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HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 984 of 2021**

Panku Kashyap S/o Shri Hariram Kashyap Aged About 19 Years R/o
Village Adeasalnar, Police Station Bhanpuri, District Bastar,
Chhattisgarh

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

State Of Chhattisgarh Through Station House Officer Kondagaon,
District Kondagaon, Chhattisgarh

--- Respondent(s)

For Appellant(s) : Mr. R.S. Patel, Advocate

For Respondent(s) : Mr. Hariom Rai, Panel Lawyer

CRA No. 1021 of 2021

Manoj @ Kanwal Baghel S/o Sukhru Ram Baghel Aged About 21 Years
R/o Khaspara Dewda P.S. Bhanpuri District Bastar (Chhattisgarh),
District : Bastar(Jagdalpur), Chhattisgarh

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

State Of Chhattisgarh Through Police Station Kondagaon District
Kondagaon Chhattisgarh

--- Respondent(s)

For Appellant(s) : Mr. Pravin Kumar Tulsyan, Advocate

For Respondent(s) : Mr. Hariom Rai, Panel Lawyer

CRA No. 1085 of 2021

Pinku Kashyap S/o Manbodh Kashyap Aged About 25 Years R/o Village Ogayguda, Police Station Bhanpuri, District Bastar Chhattisgarh.

---Appellant(s)

Versus

State Of Chhattisgarh Through Police Of Police Station Kondagaon, District Kondagaon Chhattisgarh.

--- Respondent(s)

For Appellant(s) : Mr. Tarendra Kumar Jha, Advocate

For Respondent(s) : Mr. Hariom Rai, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, CJ

11.06.2025

1. Since the aforesaid three criminal appeals have been filed against the impugned judgment dated 25.08.2021 passed by the learned Additional Sessions Judge (FTC) Kondagaon, District-Kondagaon (C.G.) in POCSO Case No.15/2019 and Consolidated Case No.31/2019, they were clubbed & heard together and being disposed of by this common judgment.
2. Appellants- Panku Kashyap (A1), Manoj @ Kanwal Baghel (A2) and Pinku Kashyap (A3) have preferred these three criminal appeals under Section 374 of the CrPC questioning the impugned judgment dated 25.08.2021 passed by the learned Additional

Sessions Judge (FTC) Kondagaon, District- Kondagaon (C.G.), by which the Special Judge has convicted appellants for the offence under Section 6 of the POCSO Act and sentenced to undergo SI for 20 years and fine of Rs.5000/-, in default of payment of fine to further undergo SI for 3 years (each).

3. The prosecution story, in brief, is that the victim appeared at the police station on 27/04/2019 and lodged a report that on 26/04/2019, the marriage of Rekha Maurya was taking place in her village Makdi in which baraatis had come from village Badeamabal. On the same date at around 11:00 pm, she and her friend Gayatri Nag went to the field to use the bathroom due to the crowd in the marriage hall. She and her friend were a little distance away, when 4 boys gagged the victim and dragged her to a field ahead of the farm and forcibly did wrong things (physical intercourse) with her and threatened to kill her. She saw the faces of the boys with the light of their mobile torch, then she told her family members about the entire incident, the victim went to village Amabal with her family members and villagers and identified those people who told their names to be Pinku Kashyap, Panku Kashyap, Manoj alias Kanwal Baghel. On the report of the victim, a crime under Section 376 (D), 506 IPC and Section 4, 6 Protection of Children from Sexual Offences Act was registered against the accused Pinku Kashyap, Manoj alias Kanwal Baghel and the child in conflict with law Panku Kashyap and investigation was taken up.

4. During the investigation, with the consent of the victim and her father for the examination of her private parts as per Ex.P-02, victim was sent to the District Hospital, Kondagaon for examination. A complaint was sent to District Hospital Kondagaon for the treatment of the victim (Ex.P-20). On 27/04/2019 at 15.10 hrs., the brown panty worn by the victim at the time of the incident and her class 6th mark-sheet (Ex.P-03) were presented in the police station premises of Kondagaon and seizure sheet (Ex.P-04) was prepared in front of witnesses. On the same date, on 20th May, the brown coloured panty seized from the victim was sent to the Medical Officer, District Hospital, Kondagaon and sought a query as to whether the seized panty had human semen on it or not. In this regard, a written complaint was made. Further, on 27/04/2019 at 18.00 hrs., lady constable No.722 Basanti Netam presented seven sealed packets prepared by the doctor at the police station premises, Kondagaon. She seized them in front of witnesses and prepared seizure sheet (Ex.P-21). After taking accused Pinku Kashyap into custody on 27/04/2019, the accused produced the underwear he was wearing at the time of the incident, which was seized in front of witnesses at the police station premises, Kondagaon at 19.45 hrs and prepared seizure sheet Ex.P-22. On 27/04/2019, after taking accused Manoj alias Kanwal Baghel into custody, the accused produced the underwear he was wearing at the time of the incident, which he seized in front of witnesses at 20.05 hrs in the police station

premises, Kondagaon and prepared seizure memo (Ex.P-23). On 27/04/2019, after taking accused Panku Kashyap into custody, the accused produced the underwear he was wearing at the time of the incident, which was seized in front of witnesses at 19.30 hrs in the police station premises, Kondagaon. After seizing the material, seizure memo Ex.P-24 was prepared.

