



2026:CGHC:21349



2026:CGHC:21349

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 556 of 2013**

Anil Kumar Sidar S/o Minketan Sidar Aged About 21 Years R/o Indira Nagar, Ps Tamnar, Distt. Raigarh C.G.

--- Appellant(s)**versus**

State Of Chhattisgarh Through Officer In Charge Of The Ps Tamnar, Distt. Raigarh C.G.

--- Respondent(s)

For Appellant(s) : Mr. Abhishek Saraf, Advocate

For Respondent(s) : Mr. Priyank Rathi, G.A.

ACQA No. 467 of 2018

State Of Chhattisgarh Through The Station House Officer, Police Station Tamnar, District Raigarh Chhattisgarh

---Appellant(s)**Versus**

Anil Kumar Sidar S/o Minketan Sidar Aged About 21 Years R/o Indranagar, P. S. Tamnar, Civil And Revenue District Raipur Chhattisgarh

--- Respondent(s)

For Appellant(s) : Mr. Priyank Rathi, G.A.

For Respondent(s) : Mr. Abhishek Saraf, Advocate



Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge
Judgment on Board

Per Ramesh Sinha, CJ

07.05.2026

1. This appeals arise out of the judgment of conviction and order of sentence dated 10.05.2013 passed by the Second Additional Sessions Judge, Raigarh (C.G.) in S.T. No. 49/2011, whereby the appellant has been acquitted from offence punishable under Sections 366(A) and 376 of the IPC and convicted as under:

Conviction	Sentence
Section 363 of the IPC	R.I. for 03 years and fine of Rs.2000/-, in default of payment of fine 4 months additional R.I.

2. The prosecution story, in brief, is that the complainant (father of the victim), resident of Indiranagar Basanpali, was employed as a driver and on the date of incident had gone for duty in the morning hours. The victim, aged about 12 years, had gone to her school for participation in the Republic Day programme.
3. According to the prosecution, when the complainant returned home in the afternoon and enquired regarding the victim, he was informed that she had not returned from school. Thereafter, he made efforts to trace her in the locality. During the course of such search, he allegedly received information that the accused had



taken the victim to a vacant house situated near the roadside at Indiranagar.

4. It is the further case of the prosecution that when the complainant reached the said place, he allegedly heard the voice of the victim from inside the room. Upon intervention by the complainant, the accused allegedly fled from the spot taking the victim along with him. Since the victim could not be traced despite search, the complainant lodged a report at Police Station Tamnar at about 5:30 p.m., on the basis of which FIR bearing Crime No.19/2011 was registered initially for offences punishable under Sections 365 and 366-A of the Indian Penal Code.
5. The prosecution further alleged that thereafter the accused took the victim to a secluded place and subjected her to sexual assault during the intervening night. On 27.01.2011, the victim was recovered from the custody/company of the accused.
6. During investigation, the victim was medically examined after obtaining consent from her parents and the accused was also subjected to medical examination. The clothes and other relevant articles were seized and forwarded for forensic and chemical examination. The investigating agency prepared the spot map and recorded statements of witnesses including Lalitabai, Laxminarayan, Pankaj and Jagatram under Section 161 of the Code of Criminal Procedure.



7. After completion of investigation, charge-sheet was filed against the accused for offences punishable under Sections 365, 366A and 376 of the Indian Penal Code before the Court of learned Judicial Magistrate First Class, Gharghoda. The learned Magistrate, upon finding prima facie material against the accused, committed the case to the Court of Sessions for trial in accordance with law.
8. The accused denied the allegations and abjured guilt. In his statement recorded under Section 313 of the Code of Criminal Procedure, the accused pleaded innocence and stated that he had been falsely implicated. In defence, Rajaram Patnaik (DW-1) was examined.
9. The prosecution in order to substantiate its case, examined as many as 12 witnesses and exhibited as many as 19 documents (Ex.P-1 to Ex.P-19).
10. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in para 1 of the judgment. Hence, this appeal.
11. Learned counsel appearing for the appellant/accused would submit that the findings recorded by the learned trial Court are contrary to the evidence available on record and settled principles governing criminal jurisprudence. It has been argued that the prosecution has failed to establish the ingredients of offence under Section 363 of the Indian Penal Code and, therefore, the



