



2025:CGHC:37458-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 976 of 2021**

1 - Vipin Kumar Jangde S/o Jagjeevan Jangde Aged About 19 Years
R/o Village Hardi, Chowki- Malhar, P.S. Masturi, District- Bilaspur (C.G.)

2 - Sunil Kurre S/o Shatruhan Lal Kurre Aged About 20 Years R/o
Village Hardi, Choki Malhar, P.S. Masturi, District Bilaspur (C.G.)

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

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

... Respondent(s)

For Appellant(s) : Mr. Rishi Rahul Soni and Ms. Itu Rani
Mukherjee, Advocates

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

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Bibhu Datta Guru, Judge****Judgment on Board****Per Ramesh Sinha, CJ****31.07.2025**

1. This appeal arises out of the judgment of conviction and order of sentence dated 19.02.2021 passed by the Special Judge (POCSO Act), Bilaspur (C.G.) in Special Criminal Case (POCSO

Act) No. 140/2017, whereby the appellants have been convicted as under:-

Conviction under Section	Sentence (Rigorous imprisonment)	Fine	In default of payment of fine add. imprisonment
Section 376D of the IPC	20 years	Rs. 10,000/-	06 months
Section 323, 34 of the IPC	1 year	Rs.1,000/-	01 month
Section 506(b) of the IPC	2 year	Rs. 1,000/-	01 month
All sentences have been directed to run concurrently.			

2. The prosecution story, in brief, is that the victim lives with her family in village x and studies in class VIII. At the time of the incident, the victim's parents had gone to a brick kiln in Uttar Pradesh to earn a living. At that time, the victim lived at home with her elder sister and brothers. On the night of 18/11/2017 at 08:00 pm, the victim entered the toilet room in the courtyard of her house to defecate, when both the accused Vipin and Sunil caught hold of the victim. Accused Vipin gagged the victim's mouth, then tied her mouth with a handkerchief and her legs with a cloth. Both the accused beat the victim and threatened her with a knife. After this, accused Vipin removed her undergarment (panty) and also removed his underwear and inserted his penis in her urination area. After that, accused Sunil also removed his underwear and inserted it in her urination area. Then hearing the sound of the

door, victim's brother and sister shouted, then the accused Vipin and Sunil opened the door and ran away. Hearing the noise, the neighbors also came to the house. The victim told her neighbour and her siblings about the incident and went to Malhar police post and filed a report about the incident. On the report of the victim, a rural complaint (Ex.P-1) was registered by Malhar police post. The said unnumbered complaint was registered in Masturi police station as numbered Crime No. 493/17 under sections 376-D, 323, 506 IPC and section 4 of the POCSO Act as per First Information Report (Ex.P-17). The case was taken into investigation by Masturi police station.

3. During investigation by Sub Inspector Ram Naresh Gautam (PW 21), preparation of site map (Ex.P-2), preparation of examination form (Ex.P-26) for sending the victim to CHC Masturi for examination on 21/11/2017, preparation of examination form (Ex.P. 27) and (Ex.P-28) respectively for sending the accused to CHC Masturi for examination on 22/11/2017, preparation of examination form (Ex.P-29 and Ex.P-30) for getting the physical examination of the accused done on the same date 22/11/2017, taking of memorandum (Ex.P-20) of accused Vipin Jangde, seizure memo (Ex.P-3) for white colour shirt, black colour leggings, maroon colour under wear of the victim dated 21/11/2017 was seized, after examination of the victim, lady constable Meena Rathore (PW 18) brought the vaginal slide of the victim in a sealed packet given by the doctor and presented it as

per Ex.P. 23, vegetable cutting knife was seized from accused Vipin Jangde as per Ex.P. 18, used handkerchief of dull colour and bamboo stick having three knots was seized from accused Sunil Kurre as per Ex.P. 19, one reddish brown colour under wear was seized from accused Sunil Kurre as per Ex.P. 21, one henna coloured under wear was seized from accused Vipin Jangde as per Ex.P. 22, statements of witnesses were recorded, the accused were arrested on 21/11/2017 as per arrest sheet (Ex.P-31 and Ex.P-32) respectively and their family members were informed. On 21/11/2017, application was given as Ex.P. 33 to the Sub-Divisional Magistrate Masturi for granting permission, consent was taken as per Ex.P. 4 for medical examination of the victim, consent was given by the victim's parents as per Ex.P. 7 for the physical examination of the victim. Application (Ex.P-34) was given for sending the query of the clothes of the victim through CHC Masturi, application (Ex.P-35) was sent through constable of CHC Mastri for query of the clothes of the accused and duty certificate (Ex.P-36) was issued to constable Dheeraj Kumar in respect of FSL and all proceedings were taken.