5. Thereafter, on 27/04/2019, accused Pinku Kashyap was taken in custody and sent to District Hospital Kondagaon regarding his competence to have sexual intercourse, in relation to which a written complaint was prepared. On 27/04/2019, accused Manoj alias Kanwal Baghel was taken in his custody and sent to District Hospital Kondagaon regarding his competence to have sexual intercourse. On 27/04/2019, accused Pinku Kashyap was taken in his custody and sent to District Hospital Kondagaon regarding his competence to have sexual intercourse. Thereafter, the underwear seized from the accused persons were sent to the District Hospital Kondagaon and a query was sought to ascertain whether human semen was present in the seized underwears.
6. On 28/04/2019 at 1.15 pm, after examining the genitals of the accused persons by constable No.457 Girjashankar Kurre, the four sealed packets were prepared and seized in front of witnesses and seizure sheet (Ex.P-25, 26 and 27) were prepared. On 28/04/2019 at 2.00 a.m., accused Pinku Kashyap was arrested and arrest panchanama (Ex.P-28) was prepared,

information about the arrest was given to his family, acknowledgment of the information is Ex.P-29. On the night of 28/04/2019 at 2.15 a.m. accused Panku Kashyap was arrested and arrest panchanama (Ex.P-30) was prepared. Information about the arrest was given to his family, acknowledgment of information is Ex.P-31. On 28/04/2019 at 2.30 am, accused Manoj alias Kanwal Baghel was arrested and arrest panchanama (Ex.P-32) was prepared and Information regarding arrest was given to his family as acknowledgment of information Ex.P-33. On 02/05/2019 at 8.45 am, the investigating Officer went to village Makdi and prepared a site map of the place of incident (Ex.P.-05) as the directions of the victim. On 02/05/2019, he wrote a complaint to Tehsildar Saheb Kondagaon regarding providing site map of the place of incident from Halka Patwari, whose acknowledgment is Ex.P-34. On 02/05/2019 at 13.00 hrs., the victim was examined by the Superintendent of Kanya Ashram Mohlai- Mrs. Sakun Baghel. Regarding the date of birth, when the mutation register (Ex.P-15) was presented in the girls' ashram Mohlai, it was seized in front of witnesses and seizure memo (Ex.P-16) was prepared by him. He took the attested copy of Ex.P. 15 as Ex.P. 15C and returned the original in the surrender memo. The surrender memo is Ex.P-17.

7. Thereafter on 06/06/2019 at 11.30 am, when Lalman Maurya of village Makdi presented the marriage invitation card of Rekha alias Jana and Loknath (Ex.P-18), it was seized in front of

witnesses and seizure memo (Ex.P-19) was prepared. On 12/06/2019 at 14.00 pm, in the police station premises of Kondagaon, when Bhadururam Kashyap presented his mark-sheet-cum-certificate regarding the date of birth of accused Pankuram (Ex.P-35), it was seized in front of witnesses and seizure memo (Ex.P-36) was prepared. In this case, the seized properties were sent to the Regional Forensic Science Laboratory, Jagdalpur for chemical test through the Superintendent of Police, Kondagaon. The memorandum of the Superintendent of Police (Ex.P-37), the laboratory's exhibit receipt is (Ex.P-38), the laboratory's exhibit return receipt is (Ex.P. 39) and the laboratory's test report is (Ex.P-40).

8. After completion of the investigation, charge-sheet No.86/2019 dated 17/06/2019 has been prepared against the accused and presented before the trial Court. Since the accused Panku Kashyap was a minor at the time of the incident, a separate charge-sheet was presented in the Juvenile Court, Kondagaon, which was found to be tried as an adult and when it was sent for trial before the trial Court, cognizance was taken and trial was conducted.
9. In order to establish the charge against the appellants, the prosecution examined as many as 12 witnesses. The statements of the appellants under Section 313 of CrPC were also recorded in which they denied the material appearing against them and

stated that they are innocent and they have been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellants and sentenced them as mentioned in para 2 of the judgment. Hence, these appeals.

10. Mr. R.S. Patel, learned counsel for the appellant in CRA No.984/2021 would submit that the learned trial Court has erred in convicting and sentencing the appellant because he has been falsely implicated in the instant case. The appellant was minor at the time of incident in spite of that he has been inflicted imprisonment of 20 years which is on higher side and his future will be ruined. The learned trial Court passed the order of conviction solely only basis of prosecutrix statement and there is no eye witness in the instant case. The statement of the prosecutrix is not reliable because the incident took place in the dark and in an abundant place, therefore, she could not have identified the actual perpetrators of offence. The prosecutrix herself in paragraph 7 and 8 of her statement has stated that the Police Authorities have informed her about the name of the accused persons. She did not know the names of the accused persons before such information was given to her by the Police Authorities. She has further stated that after knowing the name of the accused persons by the police, the First Information Report (F.I.R.) was lodged. Such statement is contradictory to event described in the First Information Report (F.I.R.), wherein she

states that the accused persons were called by the Villagers and their names were asked to them. The testimonies of Prosecutrix (P.W-2) and her friend Gayatri Nag (P.W-4) are full of contradictions, interpolations, additions and omissions. Such inconsistencies are a direct consequence of the fact that the testimonies are vitiated by afterthoughts and conformation bias due to the information supplied by the Police Authorities at a later stage. Gayatri Nag (P.W. 4) herself states that the police recorded her statement under section 161 of the Code of the Criminal Procedure, 1973 after the one-half month of the date of incident. Between such time gaps, the accused persons were already branded as guilty of the alleged act by the Villagers. Therefore, the testimonies and statements are highly manipulated in order to persecute the accused persons. Lastly, the appellant was on Bail during trial as the bail was granted by this Court vide order dated 20.08.2019 in CRR No. 874 of 2019 (Panku Kashyap v. State of Chhattisgarh). The appellant has passed approximately 4 months in jail, then after conviction he was again sent to jail on 25.08.2021 and he is in jail since then. The appellant was on bail during trial and he had never misused the liberty of bail. Lastly, the learned trial Court has failed to consider that the looking to the facts and circumstances the aforesaid offences are not made out against the present appellant.

