



CGHC010036262026



2026:CGHC:31431-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 295 of 2026**

Krishna Yadav S/o Budhram Yadav Aged About 32 Years R/o Barampur,
Shanti Nagar Sarvamangala, P.S. Kusmunda, Distt. Korba, Chhattisgarh.
Present R/o Gram Tilkeja, P.S. Urga, Distt. Korba, Chhattisgarh.

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

State Of Chhattisgarh Through P.S. Kotwali, Korba, Distt. Korba,
Chhattisgarh.

... Respondent(s)

(cause title taken from CIS)

For Appellant (s) : Mr. Anshul Tiwari, Advocate

For Respondent(s) : Mr. Ashish Shukla, Addl. Advocate General

Hon'ble Mr. Ramesh Sinha, Chief Justice**Hon'ble Mr. Ravindra Kumar Agrawal, Judge****Order on Board****Per Ramesh Sinha, Chief Justice****23.07.2026**

1. Heard Mr. Anshul Tiwari, learned counsel for the appellant and Mr. Ashish Shukla, Addl. Advocate General for the Respondent/ State.

- 2. Vide order dated 25.04.2026, notice was issued to the mother of the victim/ complainant (PW/1), regarding pendency of the appeal as well as application for suspension of sentence and grant of bail.
- 3. Learned counsel for the State would submit that the notice has been served to PW/1 (mother of the victim). Despite the service of notice, no one appears in the case to make submission on their behalf, therefore, we proceed to hear the matter.
- 4. Today, the matter has been listed for consideration on I.A. No. 01 which is an application for suspension of sentence and grant of bail. Considering the fact that the appellant is in jail since 24.08.2024, with the consent of the parties, the appeal itself has been heard finally. Accordingly, I.A No. 01 is disposed of.
- 5. The present criminal appeal has been filed under Section 415(2) of Bhartiya Nagrik Suraksha Sanhita, 2023 against the impugned judgment of conviction and sentence dated 08.12.2025 passed by learned Addl. Session Judge, FTSC (POCSO) Korba (C.G.) in Special Case (POCSO) No. 46/2024 whereby the appellant has been convicted and sentenced in the following manner:-

S.No	Conviction	Sentence
1.	Under Section 65 (1) of Bharatiya Nyaya Sanhita, 2023.	R.I. for 25 years and fine of Rs. 5000/- in default of fine additional R.I. for 2 months.
2.	Under Section 137 (2) of Bharatiya Nyaya Sanhita, 2023.	R.I. for 5 years and fine of Rs. 2000/- in default of payment of fine additional R.I. for 1 months.
3.	Under Section 04 of Protection of Children from Sexual Offences Act, 2012.	The accused was punished under Section 65 (1) of Bharatiya Nyaya Sanhita, 2023 as it provides for aggravated punishment.

		(All the sentences shall run concurrently)
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6. The case of the prosecution is that, on 22.08.2024, PW/1-mother of the victim lodged a written complaint to the Police with the allegation that her minor daughter was being kidnapped on 22.08.2024 at about 4.30-4.45 PM and has committed rape upon her and after committing rape, he left her near Sanolia. Her daughter came back by crying and disclose about the incident. Based on her written complaint (Ex-P/1), the FIR (Ex-P/2) was registered against unknown persons for the offence under Section 137 (2), 65 (1) of Bhartiya Nyaya Sanhita, 2023 (in short “BNS”) and Section 4 and 6 of Protection of Children from Sexual Offence Act, 2012 (in short “POCSO Act”). The victim was sent for her medical examination to District Hospital, Korba, where she was medically examined by PW/4 Dr. Ananya Shrivastava, who gave her report (Ex-P/12). While medically examined the victim, she noticed nail abrasion mark over left hand near rist joint and her hymen was ruptured. Two slides of her vaginal swab were prepared, sealed and handed over to the Police for its chemical examination and she referred for her urion pregnancy test and age determination. Spot map (Ex-P/3 and P/4) was prepared by the Police and (Ex-P/7 and P/8) was prepared by the Patwari. With respect to the age and date of birth of the victim, the primary school mark-sheet has been seized vide seizure memo (Ex-P/6). The school register has also been seized vide seizure memo (Ex-P/10) and after retaining its attested true copy (Ex-P/11C), the original register was returned back to the school. The appellant was arrested on 24.08.2024 and he too was sent for medical examination to

