



2025:CGHC:33035

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1120 of 2022**

Ramesh Kumar S/o Sambhu Ram Kachlam Aged About 28 Years R/o
Village Talgaon, Police Station - Balod, District Balod, Chhattisgarh.

... Appellant**versus**

State of Chhattisgarh Through Police Station Balod, District Balod,
Chhattisgarh

... Respondent

For Appellant : Mr. T.K. Tiwari, Advocate

For Respondent : Mr. Bharat Gulbani, Panel Lawyer

Hon'ble Shri Justice Ramesh Sinha, Chief Justice**Judgment on Board****15.07.2025**

1. Though, today the present appeal has been listed for hearing on I.A. No.1 of 2022, which is an application for suspension of sentence and grant of bail, however with the consent of learned counsel for the parties and considering the period of detention of the appellant, the appeal is heard finally.
2. Accordingly, I.A. No. 01 of 2022 stands **disposed of**.
3. This criminal appeal arises out of the judgment of conviction and order of sentence dated 18.04.2022 passed by the Special Judge

(POCSO), Balod, District Balod, (C.G.), in Special Session Case Pocso No. 85/2018, whereby the appellant has been convicted for offence under Section 3/4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter called as “POCSO”) and sentenced to undergo RI for 07 years and fine of Rs. 5,000/-, in default of payment of fine to further undergo RI for 06 months.

4. The case of the prosecution is that the complainant/victim lives in village Talgaon, Police Station and District Balod, Chhattisgarh. At the time of the incident, she was studying in class 12th. The accused, Ramesh Katlam, is a resident of her village and lives in her neighborhood. A year ago, when she used to go to school, the accused used to meet her there and say that he loved her and would marry her. However, she always refused. Even then, the accused used to harass her repeatedly. On 27.01.2018, her younger brother was studying at his maternal grandparents' house in village Belaudi, her parents had gone to see him, leaving her alone at home. At around 10:00 pm, the accused came to her house, pushed her inside, locked the door, and said he would kill her and defame her. He pulled her into the room and forcibly had physical relations with her. He threatened her that if she told anyone about this, he would defame her, which scared her. After that, whenever her parents were not at home, the accused used to come to her house and have physical relations with her 4-5 times against her will by threatening her that he would defame her. On 15.08.2018, she started having severe stomach pain. Her parents admitted her to Upadhyay Nursing Home, Dhamtari, at around 3:00

pm. there she delivered a 7 months old dead baby. Dr. Rashmi Upadhyay (PW-04) of Upadhyay Nursing Home, Dhamtari, gave a written complaint to Dhamtari Police Station. Based on Dr. Rashmi Upadhyay's written information and the victim's statement, Assistant Inspector Gayatri Sinha (PW-7) registered a First Information Report against the accused under Sections 457, 342, 376, 376(2)(ढ), and 506 (Part II) of the IPC and Section 5(ढ)/6 of the Protection of Children from Sexual Offences Act, 2012, in Crime No. 283/2018. After completion of investigation, the police at Balod, District Balod, found evidence of the crime against the accused and presented the charge-sheet in court for trial on 28.09.2018.

5. The trial Court has framed charges against the appellant as mentioned above. The appellant abjured his guilt and pleaded innocence.
6. In order to prove the guilt of the accused/appellant, the prosecution has produced as many as 08 witnesses, victim (PW-1), the victim's father (PW-2), Head Master Tokanlal (PW-3), Dr. Rashmi Upadhyay (PW-4), Dr. D.S. Dev (PW-5), Dr. Jitendra Kumar (PW-6), Inspector Mrs. Gayatri Sinha (PW-7), and Inspector Ramkinkar Yadav (PW-8). The statement of the appellant under Section 313 of Cr.P.C. was also recorded in which he denied the material appearing against him and stated that he is innocent and he has been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in para 3 of the judgment. Hence, this appeal.