11. Mr. Pravin Kumar Tulsyan, learned counsel for the appellant in CRA No. 1021/2021 would submit that the report has been

lodged by the prosecutrix after a long delayed and the reason for the delay has not been explained satisfactory. The prosecution has failed to prove the case against the appellant beyond the reasonable doubt. The conviction is based on uncorroborated testimony of the witness. The trial Court has not appreciated the evidence on record properly and came into erroneous conclusion while passing the judgment of conviction which is liable to be set aside. During the cross examination of the prosecutrix, she has admitted that no one has committed the rape with her only one accused has tried to attempt with her. For proving the age of the prosecutrix only the school register has been produced by the police, there is no any birth certificate or radiologist report has been taken by the prosecution. The prosecution has failed to prove that appellant is able to perform sexual intercourse or not because there is no medical examination of the appellant conducted by the prosecution. In the medical examination, there is no sperms found the cloth of the prosecutrix by the doctors. All the independent witnesses are declared hostile by the prosecution and during cross examination by the prosecution, they did not support the case of prosecution. As the medical report, there is no any injury in the body of the prosecutrix and her private part of the body to established that there is incident has been taken place.

12. Mr. Tarendra Kumar Jha, learned counsel for the appellant in CRA No.1085/2021 would submit that the impugned judgment

dated 25-08-2021 is contrary to law, facts and circumstances of the case, therefore liable to be set-aside. In the body of prosecutrix, the doctor has not found any external injury, which belies the allegation of dragging in the field. The prosecution has not conducted any identification parade in presence of competent authority and because of this reason that the involvement of accused persons have not been established beyond reasonable doubt. There is no evidence in the statement of prosecutrix that the accused persons at the time of incident, closed her mouth, the alleged incident took place is only 60 meter distance from the marriage place, which is not reliable. The prosecution has also failed to establish the age of prosecutrix was below 18 years, therefore the conviction under the POSCO Act is impermissible. The learned Trial Court decision disclosing the fact that he has not considered properly the evidence available on record corroborating the facts about non- involvement in the crime by the appellant. This being on the so face of the record, judgment for conviction against the appellant was passed on the non-consideration of the evidence of the case

13. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellants and submits that the prosecution has proved that the prosecutrix was below 16 years of age at the time of incident and the same is fortified by Ex. P-15 C i.e. School Admission Register in which the date of birth of prosecutrix is mentioned as 06.07.2006 which

makes it crystal clear that the prosecutrix is below 16 years of age on the date of incident i.e. on 26/04/2019. Thus, this is the un-rebutted evidence against the accused / appellants. Therefore, the accused / appellants have been rightly convicted by the learned trial Court and the judgment of conviction is just and proper in the eyes of law and looking to the evidence on record the appellants / accused is not entitled for grant of bail by this Court. Further, the learned trial Court has properly taken into consideration the 12 witnesses i.e. Mother of the Prosecutrix (PW-1), Prosecutrix (PW-2), Father of the Prosecutrix (PW-3), Gayatri Nag (PW-4), Shururam Nag (PW-5), Chitaram Maurya (PW- 6), Dr. Om Prakash Nag (PW-7), Dr. Mamta Thakur (PW-8), Shakun Baghel (PW-9), Lalman Maurya (PW-10), IO Archana Dhurandhar (PW-11), Gomti Baghel (PW-12) and circumstantial evidences that has been brought on record by the prosecution which leads to the only conclusion that, the accused / appellants have committed offence charges as aforesaid framed against them. He further submits that the charges leveled against the appellant is very serious in nature like committing gang rape of the prosecutrix in a very brutal manner which is evident from the medical report, and because of this reason during trial, the appellants are not enlarged on bail and throughout after their arrest, the appellants were remaining in jail custody. The respondent / State further submits that, in Para 42 of the judgment, the learned trial Court has concluded his observation

with regard to involvement of the accused / appellants in the aforesaid crime which is just and proper and the defense has not rebutted any of the findings or evidences which were produced during the proceedings of trial. Also, looking to the seriousness of the crime, the appellants are not entitled for any sympathy by this Court thus, in light of the above submissions made hereinabove, appeals of the appellants is liable to be dismissed as the same are vague, baseless and devoid of merits and accordingly is liable to be dismissed.

14. Learned State counsel also relied upon the judgment ***Himanshu Alias Shammi V. State of Himachal Pradesh*** dated 31.10.2018 before the Hon'ble High Court of Himachal Pradesh, whereby the Hon'ble High Court denunciate as follows;-

"Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care, and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable

position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted."

15. We have heard the learned counsel for the parties and perused the record with utmost circumspection.
16. The first question that arises for consideration before this Court is whether the victim was child on the date of incident.
17. In order to consider the age of the prosecutrix, her father (PW-3) in his judicial statement has stated that the present age of his daughter victim is 13 years. To prove the age of the victim, on behalf of the prosecution, a true copy of the original Dakhil Kharij of class I has been presented (Ex.P-15C). Witness Shakun Baghel (PW-9), Superintendent of Government Girls Ashram Mohlai says that she is posted as the Superintendent of the Ashram in Government Girls Ashram Mohlai since the year 2012. The Dakhil Kharij register of Government District Primary School Mohlai remains with her. She has appeared with the Dakhil Kharij register of the said school/ashram. The original Dakhil Kharij register of the Primary Girls' Ashram Mohlai was demanded by the police in relation to the victim's date of birth. On demand of the police, she gave the original Dakhil Kharij register (Ex.P-15), which the police seized and prepared the seizure memo (Ex.P-16). Her signature is on parts A to A. The police had taken the

original Dakhil Kharij register Exhibit P-15's attested copy (Ex.P-15C) on which his signature is on parts A to A.

