2026:CGHC:255-DB

2026:CGHC:255-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1540 of 2022

Pritam Gir @ Ghislu S/o Santa Gir Goswami, Aged About 20 Years R/o Village Matiyari, Police Station Seepat, District : Bilaspur, Chhattisgarh

... Appellant

versus

State of Chhattisgarh Through Station House Officer, Police of Police Station - Seepat, District : Bilaspur, Chhattisgarh

... Respondent

(Cause Title taken from Case Information System)

For Appellant : Mr. Qamrul Aziz, Advocate
For Respondent/State : Mr. Priyank Rathi, Govt. Advocate

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Arvind Kumar Verma, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

05.01.2026

1. The appellant has preferred this appeal under Section 374(2) of Code of Criminal Procedure, 1973 (for short, 'CrPC') questioning the impugned judgment dated 12.08.2022 passed by the Additional Sessions Judge, Second Fast Track Special Court, Bilaspur (C.G.) in Special Criminal Case (POCSO Act) No. 390/2018, whereby the learned trial Court has convicted and sentenced the appellant with a direction to run all the sentences concurrently in the following manner :

CONVICTION	SENTENCE
U/s 363 of IPC	RI for 7 years and fine amount of Rs.1000/- and in default of payment of fine, further imprisonment of 4 months
U/s 363 of IPC	RI for 7 years and fine amount of Rs.1000/- and in default of payment of fine, further imprisonment of 4 months
U/s 366 of IPC	RI for 10 years and fine amount of Rs.1000/- and in default of payment of fine, further imprisonment of 6 months
U/s 366 of IPC	RI for 10 years and fine amount of Rs.1000/- and in default of payment of fine, further imprisonment of 6 months
U/s 5(ङ)/6 of IPC	Life imprisonment for life time till death and fine amount of Rs.2,000/- and in default of payment of fine, further imprisonment of 1 year

2. The prosecution case in brief is that the complainant/informant, the father of the victim No.1 (PW-2), appeared at the Kotwali police station on 30/12/2018 and submitted a written complaint application to the effect that on 30/12/2018 at 6:00 pm in village Matiyari, Police Station-Sipat, his daughter, victim No.1, aged 09 years, along with her cousin sister, victim No.2 (PW-15), aged 07 years, had gone out to look for a cow in the village. An unknown person of about 20-22 years of age sent them to bring gutkha and eat *khaai* worth Rs. 5 and took them to his pond and raped them. She is unable to speak due to pain and blood is flowing from her private parts. When he

asked, his daughter, victim No.1, then she told while crying that an unknown person had raped her and her niece, victim No.2, also informed him about the incident. On the written report of the complainant, Inspector Anju Chelak registered a First Information Report against unknown persons under Crime No. 0/2018 under Section 376 of the IPC and Section 4, 8 of the POCSO Act and filed a First Information Report. In Police Station Sipat, Sub-Inspector C.S. Netam registered a crime under Crime No. 390/2019 and filed a numbered First Information Report. Statements of witnesses were recorded in the case. The accused was arrested after taking action of seizure etc. Thereafter, after complete investigation, a case was registered against accused Pritam Gir alias Ghislu under Section 376AB of the IPC and Section 4, 8 of the POCSO Act and on finding evidence of the offence, the charge sheet was presented in the Court of Additional Sessions Judge, Second Fast Track Special Court, Bilaspur (C.G.) for trial on 14/03/2019.

3. Charges were framed against the accused under sections 363, 363, 366, 366, 376 of the IPC and sections 5(ङ)/6 of the POCSO Act and were read out to the accused, who denied the charges and sought trial.

4. So as to prove the complicity of the accused/appellant in the crime in question, prosecution has examined as many as 21 witnesses and exhibited 28 documents in support of its case. Statement of the accused/appellant under Section 313 CrPC was also recorded

in which he pleaded his innocence and false implication in the case. The accused did not give any defense evidence in his defence.

5. The trial Court after completion of trial and after appreciating oral and documentary evidences available on record, by the impugned judgment dated 12.08.2022 convicted and sentenced the appellant in the manner mentioned in the opening paragraph of this judgment, against which this appeal under Section 374(2) of the CrPC has been preferred by them calling in question the impugned judgment.

6. Learned counsel for the appellant vehemently argued that the learned trial Court has failed to properly appreciate the evidence led by the prosecution and has wrongly convicted the appellant. The prosecution failed to prove the case against the appellant beyond reasonable doubt. The statements of the victims are full of conjectures and surmises and are highly unreliable. The age of the victims have not been proved and no ossification test for determining the age has been done which makes the whole case of prosecution doubtful. Hence, the conviction is liable to be set aside.