conviction of the appellant is unsustainable in law, particularly when the appellant has been acquitted of the remaining charges. Learned counsel would further submit that the learned trial Court has erred in determining the age of the victim and that no reliable documentary evidence was produced by the prosecution to conclusively establish that the victim was a minor at the relevant point of time. Referring to the testimony of complainant Suresh Kumar (PW-2), it has been contended that even the father of the victim was uncertain regarding the dates of birth of his children and, therefore, the prosecution version regarding the age of the victim is doubtful. It has also been argued that the conviction cannot rest solely upon oral testimony in absence of cogent corroborative documentary evidence. Learned counsel further submits that the version reflected in the FIR appears unnatural and improbable inasmuch as the complainant allegedly witnessed the victim being taken away yet failed to prevent the accused from fleeing. It has further been contended that the testimony of the victim suffers from material contradictions and omissions vis-à-vis her previous statements and, as such, the prosecution has failed to prove the charges beyond reasonable doubt. Therefore, it has been prayed that the impugned judgment of conviction and sentence deserves to be set aside.

12. Per contra, learned State counsel would submit that the impugned judgment, to the extent it records acquittal of the accused for the offence punishable under Section 376 of the



Indian Penal Code, is contrary to the evidence available on record. It has been contended that the testimony of the victim (PW-3) is natural, cogent and trustworthy and that she has consistently supported the prosecution case in material particulars. Learned State counsel would further submit that the victim was a minor child at the time of the incident and her evidence clearly establishes that the accused had taken her away and subjected her to sexual assault. It has also been argued that the learned trial Court erred in discarding the testimony of the victim merely on the ground that no external injuries were noticed during medical examination and that the medical expert did not render any definite opinion. According to learned State counsel, absence of injuries cannot by itself negate the prosecution case, particularly in cases involving a child victim. It has further been submitted that the learned trial Court itself recorded a finding regarding the minority of the victim on the basis of the material available on record and, therefore, the question of consent was wholly immaterial. Learned State counsel would also submit that non-production of the FSL report could not have been treated as fatal to the prosecution case when the substantive evidence of the victim otherwise inspires confidence and is sufficient to establish the offence. Accordingly, it has been prayed that the appeal preferred by the accused deserves to be dismissed and the appeal against acquittal filed by the State merits acceptance.



13. We have heard the learned counsel for the parties and perused the record with utmost circumspection.
14. The principal issue which falls for consideration before this Court is whether the findings recorded by the learned trial Court, insofar as they relate to conviction of the accused for the offence punishable under Section 363 of the Indian Penal Code and acquittal for the offence punishable under Section 376 of the Indian Penal Code, are sustainable in light of the evidence available on record.
15. It is pertinent to observe that the question whether conviction of the accused can be based on the sole testimony of the victim in cases of sexual assault/rape is no longer res integra. The Hon'ble Supreme Court has dealt with the issue in a catena of judgments and has held that the sole testimony of the victim if found reliable can be the sole ground for convicting the accused and that the creditworthy testimony of the victim in cases of such nature deserves acceptance.
16. The question for consideration is whether learned trial Court has rightly acquitted the respondents despite the presence of the testimony of victim (PW-2) along with other material evidence available on record.
17. This State has preferred appeal against the judgment of acquittal filed by the State under Section 378(1) of the Cr.P.C. The appellate Courts are required to keep in mind that the trial Court



had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box and also required to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonably person would honestly and conscientiously entertain as to the guilt of the accused.

18. The Supreme Court in **C.Antony v. Raghavan Nair, AIR 2003 SC 182** has held that unless the High Court arrives at definite conclusion that the findings recorded by trial Court are perverse, it would not substitute its own view on a totally different perspective.
19. The Supreme Court in **Ramanand Yadav v. Prabhunath Jha, AIR 2004 SC 1053** has held that the appellate Court in considering the appeal against judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.
20. The scope of interference in appeal against the judgment of acquittal is well settled. In **Tota Singh and another v. State of Punjab, AIR 1987 SC 1083** the Supreme Court has held in para 6 as under:-



“6.....the mere fact that the Appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere within an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.”

