2025:CGHC:56534-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1323 of 2022

Prasen Kumar Bhargav S/o Rajkumar Bhargav Aged About 37 Years R/o Sakin - Kota Dabri Ward No. - 15, Champa, Ps - Champa,, District : Janjgir-Champa, Chhattisgarh

... Appellant(s)

versus

State Of Chhattisgarh Through Police Station - Gidhori - Tundra, District : Balodabazar-Bhathapara, Chhattisgarh

... Respondent(s)

For Appellant(s)	**:**	Mr. Pragalbha Sharma, Advocate
For Respondent(s)	**:**	Mr. Shailendra Sharma, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice and
Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

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

20.11.2025

1. This criminal appeal filed by the appellants under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and order of sentence dated 08.07.2022 passed by the learned

Additional District and Sessions Judge FTSC (POCSO ACT), Balodabazar (C.G.) in Special Criminal (POCSO) Case No. 56/19, whereby the appellant has been convicted for offences punishable as under:

Conviction under Section	Sentence (Rigorous imprisonment)	Fine	In default of payment of fine R.I.
Section 450 of the IPC	7 years	Rs. 500/-	1 year
Section 363 of the IPC	7 years	Rs.500/-	1 year
Section 506-II of the IPC	1 year	Rs. 500/-	1 year
Section 6 of the POCSO Act	R.I. for life	Rs.1000/-	1 year
All sentences have been directed to run concurrently.			

2. Case of the prosecution, in brief, is that on 27.09.2019, at about 12:00 noon, the complainant Roopram Ratre, resident of village Gidhauri–Tundra, lodged a report stating that on the previous night of 26.09.2019, at around 9:00 p.m., he and his family members had taken dinner and went to their respective rooms to sleep. His minor daughter, aged about 11 years, was sleeping with her parents. At approximately 1:30 a.m., he was informed by his father Kaliram that the child was not in her bed. The family immediately searched the house and nearby areas but could not trace the child.

3. The complainant then informed Constable Naresh Khunte of Police Station Gidhauri, who also joined in searching for the girl. During the search, information was received that the minor girl was found near village Mudpar, within the jurisdiction of Police Station Shivrinarayan. The constable sent his nephew, Bhupendra Ratre, to bring her back. Shortly thereafter, the girl returned, and it was observed that her clothes were stained with blood. Upon being questioned, the victim disclosed that at around 1:00 a.m., an unknown person entered the house, forcibly lifted her, and carried her outside. Despite her attempts to raise an alarm, the sound was not heard by the family members because the cooler was running. The assailant allegedly covered her mouth, placed her in a capsule-type vehicle parked outside, and drove away. On the way, when she asked for water, the person gave her water to drink. He then took the vehicle towards Kera Road, Shivrinarayan, stopped at a deserted location, and subjected her to forcible sexual assault inside the vehicle. The victim alleged that the accused again committed sexual assault at another secluded location before dropping her off in a dark area and fleeing. The victim stated that she walked towards village Mudpar, where she met a person on the way and narrated the incident to him. That person took her to his house and informed the police, after which she was directed to return home. The complainant took the child, along with police personnel, to the Government Hospital at Kasdol. Following medical treatment, she was referred to the

District Hospital, Baloda Bazar.

4. Based on the complaint, FIR No. 224/2019 was registered against an unknown driver of a capsule-type vehicle under Sections 363, 376, 450, and 506 IPC and Sections 4 and 6 of the POCSO Act. During investigation, on the basis of the victim's description, information was gathered regarding bulker vehicles bearing registration numbers CG 22 J 2603 and CG 22 M 3810, which had passed near the alleged location around the relevant time. These vehicles were found to belong to accused Prasen Kumar Bhargava and accused Umesh Karsh.

5. Thereafter, a Test Identification Parade was conducted before the Sub-Divisional Magistrate, Kasdol, in which the victim identified accused Prasen Kumar Bhargava. The bulker vehicle allegedly used in the incident and the mobile numbers associated with the accused were seized. Statements of relevant witnesses were recorded, the victim's statement under Section 164 Cr.P.C. was taken, and site maps were prepared by the Investigating Officer and Patwari. The victim's clothes and the accused's underwear were seized, and medical slides were collected for forensic examination. School records were also seized to establish the victim's age, which confirmed that she was a minor.

6. Upon completion of investigation, the police filed a charge-sheet against the accused persons under Sections 363, 376, 450, 506, 120-B, and 201 IPC and Sections 4, 6, and 17 of the POCSO Act.

7. After appreciation of the oral and documentary evidence adduced by the prosecution, the learned Special Judge (POCSO), Baloda Bazar, held that the victim, being a minor aged about 11 years, had clearly narrated the incident implicating accused Prasen Kumar Bhargava. The trial Court relied upon the identification made by the victim during the Test Identification Parade as well as her substantive deposition before the Court. The Court observed that the medical evidence, including the injuries noted on the victim's private parts and the presence of blood on her clothes, supported the allegation of forcible sexual assault.

8. The trial Court further held that the recovery of vehicle No. CG-22-J-2603 from the possession of the accused, coupled with the seizure of his mobile phones, established a clear link between the accused and the crime. The Court also relied upon the evidence of police witnesses and the Investigating Officer regarding the manner in which the victim was recovered from village Mudpar and the steps taken during the investigation.

9. In order to bring home offence, prosecution examined as many as 25 witnesses and exhibited 37 documents. The accused were examined under Section 313 of the Cr.P.C. and the accused pleaded innocence and false implication and produced 05 defence witness evidence on his behalf.

