

IN THE COURT OF SPECIAL JUDGE, FAST TRACK COURT
(POCSO CASES)
JAMMU

Challan No.	253/2022	Date of Institution	03.10.2022.
CNR No.	JKJM010033842022	Date of Judgment	08.09.2025.

UT of J&K.
Through Police Station Gangyal.
Through:- Mr. Anil Saini Ld. SPP.

VERSUS.

Appu Kumar @ Ravi Pandit.
Son of Gopi Kant.
Resident of Sita Mari Bihar.
At present Ghee Factory (Charger Factory).
Gangyal Jammu.

Accused.
Through: Ms. Mandeep Reen Advocate.

FIR No 87 of 2022 Police Station Gangyal.
Offence under section 363, 376 IPC and Section 3 and 4 POCSO
Act.

Coram: Sunil Sangra.
J. O Code: JK00087.

J U D G M E N T

1. At the outset, this court deems it appropriate to refer to the complainant as 'A' in consonance with the directions rendered by the Hon'ble Supreme Court, in **Nipum Saxena vs. Union of India, 2019 (2) SCC 703**, whereby it was observed that in a patriarchal society like India, survivors/ victim of sexual violence of any nature are forced to undergo ostracization for no fault of their own. Therefore, to prevent hostile discrimination or harassment of the survivor/ victim in the future, this court believes it to be prudent to refer to the complainant/victim herein as 'A'.
2. Briefly facts as taken note of in the Final report bearing number 253/2022 arising out of FIR No 87/2022 was registered in Police Station Gangyal, Jammu dated 04.08.2022 on the basis of a written application filed by Anita Manikupri wife of Prem Dass Manikpuri resident of H No 11, Kotwar Khairaha Rapagula, District Raigarh, Chattisgarh. At present Uttam Nagar Kunjwani Jammu Mobile Number 9086395121 against

accused Appu Kumar @ Ravi Pandit son of Gopi Kant resident of Sita Mari Bihar at present Gangyal Jammu kidnapped her minor daughter namely "A" age 17 years (name withheld for protecting the identity of the girl) on 03.08.2022 at about 5:30PM when she had gone market for withdrawal of cash from ATM. Accused kidnapped and took her unknown place and thereafter committed rape upon her. Her daughter managed to rescue herself from the custody of accused and after reaching home (rented juggi) at 11:30 PM she narrated the incident to her.

3. On receipt of this formal application, FIR No 87/2022 for offences under section 363, 376 IPC and 3 and 4 of POCSO Act IPC was registered in the Police Station Gangyal, Jammu and the investigation of the case was entrusted to PW-12 Inspector Joginder Singh EXJ085741 SHO Police Station Gangyal. During the course of the investigation, the IO visited the spot of incident and prepared the site plan of the place of occurrence. Victim was produced before Gandhi Nagar hospital Jammu for conducting her medical examination. Medical examination of the victim got conducted from Gynecologist Govt. Hospital Sarwal Jammu and collected medical report about the rape. On the production of Victim's clothes by the mother which victim was wearing at the time of the occurrence were seized and sealed. Seized clothes of the victim and accused were got re-sealed from the Executive Magistrate Satwari and marked A and send to FSL Jammu/Srinagar. Radiologist and ultrasound Test of the victim were conducted from hospital Gandhi Nagar Jammu and obtained the medical reports regarding determining age of the victim. Dental Test examination was done from Dental hospital Ambphalla Jammu where her age found to be approximately 16-17 years. Victim sends to CWC Trikuta Nagar Jammu for counseling. Potency test of the accused was done and report collected from the concerned doctor. Statement of the victim under Section 164 got recorded before Judicial Magistrate and other witnesses of the case were recorded under section 161 Cr.PC. Statements of parents of the victim and victim under section 164 Cr.PC got recorded before Judicial Magistrate. Accused Appu Kumar was arrested and his arrest form was also prepared by the IO and his finger prints were also taken, Garments and clothes of the victim and accused were seized. He recorded the statement of the witnesses acquainted with the facts of the case under section 161 Cr.PC. Copy of

Aadhar Card collected, where her date of birth recorded as 07.02.2005 which completed as 17 years 6 month and 26 days on the day of occurrence whereas as per ossification Radiologist test age of the victim found in between 15-17 years. As per the investigation investigating officer established offences under section 363-A, 376 IPC and 3 and 4 of the POCSO Act against accused Appu Kumar. Accused send to District jail Ambphalla Jammu.

4. After completion of investigation the final report in terms of section 173 Cr.PC was presented before this court of on 03.10.2022 and charges under Section 363, 376 IPC, 3 and 4 under the Protection of Children from Sexual Offences Act were framed on 20.12.2022 against the accused person. Accused denied the charges and pleaded for the trial of the case. Prosecution was directed to lead evidence. In the charge sheet 12 prosecution witnesses were enlisted in the calendar of witnesses. Prosecution witnesses examined all witnesses except PW-4 CWC member, PW-7 admitted by the defence for the resealing of the packets of garments of the victim and accused and PW-11 Dr Anju Bala admitted by the defence. PW-13 Smt. Gulapi Siddar, Headmistress Government Middle School Junodih was examined as prosecution witness on 22.01.2025 for proving the School Transfer certificate regarding date of Birth of the victim in terms of Section 311 Cr.PC. Prosecution relied upon the following documents exhibited as:-

S. No.	Documents	Exhibit	Prosecution Witness
1.	Complaint	EXT-P1	PW -1, PW-2
2.	Seizure Memo	EXT-P1/1	PW-1
3.	Photocopy of statement of Victim		
4.	Transfer School Certificate regarding Date of Birth of the victim.	EXT-G	PW-13
5.	Authority Letter of FSL, Jammu dated 08.08.2022	Not Proved	
6.	FSL report	EXT-P-8	PW-8
7.	Radiologist Report of victim for assessing her age	EXT-P-9	PW-9
8.	Medical report of the victim.	EXT-P10	PW-10
9.	Site plan	EXT-P-12	PW-12
10.	Arrest Memo of accused/finger prints.	EXT-P-12/1	PW-12
11.	Final Challan		

PROSECUTION EVIDENCE

5. The brief resume of the prosecution evidence is discussed as under:-

PW-1 Mst Anita Manikpuri (mother)

Her statement recorded on 18.05.2023.

In the examination-in-chief learned Public prosecutor witness identified the accused from the photographs appended with challan file. She stated victim is her daughter and about one year back she had sent the victim for drawl of cash from ATM. In those days she used to live in Gangyal along with her family. When victim did not come back to home then she started searching her. On the day of occurrence, at night at about 11/11:30 PM, her daughter made a call to some relative in their village in Chattisgarh and informed about her presence at Kunjwani Chowk. Then thereafter, she received a call from her native village and she told about these facts to the landlord of her juggi for bringing victim from Kunjwani to her juggi situated at Gangyal. Victim's condition was very bad and she was crying. Victim narrated that accused had taken her towards jungle and raped her. Next day she went to Police Station Gangyal and presented a written complaint in English under her signature. She admitted the contents of the complaint true and correct and identified her signature same is exhibited as EXT-P1. On the basis of her complaint FIR was registered against the accused. Police seized underwear of the victim which she was wearing on the day was occurrence. She admitted the contents of the seizure memo of the underwear true and correct and identified her signature same is exhibited as EXT-P1/1. Police got the medical examination of the victim and recorded my statement under Section 161 CrPC. No further question was asked.

