reasons for holding that the prosecution failed to conclusively establish the date of birth of the victim beyond reasonable doubt, particularly in view of the inconsistencies in the statements of the parents and

the victim, as well as the absence of clarity regarding the basis of the entries in the school records. Having independently examined the said reasoning, this Court does not find any perversity, illegality, or material irregularity in the conclusion arrived at by the learned trial Court. Accordingly, the finding recorded by the trial Court on the issue of age is affirmed.

- 22.** The next question for consideration is whether, on the date, time, and place of the incident i.e. 13.05.2023 at about 09:30 PM within the jurisdiction of Police Station Sakti, the accused persons, acting in furtherance of their common intention, enticed and took the victim from the lawful custody of her guardian and thereafter subjected her to sexual assault, including commission of gang rape/penetrative sexual assault, as alleged by the prosecution?
- 23.** In view of the finding already recorded that the prosecution has not conclusively established the age of the victim as being below 18 years, the applicability of Section 363 IPC and the provisions of the POCSO Act does not survive for consideration. The issue that now arises is whether the accused persons abducted the victim against her will and, thereafter, subjected her to sexual assault, including gang rape, within the meaning of Sections 366 and 376D of the Indian Penal Code.
- 24.** Upon a comprehensive and careful re-appreciation of the entire oral and documentary evidence available on record, this Court proceeds to examine the testimonies of the prosecution

witnesses along with the exhibits proved, in order to determine whether the findings recorded by the learned trial Court call for any interference.

- 25.** The testimony of the victim (PW-2) assumes central importance in the present case. She has deposed in clear and unequivocal terms that on the night of the incident, while she was sitting outside her house after dinner, the accused persons came and took her to a secluded place near the pond. She has further stated that she was subjected to sexual assault by the accused persons one after another, against her will and without her consent. The narration given by her is detailed, consistent and inspires confidence. It is noteworthy that her statement recorded under Section 161 Cr.P.C. (Ex.D-1) as well as her statement under Section 164 Cr.P.C. (Ex.P-1) substantially corroborate her deposition before the Court on all material particulars. Though certain variations have been pointed out by the defence regarding naming of accused or minor aspects of the incident, such discrepancies are natural and do not go to the root of the matter. The core of her testimony, namely that she was taken to a secluded place and subjected to sexual assault by the accused persons, remains unshaken. Her evidence, therefore, carries a ring of truth and can safely be relied upon.
- 26.** The evidence of PW-3, the father of the victim, also lends support to the prosecution case. He has stated that on the night of the

incident, his daughter was taken away by certain persons on a motorcycle and upon her return, she disclosed that she had been subjected to sexual assault. He has proved the written complaint (Ex.P-4) and the First Information Report (Ex.P-5), though he admitted that being illiterate, the contents were written by the police personnel. However, he has clarified that the report was based upon the narration made by his daughter. Though there are certain inconsistencies in his deposition, particularly with regard to the names of the accused persons, the same do not materially affect the prosecution case, as his testimony corroborates the factum of the victim being taken away and her subsequent disclosure regarding the incident.

- 27.** The testimony of PW-1, the mother of the victim, though not wholly supportive, cannot be completely discarded. She has, in her examination-in-chief, expressed lack of knowledge regarding the incident and was declared hostile. However, during her cross-examination by the prosecution, she admitted that the victim had informed about being taken away and subjected to sexual assault. At the same time, in cross-examination by the defence, she stated that she had not witnessed the incident. The learned trial Court has rightly observed that her responses indicate a lack of clarity and understanding. In such circumstances, her evidence is to be read cautiously and relied upon only to the extent it supports the prosecution case, particularly the fact that the victim returned home and a report was lodged.

- 28.** The prosecution has also examined PW-4, the Head Teacher, who produced the school records including the Dakhil Kharij Register (Ex.P-9) and Tatima Form (Ex.P-10), which were seized vide seizure memo (Ex.P-7) pursuant to written communication (Ex.P-6). However, this witness has candidly admitted that he was not posted at the school at the time of admission of the victim and could not state the basis on which the date of birth was recorded. In view of such admission, the evidentiary value of these documents for determining the exact age of the victim becomes doubtful, and the learned trial Court has rightly appreciated the same.
- 29.** The medical evidence assumes significance and has been proved through PW-8, Dr. Soumya Jain, who conducted the medical examination of the victim and proved her report (Ex.P-14). She found that the victim was physically normal, with a torn hymen and a scratch mark on the back, though no external injuries were found on the private parts. She opined that no definite opinion regarding recent sexual intercourse could be given and advised forensic examination of the collected samples. In cross-examination, she admitted absence of injuries on the genital parts and anus. However, it is well settled that absence of injuries does not negate the occurrence of sexual assault, particularly when the testimony of the victim is otherwise credible.

- 30.** The forensic evidence, in fact, provides strong corroboration to the prosecution case. The report of the Regional Forensic Science Laboratory (Ex.P-32) clearly indicates the presence of seminal stains and human sperm on the vaginal swabs, slides and clothing of the victim. This scientific evidence establishes that there was sexual intercourse, and significantly supports the version of the victim that she was subjected to such act by the accused persons.
- 31.** The prosecution has further examined Dr. G.B. Singh (PW-7), and Dr. Ravindra Sidar (PW-10), who conducted the medical examination of the accused persons and proved their respective reports (Ex.P-12, Ex.P-13 and Ex.P-16). Both witnesses have opined that the accused persons were capable of performing sexual intercourse, and no abnormality was found in them. This evidence rules out any possibility of incapacity on the part of the accused and lends further assurance to the prosecution case.
- 32.** The testimony of the Investigating Officer (PW-11), establishes the procedural aspects of the investigation. He has proved various documents including consent memos (Ex.P-2 and Ex.P-6), seizure memos (Ex.P-15, Ex.P-17, Ex.P-18 and Ex.P-19), and the spot map (Ex.P-3). His evidence demonstrates that the investigation was conducted in accordance with law, and the material exhibits were duly seized, sealed and sent for forensic

examination. Nothing substantial has been elicited in his cross-examination to discredit the investigation.