7. Learned counsel for the appellant submits that the impugned judgment passed by learned trial Court is bad in law and contrary to the facts and circumstances of the case. There is no conclusive evidence on record that the offence is committed by the present appellant and he has been falsely implicated in crime in question. He further submits that the finding recorded by learned trial Court is not based on material available on record and the same has been recorded on the basis of conjectures and surmises. Bare perusal of the judgment there is no offence of under Section 3/4 of the Protection of Children From Sexual Offences Act, is made out against the appellant. He further submits that the prosecution has not duly proved the age of the victim. The version of complainant is not supported and corroborated by the independent witnesses, hence her statement is not trustworthy and reliable. As such, the criminal appeal deserves to be allowed and the impugned judgment deserves to be set aside.
8. On the other hand, learned State counsel opposes the submissions made by learned counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt and the learned trial Court after considering the material available on record has rightly convicted and sentenced the appellant, in which no interference is called for.
9. I have heard the learned counsel for the parties and perused the record with utmost circumspection.
10. The issue that arises for consideration in the present appeal is

whether the testimony of the victim deserves acceptance and whether the prosecution has established the case of the appellant beyond reasonable doubt.

- 11.** Insofar as, age of the victim on the date of the commission of the offence is concerned, she was admittedly 16 years 05 months and 13 days old at the time of the unsavory incident.
- 12.** Investigating Officer Inspector Ramkinkar Yadav (PW-08), in his statement, has stated that during the course of investigation, in order to ascertain the date of birth of the victim (PW-01), the relevant dakhil kharij register was seized from the Head Teacher of Saraswati Shishu Mandir, Belaudi, Police Station Raanchirai, District Balod. This seizure is corroborated by the seizure memo marked as Ex. P-32 and the certified copy of the dakhil kharij register marked as Ex. P-14(C).
- 13.** Head Master of the school, Mr. Tokanlal (PW-03), in his statement, has stated that when the dakhil kharij register of the school was demanded, he provided a certified photocopy of page number 15 of the said register. The original dakhil kharij register has been marked as Ex. P-14 and its certified photocopy has been marked as Ex. P-14(C). As per entry number 103 in the said register, the date of birth of the victim is recorded as 14.08.2001, which was entered at the time of her admission in Class 1 in July 2007, and after passing Class 5, a transfer certificate was issued to the victim.
- 14.** From the statement of Dr. Rashmi Upadhyay (PW-04), it is clear that on 15.08.2018 at 3:00 PM, the victim (PW-01) was brought to

her for treatment by her family members. After initial examination, it was found that the victim was experiencing labor pain, the fetus was partially stuck, and the fetus had already died in the womb. Dr. Upadhyay delivered the stillborn child. During inquiry with the victim, it was found that she was a 17 years old female, upon which Dr. Upadhyay informed City Kotwali Dhamtari on the same date, which is marked as Article A. On 16.08.2018, City Kotwali Dhamtari sent a requisition to Upadhyay Nursing Home for providing the bed head ticket of the victim, which is marked as Exhibit P-15. On the same date, Dr. Upadhyay provided the discharge ticket related to the victim's treatment, which is marked as Exhibit P-16.

- 15.** Inspector Mrs. Gayatri Sinha has stated that during her posting, on 16.08.2018, City Kotwali Dhamtari received a requisition from Dr. Rashmi Upadhyay of Upadhyay Nursing Home, Dhamtari. Since the matter was related to a crime against a woman, she, on the oral orders of her superior officers, reached Dhamtari on 16.08.2018. Upon reaching Upadhyay Nursing Home, Dhamtari, the victim informed her that the accused had forcibly established physical relations with her 4-5 times against her will by threatening and intimidating her, and that the accused had last established physical relations with her on the night of 30.03.2018, due to which she had not had her menstrual cycle since January 2018 and had been experiencing intermittent abdominal pain.
- 16.** On 15.08.2018, in the morning, due to severe abdominal pain, the victim was admitted to Upadhyay Nursing Home, Dhamtari by her parents for treatment, where during delivery, a seven-months

stillborn child was born. As per the victim's statements, Inspector Sinha prepared the inquest report, which is marked as Exhibit P-1. On 16.08.2018 at 11:00 AM, she prepared the inquest panchnama of the stillborn child at Upadhyay Nursing Home, Dhamtari, which is marked as Exhibit P-2, and on the same date, she prepared a written requisition to the medical officer, Upadhyay Nursing Home, Dhamtari, for providing the treatment documents and bed head ticket of the victim, which is marked as Exhibit P-15.