10. The trial Court upon appreciation of oral and documentary evidence on record, passed the judgment dated 08.07.2022 and

thereby convicted and sentenced the appellant as mentioned in the opening paragraph of the judgment.

11. Learned counsel appearing for the appellant contends that the entire prosecution case suffers from grave infirmities beginning with the identity of the alleged perpetrator, which is the foundational requirement for sustaining the conviction. It is submitted that the victim (PW-2) admittedly did not know the appellant earlier, and her first disclosure Ex.P-4 naming or describing the accused does not contain any reference to the appellant or to any identifiable physical features. The prosecution has relied heavily on the Test Identification Parade conducted by the SDM, Kasdol, but it is urged that the TIP itself is wholly unreliable. The TIP was conducted at the Irrigation Department's rest house at Baloda Bazar Bhatapara, which infact should have been conducted in the jail premises/Police Station. Furthermore, it is pointed out that as per the evidence of PW-19 Asharam Banjare (ASI) and PW-22 Investigating Officer, the appellant had been shown to the victim (PW-2) and other witnesses before the TIP, in complete violation of the guidelines laid down in ***Asharfi and Ram Dhani v. State, AIR 1961 All 153***. The appellant was produced before the victim in the police station before any TIP was held, thereby rendering the entire process a mere formality. Additionally, the TIP memo does not show whether persons of similar appearance were included, nor does the SDM's deposition clarify the precautions adopted. It is argued that in the absence of

a fair and unimpeachable TIP, dock identification in court cannot, by itself, form the basis of conviction.

12. It is further submitted that the medical evidence does not connect the appellant to the alleged act, as neither the FSL report nor the seized clothes exhibit any incriminating forensic link with the appellant. The victim's garments allegedly seized under Ex.P-14, as well as the appellant's underwear seized under Ex.P-15, do not contain any biological material connecting him to the offence. The prosecution has also withheld critical witnesses to the alleged last-seen theory and has failed to produce the person who allegedly first found and took the victim to his house. The delay and contradictions in the testimony of the family members i.e. PW-1 (mother), PW-5 (grandfather), PW-6 (grandmother), PW-7 (father) regarding the time of discovery of the victim's disappearance and the sequence of search operations create further doubt about the prosecution story. Learned counsel submits that the entire chain of circumstances is fractured, speculative, and incapable of establishing guilt beyond reasonable doubt. Thus, the conviction recorded by the Trial Court is perverse and liable to be set aside.

13. Learned counsel for the appellant further places strong reliance on the recent judgment of the Hon'ble Supreme Court in ***Nazim & Others v. State of Uttarakhand, 2025 SCC OnLine SC 2117***, wherein the Court has reiterated and clarified the fundamental

principles governing conviction based solely on identification evidence. The Supreme Court held that when the identity of the accused is doubtful, and the Test Identification Parade is either defective or conducted in a manner that compromises fairness, the entire prosecution case becomes unsafe to rely upon. The Court emphasized that TIP is only a corroborative tool and cannot be treated as substantive evidence, and that any exposure of the accused to the witness before TIP fatally undermines the credibility of the identification. Relevant paras of the judgment are quoted are hereinbelow:

> *"42. The Court further explained that TIP is only part of the investigative process and that the substantive evidence is dock identification; however, where the accused is a stranger to the witness and no TIP is held, courts must exercise extreme caution in accepting such identification. The following paragraph of P. Sasikumar (supra) is indicative of the same:*
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>> *"21. It is well settled that TIP is only a part of police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, is only dock identification that is identification made by witness in court during trial.*
>>
>> *23. [...] In cases where an accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting dock identification by such a witness.*
>>
>> *24. [...] We are of the opinion that not conducting*

> *a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused."*

14. Applying the aforesaid ratio, learned counsel submits that in the present case, the appellant was admittedly detained in police custody, produced before the victim and family members, and was visibly shown even before the TIP was conducted by the SDM, thereby rendering the entire parade meaningless. The TIP memo is not proved in accordance with law, PW-22 Investigating Officer has admitted irregularities, and the SDM's testimony does not reflect any adherence to judicial safeguards. It is urged that following the ratio in Nazim (supra), as also the earlier principles laid down in Asharfi (supra), the identification of the appellant is wholly unreliable, legally frail, and insufficient to sustain conviction under a statute carrying stringent consequences like the POCSO Act.

15. Per contra, learned State Counsel supports the judgment of conviction and submits that the trial Court has rightly appreciated the evidence on record. It is argued that the testimony of the minor victim is natural, consistent, and inspires confidence, and the law is well settled that conviction can be based solely on the statement of the victim of a sexual offence if it is found trustworthy and reliable. Learned counsel submits that the victim had no motive whatsoever to falsely implicate the appellant, a person

unknown to her, and her account of abduction and sexual assault remains materially unshaken during cross-examination. It is contended that the victim had promptly identified the appellant during the Test Identification Parade conducted before the Sub-Divisional Magistrate, and the identification made by a child victim, who had sufficient opportunity to observe the offender at close quarters, cannot be lightly discredited. Learned State Counsel further submits that the bloodstained clothes of the victim, the presence of injuries on her person, and the medical evidence collectively corroborate the allegation of forcible sexual assault. It is also submitted that the appellant’s vehicle, bearing registration number CG-22-J-2603, was seized during investigation, and the circumstances established by the prosecution form a complete chain pointing towards the guilt of the appellant. The State argues that minor discrepancies in the victim’s narration are natural for a traumatized child and do not affect the core of the prosecution case. According to the State, the trial Court has recorded a well-reasoned judgment after due appreciation of evidence, and no ground is made out for interference in appeal.