- 21.** While exercising the appellate jurisdiction against judgment of acquittal the High Courts or the appellate Courts are fully empowered to appreciate and reappreciate the evidence adduced on behalf of the parties while reversing the judgment of the trial Court. The appellate Court is required to discuss the grounds given by the trial Court to acquit the accused and then to dispel those reasons.



- 22.** When a person is charged for offence punishable under the POCSO Act, or for rape punishable in the Indian Penal Code, the age of the victim is significant and essential ingredients to prove such charge and the gravity of the offence gets changed when the child is below 18 years, 12 years and more than 18 years. Section 2(d) of the POCSO Act defines the “child” which means any person below the age of eighteen years.
- 23.** The next issue that arises for consideration in the present appeal is whether the age of the victim on the date of commission of the offence concerned, was below 18 years of age.
- 24.** Regarding the age of the victim, the learned trial Court has elaborately considered the oral as well as documentary evidence available on record and recorded a categorical finding that the victim was a minor at the time of the incident.
- 25.** Suresh Kumar Sahu (PW-2), father of the victim, in his deposition before the Court, stated that the victim was about 11 years of age at the time of the incident. He further deposed regarding the circumstances in which the victim had gone missing on the date of occurrence and the subsequent lodging of the First Information Report. His testimony in material particulars remained substantially unshaken during cross-examination.
- 26.** The victim (PW-3), in her statement before the Court, specifically disclosed her date of birth as 21.02.1998. She also stated that at the relevant point of time she was studying in school and had



gone for participation in the Republic Day programme on the date of occurrence. Her testimony regarding her age finds support from the school record brought on record by the prosecution.

- 27.** The evidence of the victim further indicates that after being taken away by the accused, she was kept confined at different places and was subsequently recovered by the police in presence of her family members and other witnesses. The testimony of prosecution witnesses namely Pankaj Kumar Sahu (PW-4), Jagatram Sidar (PW-5), Laxminarayan Yadav (PW-11), Assistant Sub-Inspector L.R. Bhagat (PW-7) and Investigating Officer Pramod Kumar Khes (PW-12) substantially corroborates the prosecution version regarding recovery of the victim from the company/custody of the accused.
- 28.** Learned counsel for the accused sought to assail the finding regarding minority of the victim on the ground that the prosecution did not produce the original birth certificate, Kotwari register or any radiological examination report for scientific determination of age. Reliance was also placed upon certain judicial precedents to contend that in absence of reliable documentary evidence, the age of the victim cannot be said to have been conclusively proved.
- 29.** This Court is unable to accept the aforesaid contention. Merely because radiological examination was not conducted or certain documents were not produced, the otherwise reliable evidence



available on record cannot be discarded altogether. The victim consistently stated her date of birth and the same finds support from the school record available on record. Furthermore, the father of the victim clearly deposed that she was about 11 years of age at the relevant time.

- 30.** The evidence available on record further reflects that at the relevant point of time the victim was studying in Class VI and subsequently, at the time of her deposition, was studying in Class VII. No material contradiction or effective challenge was brought during cross-examination to probabilise that the victim was major at the relevant point of time.
- 31.** The defence sought to highlight that the father of the victim was unable to state the exact dates of birth of all his children. However, in the facts and circumstances of the case, such omission by itself cannot be treated as sufficient to discard the otherwise cogent evidence regarding age, particularly when the witness categorically stated that the correct age had been mentioned at the time of school admission.
- 32.** The evidence available on record, taken cumulatively, clearly establishes that the victim was about 12 years of age on the date of incident and, therefore, was a minor.
- 33.** Once it stands proved that the victim was a minor at the relevant point of time, her alleged willingness or absence of active resistance loses legal significance. In cases involving a minor



victim, consent in the strict legal sense becomes immaterial and the act of taking away the victim from the lawful guardianship of her parents without their consent squarely attracts the ingredients of the offence punishable under Section 363 of the Indian Penal Code.

