2026:CGHC:9424-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on: 10.02.2026

Judgment delivered on: 24.02.2026

ACQA No. 227 of 2018

State Of Chhattisgarh Through The Station House Officer, Police Station Podi, District Korea Chhattisgarh

... Appellant

versus

1 - Philomina Kerketta D/o Guruwaro Kerketta Aged About 23 Years R/o Chuipani, Narayanpur, Police Station Jhagrakhand, Present Address Jyoti Mission School, Sarbhoka, Police Station Podi, District Korea Chhattisgarh

2 - Joseph Dhanna Swami S/o Tambu Swami Aged About 50 Years Vest Tejour Tamilnadu, Present Address Jyoti Mission School, Sarbhoka, Police Station Podi, District Korea Chhattisgarh

3 - Kishariya D/o T.J. Chako Aged About 36 Years Pittarika, District Kasalgod, Keral, Present Address Jyoti Mission School, Sarbhoka, Police Station Podi, District Korea Chhattisgarh

... Respondent(s)

For Appellant	**:**	Mr.Priyank Rathi, Government Advocate
For Respondent(s)	**:**	Mr.Aishwarya Kumar Dubey, Advocate

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

C.A.V. Judgment

***Per* Ramesh Sinha, C.J.**

1. The appellant-State has filed this acquittal appeal under Section 378(1) of the CrPC against the impugned judgment of acquittal dated 9.1.2017 passed by the Additional Sessions Judge (Fast Track Court), Baikunthpur, District Korea in Special S.T. No.03/16, whereby the trial Court has acquitted respondent No.1 from charges punishable under Sections 202, 119, 376(2)(d)(f)(i)(k) of the Indian Penal Code (hereinafter called as "IPC") and under Section 21 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter called as "POCSO Act"), respondent No.2 from charges under sections 376(2) (d)(f)(i)(k) and 377 of the IPC and Section 6 of the POCSO Act and respondent No.3 from charges under Sections 202, 119 and 323 of the IPC and Section 21 of the POCSO Act.

2. The case of the prosecution in brief is that the complainant (mother of the victim) (PW-1) made a written report (Ex.P-1) at Podi Police Station on 9.9.2015 stating that she lives in Tina Dafaai, Ward No.19, Haldibadi, Chirmiri and works as a maid. Her daughter, the victim, aged 9, studies in Class 4 at Jyoti Mission School, Sarbhoka and lives in the hostel. On 9.9.2015 at 9 A.M. security guard Abdul Wasim informed her via mobile phone that her daughter, the victim, was unwell. She then went to Mission School, Sarbhoka, with her neighbour, Sanjay and reported that she was bleeding when she went to the bathroom and

experiencing stomach pain. On Monday night, an unknown person had allegedly assaulted her urinary tract. She reported this to Madam Kismariya, who beat her with a stick and threatened her not to tell anyone.

3. On the basis of complaint made by the complainant (mother of the victim), the Police of Police Station Chirmiri, District-Korea (CG) has lodged an F.I.R. in Crime No. 105/2015 for offence punishable under Section 376(2)(f) of the IPC and under Section 4 of the POCSO Act against unknown persons on 10.09.2015 vide Ex.P-2. Consent for medical examination was obtained from the victim and her mother vide Ex.P-3. One prescription was seized vide Ex.P-4. Certified copy of birth certificate of the victim in which her date of birth has been mentioned as 29.05.2007 was seized vide Ex.P-5. Birth certificate of the victim was seized vide Ex.P-6 ‘C’. Photocopy of Aadhar Card of the victim was seized vide Ex.P-7’C’. Spot map was prepared by the patwari vide Ex.P-8. Spot panchnama was prepared vide Ex.P-9. Statements of the victim and her mother under Section 164 CrPC were recorded vide Ex.P-10. Test identification parade was conducted by the Tahsildar and Executive Magistrate, Manendragarh vide Ex.P-11 in which she identified accused / respondent No.2-Joseph Dhanna Swami by touching. MLC of the victim was conducted by Dr.Smt.Kalawati Patel (PW-7) vide Ex.P-15 on 10.09.2015 and found following injuries/symptoms:

1. The victim had swelling and injury on her left wrist measuring 1 x 1.4 inches and causing pain. This injury was on the upper part of the wrist.