On cross-examination by the defence counsel she state she had come from Chhattisgarh to Jammu before 15 / 20 days prior to the incident. She and accused works together in same factory but denied that they sit together and take lunch jointly. She does not know whether accused was harassing her daughter before the day of occurrence. Victim is her elder daughter amongst three children, after her marriage one child had died and after two year victim was born. She was married earlier twenty years but she does not remember in which year she got married. Her daughter studied till 8th standard. Victim went to ATM booth at 5:30 PM in the evening for drawl of the cash from her bank account. It took about fifteen minutes to reach the Police Station from her cottage (jhuggi). After the recovery of the victim on 04.08.2022 she went Police Station for lodging complaint. She stated on the day of occurrence she had not gone to work in the factory. She admitted she got written application from someone and thereafter she signed the application and presented in the Police Station. She cannot read either Urdu or English but she signed in English. Police recorded her statement under Section 161 CrPC in Police Station. She does not know how to write Urdu as such she does not know what was written in his statement in Urdu. Police seized brown colour under wear

and she did not see under wear in Court today. She is making herself statement today in the court and not on the asking of anyone and she denied landlord of the cottage (juggi) had forced her to lodge FIR against the accused. She denied that accused wanted to marry with victim and when the marriage did not take place then victim lodged a false FIR against him. No further question was asked.

PW-2 “A” Victim.

Her statement recorded on 18.05.2023.

On examination-in-chief by Public Prosecutor, witness identified the accused from the photograph appended with challan file. She stated her date of birth is 07.02.2005 and stated date of occurrence is 03.08.2022 and at about 7:00 PM her mother sent her for withdrawal of cash from ATM booth. On the way accused meet her who was working with her in the factory. Accused asked her to sit on his bike and he would take her to ATM. Accused instead taking her to the ATM, took her towards Narwal by stating that he would get petrol filled in the bike from the petrol pump. She told him that she has to go home and doesn't want to withdraw money. Accused told her that he will drop at her home after getting petrol in the bike. Accused then made her sit on his bike and took her to an isolated place. Accused forcibly got hold of her hand and took her towards the jungle where he committed rape on her. It was late night and she was crying and at about 11/11:30 PM accused dropped her at Kunjwani Chowk. One passerby asked her why she was crying and she took mobile from him and made a call to her relative Dinesh Patel at Chattisgarh and told him to call her mother and tell her that the victim is standing at Kunjwani Chowk. Owner of the cottages (jhuggi) where she resides came late at night to pick her from Kunjwani Chowk. She went with him to her mother cottage (jhuggi) which is situated at Gangyal. She narrated the entire story to my mother and thereafter she and my mother went to Police Station, Gangyal where FIR was lodged against the accused. During investigation the police got conducted her medical examination from Gandhi Nagar, Hospital and seized my underwear. My statement was recorded under Section 164 CrPC in the Court. She admitted her statement recorded under section 164 CrPC as true and correct which bears my signature. No further question was asked.

In cross-examination by the defence counsel witness stated one month before the incident she had come from Chattisgarh to Jammu alongwith her mother, brother and sister. Her qualification is 8th class and studied in the Government School about 5 years back and had left her studies in 8th standard. After leaving school she did not do any private job. When she started working in the factory, management of the factory did not ask for any document from her. She had worked for about 15 days in the factory. She denied that she and her younger sister had gone together to the ATM for withdraw cash. She was holding ATM card in her name which was issued as per her bank account number and last digits of her bank account is 9988. Her bank account was operated in village Chattisgarh when she

was studying. One pass book of the account is at her village and she has not brought at Jammu. She has not brought ATM card alongwith her today in the court and neither police seized the same. She does not remember the ATM Pin number today. She was working in the factory from 8:30AM in the morning till 5:30 PM in the evening and use to go to the factory on foot and it takes half an hour to reach the factory from her juggi. Accused was not accompanying with her when she use to go in the factory but we both working in the same factory. She stated and admitted that before the incident the accused had never done any wrong act with her and with anyone six to seven other girls who were also working with her in the same factory. She denied that she had told those girls that accused is her boyfriend. She does not remember the registration number of the bike on which accused took her to Narwal jungle and she remained with him for about 2 hours. Police took her to the place of occurrence after lodging FIR. It was not residential area where accused took her and she does not know the heights of the trees in the Jungle where she was taken. She denied that she wanted to marry with accused and when accused refused to marry then she implicated him in a false case. On the day of occurrence she had not gone to the factory for work. It was not time at 5:30 PM but at 7:00 PM in the evening and it is also wrong to state owner of the juggi had force me and my mother to lodge FIR against the accused as suggested. No further question asked.

PW-3 Parveen Singh.

His statement recorded on 22.08.2023.

On examination-in-chief by Public Prosecutor witness identified the accused through photographs appended with court file and witness stated accused is known to him. In the year 2022 during summer days, he was on his shop his tenant Sham who lives in Nepal, came to his shop. He told someone made a call to victim's mother in the evening and told her to take the victim from Vijaypur. He took the phone number from Sham who received call from Vijaypur and thereafter he himself talked to that person. Said person enquired about his identity then he told victim's parents are residing in his land and he shared his location at the temple near to Toll Plaza. He went to said location on his motorcycle and saw 50/60 persons from the village were standing they told him some drunken boys were teasing the victim and victim was crying. One person took my aadhar card, informed the police about me identity and after satisfying my identity they permit me to meet the victim. Firstly he called victim but she did not respond then he called victim by her name. She recognized me and then public handover the custody of the victim to him. He took the victim and handed her over to her mother at her house. As soon as he handed over the victim to her mother, the mother started beating the victim. He told mother's victim that he had brought both the sisters back from the village near Sarore. During beating and putting knife on the victim, mother asked the victim why she taken money from Ravi Kumar who lives near Gangyal Police Station. Victim and Ravi Kumar were

working together in the same factory which manufactures phone covers. He does not know second name of Ravi Kumar. Mother of the victim told him that that person who had taken the victim, he might have done some wrong act with victim and for that victim is personal responsible as she takes money from Ravi Kumar. Mother of the victim told him about these facts. After that, he got vacated his land from complainant and victim. Police recorded his statement under section 161 CrPC. He stated it is wrongly recorded in his statement that he recovered the victim from Gangyal then said he had brought her from Kunjwani. My statement recorded in Urdu and he does not know Urdu, however, whatever the PP has read out to me is correct.

On cross-examination by the defence counsel for the accused, witness stated that he had never seen the accused and victim in suspicious circumstances, however, their relationship was told to me by victim's mother. Younger sister of the victim was accompanying with him when he brought victim from Sarore and he narrated the incident to the police that victim's younger sister was also with him. He made the same statement to the police which he made today in the court. Younger sister of the victim was not arrayed in this incident on the grounds she was tender age and minor. Police did not get identified the place where from he brought victim. No further question was asked.

PW-4 Shalni Sharma (CWC Member).

Her statement admitted by defence on 17.02.2021 as such this witness not examined in the court.

PW-5 SgCt Ruby Sharma. No./71265/EXJ.

Her statement recorded on 12.09.2023.

On examination-in-chief by PP, witness stated on 04.08.2022 FIR was lodged in my Police Station and on 05.08.2022 she took the victim to the Gandhi Nagar, Hospital for her medical examination. On 12.08.2022 she took the victim to CWC Trikuta Nagar. On 16.08.2022 victim statement under section 164 CrPC recorded in the Court.

On cross-examination by the counsel for the accused, witness stated that she along with IO and mother of the victim produced victim before hospital, CWC Trikuta Nagar and before the court. In those days she was alone lady constable in the police station but two followers and one lady SPO were also posted in the police station and they did not accompanied with victim. No further question asked.

PW-6 Constable Ranjeet Kour No 977799/EX-J.

Her statement recorded on 12.05.2023.

On examination in chief stated that on 05-08-2022. She was present in the Police Station. Victim and her mother came to the police station and mother of the victim produced a underwear which was seized by the IO and a seizure memo of the underwear was prepared in my presence. She admitted the contents of seizure memo true and correct and identifies her signature on the seizure memo which is already exhibited as EXT-P-1/1.

On cross-examination by the defence counsel for the accused stated seized underwear was not shown to her in the court today. Mother of the victim produce seized underwear from her home and not by the victim herself and same was handover to IO.

PW-7 Sh Anayat Ali Naib-Tehsildar.

His statement admitted by the defence on 17.02.2024 regarding re-sealing of the garments of the victim and accused.