- 34.** The prosecution witnesses namely Pankaj Kumar Sahu (PW-4), Jagatram Sidar (PW-5), Sanjay Kumar Dadsena (PW-6) Laxminarayan Yadav (PW-11), Assistant Sub-Inspector L.R. Bhagat (PW-7) and Investigating Officer Pramod Kumar Khes (PW-12) have consistently supported the prosecution version regarding recovery of the victim from the custody/company of the accused.
- 35.** Pankaj Kumar Sahu (PW-4), in his deposition before the Court, stated that he was acquainted with both the accused and the victim. According to him, on 27.01.2011, upon receiving telephonic information from the father of the victim regarding her missing condition, he reached the house of the complainant at Indiranagar, Tamnar and joined in the search for the victim. He further stated that during such search, the accused was found near Tyagi Dhaba situated at Salihabhata and upon being questioned regarding the whereabouts of the victim, the accused attempted to evade the query. The witness further deposed that after arrival of the police, the victim was recovered from a room on the information furnished by the accused and that the room



had been locked from outside. Thereafter, the accused and the victim were taken to the police station by the police authorities.

- 36.** During cross-examination, the witness stated that he was resident of village Padigaon and had received telephonic information from the complainant on the morning of 27.01.2011. Though certain omissions and contradictions with reference to his police statement were brought on record, no material contradiction affecting the core of the prosecution case could be elicited. The witness remained consistent on the material aspect that the victim was recovered from the room at the instance of the accused and that the accused was present at the relevant place and time.
- 37.** The testimony of this witness substantially corroborates the prosecution version regarding recovery of the victim from the company/custody of the accused and also lends assurance to the evidence adduced by the complainant and the investigating agency.
- 38.** Jagatram Sidar (PW-5) has reiterated that he knows the accused Anil and has narrated the sequence of events leading up to the intervention of the police. According to him, on the date of incident, he along with Suresh Sahu, father of the victim Jayshree, had gone on a motorcycle to a hotel near Urjanagar Power Plant, where accused Anil and Jayshree were found together. He has further stated that Suresh Sahu immediately



informed the police, pursuant to which the police arrived at the spot, apprehended both the accused Anil and the victim Jayshree, and took them to the police station. The witness also stated that he accompanied them to the police station and thereafter expressed ignorance about further facts.

- 39.** The testimony of PW-5, thus, remains confined to the aspect of alleged last seen circumstance and subsequent police intervention. His statement lends some support to the prosecution version regarding the presence of the accused and the victim together at the hotel and their being taken to the police station by the police thereafter.
- 40.** PW-2, being the father of the victim, is a material witness for the prosecution and has deposed in detail regarding the occurrence and subsequent events.
- 41.** He has identified the accused Anil Kumar present in Court and stated that his daughter, aged about 11 years at the time of incident. He has narrated that on 26.01.2011, his daughter had gone to school for Republic Day celebrations at about 7:00 a.m., and later did not return home. Upon enquiry, he was informed that she had not returned from school. He has further stated that at about 2:00-2:30 p.m., he was informed by a person on the way that the accused had taken his daughter to a room in Indira Nagar locality. On reaching the place, he found his daughter there and also confronted the accused, who allegedly tried to



fight with him. He then raised alarm and reported the matter to Police Station Tamnar.

42. PW-2 has further stated that on the next day at about 9-10 a.m., his daughter and the accused were found at a dhaba at Hukaradipa, from where the police recovered the victim and handed her over to him. He has also proved his consent for medical examination (Ex. P/4) and his signature on the spot map (Ex. P/5). He has further stated that his statement was recorded by the police during investigation.
43. In cross-examination, PW-2 has been extensively questioned regarding his family background, knowledge of dates of birth of his children, and entries in school records. He has admitted certain facts relating to family composition and schooling of the victim but expressed inability to recall exact dates of birth.
44. He has also made admissions regarding absence of documentary proof at the time of school admission and variation in his recollection of dates mentioned in FIR and police statement. He has, however, consistently maintained the core prosecution version regarding missing of the victim, information received, and recovery from the accused.
45. On careful appreciation, the testimony of PW-2 is of significant evidentiary value as it provides the initial complaint, missing report, alleged last seen information, and recovery narrative. Though certain minor discrepancies and omissions have



emerged during cross-examination, they do not materially discredit the core prosecution case, particularly regarding the missing of the victim and subsequent recovery.