2. There were no injury on face, nor on the chest or abdomen.

3. The victim had an injury on the right side of her vagina, the length of the injury was half an inch by one inch.

4. Below this injury was another injury which was ¼ inch by ½ inch. The victim also had a bruise on the left side of her vagina, measuring ½ inch by 2 inch. Below this bruise was a second bruise measuring ¼ inch by ½ inch. Vaginal vulva was swollen and red with bleeding and some of the blood was stuck in clots.

5. The victim was saying that all the above injuries were painful to touch.

6. The child is reporting pain in the thighs when her legs are stretched out while lying down.

7. The victim had a total 24 teeth.

According to her, many injuries were found in the private parts of the victim and there were injuries in the wrist joint of the left hand and she had complained of pain. The victim was again examined by Dr.Madhurima Painkra (PW-4) on 16.09.2015 vide Ex.P-13 and found following symptoms:-

1. The victim had 24 teeth.

2. The victim was physically and mentally healthy.

3. The victim’s gait was normal.

4. The victim’s had not developed secondary sexual

characteristics.

5. No external or internal injury was found on the body of the victim.

6. There is no mark of injury on private part, hymen intact, hymen membrane seen. Vagina would not enter tip of little finger.

4. The accused / respondent No.2-Joseph Dhanna Swami was also sent for medical examination to Community Health Center, Manendragarh where Dr.Surendra Singh (PW-10) examined him and found competent of doing intercourse. However, semen slides could not be prepared due to non-cooperation of the person. Slides of the victim were seized vide Ex.P-20. The victim's statement was recorded before the Child Welfare Committee, Baikunthpur vide Ex.P-21. Investigating officer also prepared the spot map vide Ex.P-24. Respondent No.1-Philomina was arrested on 11.09.2015 vide arrest memo Ex.P-27, respondent No.2-Joseph Dhanna Swami was arrested on 11.09.2015 vide Ex.P-28 and respondent No.3-Krismariya was arrested on 11.09.2015 vide arrest memo Ex.P-29. Seized articles were sent to FSL for chemical examination and as per FSL report (Ex.P-34), semen stains and human sperm were found in Article "B" underwear seized from the victim.

5. Upon completion of investigation, a charge-sheet was filed before the competent criminal Court in accordance with law. Charges were framed against the accused / respondents, which were read

over and explained to them. The accused denied the charges. Their statements under Section 313 of the Code of Criminal Procedure were recorded, wherein they claimed to be innocent and alleged false implication.

6. In order to bring home the offence, the prosecution examined as many as 19 witnesses and exhibited 36 documents. The accused-respondents examined none in their defence nor any document has been exhibited in support of their case.

7. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 9.1.2017, acquitted respondent No.1 from charges punishable under Sections 202, 119, 376(2)(d)(f)(i)(k) of the IPC and under Section 21 of the POCSO Act, respondent No.2 from charges under Sections 376(2) (d)(f)(i)(k) and 377 of the IPC and Section 6 of the POCSO Act and respondent No.3 from charges under Sections 202, 119 and 323 of the IPC and Section 21 of the POCSO Act. Hence, this acquittal appeal.

8. Mr.Priyank Rathi, learned Government Advocate appearing for the appellant / State submits that learned trial Court has passed the impugned judgment in a cryptic and laconic manner without appreciating the material available on record. The impugned judgment is absolutely bad in law as the same has been passed without appreciating the material available on record. He further submits that the trial Court ought to have seen that the

prosecution witnesses are natural and truthful and they have given the true version of the occurrence. Learned trial Court overlooked the case of the prosecution and evidence available against the respondents by which the case of the prosecution is fully established against them beyond any reasonable doubt, but the learned Trial Court overlooked this aspect and passed the impugneed judgment in mechanical manner which is bad in law and liable to be set aside. He also submits that learned Trial Court has failed to appreciate the testimony of the victim (PW-2). In her statement recorded before the Trial court as well as under Section 164 CrPC, she has fully supported the case of the prosecution. However, the Trial Court has not appreciated the same in appropriate manner. The trial Court has given weightage to minor omission and contradiction and disbelieve the statement of witness of the case, which is bad in law and liable to be set-aside. He contended that learned trial Court has failed to look into the gravity of the offence, whereby present respondent No. 2 being father of the Mission, has committed sexual assault with the victim, who is a minor girl and respondents No. 1 and 3 have tried to hide the said heinous and serious misconduct of respondent No. 2, thus, there is common motive of the respondents/accused behind the said crime. He further contended that learned trial Court while passing the impugned judgment overlooked the case of the prosecution and evidence collected against the respondents/accused and passed the judgment in a mechanical

manner which is bad in law and liable to be set-aside.