16. Learned State Counsel further places reliance on the judgment of the Hon’ble Supreme Court in ***Raj Kumar @ Bheema v. State of NCT of Delhi***, (arising out of SLP (Crl.) No. 697 of 2024) to contend that the testimony of the victim, particularly in cases of sexual assault on minors, occupies a place of paramount importance and does not require corroboration in every detail. The

State asserts that the Supreme Court, in the aforesaid decision, has held that minor inconsistencies or peripheral discrepancies in the narration of events by a traumatized victim cannot be treated as material so as to discredit the core of the prosecution case, and that medical evidence is only corroborative in nature and does not override the oral testimony of the victim if the same is cogent and trustworthy. It is argued that the ratio in Raj Kumar @ Bheema (supra) reinforces the principle that the statement of the child victim, if found natural and consistent, can form the sole basis for conviction, and that the Courts must adopt a sensitive approach while appreciating evidence in cases of child sexual abuse. The State thus urges that, applying the said principles, the Trial Court has rightly accepted the evidence of the victim and correctly recorded the conviction of the appellant.

17. We have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection. The submissions advanced on behalf of both sides have been duly considered in the light of the factual matrix of the case and the legal principles governing the field. Each material aspect of the matter has been examined to determine whether any infirmity, perversity, or jurisdictional error exists in the impugned order so as to warrant interference by this Court.

18. Determination of age being foundational to the offences alleged

under the IPC and the POCSO Act, this Court first proceeds to examine whether the prosecution has proved that the victim was a minor on the date of the incident.

19. The prosecution has relied upon the School Admission Register and the Rejection Register of the Primary School attended by the victim. These documents were seized during investigation and have been proved in evidence as Ex.P-32 (Admission Register) and Ex.P-33 (Rejection Register). The entries therein record the date of birth of the victim, which establishes that she was 11 years of age on 27.09.2019, the date of occurrence.

20. The said documents have been duly proved by the competent witness PW-17 (Headmaster/Teacher), who has specifically deposed that the registers are maintained in the ordinary course of school administration and that the relevant entries pertaining to the victim were made at the time of her admission. His testimony has remained unshaken during cross-examination.

21. The documentary evidence is further corroborated by the oral testimonies of the parents of the victim, namely PW-1 (Mother Anju Ratre) and PW-7 (Father Roopram Ratre), who have consistently deposed that the child was 11 years old at the time of the incident. No material has been elicited in cross-examination to discredit their version regarding the age of the child.

22. It is well settled that school records maintained in the ordinary course of business constitute strong and reliable evidence of age.

Reference may be made to ***Jarnail Singh v. State of Haryana, (2013) 7 SCC 263***, wherein the Hon'ble Supreme Court held that for determining the age of a child, the Court must first refer to the school admission register, and only in its absence should other evidence be considered.

23. In the present case, the defence has not challenged the authenticity of Ex.P-32 and Ex.P-33, nor has any contrary evidence been produced to dispute the age recorded therein. There is thus no reason to doubt the reliability of these contemporaneous school records.

24. Accordingly, this Court has no hesitation in holding that the victim was a minor aged 11 years on the date of the alleged occurrence, and therefore the provisions of the POCSO Act, 2012 stand fully attracted.

25. **The next and foremost question for consideration would be, whether the prosecution has been able to prove, beyond reasonable doubt, the identity of the appellant Prasen Kumar Bhargav as the perpetrator of the alleged abduction and sexual assault upon the minor victim, and whether the findings of the trial Court holding the appellant guilty are sustainable in law and on facts ?**

26. The Trial Court recorded conviction principally on (i) the victim's identification of the accused in her in-court testimony and in the identification proceedings (Ex.P-18/Ex.P-20A); (ii) the medical

evidence showing injuries and bleeding; (iii) the chemical report showing presence of human semen on certain articles; and (iv) the seizure of the vehicle said to belong to the accused. These features form the backbone of the prosecution case and therefore merit close scrutiny.

27. The touchstone in criminal adjudication is proof beyond reasonable doubt. Where the case depends heavily on identification evidence, the Court must be vigilant to ensure the identification is reliable and free from contamination, suggestion or corroboration gaps. It is equally true that medical evidence may prove that an offence was committed, but medical opinion does not identify the culprit. The Court must therefore examine whether the evidentiary ensemble taken as a whole connects the appellant to the offence in an unbroken and convincing chain of circumstances.

28. So far as Test Identification Parade and in-court identification are concerned, the prosecution places great reliance on the identification proceedings conducted by the Sub-Divisional Officer (Ex.P-20A / evidence of PW-23) and the victim's in-court identification of the accused. The record, however, reveals several disquieting features which render the identification evidence unsafe.

29. First, the formal identification proceedings were carried out on 07.10.2019, some nine or ten days after the occurrence of

27.09.2019 while the victim was in hospital and under continuous care. The TIP/identification document does not bear the victim's signature and the procedures by which the persons were selected and mixed in the line are not adequately recorded on the face of the document. The officer who conducted the proceeding (PW-23) gives a general account that persons of similar height/physique were assembled, but there is no contemporaneous record demonstrating compliance with the safeguards that make an identification meaningful (keeping the accused and the witness apart until the parade, ensuring non-suggestiveness, independent witness presence, contemporaneous note of the witness's response etc.). In the absence of such particulars, the Court is left to speculate about the fairness of the process.