4. After complete investigation, on finding full evidence against the accused, charge-sheet No. 493/17 was prepared under Sections 376-G, 323, 506 IPC and Section 4 POCSO Act and presented before the concerned court.

5. During the trial of the case, when the charges were framed and explained to the accused under Sections 376-D, 323 IPC read with Sections 34, 506B and Section 5 (g)/6 of the Protection of Children from Sexual Offences Act, 2012, the accused denied the contents of the charge and even during their own examination, the accused denied the facts asked from them in their evidence. By denying all the adverse facts, the accused in their defence have stated that they are innocent and that they have been falsely implicated.
6. In order to establish the charge against the appellants, the prosecution examined as many as 21 witnesses and exhibited 36 documents (Ex.P-1 to Ex.P-36). After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellants and sentenced them as mentioned in opening para of the judgment. Hence, this appeal.
7. Learned counsel for the appellants submits that the impugned order of conviction passed by the learned trial Court is contrary to the facts and evidences available on record, hence the same is liable to be set-aside. Since nothing has been found in the examination of the property seen by the police for the purpose of the confirmation, the Hon'ble Court taking into consideration in the absence of the necessary material and the Hon'ble Court may kindly be pleased to consider it and acquit the appellants from the convicted. The judgment of conviction and order of sentence passed by the learned trial Court is illegal, arbitrary and bad in the

eye of law. There are various contradiction and omissions between the statement of prosecution witnesses. But the learned trial Court has not properly scrutinized the same before convicting the present appellants. No adverse finding was given in the FSL report submitted by the police, which were sent to the course of the investigation. The prosecution has not proved the case against the appellants beyond all the reasonable doubts. Hence, the appellants are entitled for the benefit of doubt. The offence under section 376-ब, 323, 34 and 506-बी of the Indian Penal Code is not made out against the appellants, on any corner of law. Further, the learned trial Court relied upon the statement given by brother of prosecutrix (P.W. 3) and neighbor of prosecutrix (P.W. 9) which are not reliable and un-trustworthy, hence the impugned order of conviction is liable to be set- aside. The entire case of prosecution is based upon the statement of the interested witnesses only, hence before relying upon the statement of the said witnesses, the learned trial Court is required to examine the statement of said witnesses minutely with due care and caution, hence the impugned order of conviction is not sustainable in the eye of law. The prosecution has not proved the case against the appellants beyond all the reasonable doubts. Hence, the appellants is entitled for the benefit of doubt.

8. Learned counsel for the appellant also relief upon the judgment passed by the Hon'ble Apex Court in the matter of ***Krishna***

Kumar Malik v. State of Haryana (2011) 7 SCC 130, relevant paras which are quoted hereinbelow:-

“22. Admittedly, the prosecutrix had travelled certain distance in the Maruti van after her alleged abduction but she did not raise any alarm for help. This shows her conduct and behaviour during the whole process and renders her evidence shaky and untrustworthy. The statement of the prosecutrix that in all 11 persons were there in the Maruti van renders it further doubtful as it would be extremely difficult for 11 persons to be accommodated in the Maruti van, the seating capacity of which is only 5.

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24. These are some of the salient features of the lopsided story of the prosecutrix, more so, when it has not been corroborated by any other evidence. On account of various serious contradictions in the statement of the prosecutrix and her actions, it could be safely concluded that she was certainly not telling a gospel truth.

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27. No spot maps were prepared either by the Naib Tahsildar or by the investigating officer to show the size of the room. If the size of the room was so small then it could not have been possible to accommodate 7 persons and also allowing the appellant to commit the offence of rape. If the size of the room could have been verified, then the very genesis of commission of the offence by the appellant would fall flat. This could have been possible to ascertain only if spot map had

been prepared. This was a lacuna on the part of the investigating agency and the prosecution, the benefit of which must accrue to the appellant."