9. On the other hand, Mr.Aishwarya Kumar Dubey, learned counsel appearing for the respondents opposes the submissions made by learned counsel for the appellant/State and submits that learned trial Court has properly appreciated the oral and documentary evidence available on record and rightly ruled that the prosecution failed to prove the respondent's role in the crime beyond a doubt. He further submits that the test identification parade conducted in the present case is illegal and unreliable and based on the police's illegal tampering with the witnesses and learned trial Court has rightly discredited the said test identification parade in para 18 and 19 of the impugned judgment. He also submits that the victim (PW-2) herself admitted in para 17 of her deposition that she identified the principal i.e. respondent No.2 only as per the instructions of police personnel. Two independent witnesses namely Ravi Kumar and Jai Kishor Singh were not examined by the prosecution and no explanation has been offered for their non-examination. Henceforth, the learned trial Court rightly discredited the TIP. Therefore, there is nothing to link respondent No.2 to the crime. He contended that the victim nowhere in her deposition alleged that the Principal, with whom she interacted daily, committed any offence upon her and the only allegation was that the offender looked like the Principal. There are material contradictions in the statements of the victim before the police 161's statement (Ex.D-2), Courts 164's statement (Ex.P-10) and

Child Welfare Committee, Baikunthpur (Ex.P-21). These contradictions go to the root of the case and demolish the credibility of the prosecution story and the learned trial Court has rightly appreciated these contradictions in para 13 of its judgment. He further contended that the only allegation against respondents No.1 and 3 is that they failed to report the incident and asked the victim to put medicinal oil on her vagina. The victim was also suffering from urinary tract infection and was undergoing treatment for the same and hence the same conduct of the victim can only be at the most considered as negligence but not involvement in the crime. Ku.Kavita Kol (PW-5) was the guard on duty on the night of the incident and has categorically denied any knowledge of the alleged incident. She categorically deposed that the main gate which is a channeling gate and the only one remains locked from 6 P.M. to 6 A.M. and no person male or female is permitted to open the gate at their own will and her testimony completely falsifies the prosecution story and breaks the chain of events. PW-3 and PW-6 who were the victim's roommates and students denied any such incident and also denied anyone coming to their room that night. They did not notice any abnormal conduct of the victim on the alleged date and as such, their statements further weaken the prosecution case. He also contended that the victim had a prior history of Urinary Tract Infection (UTI) and she was undergoing medical treatment and had older scratch on her private parts because of itching. The

medical evidence is only suggestive in nature and in the case at hand there is massive contradictions creating serious doubt in prosecution case. It is a settled principle of law that mere suspicion, however strong, cannot take the place of proof. In the present case, there is no direct, reliable and trustworthy evidence connecting respondent No.2 with the alleged offence and entire case of the prosecution is based only on assumptions and suspicion and as such, the trial Court has rightly extended the benefit of doubt to the respondents. He lastly contended that the scope of interference in appeal against acquittal is very limited and unless the findings are perverse, interference is not warranted. As the complete prosecution case is based on mere suspicion and instances where two or more versions can be deduced, hence, the reversal of the impugned judgment at the appellate stage to take the non liberal view would cause grave travesty to the respondents. As such, he prays that the present acquittal appeal deserves to be dismissed upholding the judgment of acquittal passed by the learned trial Court. He relied upon the judgments of the Supreme Court in the matters of **Sharad Birdhichand Sarda v. State of Maharasthra, (1984) 4 SCC 116, Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808, Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343, Vijayee Singh v. State of U.P., (1990) 3 SCC 190, State of Rajasthan v. Shera Ram, (2012) 1 SCC 602** and **Chandrappa & Ors. v. State of Karnataka, (2007) 4 SCC 415**.