7. On the other hand, learned State counsel for the State/respondent submitted that the appellant has committed a heinous crime of rape against minor victim No.1, aged about 9 years by alluring and abducting her along with victim No.2 and the same has been duly proved by the prosecution beyond reasonable doubt. As

such, the judgment of conviction and sentence awarded by the learned trial Court is just and proper warranting no interference.

8. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

9. **The first question for consideration before this Court would be, whether the trial Court has rightly held that on the date of incident, the victims were minor?**

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

11. In ***Jarnail Singh Vs. State of Haryana, reported in (2013) 7 SCC 263***, the Hon’ble Supreme Court laid down the guiding principles for determining the age of a child, which read as follows :

> **“22.** On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforestated 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and

Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :

> "**12. Procedure to be followed in determination of Age.?** (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.
>
> (2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.
>
> (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –
>
> (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
>
> (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
>
> (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.
>
> and, while passing orders in such case shall, after taking into consideration such evidence as

> may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.
>
> (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.
>
> (5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.
>
> (6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has

been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion."

12. In this regard, the prosecution witness, victim No.1 (PW-2) has stated her age to be 11 years in her court statement dated 26/08/2019 and the mother of victim No.1 (PW-1) has stated the age of her daughter victim to be 09 years at the time of the

incident and the father of victim No.1 (PW-4) has stated the age of his daughter victim to be 10 years. Regarding the age of the victim No.1 (PW-2), the Investigating Officer C.S. Netam (PW-17), the then Sub-Inspector, Sipat Police Station, has stated that regarding the age of the victim No.1, he had seized the mutation register related to the victim No.1 from the Headmaster Pratap Satyarthi of Government Primary School Matiyari, as per seizure memo Ex.P-11. This is being confirmed by the statements of Headmaster Pratap Satyarthi (PW-11), witness Pramod Yadav (PW-6), the uncle of the victim (PW-4) and the attested copy of the mutation register from the document in Article 'A'.

13. Prosecution witness Head teacher Pratyap Satyarthi (PW-11) has stated that Sipat police had seized from him the mutation register of Government Primary School Matiyari, as per seizure memo Ex.P-11, to know the date of birth of victim No.1. In serial number 2754 of the mutation register, the date of birth of victim No.1 is mentioned as 16/03/2009. The witness has stated that the attested copy of the said register is Article 'A'. On perusal of Article 'A', the date of birth of victim No.1 (PW-2) is mentioned as 16/03/2009. The incident is of 30/12/2018. Victim No.1 was admitted in Class IV in Government Primary School, Matiyari on 10/07/2018 and as per Article 'A' of the attested copy of the admission registration, the entry relating to victim No.1 was made in the year 2018. For the above reason, it cannot be said that the family members of the victim had made a false entry while

admitting victim No.1 (PW-2) in the school, imagining some future incident before the incident. The defence has not presented any oral or documentary evidence to refuse the said date of birth, therefore, there is no reason to disbelieve the date of birth of the victim No.1, as 16/03/2009 hence, we are of the considered opinion that the trial Court has rightly held that the date of birth of the victim No.1 is 16/03/2009 and her age on the date of incident i.e. 30/12/2018 was 09 years 09 months and 14 days.

14. In the present case, there is no document on record regarding the age of Victim No.2 (PW-15). The prosecution has not included victim No.2's parents as witnesses and presented their evidence. In the written report filed by the complainant, the complainant has stated that her daughter, victim No.1 is 9 years old and her niece, victim No.2, is 7 years old. In victim No.2's statement to the Court on 21/10/2021, victim No.2 stated her age to be 10 years old. The Court questioned the witness, as she was a child witness, to assess her competency. The defense has not disputed any facts regarding victim No.2's age, nor has her age been challenged. Hence, we are of the considered opinion that the trial Court has rightly held that the victim No.2 was under 12 years of age on the date of incident i.e. 30.12.2018. We hereby affirmed the said finding.

15. **The next question for consideration would be, whether the trial Court is justified in convicting the appellant for offence under Section 363 of the IPC ?**

16. The appellant has been convicted for offence under Section 363 of the IPC, which is punishable for kidnapping. Kidnapping has been defined under Section 359 of the IPC. According to Section 359 of the IPC, kidnapping is of two kinds: kidnapping from India and kidnapping from lawful guardianship. Section 361 of the IPC defines kidnapping from lawful guardianship which states as under:-

> "**361. Kidnapping from lawful guardianship**.-Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

17. The object of Section 359 of the IPC is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons. Section 361 has four ingredients:-

> (1) Taking or enticing away a minor or a person of unsound mind.
>
> (2) Such minor must be under sixteen years of age, if a male, or under eighteen years or age, if a female.
>
> (3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.
>
> (4) Such taking or enticing must be without the consent of such guardian.