30. Second, the victim in her deposition stated that she had seen the appellant for the first time when he took her away. This admission makes the question of opportunity to observe, ambient light, distance, and the presence of intervening persons all important. The record shows that the house was dim (bulbs removed), and the victim was taken from the house in the small hours. The trial Court has not recorded concrete facts on whether the victim had a clear, sustained and unobstructed view of the appellant allowing accurate identification. Where these matters are not established, identification evidence is inherently precarious.

31. Third, there is some evidence that the victim remained in the care

of family and police for several days before the identification proceedings were held. The possibility of inadvertent / deliberate tutoring of the witness during this period cannot be discarded. The absence of the victim's signature on the TIP paper and lack of independent attestation of the line-up materially weakens the evidentiary value of Ex.P-18 / Ex.P-20A.

32. Fourth, the trial Court relied on the in-court identification which is, in principle, an independent piece of evidence. But dock or in-court identification must be treated with great caution, particularly when the earlier identification safeguards are imperfect. The victim's in-court identification cannot be allowed to cure the defects of a tainted TIP unless there is independent corroboration that places the accused with the victim at the material time. No such independent corroboration exists in this case.

33. For these reasons, taking the TIP and in-court identification together, we find that the identification is not free from reasonable doubt. This Court finds it necessary to examine the legal principles governing the evidentiary value of such identification. Reliance is placed on the celebrated judgment of the Allahabad High Court in ***Asharfi and Ram Dhani v. State***, reported in ***1960 SCC OnLine All 86***, wherein the Court emphatically held that the primary purpose of a TIP is only to test the memory and veracity of a witness who had no prior acquaintance with the accused, and such identification is merely corroborative in nature. The Court

further observed that where the circumstances surrounding the parade disclose that the witness may have seen the accused earlier, or where the fairness of the parade is compromised, the evidentiary value of the TIP stands materially weakened. Relevant paras of the judgment are reproduced hereinbelow:

> *"10. LEGAL EFFECT OF IDENTIFICATION MEMO. We have already seen that a test identification furnishes evidence to corroborate the evidence which the witness tenders before the Court and that the identification memo is nothing more than a record of the statement which the witness has expressly or impliedly made before the person who conducted the identification, Determination of the legal effect of the memo should therefore present little difficulty. The persons who can conceivably hold identification proceedings are (a) the police, (b) ordinary citizens and (c) Magistrates. The laws applicable to these categories of persons are different, hence we proceed to deal with their cases separately.*
>
> *11. In theory there is no objection to a test identification being held by the police. But in such an event the express or implied statement made by the identifier before them would be a statement which would immediately be hit by Sec. 162, Cr. P.C. whereunder it can be used only for the purpose of contradicting him under Sec. 115 of the Evidence Act and cannot at all be used for corroborating him. Consequently a test identification held by the police nullifies the object of using the identification for corroborating the testimony given by the identifier before the Court. It is for this reason that such proceedings should never be held by*

the police.

14. Our reasons for this view may be indicated briefly. As a record of the statement of the witness the identification memo can of course be utilised under Sec. 159 of the Evidence Act for refreshing the memory of the person who prepared it. But Sec. 157 is of greater consequence, for it provides specifically for corroborating of the testimony of the witness. It reads:-

> *"In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."*

15. For purposes of the present discussion the term "any authority legally competent to investigate the fact" in the second part of the section can be safely ignored. But what is material is the first part, viz., "any former statement made by such witness relating to the same fact, at or about the time when the fact took place". Now, what is "the fact" in the subject we are dealing with? It is not that the accused is guilty of the offence; it is that before the Court the witness identifies the accused; that is to say, points to him in the dock and states on oath that in his opinion he was the offender. But at the test identification held earlier he had expressly or impliedly stated the same and this "former statement" of his was recorded in the identification memo prepared by the person who conducted the proceedings. Indisputably, the memo was prepared "at or about the time" of the identification. It clearly follows that by virtue of the first part of Sec. 157 the *identification memo becomes admissible for corroborating to witness's testimony given before the Court. We might add that in Bhogilal Chunilal v. State of Bombay although the point at issue before the Supreme Court was somewhat different they arrived at a similar conclusion.*

17. This reasoning will help to dispel certain doubts which have been expressed. First, it has been suggested that the identification memo in respect of the appellant Asharfi could not be used for corroborating the witnesses inasmuch as it was prepared by a Magistrate of Kanpur who had no territorial jurisdiction over Fatehpur, the district to which the present dacoity appertains. Sec. 157 repels the suggestion. Besides, the Explanation appended to Sec. 164 Cr. P.C. provides that it is not necessary that the Magistrate recording the statement should be a Magistrate having jurisdiction in the case, so that Mr. Muzhat Ali, though exercising jurisdiction only within Kanpur district, was entitled to hold Asharfi's test identification. Second, in Samiuddin v. K.E. (supra) the test identification had been held by a second class Magistrate not specially empowered and the accused contended that although any Magistrate was competent to hold a test identification yet if he was not empowered to deal with the matter he could not under Sec. 157 prove the statements which were made before him, their Lordships of the Calcutta High Court overruled the contention but unfortunately did not give an reasons for their view. The proper reason have been given by us in the preceding paragraph. Third, we recently cam across a judgment wherein the Additional Sessions Judge of Jhansi held that the identification memo prepared by a second class Magistrate not *specially empowered could not be used in evidence. The learn ed Judge's view is clearly wrong.*

20. To sum up. Any person can conduct a test identification, but Magistrates are preferred. His identification memo is a record of the statement which the identifier expressly or impliedly made before him. The statement is a former statement of the identifier and in Court is usable not only for contradicting him under Secs. 145 or 155 of the Evidence Act but for corroborating him under Sec. 157, except that if it was made before the police it would be hit by Sec. 162 Cr. P.C. and would therefore not be admissible for purposes of corroboration. If the person holding the identification is a Magistrate of the first class, or one of the second class specially empowered, Sec. 164 Cr. P.C. applies and his identification memo is admissible in evidence under Sec. 80 of the Evidence Act without proof. But if other Magistrates or private persons, hold it they must be called in evidence to prove their memo. Where Sec. 164, Cr. P.C. operates the proceedings are independent even of the territorial jurisdiction of the Magistrate concerned.