PW-8 Sh. Shahul Ahmed Dy.Director FSL Jammu.

His statement was recorded on 17.02.2020,through virtual mode.

On examination-in-chief by PP stated that on 26.08.2022 he was posted as deputy director (Biology division FSL J&K Jammu) FSL report no 342/Bio/FSL dated 26-08-2022 shown to the witness through video conference on the official link of the court. Witness identified his signatures over the said report. The contents of the report are true and correct and on the report exhibit EXT-P8 is put.

On Cross-examination witness stated that he does not know whose semen/spermatozoa were on exhibit 859.

PW-9 Dr Arun Khurana (Consultant Radiologist) Govt. Hospital Gandhi Nagar.

His statement was recorded on 09.06.2023.

On examination-in-chief by the learned APP witness stated on 18.08.2020 Victim "A" was produced by SgCt Tirath Ram No 466 and lady constable Parvinder Kour ,Belt No 119 of Police Station Gangyal under MLC No 1760. She examined the two X-rays films marked 'R' sized 8'×10'her reports which were taken by then radiologist on duty. She issued report under her signature. As per my report she gave opinion:

Lower ends of radius and ulna are not fused, so radiological age is more than 17 years and upper end of femur is fused so radiological age is more than 15 years. As per radiologist text examination victim's age is between 15-17 years. She admitted the report true and correct and identified her signature. The report is exhibited as EXT-P-9

On cross-examination by the counsel for the accused, witness stated the bone density of any human depends upon the nutrition, genetic, environment and overall activities of the individual, so it is possible that a person under nourished or malnourished might reflect a younger age and not the exact age of the individual examined. We do not opine the exact age but give approximate age on radiological examination of bone etc. and not the exact age. I have not seen the victim personally so cannot say as to what financial strata she belongs. No more question asked.

PW-10 Dr Neelu Sharma, (consultant Gynecologist).Govt. Hospital Gandhi Nagar Jammu.

Her statement was recorded on 09.06.2023.

On examination-in-chief by Ld APP, witness stated she examined the victim aged about 17 years on 04.08.2022 at 7:30PM. On her examination it was found that she was conscious, cooperative, well oriented to time, place and person. She was in same clothes and had not taken bath. LMP

24-07-2022 lasted four days. No mark of violence on any part of the body including breasts. On local examination she did not find any mark of injury, swelling or bleeding on the victim. Smears taken from posterior fornix and three slides prepared and sent for histopathology examination. The following tests were done: (1) VDRL test no. 1760-Normal (2) HBSAg MLC CR-28157D-Normal (3) HIV test-Normal (4) USG MLC No. 1760 dated 05-08-2022- no significant abnormality seen (5) HPE of slides MLC 1760- No spermatozoa seen in the slides (6) Dental opinion by Dr. Rahul dated 05-08-2022, dental age is about 18 years and (7) UPT MLC no. 1760- negative. As per my opinion:- there is no injury mark and according to the HPE report there is no evidence of recent sexual intercourse. She identified her signatures on the report shown to her in the court. She admitted the contents of the report true and correct and bearing her signature and seal. The report is exhibited as EXTP-10 dated 09-06-2023.

On cross-examination by the defence counsel witness stated victim herself narrated the history of the case to her when she was produced along with police personal at the time of victim medical examination. She reflected age of the victim 18 years in her medical report as per the opinion of dentist Dr Rahul.

PW-11 Dr Anju Balla.

This witness not examined as defence admitted her statement on 17.02.2022.

PW-12 Inspector Joginder Singh (Investigating Officer).

His statement was recorded on 17.05.2024.

On examination-in-chief by Public Prosecutor, witness identified the accused through VC at 12:22 PM produced from Jail. On 4th of August, 2022, he was posted as SHO Police Station Gangyal Jammu. After registering FIR No. 87/2022 he started the investigation. On 04.08.2022, the complainant herein Anita Manikpuri came to the police station with a written application with allegations that her daughter-victim has been kidnapped by Ravi Pandit alias Pappu. On the basis of this application, he registered FIR No. 87/2022 under section 363/376 IPC read with Sections 3 and 4 of POCSO Act and started the investigation. First of all, he went to the place of occurrence from where the victim had been kidnapped and prepared the site map of the occurrence. He admitted the contents of the site plan true and correct same is exhibited as EXPT-12 It was late night time, therefore, on next day on 5.8.2022 he got conducted the medical examination of the victim. On 05.08.2022 accused was arrested the accused and got his examination for potency test from the doctor. Arrest memo was prepared which is true and correct same is exhibited as EXT-P12/1. On 06.08.2022 he took the victim to CWC Jammu for counseling and on the very same day, 6.8.2022, brought the victim to the court for recording statement under section 164 Cr.PC. Her statement was recorded but the copy of which was given on the next day. On the basis of the statement of the victim, offence under section 376 and Sections 3 and 4 of

the POCSO Act were established. He got the medical certificate of the victim, recorded the statement of eye witnesses and complainant. After completing the challan and having it approved from the senior officers, presented the same in the Court of law. He recovered and seized victim's clothes and got them re-sealed from the Executive Magistrate Satwari and sent to FSL Director Jammu through the SDPO. The FSL report was made a part of the charge sheet. According to his investigation, it came forth that accused after completing rape on the victim dropped her back at Kunjwani alone where she was crying. The victim took the phone of the passersby and called her home at Chattisgarh which phone number she remembered. After that, witness Jugal landlord received a phone and he received victim at night. The mother of the victim and victim come to the police station at night. On the basis of the investigation, he established offence under section 363,376 IPC and offences under section 3 and 4 POCSO Act against accused. No further question was asked.

On cross-examination by the defence counsel, the witness stated on 4th of August, 2022, at about 11 / 11:30 PM in the night, mother of the victim and victim produce a written complaint in the police station and I have written this in my charge sheet. The victim had come along with her mother. She had not been recovered. In my presence witness Parveen Singh had not recovered the victim. At the time of registration of FIR, PW Parveen Singh had also come along with the victim and her mother. He stated it has not written that Parveen Singh had accompanied with the victim. Complaint was written in English and it was written that victim at 11:30 PM herself returned from the Jungle. In the complaint name of the accused is written as Ravi Pandit and not Ravi Pandit alias Appu Singh. It is not written in the complaint that the victim was taken and kidnapped on the motorcycle. According to him victim's qualification was 7th / 8th class and he did not investigate about her qualification. He stated that in the complaint exhibit on EXTP1, in the signatures of the complainant, the alphabet 'N' has been written upside down and not correctly written. He did not enquired from the complainant whether she herself written the application. He did not conduct the identification parade of the accused and neither prepared any document for identification parade which established Ravi Pandit and Appu Singh are one and same person but on the arrest form he write down name of the accused without support of the document. On 04.08.2022 he made request letter to concerned doctor for medical examination of the victim and victim was examined on 05.08.2022 and doctor has given a report exhibit EXT-P-10/8. In the medical report Doctor has opinion that no evidence of recent sexual intercourse and despite this accused was arrested on 05.08.2022 on the statement of the victim. He did not get any proof of date of birth of the victim except photocopy of Aadhar card made part of the challan. He did not examine the Aadhar card of the accused. In the site plan he has not shown the presence of any ATM Bank where victim was kidnapped. Shops have been shown on the site map but none of the shopkeepers of

these shops kept as witness in the charge sheet. He admitted that he has not kept any shopkeeper as eyewitness because they told him no girl has been kidnapped from this area. In the site plan exhibit EXT-P 12 he has shown matador stand but he did not enquire about the case from any matador person or Dhaba owner. On 4.8.2022 and 5.8.2022 he did not know how Ravi Pandit name is mentioned in the complaint. He denied that he himself got typed the complaint EXT-P1 and thereafter complainant signed it. He written in the complain victim and accused were working in same factory but he did not enquire whether they were working in same factory and neither enquired from the owner of the factory nor from any worker of the factory about their employment. He admitted that a minor cannot be engaged as labour /woker in a factory. He has not prepared the site plan of the place of occurrence of rape at Narwal neither made part of such site plan in the challan. In the CD files it does not speak about the site plan of occurrence of rape. As per my knowledge from Gangyal to Narwal Chowk, there are several police nakas and he did not enquire from any police naka pertaining to the incident. In the complaint exhibit EXT-P1there is no mention that accused kidnapped the victim on motorcycle, but it is mentioned in the statement under section 164 Cr.PC as such he written in the challan that victim was kidnapped by the accused on his motorcycle. Before recording the statement under section 164 Cr.PC, he had enquired from the victim and she stated the same. He has not stated in the challan that he tried to search and investigate about the motorcycle involved in the commission of offences. He did not enquire the victim whether she had raised any hue and cry when she was being taken on the motorcycle and whether she tried to save herself or not. Accused and victim were working in one factory and known to each other as such he did not enquire from them. He admitted he established the offences against accused merely on the statements of the victim and her mother. No further question was asked.