So far as kidnapping a minor girl from lawful guardianship is concerned, the ingredients are : (i) that the girl was under 18 years of age; (ii) such minor was in the keeping of a lawful guardian, and (iii) the accused took or induced such person to leave out of such keeping and such taking was done without the consent of the lawful guardian.

18. The Supreme Court while considering the object of Section 361 of the IPC in the matter of **S.Varadarajan v. State of Madras**[1], took the view that if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so and held that if evidence to establish one of those things is lacking, it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian and held as under:-

> "It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. If evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. But that part falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking"."

[1] AIR 1965 SC 942

19. Reverting to the facts of the present case, in light of ingredients of offence under Section 361 of the IPC which is punishable under Section 363 of the IPC & as well as principles of law laid down by the Supreme Court in the matter of **S.Varadarajan** (supra), it is evident that while the victims had gone out to look for their cow in the village, the accused sent them to bring gutkha and eat *khaai* worth Rs. 5 and by alluring took them near pond without the permission of their legal guardian and raped them. As such, we are of the considered view that the trial Court is absolutely justified in convicting the appellant for offence under Section 363 of the IPC.

20. **The next question for consideration before us is whether the appellant has committed rape on minor victim No.1 ?**

21. It has been stated by the victim No.1 (PW-02) stated that on the day of the incident, her younger sister, her elder father's daughter, was with her. They were going to look for the cow when the accused said that their cow was there and he would show it to them. He took them to the *Kuda* pond and by stripping her clothes, began making it dirty. He was putting his urine in her mouth and severely beating her. The accused had bitten the right side of her mouth, causing it to swell. She had vomited profusely and was bleeding from her urinating place. She and her younger sister were crying. The accused left after committing the crime, and they also returned. She and her sister told her mother about

the incident and she was taken to the hospital. She identified the accused. Her statement was recorded in Bilaspur. She further stated that the accused gave her 20 rupees and asked her to bring Rajshree and *Khai*, after which she brought gutkha. In cross-examination, the witness denied the defense's suggestion that she had scratched her urethra excessively, causing the bleeding, and that the accused had not committed any misdeed. Thus, the victim's statement established that the accused had coaxed her, inserted his genitals into her mouth, and that this act had caused bleeding from her genitals.

22. Supporting the statement of victim No.1 regarding the incident, victim No.2 (PW-15) has stated that the incident took place about 4 years ago. It was around 06:00 in the evening that day, she and her sister, the victim No.1, were on their way to the village when the accused met them on the way and gave them Rs. 20/- and said that they should bring Rajshree worth Rs. 10, keep Rs. 05/- and bring back Rs. 05/-. Then they brought Rajshree and when they started giving it to him, he said that follow him, he will show them the calf grazing there. He took both of them to the pond and slept there and opened his pants and made them remove all their clothes and climbed on his sister, the victim No.1, and was doing dirty things. When they said that they would go home, he said stop and caught hold of them. The accused climbed on her also. They followed the accused and found their way home. While returning, they encountered his uncle and aunt, and the victim

No.1's parents. They then returned home with them. At home, his sister, victim No.1, fainted because the accused had inserted his urinal into her mouth. His sister, victim No.1, was taken to a doctor. His sister, victim No.1, was vomiting profusely. The victim had previously testified in Court and identified the accused. Victim No.2, in cross-examination, refuted the defense's suggestion that the accused had not committed any misdeeds against her and her sister, victim No.1.

23. As per statements of victim No.1 (PW-2) and victim No.2 (PW-15), the accused took them towards the pond and by taking away their clothes, put his urinal in their mouths.

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

> "**375. Rape.**-- A man is said to commit "rape" if he--
>
> (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
>
> (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
>
> (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:

First. Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

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

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

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

Seventhly. When she is unable to communicate consent.

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

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words,

gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

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

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

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

25. Investigating Officer C.S. Netam (PW-17) has stated that he had sent the seized material to the office of the Regional Forensic Science Laboratory for examination through the Superintendent of Police, the receipt of which is Ex.P.27 and the FSL report attached to the case is Ex.P. 28. In which semen stains and human sperms have been found in B, C, D. As per FSL report Ex.P-28, alleged leggings of victim No.1 (PW-2) i.e. A. alleged panties of the victim i.e. B. alleged diaper of the victim i.e. C. alleged full pants of the accused i.e. D1, alleged full shirt of the accused i.e. D2, alleged underwear of the accused i.e. D3, soil of the crime scene i.e. E., soil of the crime scene i.e. F. in which semen stains and human sperms have been found in B, C & D. Thus, the presence of human sperms in the panties and diaper of victim No.1 confirms that the accused raped the victim No.1.