10. We have heard learned counsel appearing for the parties, perused the impugned judgment of acquittal and record of the trial Court.

11. The question for consideration is whether learned trial Court has rightly acquitted the respondents despite the presence of the testimony of victim (PW-2) along with other material evidence available on record.

12. This is the appeal against the judgment of acquittal filed by the State under Section 378(1) of the Cr.P.C. The appellate Courts are required to keep in mind that the trial Court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box and also required to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonably person would honestly and conscientiously entertain as to the guilt of the accused.

13. The Supreme Court in **C.Antony v. Raghavan Nair, AIR 2003 SC 182** has held that unless the High Court arrives at definite conclusion that the findings recorded by trial Court are perverse, it would not substitute its own view on a totally different perspective.

14. The Supreme Court in **Ramanand Yadav v. Prabhunath Jha, AIR 2004 SC 1053** has held that the appellate Court in considering the appeal against judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing

so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

15. The scope of interference in appeal against the judgment of acquittal is well settled. In **Tota Singh and another v. State of Punjab, AIR 1987 SC 1083** the Supreme Court has held in para 6 as under:-

> "6……the mere fact that the Appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere within an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

16. While exercising the appellate jurisdiction against judgment of acquittal the High Courts or the appellate Courts are fully empowered to appreciate and reappreciate the evidence adduced on behalf of the parties while reversing the judgment of the trial Court. The appellate Court is required to discuss the grounds given by the trial Court to acquit the accused and then to dispel those reasons.

17. When a person is charged for offence punishable under the POCSO Act, or for rape punishable in the Indian Penal Code, the age of the victim is significant and essential ingredients to prove such charge and the gravity of the offence gets changed when the child is below 18 years, 12 years and more than 18 years. Section 2(d) of the POCSO Act defines the “child” which means any person below the age of eighteen years.

18. In the present case, the prosecution has seized birth certificate of the victim (Ex.P-6’C’), in which her date of birth has been mentioned as 29.05.2007 and since defence has not challenged the documentary and oral evidence presented by the prosecution regarding the victim's date of birth being 29.05.2007, it is established that the age of the victim on the date of incident i.e. 9.9.2015 is 8 years, 3 months, 11 days. Thus, at the time of the incident, the victim is a minor girl below 18 years of age.

19. The next question for consideration before us is whether respondent No.2-Joseph Dhanna Swami has committed rape on minor victim ?

20. Rape has been defined in Section 375 of the IPC as follows :

> "**375. Rape.**-- A man is said to commit "rape" if he--
>
> (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
>
> (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
>
> (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
>
> (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,
>
> under the circumstances falling under any of the following seven descriptions:
>
> *First*. Against her will.
>
> *Secondly*. Without her consent.
>
> *Thirdly*. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

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

Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

> *Exception 2*. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

21. In the light of aforesaid dictum and proposition of law, we have examined the evidence adduced on behalf of the prosecution.

22. The victim has been examined as PW-2. In para 1 of her deposition the victim has stated that she know Father Joseph. She also know Kismariya and Philomina Didi. She was studying in fourth grade at Sarbhoka School, living in village Sarbhoka hostel. She went to the boys' bathroom. There was powder sprinkled there, and she could smell it. She went to the bathroom and rinsed herself with water. After that, her head started roaming. She went to her bed and sat down. After that, she was sleeping in her bed. Half an hour later, she felt something being inserted into her urinary tract, which caused pain. She then screamed. She heard the sound of slippers, similar to Father Joseph's slippers. When that man left her room, she saw that he was wearing black clothes and white pant. She saw that man's head. She could not see his face. He had a little hair on his head. In para 2 of her deposition, she deposed that when she woke up in the morning, she was bleeding from her urethra. A girl heard her screaming and asked her why she was screaming, but she did not tell her anything. She told Sister Philomina about the bleeding, and she told her to go and tell Sister. She then told Sister Kismariya about the incident, and she hit her on the hand with a stick and told her

not to tell anyone. On the second or third day, Sister Kismariya told her to apply mustard oil to her vagina. She applied mustard oil to her vagina, which caused severe pain in the swollen vagina. In para 4 of her deposition, she deposed that she even showed her penis injuries to her teacher. The teacher who taught her English also beat her for telling her about it. The one who beats Miss is white. She also told her not to tell anyone about it. In para 5 of her deposition, she deposed that she used the guard's phone to call her mother and tell her she was unwell. Her mother came to pick her up from the hostel. After speaking with the nurses, her mother took her from the hostel to the hospital. At the hospital, a female doctor examined her urinary tract.