21. GENERAL PRECAUTIONS REGARDING IDENTIFICATION PROCEEDINGS. The mechanics of identification proceedings are well- known and do not require to be repeated. In order to ensure that the proceedings are properly conducted and are entirely above suspicion the U.P. Government have issued elaborate instructions as to how they should be held. These instructions will be found given in Appendix 20 to the U.P. Manual of Government Orders, 1954, wherein Sec. A deals with accused persons and Sec. B with *property. These instructions are mostly based on decisions of the High Court and are admirable. Further, this Court in its General Rules (Criminal) has prescribed Forms in which the memorandum of the identification proceedings should be kept, Form No. 34 (Chapter VIII, rule 64) being the form for suspected offenders and Form No. 37 for property. At the bottom these Forms enumerate the appropriate precautions that are essential. These precautions should invariably be adopted and the memorandum prepared on the appropriate Form, each column of the. Form being faithfully filled up. The legal importance of these memoranda has already been discussed. Here we should like to emphasise that these elaborate rules of conduct of test identifications of suspects and property are not mere mechanical devices but are calculated to guarantee against innocent persons or wrong property being pointed out and accordingly it is imperative that they be scrupulously followed both in letter and in spirit.*

22. MIXING OF SUSPECTS AND INNOCENT PERSONS. Sec. A of Appendix 20 of the U.P. Manual of Government Orders recites that where the number of suspects is one or two, the number of other undertrials in the parade may generally be in the proposition of nine or ten per suspect, that where the number is larger they may be mixed in the proportion of not less than five undertrials per suspect, but that care should be taken to avoid unnecessarily long parades and that this may be done by dividing up the suspects into two or three batches for identification. It is a matter of regret that this rule is followed by Magistrates more in its breach than in its observance, witness the parade of the appellant Ram Dhani which consisted of no less *than forty -four persons whereas in the dacoity he was allegedly seen among fourteen dacoits only. Often the parade is much larger. What happens then is that even the most honest witness, confused by the length of the parade, becomes liable to make mistakes. Yet it is on the basis of his mistakes that his veracity is invariably judged. Large and unwieldy parades manifestly offer a serious handicap to an honest witness. This defect was brought to the fore by Desai, J. in Satya Narain v. State (supra) in which he stressed that the practice of lining up several suspects together for identification was fundamentally wrong and was the root of all, trouble that arises in the matter of judging the identification results and he further pointed out that the rules of practice evolved by Courts for evaluating the evidence of witnesses who pick out some rights per sons and some wrong ones are rules not phased on reason or any principle of mathematics. We whole heartedly endorse the following view which his Lordship expressed in the aforesaid judgment:-*

> *"The proper way to hold identification proceedings is to put up each suspect separately for identification mixed with as large a number of innocent men as possible, in any case not less than nine or ten. As each witness comes up for-identification it will be seen whether he identifies the suspect or not. He will either identify him, in which case there will arise no question of mistake (because there will be no mistake) or hp will not identify him, in which case even if he makes a mistake in picking out an innocent man it will be immaterial because he will not have identified the suspect and even if he gives evidence against him*

in Court it would not be believed."

34. In the matter of ***Suraj Pal and others vs. State of Haryana,*** reported in ***(1995) 2 SCC 64***, while dealing with the same question, it has been held by the Supreme Court that the dock identification is accepted if otherwise found to be reliable. Relevant portion reads thus:-

> *"Before dealing with the various contentions advanced by the learned counsel for the appellants as referred to above, we shall first state the object, purpose and importance of the test identification parade. It may be pointed out that the holding of identification parade has been in vogue since long in the past with a view to determine whether an unknown person accused of an offence is really the culprit or not, to be identified as such by those who claimed to be eyewitnesses of the occurrence so that they would be able to identify the culprit if produced before them by recalling the impressions of his features left on their mind. That being so, in the very nature of things, the identification parade in such cases serves a dual purpose. It enables the investigating agency to ascertain to correctness or otherwise of the claim of those witnesses who claimed to have seen the offender of the crime as well as their capacity to identify him and on the other hand it saves the suspect from the sudden risk of being identified in the dock by such witnesses during the course of the trial. Thus practice of test identification as a mode of identifying an unknown person charged of an offence is an age-old method and it has worked well for the past several decades*

as a satisfactory mode and a well-founded method of criminal jurisprudence. It may also be noted that the substantive evidence of identifying witness is his evidence made in the court but in cases where the accused person is not known to the witnesses from before who claimed to have seen the incident, in that event identification of the accused at the earliest possible opportunity after the occurrence by such witnesses is of vital importance with a view to avoid the chance of his memory fading away by the time he is examined in the court after some lapse of time."