26. The statement of victim No.1 that she was taken to doctor, is being confirmed by the statement of Dr. Shubhra Mitra (PW-19) and the test report Ex.P-16A. From the medical evidence, it has been found that there were injuries inside and outside the vagina of the victim No.1 and in the chemical test, the presence of human sperm has been found in the leggings and panties of the victim. Thus, from the evidence presented by the prosecution, it is proved that the accused abducted the victim No.1 and victim No.2 without the permission of their legal guardian and took them away with the intention of having illicit sexual intercourse against their will and raped the victim No.1.

27. The next question for consideration would be, whether the trial Court is justified in convicting the appellant for offence under Section 366 of the IPC ?

28. The appellant has also been convicted for offence under Section 366 of the IPC which states as under: -

> **"366. Kidnapping, abducting or inducing woman to compel her marriage, etc.**—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal

> intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid."

29. In order to constitute offence under Section 366 of the IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and / or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal provision. So far as charge under Section 366 of the IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.

30. Their Lordships of the Supreme Court in the matter of ***Mohammed Yousuff alias Moula and another v. State of Karnataka***[2] pointing out the essential ingredients required to be proved by the prosecution for bringing a case under Section 366

[2] 2020 SCC OnLine SC 1118

of the IPC, relying upon the decision rendered in the matter of ***Kavita Chandrakant Lakhani v. State of Maharashtra***[3], has clearly held that in order to constitute an offence under Section 366 of the IPC, besides proving the factum of abduction, the prosecution has to prove that the said abduction was for one of the purposes mentioned in Section 366 of the IPC, and observed as under: -

> "8. Chapter XVI of IPC contains offences against the human body. Section 366, which is the pertinent provision, is contained within this Chapter. Kidnapping/abduction simpliciter is defined under Section 359 and maximum punishment for the same extends up to seven years and fine as provided under Section 363. However, if the kidnapping is done with an intent of begging, to murder, for ransom, to induce women to marry, to have illicit intercourse stricter punishments are provided from Section 363A to Section 369.
>
> 9. Section 366 clearly states that whoever kidnaps/abducts any woman with the intent that she may be compelled or knowing that she will be compelled, to either get her married or forced/seduced to have illicit intercourse they shall be punished with imprisonment of up to ten years and fine. The aforesaid Section requires the prosecution not only to lead evidence to prove kidnapping simpliciter, but also requires them to lead evidence to portray the abovementioned specific intention of the kidnapper. Therefore, in order to constitute an offence under Section 366, besides

[3] (2018) 6 SCC 664

> proving the factum of the abduction, the prosecution has to prove that the said abduction was for one of the purposes mentioned in the section. In this case at hand the prosecution was also required to prove that there was compulsion on the part of the accused persons to get the victim married. [See Kavita Chandrakant Lakhani v. State of Maharashtra, (2018) 6 SCC 664]."

31. In the instant case, as the offence of sexual assault has been found proved by the prosecution which satisfies the requirement of Section 366 of the IPC, we are of the considered view that the trial Court is absolutely justified in convicting the appellant for offence under Section 366 of the IPC.

32. In the case of ***Ganesan v. State***, (2020) 10 SCC 573, the Supreme Court observed and held that that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.

33. In the case of ***State (NCT of Delhi) v. Pankaj Chaudhary***, {(2019) 11 SCC 575}, it was observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It was further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises.

34. In the case of ***Sham Singh v. State of Haryana***, {(2018) 18 SCC 34}, the Supreme Court observed that testimony of the victim is

vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It was further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

35. Applying the law laid down by the Supreme Court in the cases (supra) to the facts of the case on hand and as observed hereinabove, we see no reason to doubt the credibility and/or trustworthiness of the victims. They are found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the victims can be sustained.

36. The view taken by the learned trial Court that the appellant is the author of the crime is a pure finding of fact based on evidence available on record and we are of the opinion that in the present case, the only view possible was the one taken by the learned trial Court.

37. From the above analysis, we are of the considered opinion that the prosecution has been successful in proving its case beyond reasonable doubt and the learned trial Court has not committed any legal or factual error in arriving at the finding with regard to the guilt of the appellant/convict.

38. Accordingly, the appeal being devoid of merit is liable to be and is hereby **dismissed.**

39. The appellant/convict is stated to be in jail. He shall serve out the sentence awarded by the trial Court by means of the impugned judgment and order dated 12.08.2022.

40. Let a certified copy of this order alongwith the original record be transmitted to trial Court concerned forthwith for necessary information and action, if any.

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

Sd/-
(Arvind Kumar Verma)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Chandra

Head – Note

Testimony of a child victim, if natural, consistent, and trustworthy, is sufficient to sustain conviction and does not require corroboration as a rule of law. Allurement and taking of a minor from lawful guardianship with intent to commit a sexual offence attract Sections 363 and 366 IPC. Oral penetration by the accused squarely falls within the definition of rape and penetrative sexual assault under law.