9. Learned counsel for the appellant also relied upon the judgment passed by the Hon'ble Apex Court in the matter of ***Rajendra Pralhadrao Wasnik v. State of Maharashtra (2019) 12 SCC 460*** and in the matter of ***Chotkau v. State of U.P. (2023) 6 SCC 742***, relevant para of which is quoted hereinbelow:-

"80. After saying that Section 53-A is not mandatory, this Court found in para 54 of the said decision that the failure of the prosecution to produce DNA evidence, warranted an adverse inference to be drawn. Para 54 reads as follows: (Rajendra Pralhadrao Wasnik case 10, SCC p. 485)

"54. For the prosecution to decline to produce DNA evidence would be a little unfortunate particularly when the facility of DNA profiling is available in the country. The prosecution would be well advised to take advantage of this, particularly in view of the provisions of Section 53-A and Section 164-A CrPC. We are not going to the extent of suggesting that if there is no DNA profiling, the prosecution case cannot be proved but we are certainly of the view that where DNA profiling has not been done or it is held back from the trial court, an adverse consequence would follow for the prosecution."

10. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellants and

and submits that the prosecution has proved that the prosecutrix was below 18 years of age at the time of incident and the same is fortified by Ex. P-16 C i.e. Dakhil Khariz Register in which the date of birth of prosecutrix is mentioned as 03.04.2001 which makes it crystal clear that the prosecutrix is below 18 years of age on the date of incident i.e. on 18.11.2017. Thus, this is the un-rebutted evidence against the accused / appellants. Therefore, the accused / appellants have been rightly convicted by the learned trial Court and the judgment of conviction is just and proper in the eyes of law and looking to the evidence on record the appellants / accused is not entitled for grant of bail by this Court. Further, circumstantial evidences that has been brought on record by the prosecution which leads to the only conclusion that, the accused / appellants have committed offence charges as aforesaid framed against them. He further submits that the charges leveled against the appellants are very serious in nature like committing gang rape of the prosecutrix in a very brutal manner which is evident from the medical report, and because of this reason during trial, the appellants are not enlarged on bail and throughout after their arrest, the appellants were remaining in jail custody. Also, looking to the seriousness of the crime, the appellants are not entitled for any sympathy by this Court thus, in light of the above submissions made hereinabove, appeals of the appellants is liable to be dismissed as the same are vague, baseless and devoid of merits and accordingly is liable to be dismissed. He

further submits that so far as judgments rendered by the counsel for the appellants are concerned, the facts of the present case are completely distinguishable from the facts of the case relied upon.

11. Learned State counsel also relied upon judgment passed by the Hon'ble Apex Court in the matter of ***Nirmal Premkumar and Ors. vs. State Rep. By Inspector of Police, reported in 2024 INSC 193***, relevant paras of which are quoted hereinbelow:-

"12. In Ganesan v. State MANU/SC/0763/2020: 2020:INSC: 596: (2020) 10 SCC 573 this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the Accused.

13. This Court was tasked to adjudicate a matter involving gang rape allegations Under Section 376(2) (g), Indian Penal Code in Rai Sandeep v. State (NC round Delhi) MANU/SC/0623/2012: 2012:INSC:322: (2012) 8 SCC 21. The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:

22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre 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 every one 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 such similar tests to be applied, can it 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.

14. In Krishan Kumar Malik v. State of Haryana 2011:INSC:437: (2011) 7 SCC 130, this Court laid down that although the victim's MANU/SC/0718/2011 solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an Accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

31. No doubt, it is true that to hold an Accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the Appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the Appellant.”

12. We have heard the learned counsel for the parties and perused the record with utmost circumspection.
13. The first question that arises for consideration before this Court is whether the victim was child on the date of incident.
14. In order to consider the age of the prosecutrix, Sub-Inspector Ramnaresh Gautam (PW-21) on production of the Headmaster of the Government Primary School, on 16/12/17, as per seizure memo Ex.P-15, alleged that the Dakhil Kharij Register (Ex.P-16) (true copy Ex.P. 16C) was seized and on the basis of Dakhil Kharij Register, the date of birth of the victim was mentioned as 03/04/2001.
15. In support of the statements of the Investigating Officer, the in-charge Principal Reader (PW-10) has supported the prosecution by certifying the Dakhil Kharij Register Ex.P-16 (true copy Ex.P. 16C) as per J.P. Ex. 15 and on the basis of Dakhil Kharij Register,

the date of birth of the victim is stated to be 03/04/2001 and the admission of the victim in the Class-I and passing of the 5th class is recorded in the year 2008. This witness has stated that the said entry was made by him and the victim was also stated to be admitted in the Class-I along with her brother.

- 16.** The elder sister of the victim (PW-2) has stated herself to be 16 years old and the victim to be 13 years old. However, in the cross-examination of this witness, no refutation has been made by the defence regarding the age of the prosecutrix. The younger brother of the victim (PW-3) has stated himself to be studying in class 8 along with the victim and has recorded his age to be 12 years. The mother of the victim (PW-13) has stated herself to have 11 children, 6 girls and 5 boys, and two of the girls are married, whereas the victim and her son (PW-3) have stated only studying in Class-VIII. The victim's father (PW-4) has stated that out of his 6 daughters, 2 of them have been married and the victim is the fourth daughter and her age is stated to be 13-14 years only.
- 17.** According to the Dakhal Kharij register, the date of birth of the younger brother of the victim (PW-3) has been recorded in the year 2002 as 05/05/2002, which shows that the younger brother of the plaintiff is 01 year younger than her. Thus, it also appears that the victim was admitted in the Class-I at the age of about 7 years, while the younger brother of the victim (PW-3) was admitted at the age of 06 years. Thus, it appears from the

prosecution evidence that the complainant was admitted to the Class-I in the year 2008 at the age of about 07 years. The victim passed the fifth class in the year 2013-2014 and studied the eighth class in the year 2016-2017. The younger brother of the victim (PW-2) being one year younger than her was also admitted in Class I along with her.

18. It has been held by the Hon'ble Supreme Court in the case of ***Usman vs State of Uttarakhand 2021 SCC OnLine Utt 142***, relying on the guidelines of ***Jarnail Singh vs State of Haryana (2013) 7 SCC 263***, whereby it has been determined that the age of the victim in POCSO cases shall be determined as per the provision mentioned in Section 94 of the Juvenile Justice (Care and Protection) Act 2015 on the basis of Rule 12 (3) of the POCSO Rules, 2007.

19. Sub-section (2) of Section 94 of the Juvenile Justice (Care and Protection) Act 2015 provides that –

94(2)- In case, committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the

concerned examination Board, if available, and in the absence thereof.

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (1) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

20. Therefore, in the light of the principle propounded by the Hon'ble Supreme Court in the judgment of ***Jarnail Singh (supra)***, on the basis of the victim having passed the 5th class, the date of birth of the victim entered in the Dakhal Kharij register (Ex.P-16) (true copy Ex.P-16C), 03/04/2001 is found to be her actual date of birth and on the said basis, on the date of incident 18/11/2017, the victim is found to be 16 years 07 months and 15 days old.
21. In such a situation, it cannot be said that the victim's age was 18 years or more at the time of the incident. As a result, it is determined that the victim was a minor at the time of the incident, being 16 years 07 months and 15 days old, which is covered under Section 2 (d) of the Protection of Children from Sexual Offences Act. The child fell within the category of "child" as

defined. Therefore, the essential ingredient of commission of the offence under Section 6 of the POCSO Act is attracted against the accused.

- 22.** Now the next question that arises for consideration before this Court is whether the accused persons on 18/11/2017, committed aggravated penetrative sexual assault by raping the victim below 18 years of age in turns on the said date, time and place of incident?
- 23.** In this regard, under medical evidence, the accused were examined by Dr. S.K. Sinha (PW-4) on 22/11/2017, and as per the examination report Ex.P-11 and Ex.P-12, the accused were found capable of intercourse, which was not denied by the defence in the cross-examination of this witness. Similarly, on the basis of the examination report Ex.P-13 and Ex.P-14 given regarding the physical examination of both the accused, there was testimony that no injury marks were found on their bodies. It has been stated that Dr. R.N. Kanwar (PW-7) has given a query report (Ex.P-10) regarding the undergarments seized from the accused and handed over the chemical test report, but the chemical test report of the said seized undergarments has not been marked as an exhibit by the prosecution, only the receipt (Ex.P-25) of the Regional Forensic Science Laboratory, Tifra, regarding sending them for FSL has been presented. From the testimony of the

above medical witnesses, it is found that both the accused are capable of having sexual intercourse.