- 17.** On 16.08.2018 at 4:30 PM, Woman Constable Ku. Suman Sarwa, Badge No. 838, Police Station Dhamtari, produced a sealed plastic container inside a thermocol box containing the fetus of the deceased child for DNA testing, which was seized, and a seizure memo marked as Exhibit P-11 was prepared. Prior to this, a written requisition for preserving the fetus of the deceased child for DNA testing had been given to the Chief Medical Officer, Government Hospital, Dhamtari, which is marked as Exhibit P-17A.
- 18.** Dr. D.S. Dev (P.W. 05) has stated that on 16.08.2018 at 4:00 PM, a fully developed, approximately 7-8-month-old stillborn infant was brought in a sealed thermal box by Woman Constable Suman, Badge No. 838, Police Station Dhamtari, for conducting a DNA test on the victim. The infant was examined by him, and upon examination, it was found that the skin of the deceased infant was normal. The deceased infant was resealed in the plastic thermal box and handed over to the same woman constable for DNA testing. The report provided by him is marked as Exhibit P-17. The victim (P.W. 01) has stated that she knows the accused, who is a

resident of her village. She has studied up to Class 12, and her date of birth is 14.08.2001. As the accused lives in her village, they used to meet and talk occasionally. On 14.08.2018, she experienced sudden abdominal pain and was admitted to a nursing home in Dhamtari for treatment. The rural inquest report is marked as Exhibit P-01, and the panchnama is marked as Exhibit P-02. She did not give her consent for medical examination; however, the consent letter is marked as Exhibit P-03. The site map of the incident location is marked as Exhibit P-04, and her blood sample was taken, which is marked as Exhibit P-05. Thus, the victim (P.W. 01) did not make any statements against the accused. For this reason, the prosecution, under Section 154 of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act), questioned the victim (P.W. 01). Even thereafter, the victim (P.W. 01) did not support the prosecution and denied all statements recorded in Exhibit P-07. Thus, there is a complete contradiction between the victim's (P.W. 01) statements in Court and her statements to the police, and significant facts are missing from her Court statements. Similarly, the victim's father (P.W. 02) also did not make any statements against the accused. Therefore, the prosecution, under Section 154 of the Evidence Act, questioned the victim's father (P.W. 02). Even thereafter, the victim's father (P.W. 02) did not support the prosecution and denied all statements made to the police. Thus, there is a complete contradiction between the court statements and the police statements of both the victim (P.W. 01) and her father (P.W. 02), with significant facts missing from their

Court testimonies.

- 19.** From the statement of Investigating Officer Ramkinkar Yadav (P.W. 08) and the registration of the First Information Report marked as Exhibit P-21, it is confirmed that a report was lodged against the accused. Investigating Officer Inspector Ramkinkar Yadav (P.W. 08) has stated that on 16.08.2018, after the crime was registered at City Kotwali Dhamtari, an FIR was registered against the accused at Police Station Balod by M.L. Sahu, which is marked as Exhibit P-21 and bears the signatures of M.L. Sahu on parts 'A' to 'A'. On 17.08.2018 at 2:45 PM, he visited the scene of the incident at the victim's father's house and prepared a site map based on the information provided by the victim and witnesses, which is marked as Exhibit P-04, and identified the place as 'A', which is the victim's room.
- 20.** On 18.08.2018, he prepared a written requisition to the District Medical Officer, District Government Hospital, Balod, for the examination of the accused's genital organs, which is marked as Exhibit P-18A. On 18.08.2018 at 1:55 PM, the accused was arrested, and an arrest memo was prepared in the presence of witnesses, which is marked as Exhibit P-22. The family members of the accused were informed about the arrest, which is marked as Exhibit P-23. On 20.08.2018, a written requisition was submitted to the Tehsildar, Balod, for preparing a map of the scene through the local Patwari, which is marked as Exhibit P-24. For DNA testing, after obtaining consent from the victim's mother and the accused, an application was submitted to the learned Court, Balod, on