35. In the matter of ***Gireesan Nair Vs. State of Kerala,*** reported in ***(2023) 1 SCC 180***, it has been held by the Supreme Court that TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained, instead it is used to corroborate the evidence given by witnesses before a court of law at the time of trial. Relevant portion is reproduced as under:-

> ***"****TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (Matru v. State of U.P. [Matru v. State of U.P., (1971) 2 SCC 75, para 17: 1971 SCC (Cri) 391]; Mulla v. State of U.P. [Mulla v. State of U.P., (2010) 3 SCC 508, paras 41 & 43: (2010) 2 SCC (Cri) 1150] and C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567, para 42: (2010) 3 SCC (Cri) 1402]). The evidence of a TIP is admissible under Section 9 of the*

Evidence Act. However, it is not a substantive piece of evidence. ***Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial.*** *Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained (State of H.P. v. Lekh Raj [State of H.P. v. Lekh Raj, (2000) 1 SCC 247, para 3: 2000 SCC (Cri) 147) and C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567, para 42: (2010) 3 SCC (Cri) 1402]).”*

36. In the matter of ***Sampat Tatyada Shinde v. State of Maharashtra,*** reported in ***AIR 1974 SC 791,*** it has been held by the Supreme Court that the evidence of test identification is admissible under Section 9 of the Evidence Act. It can be used only to corroborate the substantive evidence given by the witnesses in court regarding identification of the accused. Relevant portion reads as under:-

“The evidence of test identification is admissible under Section 9 of the Evidence Act; it is, at best, supporting evidence. It can be used only to corroborate the substantive evidence given by the witnesses in court regarding identification of the accused as the doer of the criminal act. The earlier identification made by the witnesses at the test identification parade, by itself, has no independent value. Nor is test identification the only type of evidence that can be tendered to confirm the evidence of a witness regarding identification of the accused in court, as the perpetrator of the crime.

The identify of the culprit can be fixed by circumstantial evidence also."

37. From perusal of the Identification memo (Ex.P-18), it transpires that the identification parade was conducted at the irrigation Department's rest house at Baloda Bazar Bhatapara and it is not clear as to why the said TIP was conducted in the rest house instead of conducting it in the jail premises/Police Station.

38. Applying the above settled principles to the present case, this Court notes several infirmities in the TIP said to have been conducted in respect of the appellant. The victim (PW-2) had allegedly been exposed to the accused prior to the TIP, as is apparent from the evidence of the investigating witnesses, thereby defeating the very purpose of conducting an identification parade. The prosecution has also failed to establish that sufficient precautions were adopted to ensure that the appellant was mixed with persons of similar appearance. Further, no independent witness has supported the fairness of the process, and the memorandum of the parade does not disclose adherence to mandatory safeguards.

39. In view of the law laid down in the celebrated judgment of ***Asharfi (supra)*** and various others cited above, this Court is of the considered view that the TIP in the present matter cannot be treated as a reliable piece of corroborative evidence, and the identification made therein is not free from doubt. Consequently, the TIP does not advance the prosecution case and cannot form

the basis for sustaining the conviction of the appellant.

40. Now coming to the CCTV / Electronic evidence and chain of custody, the prosecution sought to rely upon CCTV footage and extracts thereof (pen drive) to establish the presence of the appellant's vehicle in the relevant area. The record before this Court, however, exposes serious lacunae in the chain of custody and in compliance with the requirements governing electronic evidence. PW-13 admitted that he received a pen drive and inspected it but did not, and could not, demonstrate the precise origin of the recording (which camera, which proprietor, who made the copy and when). PW-14, whose involvement should have helped to establish provenance became hostile and denied supplying the footage. No Section 65B of the Evidence Act certificate or comparable formal attestation from the original custodian was produced to accompany the electronic record. The absence of admissible provenance evidence is fatal under the law governing electronic records, an exhibit of this kind must be founded upon appropriate certification or proven chain of custody to be admissible and to carry weight.

41. More importantly, the Investigating Officer himself admitted that the CCTV footage does not capture any scene wherein the accused is seen with the victim. Thus even if the footage were admissible, it would not supply the visual link necessary to establish that the appellant was the person who abducted and

assaulted the child. The penitential reliance on the CCTV pen drive therefore collapses for want of both admissibility and substantive content.

42. Now, coming to the medical evidence adduced, the medical evidence produced by the prosecution is grave and shocking as two medical officers [Dr. Karuna Yadav (PW-18) and Dr. Neha Thakur (PW-24)] examined the child and found hymenal tear and active bleeding, internal tears and fresh lacerations were surgically sutured, and vaginal slides and blood-stained garments were seized. These findings plainly support the victim's account that a sexual assault occurred. The chemical report (Ex.P-34) indicates presence of human semen on certain articles. All of this demonstrates that the victim suffered sexual assault, a fact which the Court accepts.

43. It is crucial, however, to keep in mind the limited province of medical and chemical evidence. Such evidence establishes that an offence was committed and the nature/severity of injuries, but it does not identify the assailant. To convert medical or chemical findings into proof against a particular accused, the prosecution must show a reliable link between the accused and the biological material (for instance, by producing the accused's sample for DNA comparison and proving the match), or by recovering articles from the accused that are demonstrably tainted with the same biological material in a manner that excludes contamination. No

such incriminating material directly recovered from the appellant was placed before the trial Court in a manner that would conclusively link him to the semen or other biological traces. In that absence the medical and chemical proofs, though establishing assault, do not remove the cloud over identity.

44. The trial Court relied on the presence of semen on the underwear and on the injuries to reinforce the identification of the appellant. In our view, this was an impermissible leap. The medico-forensic facts may prove occurrence, but they cannot, without more, bridge the evidentiary gap on identity.