23. Smt.Kalawati Patel (PW-7) has deposed that she was examined the victim on 10.09.2015 and found following symptoms:-

> “1. The victim's identification mark was a black mole on the left side of the back of the neck.
>
> 2. The victim was a 9-year-old girl. Her secondary sexual characteristics had not developed. She was conscious and normal.
>
> 3. The victim had swelling and injury on the wrist of her left hand, which was 1 x 1.4 inches long and was painful. This injury was on the upper part of the wrist.
>
> 4. There were no injuries on the face, nor on the chest or abdomen.

5. The victim had an injury on the right side of her vagina. The length of the injury was half an inch by one inch.

6. Below this injury was another injury which was 1/4 inch by 1/2 inch.

7. The victim also had a bruise on the left side of her vagina, measuring ½ inch by 2 inches. Below this bruise was a second bruise measuring ¼ inch by ½ inch.

8. The vaginal bulb was swollen and red with bleeding and some of the blood was stuck in clots.

9. The victim was saying that all the above injuries were painful to touch.

10. The girl reported pain when her breasts were stretched while lying down.

11. The victim had a total of 24 teeth.

12. Opinion: According to her, many wounds were found in the private parts of the victim and there were injuries in the wrist of the left hand and she had complained of pain."

In para 14 of her cross-examination, she admitted that during her internal examination of the victim, she reported the injuries after examining her vagina. Since she observed redness in the private parts, she reported redness. She admitted that injures were not cuts. She denied the suggestion that the victim's injuries could have been caused by infection. In para 17 of her cross-examination, she denied that vulva is normally red. The witness

herself stated that normal redness is different from redness caused by an injury. She denied that the victim did not have internal or external injuries. When the Court asked the doctor whether she found small pimples on the private parts of the victim girl, the doctor replied that no pimples found on the victim's private parts. Those were injuries.

24. Dr.Smt.S.Minj (PW-8) has stated in para 1 of her deposition that the victim's mother brought her to the hospital for treatment. The victim's mother told her that the victim's private parts were bleeding. She examined the victim's private parts. At that time, there was no bleeding, but the private parts were swollen and red. She prescribed medicines. The prescription for prescribing the medicines was marked as Ex.P-17, in which the witness admitted to signing from A to A. During treatment of the victim, she had prescribed Moxikind Supramycil ointment and Prexan syrup for oral administration. In para 2 of her deposition, she deposed that she had told the victim's mother to talk to the school management and get her treated at a bigger hospital as she did not have the equipment to do an internal examination. In para 6 of her cross-examination, she deposed that U.T.I. (urinary tract infection) causes intermittent urination, burning and itching. A UTI infection may cause redness, but not swelling. There was no bleeding from the victim's genitals and there was no other injury to the victim's internal organs. Scratching cannot cause swelling.

25. The victim was further examined by Dr.Madhurima Paikra (PW-4) on 16.09.2015 i.e. after seven days of the incident and on internal examination she opined that there is no mark of injury on private part, hymen intact, hymen membrane seen. Vaginal would not enter tip of little finger.

26. In the present case, the prosecution has proved the test identification parade vide Ex.P-11, which was conducted by the Tahsildar and Executive Magistrate, Manendragarh. Test identification parade was conducted in Sub-Jail Manendragarh in which the victim (PW-2) touched the accused and identified him as Dhanna Swami Joseph.