PW-13 Smt. Gulapi Siddar. Headmistress Govt. Middle School Junodih. She was examined on 22-01-2025 through virtual mode.

On examination-in-chief by Ld APP, she stated she has seen the School Transfer Certificate (Sthanantarn Parman Patra) bearing no 147 issued on 17.06.2016 and same was issued as per record. She is working in this school since the year 2006. The child Asha Manikpuri was admitted in our school in 6th class and she studied in our school upto 8th class. Previously she studied in Government Primary school Khairara which falls in our jurisdiction and is at a distance of 1km. She issued the certificate on the basis of record. The contents of the certificate are true and correct and bear her signatures same is exhibited as EXT-G. She recorded the date of birth of the victim on the basis of Transfer Certificate issued by the Government Primary school Khairara, block Sarangarh. She has shown the original school record through video conferencing to the court regarding Victim "A". As per admission register she was admitted in the school vide No. 147 dated 17-06-2016 and on the basis of this

record the date of birth of the victim was recorded as 07.02.2005. This date of birth is recorded on the basis of Transfer Certificate issued by previous school. The register is lying with me in my school same shown to the court through video conference. Attested copy of the relevant page she had already furnished to the police officer Joginder Sir, who visited our school.

On cross-examination by the learned defence counsel Advocate Mandeep Reen through VC, witness stated she has not seen the date of birth certificate of victim "A". No policeman came to take certificate EXT-G from me which was issued on 24.06.2019. It is correct that whenever a child leaves school we issue original Transfer Certificate to the students/parents. She issued this original certificate exhibit EXTG-P9 to the concerned student in the year 2019. She received court summon for today's hearing from police person namely Joginder Sir. Prior to this said police person namely Joginder did not visit to me or at our school.

Statement of accused under section 313 Cr.PC.

6. After completing the prosecution evidence, further statement of the accused under Section 313 Cr.PC recorded on 02.07. 2025 with regard to incriminating circumstances made in the evidence rendered by the prosecution and he denied it. Accused stated he has been roped in a false and concocted story and has not committed any offence. The prosecutrix has falsely implicated them in order to tarnish his reputation in the society. He also denied he was not working with victim in the same factory. Prosecution witnesses have wrongly deposed against him and he has not committed any offence. He does not know about the medical record and documents which prosecution has made part of the challan. Investigating Officer has not investigated the case in fair and impartial manner. He relied upon the prosecution witnesses who have wrongly stated and thereafter presented the challan against him which is not based on truth. Accused stated he does not want to lead any defence evidence in the case.

ARGUMENTS

7. Mr. Anil Saini Learned Special Public Prosecutor has submitted at length the facts of the oral evidences of the victim and the evidence of prosecution witnesses is sufficient to prove the alleged offences and most important witness is PW-2 victim "A" whose credibility could not be shaken by the defence despite cross-examination her by length with

regard to the relevant facts manner of the occurrence and her evidence is sufficient to bring the accused guilt home. It is further submitted that the prosecution has produced the documentary evidence regarding the age of the victim and also produce the medical evidence and proved the allegations against the accused. Learned SPP submitted that in the teeth of evidence adduced by the prosecution the presumption was rightly triggered against the accused under Section 29 of The POCSO Act and accused has not brought on record any material to substantiate his defence.

8. Ms. Mandeep Reen Advocate, learned counsel for the accused has strenuously argued that at the outset prosecution has failed to establish that victim was child as per the definition under the POCSO Act. That, though it was claimed that victim was 17 years of age, she would submit that the proof adduced by prosecution in support of age is mere school extract which was prepared on the strength of Transfer Certificate (TC) of earlier school. This document has no evidentiary value. The ossification test report has suggested age of the victim in between 15-17 years. The law gives the benefit of margin of two years in the age determined on the basis of ossification test.

9. Ms. Mandeep Reen Advocate learned counsel next arguments submitted that the accused is totally innocent. The accusation for rape made by the mother of the victim is out and out false. Accused has been falsely implicated into this case. Such facts have been corroborated from the medical report and FSL report. Facts of the rape have not been established from the medical report given by Dr. Neelu Sharma consultant Gynecology who examined the victim on next day on 04.08.2022 at 7:30PM in Govt. Hospital Gandhi Nagar Jammu and she did not find any injury mark on the victim and gave opinion there is no evidence which suggest for recent sexual intercourse. As per the FSL report no human semen stain/ spermatozoa was detected from the seized garments of the victim and accused.

10. Now keeping in mind the arguments advanced by both the sides and after considering the prosecution evidence. The grounds of the arguments contented by the defence counsel are decided as under.

A. Age of the victim.

11. In a case pertaining to the POCSO Act, prosecution has to prove the age of the victim and thereby her minority. The age of the victim has an extremely crucial bearing in the case. At the threshold this court is required to deal with the issue of age of the victim. The prosecution has relied upon the School Leaving Certificate issued by the Headmistress Govt. Middle School Junodih Exhibit ECT-G. to prove this document PW- Smt.Gulpai Siddar examined through video conference, She stated on the request of Police she issued this date of birth certificate as per the school record and victim date of birth is recorded as 07.02.2005 on the basis of transfer certificate issued by previous school Govt. primary School Khairara Block Sarangarh. In cross-examination stated she has not seen the birth certificate of the victim. On analyzing above testimony, it is emerging that the witness has no knowledge about the source on which the date of birth of the victim was recorded in her previous school.
12. The prosecution in order to ascertain the age of the victim has also relied upon the ossification test report exhibit EXT-P-9 given by PW- Dr Arun Khurana(Consultant Radiologist) Govt.Hospital Gandhi Nagar. On carefully going through the evidence of PW-9 it is emerging that he suggested as per the examination of bone formation of the victim and radiologist test the age of the victim is between-15-17 years.
13. It may be mentioned that Section 34 of the POCSO Act prescribes the procedure to be followed in case of Commission of offence by child and determination of age by a Special Court under the POCSO Act. Section 34 reads thus:—

“34. Procedure in case of commission of offence by child and determination of age by Special Court

 - (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).
 - (2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.
 - (3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.”

14. In **Jarnail Singh v. State of Haryana, (2013) 7 SCC 263**, the Hon'ble Supreme Court, while considering the issue of determination of age of a minor victim, has analysed the scope of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as 'J.J. Rules, 2007'). The Supreme Court has held that though Rule 12 is strictly applicable only to determine the age of the child in conflict with law, the said statutory provision should also be the basis for determining age, even of a child, who is a victim of crime.
15. It may be mentioned that J.J. Rules, 2007 were framed in terms of Section 68 of Juvenile Justice Act, 2000, which has been repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015 and corresponding amendment has been made in Section 34 (1) of the POCSO Act by substituting the words 'Juvenile Justice (Care and Protection of Children) Act, 2000' with 'Juvenile Justice (Care and Protection of Children) Act, 2015'. Hence, the age of the victim has to be determined as per Section 94(1) of 2015 Act, which enables the Committee to determine the age of the person based on the appearance of the said person brought before it. It is only in case of reasonable doubt that the Committee or board has to follow the prescribed procedure for determination of age as provided under Section 94(2) of 2015 Act, which reads thus:—

“Section 94 Presumption and determination of age:—

(1) .xxx

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

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

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

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

(3) xxx.”