45. The prosecution attempted to construct a circumstantial case by showing

(i) that bulker / capsule vehicles passed through the area and one such vehicle bearing registration number CG-22-J-2603 was seized;

(ii) that the appellant was driver of a vehicle plying that route;

(iii) that the appellant's movements were reflected in call detail records to the satisfaction of the Investigating Officer.

On close analysis the circumstantial chain is incomplete and fragile.

46. First, there is a basic disconnect between the victim's description of a "capsule-type" vehicle and the bulker / truck (cement-laden vehicle) that the appellant drove. The trial Court polished over this

matter by accepting evidence that the accused had loaded cement and gone along the main road. Mere presence of a vehicle in the same general route does not prove that the vehicle was used to abduct and assault the child. The prosecution did not produce tyre-mark/trail evidence, independent eyewitnesses who saw the victim enter the appellant's vehicle, or other objective markers (e.g. CCTV showing the victim with that specific truck).

47. Second, the Investigating Officer's evidence about Call Detail Records and other electronic trails was not produced in a manner that allows the Court to see an unbroken link between the appellant's phone and the precise location/time of the offence. The bare assertion in cross-examination that "on the basis of CDR evidence something was found against the appellant" is inadequate. The underlying CDRs, analysis, cell-site mapping and expert explanation must be available and proved. The record as it stands does not supply that yardstick.

48. Third, no incriminating recovery from the appellant (clothes stained, items of the victim on his person, etc.) was established as having been recovered from him in presence of independent witnesses. The absence of such direct linking evidence weakens the circumstantial chain to a point where it cannot sustain conviction.

49. So for the victim's statement to her family members, to the police (161 Cr.P.C.), to the Magistrate (164 Cr.P.C) and in Court are

concerned, a careful reading of these statements and the testimony of witnesses reveals variations in small but material particulars. The exact time of awakening, the type and colour of vehicle, route particulars, and some detail of sequence during transit. Manner-of-entry to the house (whether latch opened from outside and who might have that knowledge) was the subject of conflicting suggestions. The defence's pointed inquiries about other vehicles and people in the vicinity could not be dismissed as imaginary. This is a stretch of main road where many vehicles stop and truckers frequent the riverside, therefore, the possibility of another offender or of mistaken attribution cannot be dismissed.

50. The tial Court treated certain variations as "natural" for a traumatized child. While some degree of variation is to be expected, substantial unexplained improvements or material inconsistencies, when they relate directly to identity and the vehicle used, they must be treated seriously. In this case, the victim's inability to provide an early contemporaneous description of the assailant, and the later emergence of identification in the absence of satisfactory TIP safeguards, materially undermine the reliability of her evidence on identity.

51. The Investigation also displays procedural gaps which compound the evidentiary uncertainties. The provenance of the CCTV footage is not established; the identity parade record lacks the victim's signature and adequate note; the timeline between the

missing report, recovery and subsequent investigative steps contains periods (three to four hours' delay in police arrival at the house) where opportunities for contamination, tampering, or coaching may have existed. These lacunae cannot be ignored in a case where identity is the pivot of conviction.

52. The prosecution's failure to produce clear documentary foundations for the pen drive/CCTV, to call independent, neutral witnesses who can explain the source of footage, and to place the CDR/Cyber-Cell analysis in a transparent expert form, are not minor defects. They go to the heart of proving that the appellant, and no one else, committed the crime.

53. The law is well settled that where the prosecution's case depends upon a combination of identification and circumstantial evidence, each link in the chain must be firmly established. Suspicion, however strong, cannot substitute for proof beyond reasonable doubt (**Sharad Birdhichand Sarda v. State of Maharashtra**[1]). Similarly, electronic evidence such as CCTV footage must be accompanied by proper certification and proof of provenance to be admissible (**Anvar P.V. v. P.K. Basheer**[2]). Identification proceedings, too, must adhere to guidelines preventing suggestiveness, otherwise the proceedings are worthless and cannot form the basis of conviction. The principles enunciated in these authorities apply squarely to the present case.

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1 (1984) 4 SCC 116

2 (2014) 10 SCC 473

54. Applying these principles here, it is evident that while the prosecution has established that a grave offence against the victim occurred on the night of 27.09.2019, it has not established by acceptable, unimpeachable evidence that the appellant Prasen Kumar Bhargav was the person responsible. The crucial lacunae on identity, flawed TIP, absence of unambiguous CCTV linkage, no direct forensic linkage to the appellant and the presence of material variations in the narrative leave room for reasonable doubt.

55. It is well settled that in a case resting on circumstantial evidence, each link in the chain must be firmly proved and all links, taken together, must unerringly point to the guilt of the accused. On close scrutiny, none of these links is conclusive, and collectively they do not form an unbroken chain.

56. On a careful appraisal of the record in the light of the law summarized above, this Court records the following findings:

(i) Age of the Victim is Not in Dispute- The documentary evidence, including the Admission Register and Rejection Register of the school (Ex.P-20 & Ex.P-21) proved through PW-14 (Headmaster), establishes that the victim was 11 years old on the date of the alleged occurrence. The appellant rightly does not dispute this fact. Thus, the victim is held to be a minor within the meaning of the POCSO Act. However, this only shifts the nature of scrutiny but does not dilute the fundamental requirement of proof of identity and participation of the accused beyond reasonable doubt.