- 24.** Dr. Parul Jogi (PW-5) also examined the victim on 21/11/2017 and as per the examination report (Ex.P-9), it was revealed that the victim was forced to have sexual intercourse. She was not in the habit of having sexual intercourse and a vaginal slide was prepared and sent for chemical examination. This witness further stated that on the basis of the medical report (Ex.P-9), there was a 1 x 5 cm scratch on the left side of the back of the victim, 1 cm long scratch on the lower side of the right back, a contusion on the left wrist of 2 x 2 cm, pain above the elbow in the right hand, swelling and pain of 1 x 1 cm on the left side of the labia majora, a lacerated wound at the 6 o'clock position of the hymen which was going towards the vagina and was two to three days old, the cervix was pin point and the tube was pin point and there was pain in the vagina by inserting a finger.

This witness has definitely stated that there was forceful sexual intercourse with the victim.

- 25.** Thus, the testimony of the female medical witness confirms that there was forceful intercourse with the victim and injuries of normal nature were caused on her body and it is also clear that the type of injuries that were caused were the injuries caused during forceful intercourse.

- 26.** Further, perusal of the documents goes to show that though the FSL report has not been marked as an exhibit, but the same has been appended with records of the present appeal, which goes to show that human sperm was found on Articles A, C and E, which are slides of victim, Leggings of victim and underwear of appellant Sunil Kumar respectively. As such, the FSL report is found to be ***positive***.
- 27.** Under circumstantial evidence, father of the victim (PW-4) has deposed that on the date of the incident, he had gone to Uttar Pradesh to earn his livelihood with his wife and two children. At 8:00 in the night, his elder daughter (elder sister of the victim) called and told that while she was cooking, she heard a sound near the toilet. When she went out and asked what had happened, she saw that both the accused had come out of the toilet and fled. At that time, the children had also abused her and also told her that the victim was tied in the toilet, and she had taken her out. After which he returned in about a week, but before that the report was lodged by the victim.
- 28.** The mother of the victim (PW-13) has also stated that her elder daughter had informed her over the phone that her daughter had been raped by the accused in the bathroom of the house, after which they had returned home in about eight days.
- 29.** The younger brother of the victim (PW-3) has deposed that when he came back from playing at night on the date of the incident, the

bathroom door was locked from inside and his elder sister had reached the bathroom as the victim did not return for a long time. On being told by his elder sister, he also reached the bathroom, then the accused came out of the bathroom and fled. The victim had fallen inside the bathroom, on asking the victim, she told that the accused had done wrong things to her by pressing her mouth, beating her with a stick, picking up a knife and threatening to kill her. Also, her hands and legs were tied. When the accused were running away, she abused them, then hearing the voice, their neighbor (PW-9) reached there, on telling him the whole thing, he was asked to file a report in the morning as it was night, then he informed his parents about the incident over the phone.

- 30.** It has also been alleged by the elder sister of the victim (PW-2) that when she was cooking food at 9:00 p.m., the victim went to the toilet near the house and did not return even after some time, then on hearing a rattling sound, when she went there, the accused came out of the toilet and ran away, then she abused them and on looking in the toilet, she found the victim tied up, she was crying, on asking, the victim told that the accused tied her hands and legs, held her, beat her, showed her a knife and threatened her and raped her. The victim also told that first Vipin raped her, after that accused Sunil raped her and they held her hands and legs in turns. This witness further stated that when she was abusing the accused, a neighbour came and heard it, who told her about the incident, upon which her brother also came and

heard it and abused the accused. But the neighbour explained to them and sent them home, after which a report was filed the next day. In cross-examination, this witness further stated that she had told the police that the accused had tied her hands and legs, held her and raped her one after the other. It has been further clarified by this witness that at the time of the incident the victim was not seen coming out of the bathroom, while it has also been accepted that the lights of the bathroom were switched off at the time of the incident, and while giving the police statement also it has been accepted that the accused had tied the mouth, hands and legs of the victim, her younger brother had gone out to play when her sister was locked in the bathroom while cooking food, and when her brother heard her screams and came to the spot, it has been clarified that her younger brother reached there after the accused had fled. This witness has also clarified that the victim had told that she was raped by the accused.

- 31.** The deposition of this witness reveals that when she was cooking at about 8:00 pm, the victim went to the toilet outside the house and when she did not return for a long time, this witness heard a rattling sound from the bathroom and when she reached there, on asking who it was, she saw the accused running out of the bathroom. On her screaming, her younger brother (PW-3) also reached there. On her abusing, the neighbour (PW-9) also reached there, who pacified them as it was night and advised them to tell the villagers in the morning and write a report. The

deposition of this witness also reveals that on questioning the victim, she told that her hands, legs, mouth were tied and she was raped by the accused, on the basis of which this witness told that the hands and legs of the victim were tied. This witness also appears to be an eyewitness to the circumstances after the incident.