16. The procedure prescribed under section 94, to determine the age of a person, is not materially different from the procedure prescribed under Rule 12(3) of 2007 Rules, except for some minor variations. A plain reading of section 94 indicates that when there is doubt about the age of the person, the age has to be determined first on the basis of the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination board and if no such material is available then on the basis of birth certificate given by a Corporation or a Municipal Authority or Panchayat and in the absence of such evidence on the basis of ossification test or any other medical age determination test. Section 94 does not contain provision regarding benefit of margin of error to be given to the child or juvenile as provided in Rule 12(3)(b) of 2007 Rules, which provided for benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.
17. There is no dispute about the Law that for determining the age of the victim the court has to follow the provisions of Section 34 of the POCSO Act and Section 94 of the JJ Act read with Rule 12 of the JJ Rules 2007 by seeking evidence by obtaining (i) the matriculation or equivalent certificate, if available and in absence whereof:(ii) the date of birth certificate from school (other than Play School) first attended and in absence whereof;(iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted medical board to declare the age of the Juvenile or Child. Since in this case the prosecution has relied upon marks card of the victim for annual examination 8th Class T2 which does not falls under the category of (i) as stated above and neither prosecution got proved this documents in terms of Section 35 of the Indian Evidence Act by examining any witness related to the document by establishing what was source of the recorded date of birth. Thus the Marks card cannot be relied upon for determining the age of the victim. Reference can be placed on following Judgments:
 - 17.1.Apex Court in case titled **Ravinder Singh Gorkhi Vs. State of UP AIR 2006 SC 2157**: while considering the question regarding determination of

the date of birth of a person either in a civil or criminal proceedings. It was held at paragraphs 21, 23 and 37 as under:—

“21. Determination of the date of birth of a person before a court of law, whether in a civil proceeding or a criminal proceeding, would depend upon the facts and circumstances of each case. Such a date of birth has to be determined on the basis of the materials on records. It will be a matter of appreciation of evidence adduced by the parties. Different standards having regard to the provision of Section 35 of the Evidence Act cannot be applied in a civil case or a criminal case.”

“23. Section 35 of the Evidence Act would be attracted both in civil and criminal proceedings. The Evidence Act does not make any distinction between a civil proceeding and a criminal proceeding. Unless specifically provided for, in terms of Section 35 of the Evidence Act, the register maintained in ordinary course of business by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which, inter alia, such register is kept would be a relevant fact. Section 35, thus, requires the following conditions to be fulfilled before a document is held to be admissible there-under: (i) it should be in the nature of the entry in any public or official register; (ii) it must state a fact in issue or relevant fact; (iii) entry must be made either by a public servant in the discharge of his official duty, or by any person in performance of a duty specially enjoined by the law of the country, and (iv) all persons concerned indisputably must have an access thereto.”

“37. The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission, for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum, e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of the Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or

similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted.”

17.2. Further in another reported judgement **Ram Deo Chauhan Vs. State of Assam AIR 2001 SC 2231** it was held that entry in the school register which is not shown to be maintained by the public servant in the discharge of his official duty or any other competent authority cannot be accepted as positive proof regarding the date of birth.

17.3. In another reported judgement **P. Yuvaprakash Vs. State rep. by Inspector Of Police 2023 AIR (Supreme Court) 3525**. Where it has been held that Determination of victim's age under POCSO Act - Held, conjoint reading of Section 34 of POCSO Act and Section 94 of JJ Act shows that to determine age recourse has to be taken to steps indicated in Section 94 of JJ Act - As per Section 94(2), date of birth certificate from school or matriculation or equivalent certificate by concerned examination board has to be firstly preferred - Thus, in absence thereof, birth certificate issued by Corporation or Municipal Authority or Panchayat needs to be referred to - If such document is also not available, only then age is to be determined through "ossification test" or "any other latest medical age determination test" conducted on orders of Committee/Board/Court.

17.4. In **Vishnu Vs. State of Maharashtra (2006) 1 SCC 283**, while dealing with a similar issue, this Court observed that very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by un-impeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the un-impeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home etc, the entry in the school register is to be discarded. Thus, the entry in respect of age of the child seeking admission, made in the school register by semi-literate chowkidar at the instance of a person who came along with the

child having no personal knowledge of the correct date of birth, cannot be relied upon.

18. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorized in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the Court/Authority to examine its probative value. The authenticity of the entry would depend as on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law and standard of proof for the same remains as in any other civil and criminal case.”
19. On laying my hands on aforesaid judgments it can be safely said in a criminal case where age of prosecutrix has to be proved by the prosecution, necessarily, evidence should be adduced either as provided under Section 35 of the Evidence Act or any of the documents specified in terms of the Section 34 of POCSO Act and Section 94 Juvenile Justice (Care and Protection of Children) Act read with Rule 12 of JJ 2007. It is the duty of the prosecution to adduce substantive evidence to prove the age of the victim. Mere production of a Transfer Certificate of School in terms of Section 35 is not sufficient to prove the age of the victim. But in the present case prosecution has not lead any evidence to prove the source of entry for recording date of birth as 07.02.2005 in School Transfer Certificate issued by previous Govt. Primary School Khairara and moreover PW Smt. Gulpai Siddar Headmistress Govt. Middle School Junodih examined through video conference to prove the exhibit EXT-G she stated she having no knowledge on what source the date of birth recorded in the certificate, same was not issued on the request of the Police. In cross-examination stated she has not seen the birth certificate of the victim. On analyzing above testimony, it is emerging that the witness has no knowledge about the source on which the date of birth of the victim was recorded in her previous school. Transfer Certificate was not issued on the demand of investigating officer and it cannot said for what purpose it was issued and entries in this certificate is not in the nature of any public or official register. Hence this Transfer Certificate does fulfill the requisites of Section 35 of the Indian Evidence Act and also it is not a

birth certificate issued by any school. In absence of such primary documents as well as in absence of ossification test with respect to exact date of birth of the victim, the date of birth mentioned in the document i.e. Transfer Certificate, brought by the prosecution, would lose its evidentiary value to prove the age of the victim. Therefore, the age reflected in the School Transfer Certificate is not relevant document and same cannot be consider for conclusive proof for determining age of the victim as minor on the day of occurrence in the absence of the material on what basis the date of birth was recorded. Since the prosecution failed to produce the primary admission register or other documents specified under the Section 94 of the Juvenile Justice Act, the age of the victim has not been proved and thus the POCSO Charges could not be established against accused.

20. The prosecution in order to ascertain the age of the victim has also relied upon the ossification test report exhibit EXT-P-9 given by PW- Dr Arun Khurana(Consultant Radiologist) Govt. Hospital Gandhi Nagar. On carefully going through the evidence of PW-9 it is emerging that he suggested as per the examination of bone formation of the victim and radiologist test the age of the victim is between-15-17 years. Moreover, PW-10 Dr. Neelu Sharma in her medical report exhibit EXT-P10 has also revealed that as per opinion of Dentist, age of victim is shown to be 18 years.
21. It is settled proposition of law that age determined on the basis of a radiological examination may not be accurate determination and sufficient margin the benefit of the doubt at all stage goes in favour of the accused. It is also settled law that the benefit of margin of error of two years on either side has to be given to the accused when age is determined through ossification test.
22. Reference can be placed on the judgment in case of **On Its Own Motion Vs. State of NCT of Delhi 2024 NDCHC 4915** it is held that-
“Determination of age of victim under POCSO Act. In cases where the age of the victim is determined through the bone age ossification test, the upper side of the reference range should be considered as the victim's age. Margin of error of two years is also applicable in such cases to ensure

fairness and alignment with legal principles. The principle of "margin of error" must be applied in POCSO cases, granting a two-year flexibility on either side of the age determined by ossification test. Such an approach aligns with the adversarial system of justice, ensuring that the benefit of doubt favours the accused while safeguarding the victim's rights under the Act."

22.1. In another reported judgment **Mahabir Prasad Vs. State 1999(1) Crimes 1**, the Court while dealing with the age of the prosecutrix, in this context has held as under:—"On consideration of the entire evidence on record and the judgment cited at the bar, if there can be difference of two years, even in the ossification tests, in that event, the benefit of doubt has to go to the accused."

22.2. The Hon'ble Supreme Court, in case of **Jaya Mala Vs. Govt. of J&K, reported in (1982) 2 SCC 538**, has held that one can take judicial notice that margin of error in age ascertained by radiological examination is two years on either side. It was incumbent upon the prosecution to establish beyond all reasonable doubts that the victim was below 18 years as on the date of occurrence to attract the provisions of the POCSO Act.

22.3. In case of **Jyoti Prakash Rai Vs. State of Bihar, reported in (2008) 15 SCC 223**, the Hon'ble Supreme Court has reiterated that age determination by the Doctors should be given flexibility of two years on the either side. A medical report determining the age of a person has never been considered by the courts of law as also by the medical scientists to be conclusive in nature.

23. Now the next question arises what whether the lower or the upper age of the recommended in the ossification test should be adopted to be the age of the prosecutrix. It is settled by Law that upper side of the ossification test report shall be considered while assessing the age of the prosecutrix and further margin of two years to such upper estimate shall be benefit of doubt has to be given to the accused under all circumstances. Reference can be placed on the reported judgments; **State Vs. Bashir Ahmad 2023 SCC Online Del 5852. Triveniben Vs. State of Gujarat (10989) 1 SCC 678**.

24. While it is correct that the age determined on the basis of a radiological Dental test examination may not an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated

above read with the report of the radiologist/Dental Test examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The facts mentioned above show that the prosecution has not been able to discharge the burden cast on it to prove that the age of the victim was below 18 years at the time of the alleged commission of offence. This being a prosecution under the POCSO Act, one of the fundamental facts to be proved by the prosecution is that the victim involved in the case is a child in terms of the provisions of the POCSO Act. In the absence of any evidence to prove that the victim in the case is a child in terms of the provisions of the POCSO Act, I am constrained to hold that the prosecution has not established the guilt of the accused under Section 376IPC and offences under section 3 and 4 of the POCSO Act. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.

B. Medical Evidence.

25. Medical expert who had occasion to medically examine the victim is PW-10 Dr. Neelu Sharma consultant Gynecologist and this doctor stated victim having age 17 Plus years was produced before her on 04.08.2022 at 7:30PM for medical examination at Govt Hospital Gandhi Nagar Jammu and she issued medical opinion report exhibit EXT-P-10. She stated after conducting various test and after examining victim and various test reports she did not find any mark of injury on the victim and medical test reports does not suggest any evidence of recent sexual intercourse. She also stated in the medical report that according to Dental opinion victim age is above 18 years.
26. PW-8 Dr Shahul Kanth Dy Director, FSL Jammu has issued FSL report dated 26.08.2022 exhibit EXT-P-8 regarding chemical examination of seized clothes of the victim and accused. As per the FSL report there is opinion that no human semen stains/spermatozoa were detected on the exhibit No-K859/2022 (under wear of the victim) and exhibit No-K-860/2022 (one tooth brush cover colgate).
27. On analyzing the aforesaid available evidence on record as well as important evidence of the medical officer and the FSL report, it appears that the doctor has also not expressed opinion with regard to occurrence of rape upon the victim. The medical opinion does not supports the claims

of prosecutrix and FSL report also does not corroborate any evidence about the presence of sperm and semen stains on the clothes.

C. Contradictions.

28. Ms.Mandeep Reen Advocate, Learned counsel appearing for the accused submitted that the case is based on solitary statement of the victim and the evidence of the rest witnesses are hearsay in nature.
29. The case of the prosecution as emanating from the first information report is that the accused on 03.08.2022 at 5:30PM on a false pretext took the victim with him in a motorcycle assuring the victim that he would drop the victim at ATM. However, the accused took the victim on false pretext to Narwal jungle where he subjected her to sexual intercourse which was without her consent and against her will. Later on victim was dropped at Kujwani Chowk. Before dealing with the rival contentions of the parties, it would be appropriate to analyze the relevant ocular of the prosecution evidence.
30. PW-1. Mst Anita Manikpuri, mother of the victim stated on 03.08.2022 at about 5:30PM her minor daughter-victim "A" age 17 years had gone market for withdrawal of cash from ATM and she was did not returned back and at 11:30 PM she herself came back to home and narrated the incident that accused kidnapped and took her in the jungle of Narwal and committed rape upon her. On the day of occurrence, at night at about 11/11:30 PM, her daughter made a call to some relative in their village in Chattisgarh and informed about her presence at Kunjwani Chowk. Then thereafter, she received a call from her native village and she told about these facts to the landlord of her juggy for bringing victim from Kunjwani to her juggy situated at Gangyal.
31. PW-2 Victim "A" stated on 03.08.2022 and at about 7:00 PM her mother sent her for withdrawal of cash from ATM booth. On the way accused meet her who was working with her in the factory. Accused asked her to sit on his bike and he would drop her to ATM. Accused instead dropping to the ATM, took her towards Narwal by stating that he would get petrol filled in the bike from the petrol pump. She told him that she has to go home and doesn't want to withdraw money. Accused told her that he will drop at her home after getting petrol in the bike. Accused then made her sit on his bike and took her to an isolated place. Accused forcibly got hold of her hand and took her towards the jungle where he committed rape on

her. It was late night and she was crying and at about 11/11:30 PM accused dropped her at Kunjwani Chowk. One passerby asked her why she was crying and she took mobile from him and made a call to her relative Dinesh Patel at Chattisgarh and told him to call her mother and tell her that the victim is standing at Kunjwani Chowk. Owner of the cottages (jhuggi) where she resides came at late night to pick her from Kunjwani Chowk. She went with him to her mother cottage (jhuggi) which is situated at Gangyal. She narrated the entire story to my mother and thereafter she and my mother went to Police Station, Gangyal where FIR was lodged against the accused. In cross examination she stated she does not remember the registration number of the bike on which accused took her to Narwal jungle which is not residential area and she remained with him for about 2 hours. Police took her to the place of occurrence after lodging FIR.

32. PW-3 Parveen Singh he stated in the year 2022 during summer days his one tenant namely Sham who lives in Nepal told him that someone made a call to victim's mother in the evening and informed her to take the victim from Vijaypur. He took the phone number of the person of Vijaypur who made call to victim's mother and he himself talked to that person. Said person enquired about his identity then he told victim's parents are residing in his land and he shared his location at the temple near to Toll Plaza. He went to said location on his motorcycle and saw 50/60 persons from the village were standing they told him some drunken boys were teasing the victim and victim was crying. One person took my Aadhar card, informed the police about me identity and after verifying my identity they permit me to meet with victim. Firstly he called victim but she did not respond then he called victim by her name. She recognized me and then public handover the custody of the victim to him. He took the victim and handed her over to her mother at her house. He told mother's victim that he had brought both the sisters back from the village near Sarore. He denied his statement under section 161 recorded by police under that he recovered the victim from Gangyal then said he had brought her from Kunjwani. In cross-examination, he stated that he had never seen the accused and victim in suspicious circumstances Younger sister of the victim was accompanying with him when he brought victim from Sarore and he narrated the incident to the police that victim's younger

sister was also with him. He made the same statement to the police which he made today in the court. Younger sister of the victim was not arrayed in this incident on the grounds she was toddler in age and minor. Police did not get identified the place where from he brought victim.