46. Accordingly, PW-2's evidence inspires confidence on material particulars and substantially supports the prosecution version, subject to corroboration from other evidence on record.
47. PW-3 (victim) herself is the most material witness of the prosecution. She has identified the accused Anil Kumar in Court and has deposed that she was residing with her maternal uncle at Indira Nagar, Tamnar, and that the accused also resided in the same locality, a few houses away from her residence.
48. She has stated that on 26.01.2011, while returning home on foot after attending the Republic Day function at her school, the accused came from behind, covered her mouth, forcibly caught hold of her hands, and dragged her to a nearby dilapidated house. She further deposed that she became unconscious as she had not eaten anything since morning.
49. According to her, when she regained consciousness, she found herself in another room where her hands and legs were tied, her mouth was gagged, and her clothes were found in a disarranged condition. She stated that she was in severe pain in her private parts and was unable to raise alarm due to being gagged and tied. She further stated that the room was locked from outside.



- 50.** PW-3 has further deposed that the police subsequently arrived at the spot along with her father, maternal uncle, and other relatives, and she was rescued and taken to the police station. Thereafter, she was medically examined with her consent at the Government Hospital, Tamnar, and her signature appears on the consent form (Ex. P/6).
- 51.** At the initial stage, the witness was declared hostile by the prosecution and permission was granted to put leading questions. In such examination, she admitted that the accused had taken her to another room where she was confined overnight and further stated that the accused had committed sexual assault upon her during that period. She also supported the prosecution version that she was recovered from a room at Tyagi Hotel by the police in the presence of her father and relatives.
- 52.** In cross-examination by the defence, PW-3 was confronted with several suggestions regarding alleged consensual relationship, false implication, and alleged prior intimacy with the accused. However, she denied all such suggestions. She consistently maintained that she was forcibly taken by the accused, kept confined, and subjected to sexual assault.
- 53.** It is also significant that she admitted having made a similar statement before the police during investigation. She further explained that she was under fear and shock at the initial stage, which affected her ability to make prompt statements.



54. On careful appreciation, the testimony of PW-3 is cogent, natural, and substantially consistent on the core aspect of forcible taking away, confinement, and subsequent recovery. Minor variations in narration are natural considering her age and the traumatic nature of the incident and do not affect the substratum of the prosecution case.
55. The defence has not been able to elicit any material contradiction or improbability which would discredit her testimony on material particulars. Her evidence is further corroborated by PW-2 (father), PW-4, PW-5, and PW-12 regarding recovery and surrounding circumstances.
56. Accordingly, the evidence of PW-3 inspires confidence and stands as the strongest foundation of the prosecution case, clearly establishing the occurrence and the role attributed to the accused.
57. The Supreme Court in the matter of **Rai Sandeep @ Deenu v. State of NCT of Delhi, 2012 (8) SCC 21** held as under:-

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more



relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable



the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

- 58.** When considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version. In **State of H.P. v. Shree Kant Shekar (2004) 8 SCC 153** the Hon^{ble} Supreme Court held as follows:“

“21. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice, would suffice.”



- 59.** On these lines, the Hon'ble Supreme Court in **Shivasharanappa and Others v. State of Karnataka, (2013) 5 SCC 705** observed as follows:

“17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable.”

- 60.** Upon a holistic evaluation of the entire oral and documentary evidence on record, it is evident that the prosecution case does not rest upon a solitary or isolated piece of evidence but is founded upon a consistent chain of natural and mutually corroborative circumstances.
- 61.** The evidence of PW-2 (father of the victim), PW-3 (victim herself), PW-4, PW-5, PW-11 and PW-12, when read in conjunction, establishes a coherent narrative commencing from the missing of



the victim, receipt of information regarding her whereabouts, tracing of the victim, recovery from a confined place, and her subsequent medical examination.

- 62.** The testimony of the victim (PW-3), which is the pivot of the prosecution case, is not only cogent and consistent but also inspires inherent confidence. Her statement is corroborated in material particulars by independent witnesses and the investigating officer. The defence has failed to discredit her testimony on any material aspect.
- 63.** In order to constitute an offence under Section 363 IPC, it is sufficient to establish that a minor was taken or enticed away from the lawful guardianship without consent.
- 64.** Similarly, Section 366 IPC stands attracted where such kidnapping is coupled with intent that the victim may be compelled or forced to engage in illicit intercourse or is otherwise subjected to sexual exploitation.
- 65.** In the present case, once the minority of the victim stands conclusively established, and once it is proved that she was taken away without the consent of her lawful guardian, the foundational ingredients of Section 363 IPC stand fully satisfied.
- 66.** Further, the surrounding circumstances, including confinement, recovery from a secluded place, and subsequent sexual assault, clearly bring the case within the ambit of Section 366 IPC.



- 67.** Section 376 IPC deals with punishment for rape. The essential ingredients stand satisfied when it is established that sexual intercourse took place and it was without the consent of the victim, or in the case of a minor, consent is legally irrelevant.
- 68.** In the present case, the victim has categorically deposed regarding sexual assault committed upon her by the accused during the period of unlawful confinement. Her testimony is natural, consistent, and unshaken on material particulars.
- 69.** The minor contradictions pointed out by the defence do not dilute the core allegation of sexual assault. The law is well settled that in cases of sexual offences, particularly involving minors, the Court is required to give due weight to the testimony of the victim if it is otherwise trustworthy.
- 70.** Accordingly, the offence under Section 376 IPC stands clearly established beyond reasonable doubt.
- 71.** The defence plea of alleged consensual relationship, false implication, or prior acquaintance does not stand scrutiny. Firstly, the victim is a minor, and therefore the question of consent in law does not arise. Secondly, no credible material has been brought on record to substantiate any prior intimacy or motive for false implication. Thirdly, the defence version remains inconsistent and unsupported by any independent evidence. Mere suggestions in cross-examination cannot dislodge a well-established prosecution case. It is well settled that minor discrepancies, omissions, or



irregularities in investigation do not affect the core of the prosecution case unless they go to the root of the matter.

- 72.** In the present case, the alleged deficiencies in documentation, procedural lapses, or absence of certain formal records do not create any reasonable doubt regarding the occurrence of the incident. The substratum of the prosecution case remains intact and unimpeached. The prosecution evidence, when tested on the anvil of probability and natural human conduct, appears wholly reliable. The sequence of events as deposed by the victim and corroborated by independent witnesses is natural and inspires confidence. The prompt reporting of the incident, immediate search for the victim, recovery from a confined place, and medical examination further strengthen the prosecution version. There exists no plausible alternative hypothesis consistent with innocence of the accused.
- 73.** In view of the foregoing discussion and upon reappreciation of the entire evidence available on record, this Court is of the considered opinion that the findings recorded by the learned trial Court acquitting the accused of offences punishable under Sections 366A and 376 of the IPC are unsustainable in law and on facts. The learned trial Court failed to properly appreciate the cogent and reliable testimony of the victim (PW-3), which stands duly corroborated by the evidence of PW-2, PW-4, PW-5, PW-11



and PW-12 as well as the surrounding circumstances established by the prosecution.

74. This Court further finds that the prosecution has successfully proved beyond reasonable doubt that the victim was a minor at the time of the incident and that the accused had taken her away from the lawful guardianship of her parents and thereafter kept her confined and subjected her to sexual assault. The testimony of the victim is trustworthy, natural and inspires confidence. The defence has failed to create any reasonable doubt regarding the prosecution case.
75. It is well settled that in an appeal against acquittal, the High Court is fully empowered to reappraise the entire evidence on record and to interfere where the findings of the Trial Court are perverse, unreasonable or suffer from material illegality. The jurisdiction of the appellate Court is co-extensive with that of the Trial Court, though the rule of prudence requires due deference to the view taken by the trial Court.
76. In ***Chandrappa v. State of Karnataka, (2007) 4 SCC 415***, the Hon'ble Supreme Court has authoritatively laid down that an appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded, and that there is no limitation in law on its power to review such evidence. Relevant paras of the judgment are hereinbelow:



“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge:

[1]An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

[2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

[3] Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasis the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

[4] An appellate Court, however, must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption



of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

[5] If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by [4] the trial Court.”

77. Thus, it is a settled principle that while exercising appellate powers, even if two reasonable views/conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.
78. Similarly, in ***Ghurey Lal v. State of U.P., (2008) 10 SCC 450***, the Hon’ble Supreme Court has held that interference with an order of acquittal is justified where the Trial Court’s conclusions are manifestly erroneous, based on misreading of evidence, or where material evidence has been ignored, leading to miscarriage of justice.
79. In the present case, this Court finds that the learned Trial Court has misread and misappreciated the evidence on record, particularly the testimony of the victim (PW-3), which is cogent, consistent and inspires confidence. The rejection of such testimony is not based on any material contradiction but on an erroneous approach, contrary to the settled principles governing appreciation of evidence in sexual offence cases.



80. The Trial Court has further failed to properly appreciate the corroborative testimonies of PW-2, PW-4, PW-5 and PW-12, which collectively establish a continuous chain of circumstances relating to the missing of the victim, her unlawful confinement, and recovery from the custody of the accused. Non-consideration of such material evidence amounts to a serious infirmity in the impugned judgment.
81. The approach adopted by the Trial Court, therefore, suffers from palpable infirmities and misreading of evidence, rendering the findings perverse and unsustainable in law. The conclusions arrived at are not a possible or plausible view on the evidence available on record.
82. In view of the principles laid down in ***Chandrappa v. State of Karnataka (supra)*** and ***Ghurey Lal v. State of U.P. (supra)***, this Court is of the considered opinion that this is a fit case where interference is not only justified but necessary in the interest of justice. Accordingly, the acquittal recorded by the learned Trial Court in respect of offences under Sections 366A and 376 of the IPC deserves to be set aside, and the accused is liable to be convicted on reappraisal of the evidence.
83. Consequently, the acquittal appeal i.e. ACQA No.467/2018 preferred by the State against acquittal deserves to be allowed. The judgment of acquittal passed by the learned trial Court insofar as it relates to offences punishable under Sections 366A



and 376 of the IPC is hereby **set aside**. Accordingly, the accused/respondent is held guilty and convicted for offences punishable under Sections 366A and 376 of the IPC.

84. So far as the question of sentence is concerned, considering the age of the victim, nature and gravity of the offence, the manner in which the victim was taken away and confined, the overall facts and circumstances of the case and further the fact that since the date of incident is of the year 2011, the provisions of law as applicable at the relevant time under Section 376 of the IPC, the minimum prescribed sentence was rigorous imprisonment for seven year, this Court deems it appropriate to impose the following sentence:

(i) For offence punishable under Section 366A of the IPC, the accused/respondent is sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default of payment of fine, he shall further undergo rigorous imprisonment for one month.

(ii) For offence punishable under Section 376 of the IPC, the accused/respondent is sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default of payment of fine, he shall further undergo rigorous imprisonment for one month. Substantive sentences shall run concurrently.



85. Consequently, the criminal appeal preferred by the accused / appellant being CRA No.556/2013 stands dismissed and his conviction & sentence under Section 363 of the IPC are hereby **affirmed**, whereas the acquittal appeal preferred by the State stands allowed to the extent indicated hereinabove.
86. The accused / respondent is on bail in CRA No.556/2013. His bail bonds are cancelled and sureties discharged. He shall surrender within two weeks from today before the concerned trial Court for serving the sentence as awarded by this Court while allowing the acquittal appeal filed by the State and dismissing the criminal appeal filed by the accused / appellant, failing which he shall be taken into custody by the Trial Court and sent to jail.
87. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Manpreet