District Hospital, Korba, where he was medically examined by (PW/9) Dr. Diksha Markam, who gave her report (Ex-P/17). After medically examined the appellant, the doctor has found him able to do sexual intercourse. The appellant was put to test identification parade which was conducted by the Nayab Tahsildar, Korba on 23.08.2024 and the victim has duly identified the appellant and TIP memo (Ex-P/9) was prepared. The memorandum statement of the appellant (Ex-P/18) was also recorded and his moter cycle and mobile phone has been seized vide seizure memo (Ex-P/19). The mobile phone seized from the appellant was for its cyber analysis report, from where report (Ex-P/30 and P/33) and certificate under Section 65-B of the Evidence Act, 1872 (Ex-P/32) have been received. The vaginal slides, nail clipping of the victim, hair of the victim and her underwear as well as hair of the appellant, his semen slides and underwear of the appellant were sent for its chemical examination to Regional FSL Bilaspur, from where report (Ex-C/1) was received and as per the FSL report semen and sperms were found on vaginal slide, underwear of the victim and semen slide of the appellant and his underwear. Statements of the witnesses under Section 161 of the Cr.P.C. and the statement of the victim under Section 164 of the Cr.P.C. were recorded. After completion of the investigation, the Police filed a charge-sheet against the appellant for the offences under Sections 137(2) and 65(1) of BNS and Section 4 and 6 of POCSO Act.

7. The learned trial Court framed charges against appellant for the offences punishable under Sections 137(2) and 65 (1) of BNS and Section 4 of POCSO Act. The appellant abjured his guilt and claimed trial.

8. In order to prove the charges, the prosecution examined as many as 13 witnesses. The statements of the appellant under Section 313 of the Code of Criminal Procedure were also recorded, wherein he denied circumstances appearing against him, pleaded innocence, and stated that he has been falsely implicated in the case.
9. After appreciation of the oral as well as documentary evidence produced by the prosecution, the learned trial Court convicted the appellant and sentenced him as has been mentioned in the earlier part of this judgment, hence this appeal.
10. Learned counsel for the appellant would submit that the prosecution has failed to establish its case beyond reasonable doubt. There are material omission and contradictions in the evidence of prosecution witnesses. There are material contradictions in the evidence of the victim as well as other witnesses. The victim being the tuiiter witness cannot be relied upon for holding conviction of the appellant. Initially, the victim could not identify the accused who committed the offence with her, however, in the subsequent stage, on the instance of her mother and the police personnel, she identified the present appellant and there is discrepancies in the identification of the appellant also. He would further submit that the age of the victim has also not been proved by the prosecution by leading cogent evidence which has been produced by the prosecution are inadmissible and not sufficient to hold that to determine the age of the victim. He would further submit that the victim was having love affair with his classmate and she had gone to Jungle along with him and when the present appellant saw them together, he raised objection and only to save her boyfriend, she made allegation against the present appellant. There is no sufficient material

except from the mobile phone of the appellant. The entire conduct of the victim as well as the evidence of the prosecution witnesses are suspicious. The evidence of the victim is not believable on the material allegation and the appellant at least is entitled for benefit of doubt and he may be acquitted. In alternative, he is further submit that the learned trial Court has awarded the maximum punishment for the alleged offence and considering the nature of offence, his sentence may be reduced for the minimum sentence provided for the offence.

11. On the other hand, learned State counsel supported the impugned judgment and submitted that the prosecution has duly proved its case beyond reasonable doubt by leading cogent as well as clinching evidence against the appellant. The victim has duly identified the appellant in TIP conducted by Nayab Tahsildar. The injuries found on the body of the victim and that semen and sperms were also found on her vaginal slides. These clinching evidence duly proved the allegation against the appellant that on the date of incident he kidnapped the victim and committed rape upon her. The victim was minor and her age has been proved by the prosecution by leading evidence of school teacher along with the documentary evidence of school record (Ex-P/11C) and there is no reason to disbelieve the entries made in the school register which has been made mach prior to the date of incident. There are sufficient overwhelming evidence against the appellant and the learned trial court has rightly convicted and sentenced him which need no interference and the appeal filed by the appellant is liable to be dismissed.

12. We have heard learned counsel for the parties and perused the material annexed with the appeal.

13. The first question arose in the case as to whether the victim was minor and less than 18 years of age on the date of incident or not.
14. The prosecution has proved the age of the victim by the evidence of PW/3, who is the Assistant Teacher of school, and proved the school register (Ex-P/11C). He stated in his evidence that school register was seized by the Police vide seizure memo (Ex-P/10) and after retaining its attested true copy, the original register was return to the school which he brought with him today. The original register is (Ex-P/11) and its attested true copy is (Ex-P/11C). He duly identified the Headmaster from whom the school register was seized. In cross-examination though he stated that his signature is not there in the school register (Ex-P/11). He further admitted that on what basis, the date of birth of the victim is recorded in the school register (Ex-P/11), he could not tell. But the relevant document are kept in safe custody in the school. From the evidence of this witness, though, he is not the author of the school register but the defence could not be able to extract any material in the date of birth recorded in the school register is wrong or any other date of birth of the victim is there which has not been recorded. From the date of birth recorded in the school register, on the date of incident, the victim's age comes to about 13 years and one month.
15. In the matter of “**Jarnail Singh v. State of Haryana**” 2013 (7) SCC 263, the Hon'ble Supreme Court in Para 22 to 24 held that:-
- “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.

24. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW - PW6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied upto class 3 only, and thereafter, had left her school and had started to do household work. The prosecution in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW-PW6, on the next available basis, in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW4), to prove the age of the prosecutrix VW – PW6. Satpal (PW4) was the Head Master of the Government High School, Jathlana, where the prosecutrix VW - PW6 had studied upto class 3. Satpal (PW4) had proved the certificate Exhibit-PG, as having been made on the basis of the school records indicating, that the prosecutrix VW - PW6, was born on 15.5.1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are therefore of the

view, that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW – PW6. It would also be relevant to mention, that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the prosecutrix VW-PW6. The deposition of Satpal-PW4 has not been contested. Therefore, the date of birth of the prosecutrix VW - PW6 (indicated in Exhibit P.G., as 15.7.1977) assumes finality. Accordingly it is clear, that the prosecutrix VW-PW6, was less than 15 years old on the date of occurrence, i.e., on 25.3.1993. In the said view of the matter, there is no room for any doubt that the prosecutrix VW - PW6 was a minor on the date of occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court, that even if the prosecutrix VW-PW6 had accompanied the accused-appellant Jarnail Singh of her own free will, and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor.”

16. PW/2, the victim has stated in her evidence that her date of birth is 28.04.2012 and she studying in Class-8. In cross-examination, the defence has not specifically challenged her date of birth except the suggestion given in her cross-examination that she has got admitted in Class-1 at Village- Parsada and with respect to her admission in Class-1, she has not given any document to the Police. From her evidence,

the date of birth is remained uncontraverted. From the evidence of the victim her age comes to 12 years, 03 months and 25 days on the date of alleged incident.

17. PW/1, who is the mother of the victim, though, she has not disclosed any specific date of birth of the victim but she stated that she had given the primary school mark-sheet (Article-A/1) of the victim to the Police which has been seized vide seizure memo (Ex-P/6). In her cross-examination also the age of the victim has not been specifically challenged by the appellant.

18. The learned trial Court has also considered the evidence available on record and has held that on the date of incident, the victim was less than 16 years of age and as per the school record, her age comes to 13 years and 01 month and 17 days and as per her evidence, her age come to 12 years, 3 months and 25 days and in any case, she could not be more than 16 years of age. After appreciating the evidence available on record, we also concur with the finding recorded by the learned trial Court that on the date of incident, the victim was less than 16 years of age.

19. So far as the offence of kidnapping and rape is concerned, we again examined the evidence of the victim (PW/2).

20. (PW/2), the victim has stated in her evidence that on 22.08.2024, at about 4.30 PM, when she was returning from the school, near Nagar Nigam parking, the appellant met her. He inquired about her father and allured her and took her with him by his motor cycle. He took her to Jungle at Bundeli and on the way, he purchased snacks from a hotel. In the Bundeli Jungle, he committed rape upon her. When she tried to

run away from the place, she could not succeeded as the appellant caught hold her. Despite her protest and repeated request, the appellant has not leave her and after committing the rape upon her and sexually exploited her, he left her near Sonalia. The appellant also captured her nude photographs in his mobile phone. She came back to her house and informed the incident to her mother and then report has been lodged. She identified the appellant in TIP which is Ex-P/9. In cross-examination, she stated that the appellant allured her and took her with him. She firmly denied that the appellant has not committed any offence with her. She explained as to why she has not raised any alarm that since the appellant allured her and therefore, she could not raise any alarm. She also denied that she had gone to Jungle also with her boyfriend. She also denied the suggestion that to obtain the compensation from the Government, she made false allegation against the appellant. She also denied that before the TIP, the Police shown the photographs of the appellant in the mobile phone. From her entire evidence, the defence could not be able to elicit any discrepancies in her evidence with respect to the allegation of kidnapping, rape, capturing nude photographs would be taken out by the defence. Her evidence is consistent in the allegation made by her against the appellant and there is no infirmity in it. She can be turn as sterling witness as there is no infirmity in her evidence and she duly supported the every allegation raised by her against the appellant.