33. PW-12 Inspector Joginder Singh, investigating officer stated PW-1 lodged a written complaint in the police station and on 04.08.2022 he conducted the investigation of FIR No. 87/2022 offences under Section 363 and 376 IPC offences under section 3 and 4 POCSO Act. He stated he went to the place of occurrence from where the victim had been kidnapped and prepared the site map exhibit EXPT-12 of the occurrence. During investigation he found victim took the phone from passersby and made a call at her home at Chhattisgarh. Thereafter PW-3 Parveen Singh landlord received a phone call and he received victim at night. The mother of the victim and victim come to the police station at night. On the basis of the investigation, he established offence under section 363,376 IPC and offences under section 3 and 4 POCSO Act against accused. In cross examination he stated he PW Parveen Singh had not recovered the victim in his presence. In the complaint it was written at 11:30 PM victim herself returned from the Jungle and it is not written in the complaint that accused kidnapped the victim on his motorcycle. He did not investigate the complaint was written by the complainant herself. He did not conduct the identification parade of the accused and neither prepared any document for identification parade which established Ravi Pandit and Appu Singh are one and same person. In the medical report Doctor has opinion no evidence of recent sexual intercourse and despite this accused was arrested on 05.08.2022 on the statement of the victim. He did not get any proof of date of birth of the victim except photocopy of Aadhar card which made part of the challan. He did not examine the Aadhar card of the accused. He admitted that he has not prepared the site plan of the place of occurrence of rape at Narwal neither made part of such site plan in the challan. He stated from Gangyal to Narwal Chowk, there are several police nakas and he did not enquire from any police naka pertaining to the incident. He did not enquire from the victim whether she had raised any hue and cry when she was being taken on the motorcycle and she made any attempt to save herself. He established the offences against accused merely on the statements of the victim and her mother.

34. As per the statement of PW-1 it appears that at the time of incident victim age 17 years was made to ride on the accused motorcycle at Gangyal and she was taken to Narwal where the distance between two places is about more than 10 KM and PW-12 stated number of police naka falls under this route and victim did not made any noise and cry for saving from her kidnapping and she remained accompany with accused during this journey. It was alleged that accused took the victim in the Narwal Jungle and committed rape upon her and thereafter accused dropped her at Kajwani Chowk. At Kujwani Chowk she took mobile from a person and informed her location to her known relative at her native village at Chattisgarh and thereafter said relative informed her mother about the presence of the victim at Kujwani Chowk.
35. Considering the facts and circumstances of the prosecution case and deep scrutiny of the evidence available on record, the victim having attained the age of discretion and quite a grown up girl, when the accused was taking her on false pretext to drop at ATM Gangyal and took her at Narwal, but during travelling in motorcycle though she had opportunity to raise alarm to attract persons on the way, but neither did she shout for help from passerby nor made any attempt to leave the company of the accused. In such circumstances, it could be inferred that she was a consenting party, is the submission of the learned counsel for the accused. The evidence of the victim is neither convincing nor there is any substance of truth therein. She is not a truthful witness. Her evidence is, therefore, not reliable and no absolute reliance can be placed on such tainted evidence.
36. PW-1 stated after receiving the call from her relative from Chattisgarh she requested owner and landlord of her juggi PW-3 Parveen Singh to bring her daughter from Kujwani Chowk. PW-3 Parveen Sing his independent witness and has not supported the version of the victim and her mother as he denied that victim was not recovered from Kujwani Chowk but she was recovered from Saroor in the presence of her minor sister.
37. PW-12 investigating officer has admitted that he has not seized the motorcycle used in the crime and he also not prepared the site plan where the victim was raped by the accused. Investigating officer has admitted that he did not collect date of Birth certificate of the victim to ascertain her age and he simply relied upon her Aadhar card.

38. The prosecution case also becomes doubtful as according to the prosecutrix accused took her in the Narwal jungle and committed rape upon her. PW-12 stated he did not go to the place of occurrence where allegedly rape was committed and he did not prepared the site plan of the place for committing rape. Thus, the statement of PW-2 regarding spot of rape does not established and is doubtful.
39. There is no doubt that rape causes great distress and humiliation to the victim of rape but at the same time false allegation of committing a rape also causes humiliation and damage to the accused. An accused has also rights which are to be protected and the possibility of false implication has to be ruled out. The Hon'ble Supreme Court in reported judgment titled **Radhu Vs. State of Madhya Pradesh, 2007(6) Supreme 196** had in this context noted as follows:
- “The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a person has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability, whether there was rape or not would depend ultimately on the facts and circumstances of each case.”
40. Thus, in view of the aforesaid discussion, the prosecution has failed to prove its case beyond reasonable doubt. Every part of the testimony of the prosecutrix is infirm, doubtful and contradictory as well as improbable which does not pose confidence. There is no corroborative evidence in support of the testimony of the prosecutrix.

D. Presumption of Section 29 of POCSO Act.

41. The fourth submission advanced by Ld defence counsel Ms Mandeep Reen Advocate for the accused would lament on the presumptive clause as per section 29 and 30 of the POCSO Act which clearly demonstrate that conviction can be passed against the accused on the testimony of the prosecutrix under POCSO Act if it inspire confidence. But in the present case the prosecution has failed to establish foundational facts beyond doubt against the accused kidnapped the victim and thereafter committed the penetrative sexual assaults on her as such foundation of Section 29 does not operates against accused.
42. At the outset, it is necessary to mention that prosecution is duty bound to prove the guilt of the accused beyond reasonable doubt. The accused is

entitled to the benefit of doubt. The benefit of doubt created on the basis of the evidence led by the prosecution cannot be denied to the accused on the spacious plea advanced by the prosecution by relying upon Section 29 of the POCSO Act. The presumption under Section 29 of the POCSO Act requires the prosecution to first prove foundational facts beyond a reasonable doubt for it to operate against the accused. There can be no quarrel with the proposition of law that Section 29 of POCSO Act raises a presumption of guilt against a person when prosecution established offence of sexual assault which is punishable under Section 3 and 4 of POCSO Act. It is necessary to mention that prosecution is duty bound to prove the guilt of the accused beyond reasonable doubt. Reference can be placed on the following judgments:-

43.1. In reported judgment **Swapan Mondal Vs. State, 2021 SCCOnLine Cal 2007**, it has held that unless the prosecution is able to prove foundation facts in the context of the allegations made against the accused under the POCSO Act, the presumption establishes such facts and the presumption is raised against the accused, he can rebut the same either by discrediting prosecution evidence through cross-examination demonstrating that the prosecution case is improbable or absorbed or the accused could lead evidence to prove his defence, in order to rebut the presumption. In either case, the accused is required to rebut the presumption on the touchstone of preponderances of probability.

43.2. In another judgment **Manirul Islam @ Manirul Zaman Vs. State Of Assam And Anr; 2021 0 Supreme(Gau) 44**; it has been observed the prosecution would be under an obligation to lay down the foundational facts before presumption can be drawn against the accused under Section 29 and 30 (2) of POCSO Act.

43.3. In another reported judgement titled **Abhinandan Sah @ Abhinandan Kumar Sah Vs. State of Bihar, 2023 0 Supreme (Pat) 1032**; it has been observed at para no 31 and 32 of the judgment that:-

31. It is necessary to examine the effect of presumption under Section 29 of the POCSO Act and the manner in which accused could rebut such presumption. Under Section 29 of the POCSO Act, it cannot be said that presumption is absolute. It would come into operation only when the prosecution is first able to establish facts that would form the foundation for the presumption under Section 29 of the POCSO Act to operate. There

may be difficulty in proving a negative fact. It is trite law that negative cannot be proved. In order to prove a contrary fact, the fact whose opposite is sought to be established, must be proposed first.

32. It is pertinent to mention that foundational facts in a POCSO case includes the proof that the victim is a child, that the alleged incident has taken place, that the accused has committed the offence and whenever physical injury is caused, to establish it with medical evidence. If the basic and foundational facts of prosecution case is laid by adducing legally admissible evidence then burden gets shifted to the accused to rebut it by establishing from the evidence on record that he has not committed the offence or that no such incident was occurred or that victim is not a child.”

43.4. In reported judgment in case **Sunder Lal Vs. State of Himachal Pradesh 2024(1) 440 (H.P)** it is observed that:-

No doubt, Section 29 of the Act contains a legislative mandate that the Court shall presume the commission of an offence by the accused only the contrary is proved. Section of the Act states that where a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and 9 of the Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. However, the statutory presumption under Section 29 of the Act does not mean that the prosecution version has to be accepted as a gospel truth in every case. The presumption does not mean that the Court cannot take into consideration the special features of a particular case. Patent absurdities or inherent infirmities or improbabilities in the prosecution version may lead to an irresistible inference of falsehood in the prosecution case. The presumption would come into play only when the prosecution is able to bring on record facts that would form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegations against the accused and to claim that the case projected by it is true. The Court must be on guard to see that the application of the presumption without advertent to essential facts does not lead to any injustice.

44. It is well established that the presumption under Sec. 29 is available where the foundational facts exist for commission of offence under the POCSO

Act. The Hon'ble Supreme Court in the case of **Just Rights For Children Alliance and Another Vs. S. Harish and Others**, reported in **2024 SCC Online SC 2611**, has held as follows:-

“173. Since a negative cannot be proved, an accused cannot be asked to disprove his guilt even before the foundational allegations with supporting material thereof are placed and duly established by the prosecution before the court. Unless the prosecution is able to prove foundational facts in the context of the allegations made against the accused under any specific provision of the POCSO as the case may be, the statutory presumption of culpable mental state under Section 30 of the POCSO will not come into the picture”.

45. In the absence of cogent evidence brought on record to prima-facie establish the foundational facts, conviction of the accused cannot be based solely on presumption of guilt. Since victim “S” is important witness of the present case. She is not sterling witness and in absence of other corroborated evidence her testimonies cannot be relied upon. In view of the evidence on record and the rationale in the aforementioned cases, this court is of a considered view that the prosecution has totally failed to prove beyond reasonable doubt that accused is wrongdoer of sexual assault on the victim. Whereas, what has become a trite and unfortunate practice is that the Police are filing POCSO cases at the behest of the family of a girl to settle their other trivial issues by registration false case against accused. The rigor of the law is therefore being misapplied and subsequently misused.
46. As seen earlier, the testimony of the victim-girl is not at all trustworthy and her testimony is discarded as same is not corroborated by the independent witness. The other evidence which is in the nature of the corroboration also rules out the possibility of any sexual assault by the accused person on the victim-girl. When the evidence of the victim is intrinsically in separable one, then her whole evidence is liable to be rejected.
47. A criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim, and above all the societal interest for preservation of the rule of law. Neither the accused nor the victim can be permitted to subvert a criminal trial by

stating falsehood and resort to contrivances, so as to make it the theatre of the absurd. Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply awarding punishment to accused on moral pressure. Reference can be placed on the judgment reported as **Rahul vs. State of Delhi Ministry of Home Affairs, 2022 0 Supreme (SC) 1136**; it has held “It may be true that if the accused involved in the heinous crime go unpunished or are acquitted, a kind of agony and frustration may be caused to the society in general and to the family of the victim in particular, however the law does not permit the Courts to punish the accused on the basis of moral conviction or on suspicion alone. No conviction should be based merely on the apprehension of indictment or condemnation over the decision rendered. Every case has to be decided by the Courts strictly on merits and in accordance with law without being influenced by any kind of outside moral pressures or otherwise.”

48. This Law point has been also settled in case reported as **Mohd Maqbool Ganai vs. Union Territory of J&K (Jammu & And Kashmir And Ladkah (DB), 2023 0 Supreme (J&K) 253**; Our Hon’ble High Court has held that no conviction/ punishment can be rendered upon an accused merely on the ground of apprehension and influenced by sentiments.”
49. It is settled law that in a case of Sexual offence where an accused is falsely implicated, the real victim in such case is not the “alleged victim” of sexual violence, but the accused, who has been falsely implicated in the crime of sexual violence, which has been instituted falsely. This aspect of the matter has to be borne in mind by the investigating officer, prosecutor as well as by the Courts.
50. In a Criminal cases, the onus is on the prosecution to prove its case beyond all reasonable doubt. On a detail examination and scrutiny of the evidence, produced by the prosecution, it is considered view of this court that the prosecution has failed to establish the commission of alleged offences by the accused person beyond all reasonable doubt, therefore he deserves benefit of the doubt.
51. Thus, the presumption that operates under Section 29 of the POCSO Act is not absolute and it is triggered only when the prosecution is able to prove the foundational facts in the first place. If the accused is able to create serious doubt on the veracity of the prosecution case or accused

brings the material on record which would render the prosecution version highly improbable, the presumption would get weakened.

52. The presumption under Section 29 of the POCSO Act requires the prosecution to first prove foundational facts beyond a reasonable doubt for it to operate against the accused. It is necessary to examine the effect of presumption under Section 29 of the POCSO Act and the manner in which accused could rebut such presumption. Under Section 29 of the POCSO Act, it cannot be said that presumption is absolute. It would come into operation only when the prosecution is first able to establish facts that would form the foundation for the presumption under Section 29 of the POCSO Act to operate. There may be difficulty in proving a negative fact. It is trite law that negative cannot be proved. In order to prove a contrary fact, the fact whose opposite is sought to be established, must be proposed first.
53. A proper analysis of the prosecution witnesses and the other evidence brought on record by the prosecution shows that the foundational facts, necessary in the present to raise presumption under Section 29 of the POCSO Act, have not been established beyond reasonable doubt by the prosecution. The defence has been able to demonstrate that the prosecution story cannot be believed and that, therefore, the presumption would not operate.
54. Thus, the quality of evidence required to convict an accused for a criminal offence attracting the provisions of as stringent a law as the POCSO Act, is definitely missing in the present case. Thus upon juxtaposition of evidence discussed and principles of law laid down in the decisions supra, it would emerge that the prosecution evidence cannot be said to be definite, positive, consistent and coherent as for as charge for offences 363,376 IPC and Section 3 and 4 of the POCSO Act against the accused is concerned as serious doubts are left in the prosecution case on the charge as aforesaid thereof, benefit of the doubt has to be given to the accused.
55. As a sequel to the discussion aforesaid it has to be held that the prosecution is not able to adduce cogent and emphatic evidence in proving the guilt of the accused person. The court found the evidence presented by the prosecution insufficient to prove the accused's guilt beyond a reasonable doubt, highlighting inconsistencies and lack of corroborative medical

evidence. This court finds that the arguments of the defence counsel is well founded that it is settled principle of law that acquittal leads to presumption of innocence in favour of the accused. To dislodge the same onus heavily lies on the prosecution. It is imperative that the law which court should follow for awarding conviction under the provisions of POCSO Act is “stringent the punishment strict the proof”. Therefore, in the backdrop of discussion made herein above the conclusion arrived that the prosecution must establish foundational facts for the presumption under Section 29 of the POCSO Act to apply and the evidence presented was not sufficient to meet this burden. The prosecution has not been able to prove the case against the accused beyond any reasonable doubt and benefit of doubt is required to be given to the accused under law. That being so, accused person deserves acquittal and are accordingly acquitted of the offences under section 363 and 376 IPC and Section 3 and 4 of the POCSO Act. Accused person is presently lodged in District Jail Amphalla Jammu. In-charge Superintendent District Jail Amphalla Jammu is directed to release the accused from the judicial custody in case his custody is not required in another case. The seized items of the case shall be destroyed after the period of appeal.

56. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.
57. The original challan is dismissed accordingly and sent to record after its due completion.

Announced.
08.09.2025.

Sunil Sangra
Special Judge
Fast track Court (POCSO Cases)
Jammu.

Anil Verma/
Executive Assistant