27. Tahsildar A.K.Bhoi (PW-11) in para 1 of his deposition has stated that he is posted as Tahsildar in the Tehsil Office, Manendragarh since March 2015. He received a letter dated 10.10.2015 (Ex.P-19) from the Station House Officer, Police Station Podi, to go to the jail and identify the accused. He then went to the Sub Jail, Manendragarh and initiated the process of identifying the accused. In para 2 of his deposition, he deposed that on 11.10.2015, he had the victim identify the accused in Crime No.105/15 of Police Station Podi, in sub-jail of Manendragarh. The victim is 9 years old. He introduced the accused to nine individuals of similar stature. The victim identified the accused by touching him. The proceedings of the identification parade

conducted by him are Ex. P-11, with his signatures on parts B to B.

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

> “7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure, which obliges the investigating agency to hold, or confers a right upon the accused to claim, a test identification parade. They do not constitute

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

29. The victim (PW-2) in her 164 CrPC statement (Ex.P-10) before the Judicial Magistrate First Class, Chirmiri has stated that she study in the fourth grade at Mission School, Sarbhoka, and live in a hostel. About six days ago, she was sleeping after dinner. She got up and went to the bathroom. Their bathroom was locked, so she went to the boys' bathroom, where powder had been sprinkled. She went back to sleep. Half an hour later, she saw a bald man, wearing pants, a shirt, and slippers, come into her room and put something on her urine. It was irritating. She screamed, and he ran away. She could not see his face. The room was dark and there was no light. She heard the sound of slippers as he ran away. The next day, she felt a burning sensation in her penis. On the third day, she started urinating blood. She told Sister Sudeepa that she was bleeding from her urine. She then told Sister Philomena, who then told Kishmaria. Kishmaria had asked her to apply oil on the area where she urinate, so she applied oil and it started burning. In para 2 she has stated that Kishmaria Didi told

her to tell her mother about this. She also hit her on the left wrist with a stick and had her bed moved upside down.

30. Mother of the victim (PW-1) in para 5 of her deposition before the trial Court has stated that after this, the doctor told the victim that there was a severe wound in her vagina. How did this happen? The doctor asked the victim how the wound came about, but the victim was unable to explain it clearly. But she did say that Philomina didi had rubbed her with a handkerchief and bathed her. Then the doctor said that such an injury would not occur if she rubbed her with a handkerchief and bathed her. Tell her exactly how the injury happened, but the victim could not explain. In para 6 of her deposition, she deposed that the doctor replied that her daughter's vagina is torn, something bad has happened to her. The doctor told her to throw away her panties and put on new ones. She took off the victim’s panties and threw them away and put on new ones at home. The doctor had prescribed treatment for her daughter and told her that she is her mother and asked her to find out what really happened. When she asked, the victim said that she had accidentally gone into the boys' bathroom. The girls' toilet was locked. The victim also said that powder had been sprinkled in the boys' bathroom and she was feeling nauseous. After urinating, she poured water. After that, she started feeling dizzy, but still somehow managed to come back to the room and sit down. The victim also said that Philomena Didi told her to go to sleep and said she was going to eat. The victim

said that Philomena Didi had told her not to be afraid, so she fell asleep.

31. 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...”.

32. 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 victim 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.

33. 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.

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

> "22. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and

consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a ‘sterling witness’ whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

35. The Supreme Court in the matter of **Nawabuddin v. State of Uttarakhand, (2022) 5 SCC 419** has held as under:-

> “17. 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.
>
> 18. 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.
>
> 19. As observed and held by this Court in **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 **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."

36. In the present case, the prosecution has examined Smt.Kalawati Patel (PW-7) who conducted the medical examination of the victim. The doctor has categorically proved the injury report and has deposed that the injuries found on the person of the victim were consistent with sexual assault. The medical evidence clearly establishes the presence of injuries on the private parts and other

relevant portions of the body of the victim. Nothing material has been elicited to discredit the medical findings. The injury report corroborates the ocular testimony of the victim and lends substantial assurance to the prosecution case. It is well settled that where the medical evidence supports the version of the victim, it strengthens the reliability of her testimony. In the present case, the medical evidence fully supports the prosecution version and rules out the possibility of false implication.