21. From the nature and quality of the evidence produced by the prosecution, the victim cannot be considered to be a sterling witness as has been held by the Hon'ble Supreme Court in the case of

Santosh Prasad alias Santosh Kumar v. State of Bihar reported in

2020 (3) SCC 443 has held in para 5.4.2. that:-

5.4.2. In Rai Sandeep, this Court had an occasion to consider who can be said to be a "sterling witness". In para 22, it is observed and held as under (SCC p. 29)

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version

of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged"

22.When the victim was medically examined by Dr. Ananya Shrivastava (PW/4), she found her hymen was ruptured and nail abrasion on over left hand rist joint. Two slides of vaginal swab of the victim was prepared, sealed and handed over to the Police for its chemical examination. In the FSL report (Ex-C/1), semen and sperms were found present on the vaginal slides of the victim (Article-A), her underwear (Article-D) and also in the semen slides and underwear of the appellant (Article-F and G) which further corroborates the evidence of the victim that on the date of incident, she was subjected to rape by the appellant.

23.The another piece of evidence to connect the appellant in the offence in question is the Test Identification Parade (TIP), which was conducted by the Nayab Tahsildar (PW/13). He stated in his evidence that on the instructions of Sub Divisional Magistrate, Korba, he conducted TIP on 23.08.2024 at Tahsil Office, Korba in which the victim has duly identified the appellant and TIP Memo (Ex-P/9) was prepared in presence of the witnesses. Though, in cross-examination, he admitted

about sequence of standing the accused and witnesses is not mentioned and the witnesses have not been called by him by giving them notices, however, that itself is not sufficient to discredit the evidence of this witness who is the departmental witness and have no interest in the present proceedings. He independently conducted TIP under the instructions of Sub Divisional Magistrate, Korba. He duly conducted the TIP at Tahsil Office in which the victim has identified the appellant, which has been supported by the evidence of victim (PW/2) also, that she identified the appellant in TIP.

24. PW/1, who is the mother of the victim, she stated in her evidence that on the date of incident, the victim had gone to school and when she could not return after school hours, they started searching her. At about 8 PM, the victim came back and then informed about the incident. She also informed that she was being kidnapped by a boy, he took her to Jungle and committed rape upon her and left her near Sonalia and also that he prepared her obscene video. She lodged the report to the appellant which is (Ex-P/1). In cross-examination, though she admitted the suggestion the defence that she disclosed before the Police that the appellant allured the victim on the pretext of providing sugar bag and if it is not there, she could not tell the reason but that part of her evidence is not the substantial allegation against the appellant. The substantiate part of her evidence is that the victim informed her that a boy was kidnapped her, took her to Jungle and committed rape upon her and also prepared her obscene video. Sufficient corroboration was found from the evidence of this witness to the evidence of the victim.

25. PW/10 is the maternal uncle of the victim, he stated in his evidence that on the date of incident, when the victim could not return from the

school, they started searching her and at about 7-8 PM, she returning to her house by crying. On being asked, she disclosed that Krishan Yadav allured her that he knows her father and took her towards Baishma via Risdi and committed rape upon her and left her back. In cross-examination, nothing substantive could be extracted from this evidence. Further he has only deposed on the basis of the information disclosed by the victim. He is also the witness of the TIP (Ex-P/9). He proved the TIP that the victim has identified the appellant. In his further cross-examination, he remained firm in TIP proceeding conducted by the Nayab Tahsildar at Tahsil Office.

26. PW/11, who is the investigating officer, she stated that from the CCTV footage installed near the place of incident, they came to know about the physic of the accused. She denied that the appellant has been falsely being implicated without any basis, only to benefited the victim of compensation.

27. PW/12, who is the Station House Officer, Police Station Kotwari Korba, he stated in his evidence that he obtained the CCTV footage from the Smart Trust Fuels, Sharda Bihar Korba (Article-A/1) and obtained certificate of its Manager under Section 65-B of the evidence Act which is (Ex-P/32). As per the CCTV footage, it is visible that the appellant had gone to petrol pump along with the victim for filling of petrol in his motor cycle. Nothing substantial is there in his evidence to discredit in his evidence.

28. From all these evidences, the involvement of the appellant in offence in question is duly proved by the evidence of the victim (PW/2), her mother (PW/1), her maternal uncle (PW/10), the evidence of (PW/13) Nayab Tahsildar who conducted the TIP of the appellant, the evidence

of doctor (PW/4) who medically examined the victim, TIP (Ex-P/9), MLC report (Ex-P/12), FSL report (Ex-C/1) and there is sufficient cogent and clinching evidence which pointing towards guilt of the appellant that he committed the offence of kidnapping and rape upon the minor victim.