- 18.** According to the original Dakhil Kharij register, the name of the victim is recorded on Dakhil Kharij at Serial No.45. According to which, her date of birth is recorded as 06/07/2006. She took admission in class I on 01/07/2012. At the time of admission the victim's father Ghassuram brought her. As per his instructions he has recorded her date of birth on Dakhil Kharij register (Ex.P-15). Both the prosecution witnesses have confirmed the date of birth of the prosecutrix and have stated that her date of birth was 06/07/2006, which has not been refuted by the defence during cross-examination and the fact of fundamental deviation has not been proved before the trial Court. The victim's father has stated her age to be 13 years, which is close to the date of birth mentioned in the victim's mark-sheet presented by the prosecution, i.e. 06/07/2006. The victim and her father have stated that the victim's age is 13 years and on the contrary, the defence has not presented any evidence to refute the statements of the victim and her father that the victim's age was 18 years or more at the time of the incident.
- 19.** In such a situation, it cannot be said that the victim's age was 18 years or more at the time of the incident. As a result, it is determined that the victim was a minor at the time of the incident, being 13 years old, which is covered under Section 2 (d) of the

Protection of Children from Sexual Offences Act. The child fell within the category of "child" as defined. Therefore, the essential ingredient of commission of the offence under Section 6 of the POCSO Act is attracted against the accused.

- 20.** Now the next question that arises for consideration before this Court is whether the accused persons on 26/04/2019 at about 11:30 pm committed aggravated penetrative sexual assault by raping the victim below 18 years of age in turns on the said date, time and place of incident?
- 21.** In this regard, Victim (PW-2) has stated in her judicial examination that she knows the accused Pinku Kashyap and Manoj alias Kawal. She studies in class VIII. The incident took place in village Makdi on 26/04/2019. On the date of incident, a wedding was taking place in her aunt's house, at around 9-10 pm, she and her friend Gayatri went to the field at a little distance from the wedding house to use the bathroom. They were standing to use the bathroom at that time, 11-12 boys came and surrounded them, four of them caught her, she came to know the names of the accused Panku, Pinku, Manoj later and two boys caught her friend and lifted her and took her in different direction and made her lie down on the ground and removed her clothes, after that one of them caught her hand and sat on her head and one boy held both her legs. After that one of the boys came upon

her and raped her, after that two more boys raped her in turn. After raping her, they ran away from there.

- 22.** The victim (PW-2) has further stated in her main examination that after that she went to her home and told her mother about the incident that happened with her, her mother told the village head Lakhamu and other people. After that she went to Aambal. She also told her father about the incident. She went to the house of the boy whose marriage procession had come to Makdi in Aambal and told him about the incident. Then they made the boys playing the instruments stand up. Then she recognized three of the boys who had raped her. At the time they were raping her, they had turned on the torch of their mobile phone, due to which she saw their faces and hence recognized those boys there. She has further stated in his examination-in-chief that she returned to her village from Aambal at night. Next day after dawn, she went to Kondagaon police station with his parents and village sarpanch, patwari and lodged a report. Her report is Exhibit P-01, on which her signature is present on parts A to A. The police took her consent for conducting a private examination, which is Exhibit P-02, on which her signature is present on parts A to A. A lady doctor had conducted her private examination in the hospital. The police gave her the underwear she was wearing at the time of the incident and her mark-sheet of Upper Primary School Makdi (Ex.P-3) which the police seized from her and prepared a seizure

memo (Ex.P-4), on which her signature is present on parts A to A. There was no visible injury on her body.

- 23.** The victim (PW-2) has further stated in her examination-in-chief that after coming home on the date of incident, she met her friend Gayatri, who told her that her cloths were also removed. Policemen had come to the village for investigation and she had shown the police the crime scene. Police had prepared the site map of the crime scene (Ex.P-5). Policemen had taken her to the Magistrate for recording her statement. Magistrate had interrogated her and recorded her statement. Similar statement has been made by witness Gayatri Nag (PW-04) regarding the incident who is an eye witness of the incident.
- 24.** The prosecution has examined the victim's mother (PW-1), victim's father (PW-3), Sururam Nag (PW-5), Chitaram Maurya (PW-6). All these witnesses have supported the statements of the victim and no such notable fact has come to light in their cross-examination which may create distrust in the statements of these witnesses and may have any adverse effect on the prosecution story.
- 25.** Dr. Mamta Thakur (PW-08), Medical Officer has stated that in the year 2005, she has obtained MBBS degree from Shyam Shah Medical College, Rewa. She is posted as Medical Officer in District Hospital, Kondagaon since June 2014. On 24/04/2019 at 4:00 PM, the victim, aged 12 years, resident of Makdi, Police

Station Kondagaon, was brought before her for genital examination by lady constable No. 722 Basanti Netam. After examining her, she found the following facts-

(a). There were no injury marks on the external part of her body, her secondary sexual characteristics were not fully developed.

(b) During examination, her gait was abnormal due to pain in her waist. There was slight blueness in her labia minora in the direction of 11:00 clockwise direction and her hymen was torn in the direction of 6:00 clockwise direction.

(c) She collected her nail scrapings and cuttings. Two vulval swabs, two vaginal swabs, two vaginal smears and one vaginal washing were collected from her vagina.

According to the Medical Officer, on the basis of the above tests, signs of sexual intercourse with the victim were found, the duration of which was within 24 hours, for confirmation of which, the sample was sealed and handed over to the same constable for chemical testing. She referred it to a radiologist to determine the age of the victim. The test report prepared by her is Exhibit P-13, on which parts a to b are signed by her.

- 26.** Dr. Mamta Thakur (PW-08) has further stated in her cross-examination that on 24/04/2019, the same lady constable brought a sealed packet and wanted to enquire whether the seized underwear contained human semen or not. She opened the said

packet and took it from the police. When she checked, she found a brown coloured under wear, on the inside of which there was a red coloured stain marked with red ink and on the back there was a white coloured stain marked with red ink. She sealed the under wear and handed it over to the concerned constable after advising her to conduct a chemical test to see if there was human semen in both the stains. The test report prepared by her is Exhibit P-14, on which his signature is there from A to C.

- 27.** Thus, the evidence of this medical witness confirms that sexual intercourse had taken place with the victim within a period of 24 hours from her examination.
- 28.** Dr. Omprakash Nag (PW-7) has stated in his examination that he has obtained MBBS degree from Pandit Jawaharlal Nehru Medical College Raipur in the year 2013. He has obtained the degree of MD Medicine Specialist from SMS Jaipur (Rajasthan) in the year 2018. He was posted on the post of Medical Officer from February 2018 to July 2019. On 27/04/2019 at 11.40 AM, Constable No. 457 Girja Prasad Kurre of Police Station Kondagaon produced Manoj Baghel s/o Sukaru Baghel, aged about 19 years, resident of Devda, before him for examination. He examined the said person and found the following facts -
- (a) Hair was present on his genitals, there was a deep torn injury mark on the tip of his penis measuring 0.5x0.5 cm, smegma was

not present on his penis, there was a torn wound on the lower part of the penis below the first wound measuring 0.5x0.5 cm.

(b) Both the said injuries were fresh which were found to be of the same size after examination. It was done within two days and the wound was bleeding.

(c) The size of the scrotum was normal and both the testicles were present on his scrotum and there was no abnormality on the testicles.

He prepared a slide of the penis around the genitals of the accused, the glans penis and pubic hair and advised to do a chemical test and sealed it and handed it over to the concerned constable.

- 29.** According to him, Manoj Baghel was fully capable of having sexual intercourse. The test report prepared by him is Exhibit P-07, on which parts A to C are signed by him.
- 30.** Dr. Omprakash Nag (PW-7) has further stated in his examination-in-chief that on the same date the same constable had brought a property and sought a query as to whether the seized under wear had human semen on it or not. He opened the said property and found a brown coloured under wear in it. Whether there was any stain on the under wear or not was not visible to the microscopic eye. He sealed the under wear and handed it over to the concerned constable after advising him to conduct a chemical

test to see whether there was a human sperm stain on it or not. The test report prepared by him is Exhibit P-08, on which his signature is present on parts a to c.

This witness has further stated in his examination-in-chief that on 27/04/2019, Constable No. 457 Girja Prasad Kurre of Police Station Kondagaon brought Pinku Kashyap s/o Manbodh, age-23 years, resident of Balenga, before him for examination and upon examining him the following facts were found-

(a) Hair was present on his genitals, his penis was fully developed and there was no deformity, testicles. The penis was developed and there was no deformity.

(b) There was a blood stain on the penis. There was a pinkish wound on the waist, the size of which was 2x1 cm.

(c) There was a red shiny spot on the right scapula area, the size of which was 3x2 cm. Both the above injuries were immediate and their duration was within one to two days and the wounds could heal within two to three weeks.

He prepared slides of the penis, the front and the inside of the penis and the injured area and advised to do a chemical test and sealed them and handed them over to the concerned constable.

- 31.** According to him, Pinku Kashyap was fully capable of having sexual intercourse. The test report prepared by him is Exhibit P-09, on which his signature is present on parts A to A.
- 32.** Dr. Omprakash Nag (PW-7) further stated in his examination-in-chief that on the same date the same constable brought a property and sought a query as to whether the seized under wear had human semen on it or not. He opened the said property and found a brown coloured under wear, a stain was present on the inner part of the said under wear. He sealed the property and handed it over to the concerned constable, advising him to conduct a chemical test to find out whether the stain on the under wear contained human semen or not. The test report prepared by him is Exhibit P-10, on which his signature is present on parts A to C.
- 33.** Dr. Omprakash Nag (PW-7) further stated in his examination-in-chief that on the date 27/04/2019 at 11.48 am, constable No. 457 Girja Shankar Kurre brough Panku Kashyap, S/o- Hari Ram, aged 16 years, resident of Bade Alnar Bhanpuri to him for treatment. He examined the penis of a person and found the following facts-
- (a) Hair was present on his genitals and his secondary genitals were fully developed. Smegma was present on the penis and there was no deformity in his genitals and there was no swelling on the genitals.

He prepared slides of the genital hair and genital fluid and the fluid of the penis head and advised to do chemical tests and sealed them and handed over to the concerned constable.

- 34.** According to him, Panku Kashyap was fully capable of having sexual intercourse. The test report prepared by him is Exhibit P-11, on which his signature is present on parts A to C.
- 35.** Dr. Omprakash Nag (PW-7) further stated in his examination-in-chief that on the same date, the same constable brought a property and sought a query as to whether the seized under wear had human semen on it or not. He opened the said property and found a brown coloured under wear, a stain was present on the inner part of the said under wear. He sealed the property and handed it over to the concerned constable, advising him to conduct a chemical test to find out whether the stain on the under wear contained human semen or not. The test report prepared by him is Exhibit P-12, on which his signature is present on parts a to c.
- 36.** Thus, it is reflected from the evidence of this medical witness that on examination of the accused Manoj Baghel and Pinku Kashyap, he had found injury marks on their private parts (penis) and he has stated that the injury found was of a period of 24 hours, regarding which, no facts were presented by the accused in rebuttal during cross-examination, neither could any of them be examined nor did they give any explanation regarding the injury

to their private parts in the examination conducted under Section 313 Cr.P.C. Although the doctor did not mention any kind of injury to the genitals of accused Panku Kashyap in his report, but all these three accused have been said to be capable of having sexual intercourse. In such a situation, the injury found in the private parts of the accused on examination immediately after the incident indicates their involvement in sexual crime.

37. In the case, the prosecution has produced the ***test report Exhibit P-40 received from the Regional Forensic Science Laboratory, Jagdalpur***, in which the packets sent for testing, namely A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, which are respectively nail scraping, vulval swab, vaginal swab, vaginal smear, vaginal washing, panty of the victim and underwear, pubic hair, slide of the child in conflict with law Panku Kashyap and underwear, slide and pubic hair of accused Pinku Kashyap, it has been opined that in Exhibits C1, D1, E1, G and H, which are respectively vulval swab, vaginal swab, vaginal smear and panty of the victim and underwear, slide and pubic hair of accused Panku Kashyap, ***it has been stated that semen stains and human sperm were found in the underwear, which confirms the fact that sexual intercourse had taken place with the victim.***
38. Lalman Maurya (PW-10) has stated in his judicial examination that he knows the victim, she is from his village, the incident is of

last year, his elder sister Jana alias Rekha's marriage was taking place at his house, for which the marriage procession had come from village Amabal. On the night of his sister's marriage, the victims (Gayatri was molested and the victim was raped) went to play musical instruments of village Amabal. The incident was caused by the people. He had given the wedding card of his sister Jana (Ex.P-18) to the police which was seized by the police and seizure memo (Ex.P-19) was prepared, a part of which bears his signature.

- 39.** Inspector Archana Dhurdhar (PW-11) has stated that on 27/04/2019, she was posted as Inspector at Police Station Aajak Kondagaon. In compliance with the order No. PU/Konda/Reader 1 O-170 dated 27/04/2019 of Superintendent of Police Kondagaon, she had registered First Information Report (FIR) on oral complaint of the victim against accused Pinku Kashyap, Panku Kashyap and Manoj alias Kanwal Baghel and another under Section 376G IPC and Section 4, 6 of POCSO Act at Police Station Kondagaon which is Ex.P.-01 on which her signature is present from b to b. On the same date she had got the consent of the victim and her father obtained for examination of her private parts as per Ex.P. 02 and got the victim sent to District Hospital Kondagaon for examination. This investigating witness has further stated that on 27/04/2019 at 15.10 hrs., the brown panty worn by the victim at the time of the incident and her class 6th marksheet (Ex.P. 03) were presented in the police

station premises of Kondagaon and seizure sheet (Ex.P. 04) was prepared in front of witnesses, all parts of which has her signature. On the same date, she sent the brown coloured panty seized from the victim to the Medical Officer, District Hospital, Kondagaon and sought a query as to whether the seized panty had human semen on it or not. On 27/04/2019 at 18.00 hrs., lady constable No. 722 Basanti Netam presented seven sealed packets prepared by the doctor at the police station premises, Kondagaon. She seized them in front of witnesses and prepared seizure sheet (Ex.P-21) on which her signature is on A to A and constable Basanti Netam's signature is on B to B. After taking accused Pinku Kashyap into custody on 27/04/2019, the accused produced the underwear he was wearing at the time of the incident, which he seized in front of witnesses at the police station premises, Kondagaon at 19.45 hrs and prepared seizure sheet (Ex.P-22) on which her signature is on A to A and the accused's signature is on B to B. On 27/04/2019, after taking accused Manoj alias Kanwal Baghel into custody, the accused produced the underwear he was wearing at the time of the incident, which he seized in front of witnesses at 20.05 hrs in the police station premises, Kondagaon and prepared seizure memo (Ex.P-23), on parts A to A of which he has signed and on parts B to B of the accused has signed. On 27/04/2019, after taking accused Panku Kashyap into custody, the accused produced the underwear he was wearing at the time of the incident, which he

seized in front of witnesses at 19.30 hrs in the police station premises, Kondagaon After seizing the material, she prepared seizure memo (Ex.P-24) on which his signature is on parts A to A and the accused's signature is on parts B to B.

- 40.** This investigating witness has further stated that on 27/04/2019, accused Pinku Kashyap was taken in his custody and sent to District Hospital Kondagaon regarding his competence to have sexual intercourse, in relation to which a written complaint was prepared, which is his signature on parts B to B of the test report Ex.P. 09. On 27/04/2019, accused Manoj alias Kanwal Baghel was taken in custody and sent to District Hospital Kondagaon regarding his competence to have sexual intercourse, in relation to which a written complaint was prepared, which is her signature on parts B to B of the test report Ex.P-07. On 27/04/2019, accused Pinku Kashyap was taken in his custody and sent to District Hospital Kondagaon regarding his competence to have sexual intercourse, in relation to which a written complaint was prepared, which is her signature on parts B to B of the test report (Ex.P-11). In this case, the underwear seized from the accused Pinku Kashyap was sent to the District Hospital Kondagaon and a query was sought to ascertain whether human semen was present in the seized underwear. This investigating witness has further stated that in this case the underwear seized from accused Manoj alias Kanwal was sent to District Hospital Kondagaon and a statement to this effect was made. A query was

sought whether human semen is present in the seized underwear? In relation to which a written complaint was prepared. The underwear seized from the accused Panku Kashyap was sent to the District Hospital Kondagaon and a query was sought to the effect that whether human semen is present in the seized underwear? In relation to which a written complaint was prepared. On 28/04/2019 at 1.15 pm, after examining the genitals of the accused Panku Kashyap by constable No. 457 Girjashankar Kurre, the four sealed packets prepared by Dr. Sahab were seized in front of witnesses and seizure sheet (Ex.P-25) was prepared. Her signature is on parts A to B and Girjashankar Kurre's signature is on parts B to B. On 28/04/2019 at 1.30 a.m. constable number 457 Girjashankar Kurre, after examining the private parts of accused Pinku Kashyap, seized the four sealed packets prepared by medical officer in front of witnesses at the police station premises of Kondagaon and prepared seizure memo (Ex.P-26), on which his signature is on parts A to A and Girjashankar Kurre's signature is on parts B to B. This investigating witness has further stated that on 28/04/2019 at 1.55 a.m. constable No. 457 Girjashankar Kurre, after examining the private parts of accused Manoj alias Kanwal Baghel, seized the four sealed packets prepared by Medical Officer in front of witnesses at the police station premises of Kondagaon and prepared seizure memo (Ex.P-27). On the A to A parts of which his signature is there and on the B to B parts

Girjashan Kurre's signature is there. On 28/04/2019 at 2.00 a.m. accused Pinku Kashyap was arrested and arrest panchanama Ex.P. 28 was prepared, on the A to A parts of which the accused's signature is there. Information regarding the arrest was given to his family members, acknowledgment of the information is Ex.P. 29, on the A to A part of which his signature is there. On the night of 28/04/2019 at 2.15 a.m. accused Panku Kashyap was arrested and arrest panchanama Ex.P. 30 was prepared, on the A to A parts of which his signature is there and on the B to B parts the accused's signature is there. Information regarding the arrest was given to his family members, acknowledgment of information is Ex.P. 31, on the A to A parts of which his signature is there.

- 41.** This investigating witness has further stated that on 28/04/2019 at 2.30 am, accused Manoj alias Kanwal Baghel was arrested and arrest panchanama (Ex.P-32) was prepared on whose A to A parts the accused has signed. Information regarding arrest was given to his family as acknowledgment of information (Ex.P-33) on whose A to A parts, his signature is there. On 02/05/2019 at 8.45 am, she went to village Makdi and prepared a site map of the place of incident (Ex.P.-05) on the directions of the victim on whose B to B parts her signature is there. On 02/05/2019, she wrote a complaint to Tehsildar, Kondagaon regarding providing site map of the place of incident from Halka Patwari, whose acknowledgement is Ex.P-34 on whose A to A parts her signature is there. On 02/05/2019 at 13.00 hrs., the victim was examined by

the Superintendent of Kanya Ashram Mohlai, Mrs. Sakun Baghel regarding the date of birth, when the mutation register (Ex.P-15) was presented in the girls' ashram Mohlai, it was seized in front of witnesses and seizure memo (Ex.P-16) was prepared by her on parts B to B. She took the attested copy of Ex.P-15 as Ex.P-15C and returned the original in the surrender memo. The surrender memo is Ex.P-17 on parts B to B of which she has signed. This investigating witness has further stated that on 06/06/2019 at 11.30 am, when Lalman Maurya of village Makdi presented the marriage invitation card of Rekha alias Jana and Loknath (Ex.P. 18), it was seized in front of witnesses and seizure memo (Ex.P. 19) was prepared on which his signature is on parts B to B. On 12/06/2019 at 14.00 pm, in the police station premises of Kondagaon, when Bhadururam Kashyap presented his mark-sheet-cum-certificate regarding the date of birth of accused Pankuram (Ex.P-35), it was seized in front of witnesses and seizure memo (Ex.P-36) was prepared on parts A to A and parts B to B are signed by him. In this case the seized properties were sent to the Regional Forensic Science Laboratory, Jagdalpur for chemical test through the Superintendent of Police, Kondagaon. The memorandum of the Superintendent of Police is (Ex.P-37), the laboratory's exhibit receipt is Ex.P-38, the laboratory's exhibit return receipt is Ex.P-39 and the laboratory's test report is Ex.P-40. During the investigation she recorded the statements of the victim, witnesses Smt. Kunti Bai, Ghasuram Maurya, Mangtaram

Maurya, Lakhmuram Maurya, Sururam Nag, Chituram Maurya, Mangalram Nag, Ms. Gayatri Nag, Smt. Gomti Baghel, Smt. Rekha Baghel alias Rekha Maurya and Narendra Baghel as told by them. After finding sufficient evidence against the accused, the charge-sheet was presented before the learned trial Court.

42. In the Indian society, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in **Rameshwar v. The State of Rajasthan (AIR 1952 SC 54)** were:

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity

of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...”.

43. Crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women'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 not merely a physical assault -- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulders 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. This position was highlighted in **State of Punjab v. Gurmeet Singh (1996 (2) SCC 384)**.

44. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may

lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

45. The Supreme Court in the matter of **Rai Sandeep @ Deenu v. State of NCT of Delhi, 2012 (8) SCC 21** held as under:-

“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."

46. The Supreme Court in the matter of **Nawabuddin v. State of Uttarakhand** (CRIMINAL APPEAL NO.144 OF 2022), decided on 8.2.2022 has held as under:-

“10. Keeping in mind the aforesaid objects and to achieve what has been provided under Article 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.

Children are precious human resources of our country; they are the country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our

view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. As observed and held by this Court in the case of **State of Rajasthan v. Om Prakash, (2002) 5 SCC 745**, children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. In the case of **Nipun Saxena v. Union of India, (2019) 2 SCC 703**, it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.”

- 47.** 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."

48. 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.”

49. The Supreme court in the matter of **State of UP v. Sonu Kushwaha, (2023) 7 SCC 475** has held as under :

“12. The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology “shall not be less than....”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the

obnoxious act on the mind of the victim/child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court.”

- 50.** As per the statement of the prosecutrix before the trial Court (PW-2), the incident took place in village Makdi on 26/04/2019. On the date of incident, a wedding was taking place in her aunt's house, at around 9-10 pm, she and her friend Gayatri went to the field at a little distance from the wedding house to use the bathroom. They were standing to use the bathroom at that time, 11-12 boys came and surrounded them, four of them caught her, she came to know the names of the accused Panku, Pinku, Manoj later and two boys caught her friend and lifted her and took her in different direction and made her lie down on the ground and removed her clothes, after that one of them caught her hand and sat on her head and one boy held both her legs. After that one of the boys came upon her and raped her, after that two more boys raped her in turn. After raping her, they ran away from there. She has further stated in her main examination that after that she went to her home and told her mother about the incident that happened with her, her mother told the village head Lakhmu and other people. After that she went to Aambal. She also told her father about the incident. She went to the house of the boy whose

marriage procession had come to Makdi in Aambal and told him about the incident. Then they made the boys playing the instruments stand up. Then she recognized three of the boys who had raped her. At the time they were raping her, they had turned on the torch of their mobile phone, due to which she saw their faces and hence recognized those boys there. She has further stated in his examination-in-chief that she returned to her village from Aambal at night. Next day after dawn, she went to Kondagaon police station with his parents and village sarpanch, patwari and lodged a report. Her report is Exhibit P-01, on which her signature is present on parts A to A. The police took her consent for conducting a private examination, which is Exhibit P-02, on which her signature is present on parts A to A. A lady doctor had conducted her private examination in the hospital. The police gave her the underwear she was wearing at the time of the incident and her mark-sheet of Upper Primary School Makdi (Ex.P-3) which the police seized from her and prepared a seizure memo (Ex.P-4), on which her signature is present on parts A to A. There was no visible injury on her body.

The victim (PW-2) has further stated in her examination-in-chief that after coming home on the date of incident, she met her friend Gayatri, who told her that her cloths were also removed. Policemen had come to the village for investigation and she had shown the police the crime scene. Police had prepared the site map of the crime scene (Ex.P-5).

Policemen had taken her to the Magistrate for recording her statement. Magistrate had interrogated her and recorded her statement. Similar statement has been made by witness Gayatri Nag (PW-04) regarding the incident who is an eye witness of the incident.

- 51.** It is an established principle that there is no legal impediment in convicting a person on the basis of the sole testimony of the prosecutrix in sexual offences, if her statement inspires confidence. In the present case, the prosecutrix/victim (PW-02) has clearly stated in her judicial examination that on the incident dated 26/04/2019, the accused persons along with the child in conflict with law gang-raped her in turns without her will and consent. It is difficult for a woman who is subjected to sexual offence to forget the original nature of the incident, and in the present case, the victim has presented the incident that happened to her before the trial Court concerned through her irrefutable evidence and she had told her parents and other people about the incident that happened to her, which has been confirmed by other prosecution witnesses Gaatrayi Nag (PW-04) (eye witness), Sururam Nage (PW-05), Chitaram Maurya (PW-06).
- 52.** The prosecutrix in para 03 of her examination-in-chief has stated that at the time of the incident, the accused persons had turned on the torch of their mobile phone, due to which she saw their

faces and identified appellants Panku Kashyap, Manoj @ Kanwal Baghel and Pinku Kashyap.

53. The Supreme Court in the matter of **Malkhansingh and others v. State of M.P.** reported in **(2003) 5 SCC 746** held as under:-

“7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure, which obliges the investigating agency to hold, or confers a right upon the accused to claim, a test identification parade. They do not constitute

substantive evidence and these parades are essentially governed by section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (Emphasis supplied)."

54. On the basis of the above analysis of evidence, the prosecution has been able to prove beyond reasonable doubt that on the date of the incident, the prosecutrix was below 18 years of age and fell in the category of "child" and the accused and the child in conflict with law, at the said date, time and place of the incident, committed aggravated penetrative sexual assault by gang-raping the minor victim, who was below 16 years of age, in turns, without her will and consent.
55. **Section 376D Gang rape:** Where a woman is raped by one or more persons forming a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape.
56. As per above, gang rape as defined in section 376D and the facts and circumstances of the case fully satisfy the fact that each of the accused has directly contributed to the commission of this crime.

57. Considering the evidence of the prosecutrix (PW-2) who has specifically stated the role of each of the appellants, evidence of witnesses victim's mother (PW-1), victim's father (PW-3), Gayatri Nag (PW-04)(eye witness), Sururam Nage (PW-05), Chituram Maurya (PW-06), Dr. Omprakash Nag (PW-7), Dr. Mamta Thakur (PW-8), Shakun Baghel, Principal (PW-9), further considering the FSL report (Ex.P-37) in which, it has been stated that semen stains and human sperm were found in the underwear, which confirms the fact that sexual intercourse had taken place with the victim and the identification process, in which the prosecutrix has identified appellants Panku Kashyap, Manoj @ Kanwal Baghel and Pinku Kashyap, the material available on record and the law laid down by the Supreme Court in the above-stated judgments, we are of the considered opinion that the learned Sessions Judge has rightly convicted appellants- Panku Kashyap, Manoj @ Kanwal Baghel and Pinku Kashyap for offence under Section 6 of the POCSO Act. We do not find any illegality and irregularity in the findings recorded by the Sessions Judge.
58. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellants. The conviction and sentence as awarded by the trial court to the appellants is hereby upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.

- 59.** It is stated at the Bar that the appellants are in jail. They shall serve out the sentence as ordered by the trial Court.
- 60.** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the Appellants are undergoing the jail term, to serve the same on the Appellants informing them that they are 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.

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

HEAD NOTE

Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act.