- 33.** It is true that Prakash Sindhur (PW-12), did not support the prosecution case and was declared hostile. However, it is well settled that the testimony of a hostile witness is not to be rejected in toto, and in any case, the non-support of this witness does not affect the core of the prosecution case, which stands firmly established through the consistent and reliable testimony of the victim, duly corroborated by medical and forensic evidence.
- 34.** Thus, on a cumulative appreciation of the entire evidence on record, this Court finds that the testimony of the victim is trustworthy and inspires confidence, and the same stands corroborated by the surrounding circumstances, medical evidence and forensic report. The minor inconsistencies and contradictions pointed out by the defence are not of such nature as to discredit the prosecution case in its entirety. The learned trial Court has meticulously analysed the evidence and has arrived at a well-reasoned conclusion. This Court does not find any perversity or illegality in such appreciation of evidence warranting interference.
- 35.** 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...”.

**36.** 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 victim, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the victim 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 victim 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)**.

37. A victim 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 victim. 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 victim must necessarily depend on the facts and circumstances of each case. But if a victim 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 victim does not have

a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

38. 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."

39. 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.”

**40.** 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<sup>ble</sup> 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.”

41. 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.”

42. 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.”

- 43. Section 376D Gang rape:** Where a woman is raped by one or more persons forming a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape.

- 44.** 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 has directly contributed to the commission of this crime.
- 45.** Upon an anxious and independent re-appreciation of the entire evidence on record, this Court finds that the learned trial Court has undertaken a thorough, reasoned and legally sustainable analysis of both oral and documentary evidence. The findings recorded are based on proper appreciation of the testimony of the victim (PW-2), duly corroborated by the medical evidence (PW-14), the forensic report (Ex.P-32), and other attending circumstances. The defence has not been able to point out any material illegality, perversity, or misreading of evidence which would warrant interference by this appellate Court. Minor discrepancies or variations, as highlighted by the appellants, do not go to the root of the prosecution case and are insufficient to discredit an otherwise cogent and reliable version of the victim.
- 46.** This Court is of the considered opinion that the testimony of the victim is natural, consistent on material particulars, and inspires full confidence. The same stands fortified by scientific evidence, particularly the FSL report (Ex.P-32), which conclusively establishes the presence of seminal stains and human sperm on the samples collected. The medical evidence, though not showing extensive external injuries, does not negate the

occurrence of sexual assault, especially in light of settled legal principles that absence of injuries is not determinative. The prosecution has thus successfully established that the victim was subjected to sexual assault by the accused persons acting in concert.

- 47.** The learned trial Court has rightly held that though the prosecution failed to conclusively establish the minority of the victim, thereby disentitling application of provisions under the Protection of Children from Sexual Offences Act and Section 363 IPC, the evidence on record clearly proves beyond reasonable doubt that the accused persons abducted the victim with intent to commit illicit sexual intercourse and thereafter committed gang rape upon her against her will and without her consent, thereby attracting the provisions of Sections 366 and 376D of the Indian Penal Code.
- 48.** The legal position governing appreciation of evidence in cases of sexual assault, as discussed hereinabove, clearly mandates that the testimony of the victim, if found reliable and trustworthy, can form the sole basis of conviction. In the present case, the victim satisfies the test of a wholly reliable witness, and her version stands corroborated by surrounding circumstances and scientific evidence. The findings of guilt recorded by the trial Court are thus fully in consonance with settled principles of criminal jurisprudence.

49. This Court is also mindful of the gravity and heinous nature of the offence. The act committed by the accused persons is not merely an offence against an individual, but an affront to the dignity and bodily integrity of a woman. The manner in which the offence has been perpetrated reflects a complete disregard for human dignity and societal norms. Crimes of such nature require a stern judicial response so as to uphold the rule of law and to send a clear message that such acts shall not be tolerated.
50. In view of the foregoing discussion and the settled position of law, this Court finds no merit in the present appeal. The judgment of conviction and order of sentence passed by the learned trial Court, convicting the appellants under Sections 366 and 376D of the Indian Penal Code, are well-founded, legally sustainable and do not call for any interference.
51. Accordingly, the appeal being devoid of merits is hereby **dismissed**. The conviction and sentence imposed upon the appellants by the learned trial Court are affirmed in totality. Consequently, all pending applications, if any, stand disposed of.
52. It is stated at the Bar that the appellants are in jail. They shall serve out the sentence as ordered by the trial Court.
53. 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.

- 54.** Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-

(Ravindra Kumar Agrawal)  
**Judge**

Sd/-

(Ramesh Sinha)  
**Chief Justice**

Manpreet

**HEAD NOTE**

Where the prosecution fails to conclusively establish the minority of the victim, the provisions of the POCSO Act may not be attracted. However, if the evidence on record, particularly the consistent and trustworthy testimony of the victim, duly corroborated by medical evidence (MLC) and forensic science laboratory (FSL) report indicating presence of seminal stains and human sperm on the victim's body and clothing, establishes that she was abducted and subjected to sexual assault by multiple accused acting in furtherance of a common intention, conviction under Sections 366 and 376D IPC is fully sustainable. Absence of injuries or a conclusive medical opinion does not negate the offence, and each accused, being part of the group, is constructively liable for the act of gang rape irrespective of individual role.