37. The prosecution has further proved that a Test Identification Parade was conducted during the course of investigation. The accused / respondent No.2-Joseph Dhanna Swami was properly identified by the victim in the Test Identification Parade conducted by the competent Magistrate in accordance with law. The purpose of a Test Identification Parade is to test the memory and veracity of the witness and to establish the identity of the accused as the perpetrator of the offence. In the present case, the identification was made promptly and without any ambiguity. There is no material on record to suggest that the TIP was conducted in an improper or suggestive manner. The identification of the accused by the victim in the Test Identification Parade, coupled with her consistent deposition before the Court, establishes beyond reasonable doubt that the accused / respondent No.2 was the author of the crime.

38. The prosecution has also relied upon the Forensic Science Laboratory (FSL) report, which has been duly exhibited and proved in accordance with law. The FSL report is found to be positive and corroborates the prosecution case. The scientific evidence establishes the presence of biological material connecting the accused with the crime. Scientific evidence, when properly collected and analyzed, carries significant probative value. In the present case, the FSL report provides independent corroboration of the victim's testimony and the medical findings. There is no material contradiction or procedural lapse brought on record that would render the FSL findings doubtful.

39. The medical evidence on record requires to be appreciated in its proper perspective. The victim was first examined on 10.09.2015 by Dr.Smt.Kalawati Patel (PW-7), who noted swelling and tenderness on the left wrist and multiple injuries over the genital region, including swelling, redness, bruising and bleeding, all of which were found to be painful on touch. These findings clearly indicate recent trauma at the time of examination. The victim was subsequently examined on 16.09.2015 by Dr. Madhurima Painkra (PW-4), who did not notice any external or internal injuries and found the hymen intact. However, it is significant that more than six days had elapsed between the two examinations. Minor soft-tissue injuries, particularly swelling, bruises and superficial lacerations are capable of healing substantially within a short span of time, especially in a child. Therefore, the absence of

visible injuries on 16.09.2015 does not negate or contradict the earlier medical findings recorded on 10.09.2015. The first medical examination, being proximate to the date of the incident, carries greater evidentiary value, and the subsequent absence of injuries after a lapse of several days is consistent with natural healing rather than indicative of absence of assault.

40. The testimony of the victim is cogent, consistent, and trustworthy. It is settled law that the sole testimony of the victim, if found reliable and credible, is sufficient to base conviction even in the absence of further corroboration. In the present case, her testimony stands corroborated by medical evidence as well as scientific evidence. The minor discrepancies, if any, do not go to the root of the matter and are natural in cases of this nature. Such minor inconsistencies do not discredit an otherwise reliable prosecution case. The chain of circumstances is complete. The medical evidence proves the injuries. The accused has been duly identified in the Test Identification Parade. The FSL report provides scientific corroboration. The oral, medical, and scientific evidence, when read together, establish the guilt of the accused / respondents beyond reasonable doubt.

41. This Court has carefully examined the testimony of the victim in light of the settled principles governing appreciation of evidence in cases of sexual offences. The victim has deposed in a clear, cogent, and consistent manner. Her testimony inspires confidence

and bears the ring of truth. The core of her version regarding the commission of the offence has remained intact and unshaken. The testimony of the victim is of sterling quality. It is natural, trustworthy, and free from embellishment. There is no evidence on record to suggest any motive for false implication. On the contrary, her conduct appears natural and consistent with the trauma suffered.

42. It is a well-settled principle of criminal jurisprudence that the sole testimony of the victim, if found reliable and of sterling quality, is sufficient to base a conviction and does not require corroboration as a matter of rule. Corroboration is only a rule of prudence and not of law. In the present case, even though the testimony of the victim is independently sufficient to sustain conviction, it stands further corroborated by medical evidence, scientific evidence in the form of the FSL report, and the identification of the accused in the Test Identification Parade.

43. The defence has failed to demonstrate any inherent improbability or material inconsistency in her evidence. Minor discrepancies, if any, are bound to occur in truthful testimony and, in fact, lend assurance to its genuineness rather than detract from it.

44. In view of the aforesaid discussion, this Court finds that the evidence of the victim is wholly reliable and of sterling quality. Her sole testimony, being trustworthy and confidence-inspiring, is sufficient to hold the respondents/accused guilty. Accordingly, this

Court places full reliance upon her deposition while recording the conviction of the respondents.