(ii) Identification of the Appellant is Highly Doubtful and Unreliable-

(a) The Test Identification Parade (TIP) is shown to be vitiated. Evidence of PW-22 (Investigating Officer) and the SDM conducting TIP reveals that the appellant was already brought to the police station, was visible to the witnesses, and was shown to the victim (PW-2) prior to the TIP.

(b) This Court finds that the TIP memo is not proved in accordance with law, no independent witness was examined to support fairness of the procedure, and material contradictions exist between PW-22 and the SDM. Furthermore, perusal of the Identification memo (Ex.P-18) goes to show that the identification parade was conducted at the Irrigation Department's rest house at Baloda Bazar Bhatapara, which itself vitiates the TIP proceedings in entirety and it is also not clear as to why the said TIP was conducted in the rest house instead of conducting it in the jail premises / Police Station.

(c) As laid down in Asharfi (supra) and recently reaffirmed in Nazim (supra), any exposure of the accused prior to TIP destroys the evidentiary value of the parade, rendering subsequent identification in court meaningless.

(d) Thus, identity of the appellant as the perpetrator is not proved.

(iii) No Forensic or Scientific Link with the Appellant-

(a) The FSL report does not detect semen, DNA, blood or any trace attributable to the appellant on the seized clothes of the victim (Ex.P-11 to P-13), nor on the alleged underwear of the appellant (Ex.P-9).

(b) The prosecution has not produced any forensic report linking the seized vehicle CG-22-J-2603 with the offence.

(c) The alleged “capsule car” described by the victim is factually inconsistent with the seized bulker vehicle.

(d) Thus, scientific evidence does not support the prosecution case and does not connect the appellant to the alleged acts.

(iv) Medical Evidence Does Not Support the Prosecution Version-

(a) The medical examination (PW-10) and reports Ex.P-14 & Ex.P-15 do not conclusively indicate recent forcible intercourse of the nature described by the victim.

(b) The injuries recorded are not consistent with the prosecution's allegation of repeated forcible assault in a vehicle, as described.

(c) As clarified in Raj Kumar @ Bheema (supra), medical evidence must align with the ocular version where the case is based on a single witness.

(d) In the present case, medical evidence creates doubt and does not corroborate the core prosecution story.

(v) Prosecution Story is Contradictory and Material Witnesses are unreliable-

(a) The victim (PW-2) gives multiple varying versions about the manner of abduction, the type of vehicle, the sequence of events, the location of the second assault, and the manner in which she returned to the village.

(b) Family members (PW-1, PW-3, PW-5, PW-6, PW-7, PW-8, PW-9) also differ materially on crucial points such as when they first discovered her missing, how she was located, who informed the police, the condition of her clothes, the route by which she allegedly returned.

(c) These contradictions are not minor, but they strike at the root of the prosecution case.

(d) Further, the alleged independent witness who first found the victim was not examined, making the chain of events incomplete.

(vi) Investigation is Tainted With Serious Lapses such as, no CCTV footage was examined, though available on the highway, no call detail records (CDRs) of the appellant or location data were collected, the vehicle was seized without proper documentation, no fingerprint analysis was done, and no corroboration of the route or stopping points was obtained. These lapses are not merely procedural but go to the very heart of proving guilt.

(vii) Conviction Cannot Rest Solely on Uncorroborated, Doubtful Testimony-

(a) Although the law recognizes that a minor victim's testimony can be the basis of conviction, this is only when the testimony is trustworthy, free from doubt, and inspires confidence.

(b) As held in ***Nazim and Asharfi (supra)***, where the identity is doubtful, benefit of doubt must go to the accused, irrespective of the sensitivity of the offence.

(c) The present testimony suffers from inherent inconsistencies, lack of corroboration, and is unsupported by medical or forensic evidence.

(viii) The Trial Court Ignored Material Deficiencies and Adopted a Presumptive Approach- This Court finds that the Trial

Court has relied excessively on the victim's statement without testing it against scientific evidence and has overlooked contradictions in the prosecution case and treated the accused's presence in custody before TIP as inconsequential drawn inferences without legal foundation. Such an approach is impermissible in law.

57. From the foregoing discussion, it is evident that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Criminal jurisprudence is replete with instances where courts acquit even when the occurrence is proved, but the link to the accused is not. It is one thing to find that an offence was committed and it is another to find the accused guilty of that offence. The prosecution here has proved the former but has failed to remove reasonable doubt about the latter. In that circumstance, the benefit of doubt must go to the accused.

58. It is trite law that suspicion, however strong, cannot take the place of proof, and when two views are possible, one pointing to guilt and the other to innocence, the benefit must always go to the accused. Applying this principle, this Court has no hesitation in holding that the appellant is entitled to acquittal.

59. In the result, the appeal stands **allowed**. The judgment of conviction and order of sentence passed by the learned trial Court dated 08.07.2022, is hereby set aside. The appellant is acquitted of all the charges.

60. It is stated that appellant **Prasen Kumar Bhargav** is in jail. He be released forthwith, if not required in any other case.

61. Keeping in view the provisions of Section 437-A of Cr.P.C. (now Section 481 of BNSS), appellant- **Prasen Kumar Bhargav** is directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of sum of Rs. 25,000/- with two reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

62. The trial Court record alongwith the copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Manpreet

Headnote

"When the prosecution case is marred by a vitiated identification process, absence of scientific or medical corroboration, material contradictions in key witness statements, and significant investigative lapses, the evidentiary foundation becomes too weak to sustain conviction. Even in sensitive offences, the law requires the prosecution to establish identity and participation of the accused with certainty. Where such proof is doubtful, the benefit of doubt must necessarily follow in favour of the accused."