- 32.** The victim (PW-1) in her recorded statement (Ex.P-6) has stated that when she went to the bathroom and came out of the bathroom, she was beaten up by accused Vipin. Holding her, gagging her, accused Sunil took her to the bathroom and took off her clothes. Thereafter, first Vipin and then Sunil raped her. Accused Vipin covered her mouth with a towel due to which she could not scream and when the accused were running away after committing the crime with her, her sister saw them. Accused Vipin showed her a knife and said that if she tells her parents, he would kill her and she was beaten with a stick and both of them ran away from the bathroom after committing the crime. Immediately after the incident, the victim informed her elder sister about the incident.
- 33.** The victim (PW-1) has stated in her court statement that when she went to the bathroom, accused Vipin tied her mouth, hands and legs and removed her clothes and put his urinal in her urinal. Accused Sunil held the complainant's hand and after that he too removed his clothes and raped her. At that time, accused Vipin

threatened her by showing a knife that if she tells her parents, he will kill her and both of them hit her on the back with a stick. During that time, when her sister came, both of them opened the door and ran away. At the time of the incident, her brother had gone to play and he also came back. When they abused them, their neighbor also came there. The victim has also stated in her court statement that a year ago, when she had gone to the field to collect cow dung, the accused had raped her by showing a knife, threatened to kill her and she had not told anyone about the incident before. Apart from this, on the date of the incident, the accused also took photographs one by one without clothes.

- 34.** In this way, the testimony of the victim is strengthened by the testimony of the victim's siblings and medical witness. On the basis of the testimony of the victim and medical witness, it can be seen that on the night of 18/11/2017 at about 8:00 pm, inside the toilet located in the courtyard of the victim's house, the accused attacked the victim by showing her a knife and hitting her with a stick. By beating her, tying her mouth with a handkerchief and tying her legs with a cloth, they gang-raped her in turns in furtherance of common intention, and gang-sexual intercourse was committed, and aggravated penetrative sexual assault was committed. And during the said act, by beating the victim in furtherance of common intention, voluntarily hurt was caused to her, and by threatening her with a knife and beating with a stick,

and threatening her not to tell anyone, criminal intimidation appears to have been caused.

- 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 prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be

alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. This position was highlighted in **State of Punjab v. Gurmeet Singh (1996 (2) SCC 384)**.

37. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case.

But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

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^{ble} Supreme Court held as follows:“

“21. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that

her testimony cannot be acted without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice, would suffice.”

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. On the basis of the above analysis of evidence, the prosecution has been able to prove beyond reasonable doubt that on the date of the incident, the prosecutrix was below 18 years of age and fell in the category of "child" and the accused and the child in conflict with law, at the said date, time and place of the incident, committed aggravated penetrative sexual assault by gang-raping the minor victim, who was below 18 years of age, in turns, without her will and consent.
44. **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.
45. 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.
46. Considering the evidence of the victim (PW-1) who has specifically stated the role of each of the appellants, evidence of witnesses victim's mother and father, sister of the victim (PW-2) and brother of the victim (PW-3), further considering the FSL report in which, it has been stated that semen stains and human sperm were found in the victims slide, leggings and underwear of the victim Sunil Kurre, which confirms the fact that sexual intercourse had taken place with the victim and the Medical

Report (Ex.P-9) thorough which it is confirmed that injuries were sustained by the victim caused during forceful intercourse, the material available on record and the law laid down by the Supreme Court in the above-stated judgments, we are of the considered opinion that the learned trial Court has rightly convicted appellants- **Vipin Kumar Jangde** and **Sunil Kurre** for offence under Section 376-D, 323/34, 506(b) of the IPC. We do not find any illegality and irregularity in the findings recorded by the trial Court.

- 47.** In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellants. The conviction and sentence as awarded by the trial court to the appellants is hereby upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.
- 48.** It is stated at the Bar that the appellants are in jail. They shall serve out the sentence as ordered by the trial Court.
- 49.** 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.

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

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Manpreet

HEAD-NOTE

In evaluating the testimony of a victim of a sexual offense, the Court's approach is nuanced, recognizing the inherent trauma and potential inconsistencies in the victim's account. The Court does not require an exacting or flawless recounting of the incident. Rather, it focuses on permitting the victim to share her narrative to the best of her ability, based on her recollection of events, within the bounds of reasonable possibility.