20.08.2018 for permission to collect DNA samples, which is marked as Exhibit P-25 and bears his signatures on parts 'A' to 'A'. On the same day, a requisition was submitted to the Jail Superintendent, Sub Jail, Balod, for the presence of the accused in the Sessions Court, Balod, for collection of blood samples for DNA testing, which is marked as Exhibit P-26 and bears his signatures on parts 'A' to 'A'. On the same day, a requisition was submitted to the District Medical Officer, District Balod, for providing a doctor for DNA testing, which is marked as Exhibit P-27. On 28.08.2018, a requisition was submitted to the BMO, Balod, for providing an icebox to preserve the blood samples for DNA testing, which is marked as Exhibit P-28 and bears his signatures on parts 'A' to 'A'. On 23.08.2018 at 1:45 PM, Dr. K.K. Ramteke, District Hospital, Balod, presented the blood samples of the victim and the accused for DNA testing, which were seized, and a seizure memo was prepared, marked as Exhibit P-30. The seized exhibits in the case were sent for DNA testing to the Director, Forensic Science Laboratory, DNA Unit, Raipur, through the Superintendent of Police, Balod, which are marked as Exhibit P-33, acknowledgment as Exhibit P-34, and the report as Exhibit P-35. The enclosed DNA report marked as Exhibit P-35 in the case states that Exhibit B (691) and Exhibit P-C (692) are the biological parents of Exhibit A (690). Thus, according to the DNA report (Exhibit P-35), the biological parents of the stillborn child delivered by the victim are the victim and the accused.

21. From the material available on record, it stands established that the

date of birth of the victim is 14.08.2001, as is evident from the dakhil kharij register seized from Saraswati Shishu Mandir, Belaudi, proved through PW-03 and PW-08, and exhibited as Ex. P-14(C) and Ex. P-32. Thus, the victim was a minor at the relevant period. The testimony of Dr. Rashmi Upadhyay (PW-04) and the medical documents (Ex. P-15 and Ex.P-16) prove that on 15.08.2018, the victim, who was below the age of 18 years of age, was admitted in Upadhyay Nursing Home, Dhamtari, where she delivered a seven months stillborn child.

- 22.** Inspector Gayatri Sinha (PW-7) has stated that during inquiry of the victim, she informed that the accused had forcibly established physical relations with her on multiple occasions by threatening her, and the last incident took place on 30.03.2018, which resulted in her pregnancy. Although the victim and her father turned hostile during the trial, it is a settled position of law that the testimony of a hostile witness need not be discarded in toto, and the portions corroborated by reliable evidence can be considered.
- 23.** In the present case, the scientific evidence in the form of the DNA report (Ex. P-35) categorically establishes that the biological parents of the stillborn child are the victim and the accused. This scientific evidence conclusively connects the accused with the commission of penetrative sexual assault upon the victim at the relevant time. The prompt registration of FIR (Ex. P-21), the preparation of site map (Ex. P-04), requisitions for medical examination of the accused (Ex. P-18A), collection of DNA samples, and their forwarding for forensic examination (Ex. P-25 to x. P-28,

Ex. P-30, Ex. P-33, Ex. P-34), along with the DNA report (Ex. P-35), establish an unbroken chain of evidence against the accused.