45. The view taken by the trial Court is neither plausible nor reasonable. It is contrary to the evidence on record and suffers from manifest illegalities, resulting in a perverse acquittal. As held in **Ramanand Yadav** (supra) and **Tota Singh** (supra), interference is warranted when the acquittal is perverse and based on misappreciation of the evidence. The present case is a clear example where compelling and substantial reasons exist for reversing the acquittal.

46. Having re-appreciated the entire evidence on record and for the reasons recorded hereinabove, this Court is of the considered opinion that the judgment of acquittal passed by the learned Additional Sessions Judge (Fast Track Court), Baikunthpur, District Korea in Special S.T. No. 03/2016 dated 9.1.2017 is manifestly erroneous, contrary to the evidence available on record and suffers from misappreciation of material evidence. The conclusions drawn by the trial Court are neither plausible nor reasonable and have resulted in miscarriage of justice. The said judgment is therefore liable to be set aside.

47. The prosecution has successfully established beyond reasonable doubt that respondent No. 2–**Joseph Dhanna Swami** committed aggravated penetrative sexual assault upon the minor victim. The testimony of the victim, duly corroborated by medical and other

circumstantial evidence, inspires full confidence and establishes the ingredients of the offences alleged.

48. Accordingly, respondent No. 2–**Joseph Dhanna Swami** is held guilty and convicted for offences punishable under Section 6 of the POCSO Act (as it stood at the time of commission of the offence in 2015) and Section 376(2)(d)(f)(i)(k) IPC. However, in view of conviction under Section 6 of the POCSO Act, which prescribes a more stringent punishment, no separate sentence is awarded under Section 376(2)(d)(f)(i)(k) IPC.

49. Insofar as respondent No. 1-**Philomina Kerketta** and respondent No.3-**Kismariya** are concerned, the trial Court had framed a specific charge against them under Section 119 IPC along with other charges. The evidence on record clearly establishes that they were public servants at the relevant time and were legally bound to prevent the commission of the offence. Despite having knowledge of the design and likelihood of the offence being committed by respondent No. 2, they intentionally concealed the same and failed to discharge their statutory duty to prevent its commission. The omission on their part was not a mere lapse or negligence, but a conscious and deliberate concealment which facilitated the commission of a grave offence against a minor child. The essential ingredients of Section 119 IPC stand proved beyond reasonable doubt. The finding of acquittal recorded by the trial Court in their favour is therefore unsustainable. Consequently,

respondents No. 1 and 3 are held guilty and convicted under Section 119 IPC.

50. As a result, the acquittal appeal filed by the State under Section 378(1) CrPC stands **allowed**. The impugned judgment of acquittal dated 9.1.2017 passed by learned Additional Sessions Judge (Fast Track Court), Baikunthpur, District Korea in Special S.T. No. 03/2016 is hereby **set aside**.

51. Respondent No. 2-**Joseph Dhanna Swami** is sentenced to rigorous imprisonment for life for offence punishable under Section 6 of the POCSO Act (as applicable in 2015) and fine of ₹10,000/-, in default of payment of fine, to undergo simple imprisonment for one year. No separate sentence is awarded under Section 376(2)(d)(f)(i)(k) IPC.

52. Considering that the principal offence concealed was punishable with imprisonment for life, and bearing in mind the seriousness of their conduct as public servants entrusted with the duty to prevent such offence, respondent No. 1–**Philomina Kerketta** and respondent No. 3–**Kismariya** are sentenced to rigorous imprisonment for seven years and a fine of ₹5,000/- each, in default of payment of fine, they shall undergo simple imprisonment for six months.

53. The accused/respondents are directed to surrender before the concerned trial Court within a period of two weeks from today for serving sentence imposed upon them by this Court, failing which,

they shall be taken into custody by the trial Court for serving the sentence imposed by this Court and compliance report be submitted to this Court.

54. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/- Sd/-

(Ravindra Kumar Agrawal)
Judge

(Ramesh Sinha)
Chief Justice

Bablu

HEAD-NOTE

A victim of rape or sexual assault is not an accomplice, and her evidence does not require corroboration as a matter of law. Corroboration is only a matter of prudence, not a condition for conviction. If the victim's testimony is credible, natural, consistent, and trustworthy, and free from material infirmities, the Court may act upon it even without independent corroboration.