29. In the case of *State of Punjab vs. Gurmit Singh and Others 1996 (2) SCC 384*, the Hon'ble Supreme Court has held in Para-21 of its judgment that:

“**21.** Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is it is often destructive of the whole not merely a physical assault personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some

reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

30. Further in the matter of ***Appabhai and Another vs. State of Gujarat 1998 (Supp) Supreme Court Cases 241***, the Hon’ble Supreme Court has observed in Para-13 that:

“The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses may go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are other-(Para 13) wise trustworthy.”

31. In the case of ***State of Himanchal Pradesh v. Sanjay Kumar***, 2017 (2) SCC 51, it has been held by the Hon’ble Supreme Court that:

“30. By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person has to be convicted. We have already discussed above the manner in which testimony of the prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevent such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism. Therefore, time is ripe to bring about significant reforms in the criminal justice system as well. Equally, there is also a dire need to have a survivor centric approach towards victims of sexual violence, particularly, the children, keeping in view the traumatic long lasting effects on such victims.

31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance {See [Bhupinder](#)

[Sharma v. State of Himachal Pradesh](#), (2003) 8 SCC 551}. Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.”

32. On these premises, we are of the opinion that learned trial Court has rightly considered the evidence produced by the prosecution against the appellant for his conviction under the alleged offences of Section 137 (2), 65 (1) of BNS and Section 4 of POCSO Act and therefore, we affirm the conviction of the appellant for the aforesaid offences.

33. So far as the sentence awarded to the appellant is concerned, Section 65(1) of BNS provided the minimum sentence of 20 years which may extend to imprisonment for life. In the present case, the appellant has been sentenced for RI for 25 years under Section 65(1) of BNS.

34. In the matter of **Mohammad Giasuddin Vs. State of Andhra Pradesh** reported in **(1977) 3 SCC 287** Hon'ble Supreme Court has observed that If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries and held in Para 9 as follows:

"9. Western jurisprudes and sociologists. from their own angle have struck a like note. Sir Samuel Romilly. critical of the brutal penalties in the then Britain, said in 1817: "The laws of England are written in blood". Alfieri has suggested: 'society prepares the crime, the criminal commits it'. George Micodotis, Director of Criminological Research Center, Athens, Greece, maintains that 'crime is the result of the lack of the right kind of education'. If it is thus plain that crime is a pathological aberration. that the criminal can ordinarily be redeemed. that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social

behaviour has to be countered not by undue cruelty but by reculturation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defense. We, therefore, consider a therapeutic, rather than an 'in terrorem' outlook, should prevail in our criminal courts. since brutal incarceration of the person merely produces laceration of his mind. In the words of George Bernard Shaw: 'If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries'. We may permit ourselves the liberty to quote from Judge Sir Geoffrey Streatfield: "If you are going to have anything to do with the criminal Courts, you should see for yourself the conditions under which prisoners serve their sentences."

- 35.** Further, in the matter of **“Raj Bala Vs. State of Haryana & Others”** 2016 (1) SCC 463 in paragraph 1 & 2 the Hon’ble Supreme Court has held as under :

“1. In Gopal Singh v. State of Uttarakhand[1], while focusing on the gravity of the crime and the concept of proportionality as regards the punishment, the Court had observed:-

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and

punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive.

The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered

moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

[Emphasis supplied]

2. Seven years prior to that, in *Shailesh Jasvantbhai v. State of Gujarat* [2], it has been held that:-

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to

meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society.

Friedman in his Law in Changing Society stated that:

"State of criminal law continues to be as it should be-a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to

undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.*[3]"

[Emphasis supplied]

And again:- "The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal"."

36. Considering the entire facts and circumstances of the case, the age of the appellant and that the nature of palpability, there is no antecedent of the appellant, capability of his reformation, this Court is took it appropriate to reduce the sentence of the appellant for the minimum sentence provided for the offence under Section 65 (1) of the BNS. Therefore, while maintaining the conviction of the appellant, his sentence awarded for the offence under Section 65 (1) of BNS is

reduced from RI for 25 years to RI for 20 years. The rest of the conviction and sentence and default stipulations are remain intact.

37.With the aforesaid modification of the sentence, the appeal filed by the appellant is **partly allowed**.

38.The appellant is reported to be in jail since 24.08.2024, he shall serve the sentence as modified by this Court.

39.Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his 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 High Court Legal Services Committee or the Supreme Court Legal Services Committee.

40.The trial court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice