



2026:CGHC:18374-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1577 of 2024**

**1 - Jitendra @ Jeevan Yadav S/o Ishwar Yadav, Aged About 28 Years,
R/o Navagav, Thana - Mandir Hasaud, District - Raipur (C.G.)
(Appellant is in Jail)**

... Appellant**versus**

**1 - State of Chhattisgarh Through The Police Station Mandir Hasaud,
District Raipur (C.G.)**

... Respondent

(Cause-title taken from Case Information System)

For Appellant : Mr. Sangeet Kumar Kushwaha, Advocate.

For State : Ms. Vaishali Mahilong, Deputy Govt. Advocate.

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

Judgment on Board**Per Ramesh Sinha, Chief Justice****22-04-2026**

1. Learned counsel for the State submits that the notice issued to the mother of the victim has been served, however none appears to submit/object the appeal/application for suspension of sentence and grant of bail. Though the matter was listed for orders on I.A. No.01/2024 which is an application for suspension of sentence and grant of bail, however, considering the fact that the appellant is in jail since 27-02-2020, with the consent of parties, the matter has been heard finally.

2. The present Criminal Appeal has been filed under Section 415(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS') against the judgment of conviction and sentence dated 22-06-2024 passed by the learned Additional Session Judge, First Fast Track Special Court, POCSO, Raipur, District Raipur (C.G.) in Special Criminal (POCSO) Case No. 46/2020, whereby the appellant has been convicted and sentenced in the following manner:-

Conviction	Sentence
U/s 376 AB of the IPC	Life Imprisonment with fine of Rs.2,000/-, in default of payment of fine R.I. for 4 months.
U/s 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act')	(Since the appellant has been sentenced Life Imprisonment with fine of Rs.2,000/-, in default of payment of fine R.I. for 4 months for his conviction under Section 376 AB of the IPC, no separate sentence has been awarded to him for his conviction under Section 6 of the POCSO Act.)

3. The prosecution case in brief is that the mother of the the victim, PW-2 lodged a written complaint to the police station Mandir Hasaud on 26-02-2020 Ex.-P/4 alleging in it that at about 03:30 p.m. her daughter informed her that the appellant dragged her towards field and in isolated place he opened his clothes and force her to massage of his penis and thereafter he removed her underwear also, laid her down on the ground and tried to make sexual intercourse with her, however he could not succeeded and left her. He gave her Rs.50/- and asked her not to disclose the incident to anyone. On the basis of her written complaint, the FIR Ex.-P/26 has been registered against the appellant for the

offence under Section 376 of the IPC and Section 4 of the POCSO Act. The victim was sent for her medical examination to Primary Health Center Mandir Hasaud where she was medically examined by PW-4 Doctor Vijay Laxmi Anant and after her medical examination gave report Ex.-P/9. While medically examining the victim, the doctor has noticed abrasion present on her private part and redness was also present and she opined that she had gone through physical abuse and attempt to sexual intercourse within 12 to 20 hours prior to MLC. She was referred to Radiologist for age confirmation. The underwear of the victim has been seized vide seizure memo Ex.-P/2. Spot map Ex.-P/7 was prepared by the police and Ex.-P/10 was prepared by Patwari. With respect to the age and date of birth of the victim police has seized school register Ex.-P/27 vide seizure memo Ex.-P/17 and after retaining its attested true copy Ex.-P/27C, the original register was returned back to the school. The progress report card of Class 5 of the victim has also been seized which is Article A1. The appellant was arrested on 27-02-2020 and he too was sent for his medical examination to Community Health Center Arang, District Raipur where he was medically examined by PW-3 Doctor Todan Lal Todar who gave his report Ex.-P/11. While medically examining the appellant the doctor has not noticed any external injuries on his body and opined that the appellant was able to perform sexual intercourse. The underwear of the appellant was also seized vide seizure memo Ex.-P/15. The underwear of the victim and the underwear of the appellant were sent for its chemical examination to State FSL, Raipur from where report Ex.-P/23

was received and according to the FSL report, semen and sperms were found on the underwear of the victim as well as the appellant.

4. Statement of the victim under Section 164 of the Cr.P.C., statement of witnesses under Section 161 of Cr.P.C. were recorded and after completion of usual investigation charge-sheet was filed against the appellant for the offence under Section 376AB, 506 of the IPC and Section 6, 10 and 18 of the POCSO Act before the learned trial Court.

5. The learned trial Court has framed charge against the appellant for the offence under Section 376AB in alternative Section 376AB read with Section 511 of the IPC and Section 6 of the POCSO Act and in alternative Section 6 read with Section 18 of the POCSO Act. The appellant denied the charge and claimed trial.

6. In order to prove the charge against the appellant, the prosecution has examined as many as 8 witnesses. Statement of the appellant under Section 313 of Cr.P.C. has also been recorded in which he denied the circumstances that appears against him, pleaded innocence and submitted that he has been falsely implicated in the offence.

7. After appreciation of oral as well as documentary evidence led by the prosecution, the learned trial Court has convicted the appellant and sentenced him as mentioned in the earlier part of this judgment. Hence, this appeal.

8. Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses, which cannot be the basis to convict the

appellant for the offence in question. He would further submit that there is no legally admissible evidence with respect to the age of the victim. The school register has not been proved in accordance with the law and in absence of any cogent evidence regarding the age of the victim she cannot be held to be less than 18 years of age. He would further submit that though redness was found on the private part of the victim, but in absence of any penetration the appellant cannot be convicted for the offence of rape, but it would only be an attempt to commit rape upon her. Even in the written complaint as well as in the evidence of the victim, only attempt of rape has been alleged by the victim. From the evidence of the victim, her parents and the medical evidence, it only suggested about attempt and not complete penetration, therefore, the conviction of the appellant for the offence of rape upon the victim is liable to be set aside and instead thereof he may be convicted for attempt to commit rape upon the victim and may be sentenced for the minimum sentence provided for the same.

9. On the other hand, learned counsel appearing for the State opposes in his submissions made by learned counsel for the appellant and has submitted that the prosecution has proved its case beyond reasonable doubt. But her minor omissions or contradictions, the evidence of the victim, her parents as well as the medical evidence are duly corroborated with each other. The prompt report has been lodged, injuries have been found on the body of the victim and in the FSL report, semen and sperms were found on her underwear which are clinching evidence to hold the appellant guilty for the alleged offence. She would

further submit that slightest penetration with or without ejaculation can constitute the offence of rape which has rightly been considered in the present case as the injuries have been found on the private part of the victim and thus, as per the definition of rape provided under the IPC as well as the POCSO Act, the act of the appellant does constitute the offence of rape and it is not only attempt to commit rap. She has also submitted that the victim was aged about 11 years and 4 months on the date of incident and the school record can be considered to prove her age as has been laid down by the Hon'ble Supreme Court in the case of **Jarnail Singh v. State of Haryana**, 2013 (7) SCC 263. She would next submit that the learned trial court after appreciating the entire evidence produced by the prosecution rightly considered the evidence and convicted the appellant which is not required to be interfered with and the appeal filed by the appellant is liable to be dismissed.

10. We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.

11. The first and foremost question that arises for consideration would be the age of the victim as to whether the evidence produced by the prosecution is sufficient to hold that on the date of the incident, she was a minor or not.

12. The admissibility and evidentiary value of the school register have been considered by the Hon'ble Supreme Court 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 aforesaid 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.”

13. The prosecution has mainly relied on the school register Ex.P/27C, which is which is sought to be proved by PW-8 who is the

Head Master of the school. She stated in her evidence that the victim studied in his school upto class 5. The police has seized the school register with respect to her date of birth vide seizure memo Ex.-P/17 and after retaining its attested true copy Ex.-P/27C the original school register was returned back to him. She brought the original register with him before the court. As per the school register the date of birth of the victim is 06-08-2008. In cross-examination she admitted that children were admitted in the school on the basis of oral information given by their parents with respect to their age. Apart from her the school register was also endorsed by other employees of the school. In her cross-examination the defence have not challenged that she is not the author of the school register or incorrect date of birth of the victim has been recorded in it. In absence of any challenge about the authenticity of the school register the entries made in it cannot be disbelieved. Further, the victim has got admitted in Class I in the school on 17-06-2014 and the present incident has occurred on 26-02-2020, i.e., much after the endorsement made in the school register, therefore, the said school register Ex.-P/27C cannot be doubted particularly in absence of any specific challenge to the same.

14. PW-1, the victim has stated in her evidence that her date of birth is 06-08-2008 and she is aged about 14 years. She has been examined on 16-03-2022 before the court, her date of birth is corroborated with the school register and the age is also corroborated that she was about 12 years on the date of incident and after about 2 years of the date of incident, i.e., 16-03-2022 when she has been examined before the court

she is about 14 years of age. In her cross-examination she stated in para 29 that she remembered her date of birth, though she admitted that in the school register her another date of birth is recorded, however, from the perusal of the school register Ex.-P/27C as well as her Primary School Progress Report Card Article A1C, the same date of birth, i.e., 06-08-2008 has been recorded as has been stated by her in her deposition. She denied that her parents have recorded the wrong date of birth in the school.