24. Thus, despite the hostility of the victim and her father, the prosecution has succeeded in proving beyond reasonable doubt, on the basis of medical, documentary, and scientific evidence, that the accused committed penetrative sexual assault on the victim, who was a minor at the relevant time, thereby impregnating her, which resulted in the delivery of the stillborn child. Accordingly, the culpability of the accused for the offence under Section 376 of the Indian Penal Code and Section 3/4 of the Protection of Children from Sexual Offences Act, 2012, stands proved, therefore, I am of the considered opinion that learned Special Judge (POCSO) has rightly convicted the appellant for offence under Section 3/4 of the POCSO Act. I do not find any illegality and irregularity in the findings recorded by the trial Court.
25. No doubt that the victim and her father in their cross-examination, which was recorded, have turned around and not supported the prosecution case.
26. A 3-Judge Bench of the Supreme Court in the case of ***Khujji @ Surendra Tiwari v. State of Madhya Pradesh, (1991)3 SCC 627*** relying on the judgments of the Supreme Court in the cases of ***Bhagwan Singh v. State of Haryana (1976) 1 SCC 389, Sri Rabindra Kuamr Dey v. State of Orissa (1976) 4 SCC 233, Syad Akbar v. State of Karnataka (1980) 1 SCC 30***, has held that the evidence of a prosecution witness cannot be rejected in toto

merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

27. The Supreme Court in the case of ***C. Muniappan and Others v. State of Tamil Nadu (2010) 9 SCC 567***, has observed thus:

“81. It is settled legal proposition that : (Khujji case, SCC p. 635, para 6)

‘6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.’

82. In *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543], *Gagan Kanojia*

v. State of Punjab, (2006) 13 10 (2010) 9 SCC 567 : 2010 INSC 553 10 SCC 516], Radha Mohan Singh v. State of U.P.,(2006) 2 SCC 450], Sarvesh Narain Shukla v. Daroga Singh, (2007) 13 SCC 360] and Subbu Singh v. State, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. 84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the

basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide *Sohrab v. State of M.P.*, (1972) 3 SCC 751, *State of U.P. v. M.K. Anthony*, (1985) 1 SCC 505, *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217, *State of Rajasthan v. Om Prakash*, (2007) 12 SCC 381, *Prithu v. State of H.P.*, (2009) 11 SCC 588, *State of U.P. v. Santosh Kumar*, (2009) 9 SCC 626 and *State v. Saravanan*, (2008) 17 SCC 587”

28. In the case of ***Vinod Kumar v. State of Punjab (2015)3 SCC 220***, this Court has observed thus:

“51. It is necessary, though painful, to note that PW 7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said

witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.

52. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 has accepted about the correctness of his statement in the court on 13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in the court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9-1999 after going through and admitting it to be correct. It has 11 (2015) 3 SCC 220 : 2014 INSC 670 12 come in the re-examination that PW 7 had not stated in his statement dated 13-9-1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

53. Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination- in-chief and the re-examination.

xxx xxx xxx

57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross- examination and the disquieting feature is that the trial courts grant time. The law requires

special 13 reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in- chief is over, the cross-

examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. 14 How long shall we say, “Awake! Arise!”. There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot be allowed to be lonely; a destitute.”

29. Recently, the Supreme Court in the case of ***Selvamani Vs. The State Rep. By the Inspector of Police, 2024 INSC 393*** held as under:

“13. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief.”

30. Considering the evidence available on record, further considering the evidence of Dr. Rashmi Upadhyay (PW-4) and other material available on record and the law laid down by the Supreme Court in the above-stated judgments (supra), I am of the considered opinion that, the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant. The conviction and sentence as awarded by the Special Judge (POCSO) to the appellant is hereby upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.
31. It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.
32. Registry is directed to transmit the certified copy of this judgment along with the record to the trial Court concerned for necessary information and compliance.

- 33.** Registry is also directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail term, to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-

(Ramesh Sinha)
Chief Justice

Abhishek

Head Note

The fact that a witness is deemed “hostile” does not automatically mean their entire testimony must be disregarded. While the Court will scrutinize the evidence of a hostile witness with caution, it can still be relied upon in part if it is corroborated by medical evidence or if it is corroborated by medical evidence or if certain parts of the testimony inspire confidence.