15. PW-2 is mother of the victim, she has stated in her evidence that she could not remember the date of birth of her daughter, but she is 14 years of age. She has also been examined on 12-09-2022. In cross-examination she stated that her daughter was born in the house and she could not get her birth certificate.

16. Thus, from the aforesaid evidence the prosecution is able to prove age of the victim that she was minor and less than 12 years of age on the date of incident which has rightly been considered by the learned trial Court.

17. So far as involvement of the appellant in the offence in question is concerned we again examine the evidence of the victim PW-1.

18. PW-1, the victim has stated in her evidence that when she had gone to her grand-father's house in a marriage function along with her parents, the appellant asked her to accompany upto to the field. He took her to the field and removed her lower garment, he also removed his underwear and forced her to massage his penis. After giving massage to his penis the appellant inserted his penis on her private part, when

she felt pain, the appellant left her. He gave her Rs.50/- and asked her not to disclose the incident to anyone. She came back to her house by crying and informed the incident to her mother. On the same day she has gone to police station and lodged the report. Her statement was also recorded under Section 164 of the Cr.P.C. and she was medically examined by the doctor. In cross-examination she admitted that she had seen the appellant in the marriage function and he too had come there. She firmly denied that the appellant has not committed any offence with her. She voluntarily stated that the appellant had inserted his penis into her private part. But for minor omissions and contradictions the defence could not abstract any material so that her evidence could be disbelieved or it can be inferred that the victim has falsely implicated the appellant in the offence in question. There was no reason for his false implication and the victim has firmly stated about the act of the appellant . But for minor omission and contradictions she remained firm in substantive evidence that the appellant took her towards the field and committed sexual intercourse with her. The substantive allegation could not be rebutted by the defence in her cross-examination. The evidence of the victim can be puts her in the category of witness of sterling quality as she sufficiently and firmly stated about the incident committed by the appellant.

19 PW-2, mother of the victim has supported the evidence of PW-1. She stated that on the date of incident when she along with her other family members had gone to her matrimonial in-laws house, in the noon, the victim came to her by crying and informed about the incident

that the appellant committed rape upon her in the field. She also disclosed the entire incident to her. She immediately informed the incident to her husband and Sarpanch and other members of the family and immediately lodged the report to Police Station Mandir Hasaud. In her cross-examination the defence tried to bring the reason for his false implication that there was dispute between the appellant and her husband on account of drinking liquor and money transaction, however, she denied the suggestion given by the defence about such dispute. Even such a dispute cannot be considered to be false implication of the appellant in view of the evidence of the victim and one cannot make her minor daughter to be instrumental to settle their personal score that too in such a heinous offence of rape.

20. PW-4 is the doctor who medically examined the victim. She stated in her evidence that she medically examined the victim on 27-02-2020 and found abrasion on right labia minora of the private part of the victim and opined that the victim had gone through physical abuse and attempt to sexual intercourse. She referred for age confirmation from the Radiologist and her report is Ex.-P/9. She also gave her query report with respect to the underwear of the victim which is Ex.-P/13. In cross-examination the injuries noticed by her in private part of the victim could not be rebutted. She explained that the victim suffered by attempt of penetration forcefully and therefore, she has written in her MLC report about attempt of sexual intercourse. She also explained that the injuries on private part due to cycling would be different in nature from the injuries found on the body of the victim in the present case. Thus,

the medical evidence has also supported the allegation made by the victim that she suffered offence of rape by the appellant.

21. Another piece of evidence is FSL report Ex.-P/23. In the FSL report, semen and sperms were found on the underwear of the victim Article A and the underwear of the appellant Article B. Presence of semen and sperms on the underwear of the victim also connects the appellant with the alleged incident that she suffered sexual intercourse by the appellant as alleged by her.

22. Learned counsel for the appellant argued that from the alleged act of the appellant, there was no complete penetration and therefore, offence of rape or aggravated penetrative sexual assault has not been proved, but it is only attempt to commit rape upon her. Considering the submission made by learned counsel for the appellant we also have gone through the relevant provision of the IPC as well as the POCSO Act.

23. The victim is found to be less than 12 years of age in the case and the offence charged against the appellant is under Section 376AB in alternative Section 376AB read with Section 511 of the IPC and Section 6 of the POCSO Act and in alternative Section 6 read with Section 18 of the POCSO Act.

24. Section 375 of the IPC reads as under:-

“Section 375 – Rape.—A man is said to commit "rape" if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a woman, or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra, or anus of a woman, or makes her do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus, or any part of the body of such woman, or makes her to do so with him or any other person; or

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

.....”

25. Section 376AB of the IPC provided punishment for rape upon a woman under 12 years of age, which reads as under:-

“376AB. Punishment for rape on woman under twelve years of age.—

Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

26. Section 5 of the POCSO Act provided the definition of aggravated sexual assault and Section 5(m) provided that whoever commits penetrative sexual assault on a child below twelve years s said to commit aggravated penetrative sexual assault. Section 3 of the POCSO Act provided definition of penetrative sexual assault which reads as under:-

“3. Penetrative sexual assault.—A person is said to commit “penetrative sexual assault” if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any pan of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.”

27. From the reading of provisions of Section 375, 376AB of the IPC and Section 3 and Section 5(m) of the POCSO Act, it is clear that if a person penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person, it constitutes the offence of rape. The word ‘to any extent’ used in Section 375(a) of the IPC and Section 3(a) of the POCSO Act would disentitle the appellant to get benefit that there was no complete penetration on the victim. When some injuries have been found on her private part the private part of the appellant definitely penetrated to some extent which caused the injury to the private part of the victim and the said act of the appellant duly falls within penetration to any extent.

28. In the case of **Satyapal Vs. State of Haryana**, (2009) 6 SCC 635 it has been observed by the Hon’ble Supreme Court that in offence under Section 375 of the IPC even slightest form of penetration is sufficient to constitute the offence of penetrative assault. It is also not necessary that there has to be some injury on genital or in other part of the victim’s body. In para 18 of the judgment passed in the case of **Satyapal** (supra) the Hon’ble Supreme Court has held that:-

“18. In Modi's Medical Jurisprudence, 23rd Edn., at pp. 897 and 928, it is stated:

"To constitute the offence of rape, it is not necessary that there would be complete penetration of the penis with emission of semen and the rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of law. It is, therefore, quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains.....

* * *

In small children, the hymen is not usually ruptured, but may become red and congested along with the inflammation and bruising of the labia. If considerable violence is used, there is often laceration of the fourchette and perineum.”

29. In the case of **State of Himachal Pradesh Vs. Sanjay Kumar alias Sunny**, (2017) 2 SCC 51 the Hon'ble Supreme Court has held in para 30 and 31 that:-

“30.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. ...

31.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 : 2004 SCC (Cri) 31]}. Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.”

30. Further in the case of **State of Punjab Vs. Gurmit Singh and others**, (1996) 2 SCC 384 the Hon'ble Supreme Court has observed that the offence of rape against victim degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. It has been observed in para 21 of the judgment that:-

“21.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.”

31. In the case of **Prahlad and another Vs. State of Haryana**, (2015)

8 SCC 688 the Hon'ble Supreme Court in para 17 and 18 held that:-

“17. It has to be borne in mind that an offence of rape is basically an assault on the human rights of a victim. It is an attack on her individuality. It creates an incurable dent in her right and free will and personal sovereignty over the physical frame. Everyone in any civilised society has to show respect for the other individual and no individual has any right to invade on physical frame of another in any manner. It is not only an offence but such an act creates a scar in the marrows of the mind of the victim. Anyone who indulges in a crime of such nature not only does he violate the penal provision of IPC but also the right of equality, right of individual identity and in the ultimate eventuality an important aspect of rule of law which is a constitutional commitment.

The Constitution of India, an organic document, confers rights. It does not condescend or confer any allowance or grant. It recognises rights and the rights are strongly entrenched in the constitutional framework, its ethos and philosophy, subject to certain limitations. Dignity of every citizen flows from the fundamental precepts of the equality clause engrafted under Article 14 and right to life under Article 21 of the Constitution, for they are the “fons juris” of our Constitution. The said rights are constitutionally secured.

18. Therefore, regard being had to the gravity of the offence, reduction of sentence indicating any imaginary special reason would be an anathema to the very concept of rule of law. The perpetrators of the crime must realise that when they indulge in such an offence, they really create a concavity in the dignity and bodily integrity of an individual which is recognised, assured and affirmed by the very essence of Article 21 of the Constitution.”

32. Considering the overall evidence available on record and the aforesaid law laid down by the Hon’ble Supreme Court we are of the opinion that the learned trial Court has rightly convicted and sentenced the appellant for the offence under Section 376AB of the IPC and Section 6 of the POCSO Act, though no separate sentence has been awarded under Section 6 of the POCSO Act and there is no scope for any interference in the impugned judgment passed by the learned trial Court. Accordingly, the appeal filed by the appellant is **dismissed**.

33. The appellant is stated to be in jail since 27-02-2020. He shall serve the entire sentence awarded by the learned trial Court.

34. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his

jail sentences 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.

35. Record of the trial Court be sent back along with copy of this judgment.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice