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CRA-9382-2022

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&amp;

HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN

CRIMINAL APPEAL No. 9382 of 2022*AYYAZ MOHAMMAD**Versus**THE STATE OF MADHYA PRADESH*Appearance:*Shri Siddharth Datt - Advocate for the appellant.**Shri Arvind Singh - Government Advocate for the respondent/State.*

Reserved on: 08/01/2026

Delivered on: 27/01/2026

JUDGMENT*Per. Justice Ratnesh Chandra Singh Bisen.*

This Criminal Appeal under Section 374(2) of the Cr.P.C., is filed by the appellant being aggrieved of the judgment dated 06.09.2022 passed by learned Third Additional Sessions Judge/Special Judge, Protection of Children from Sexual Offences Act, 2012, Deosar, District Singrauli (M.P.), in Special Case No.59 of 2020, whereby appellant has been convicted for offences as under:-

<u>Conviction</u>		<u>Sentence</u>		
<u>Section</u>	<u>Act</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>Imprisonment in lieu of fine</u>
343	I.P.C.	R.I. for 1 year	Rs.500/-	R.I. for 01 month.
363	I.P.C.	R.I. for 05 years	Rs.1,000/-	R.I. for 03 months
366	I.P.C.	R.I. for 07 years	Rs.1,000/-	R.I. for 03 months
368	I.P.C.	R.I. for 05 years	Rs.1,000/-	R.I. for 03 months
376(2)(n)	I.P.C.	R.I. for 10 years	Rs.5,000/-	R.I. for 06 months



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376(3)	I.P.C.	R.I. for 20 years	Rs.5,000/-	R.I. for 06 months
3(k) read with 4	POCSO	-	-	-
5(L) read with 6	POCSO	-	-	-

2. According to the case of the prosecution, on 26.6.2019, a missing report was lodged by the mother of the prosecutrix to the effect that on 25.6.2019, the prosecutrix had gone to see a *Baraat* in the neighbourhood but did not come back. On being enquired, a friend of the prosecutrix informed that the prosecutrix had gone towards the river. Thereafter the prosecutrix was searched at various places but could not be traced. On the basis of aforesaid report, an FIR was lodged against unknown person vide crime no. 252 of 2019 under section 363 of the Indian Penal Code at Police Station Jiyawan.

3. During course of investigation on 27.6.2019, the prosecutrix was recovered from the house of the appellant at village Harra Chandel. On the said date, the statements of the father of the prosecutrix and friend of the prosecutrix were recorded. On 28.6.2019, after obtaining the consent of the parents of the prosecutrix, the prosecutrix was sent for medical examination to District Hospital Waidhan. On 28.6.2019, the police statement of the prosecutrix was recorded. On investigation, it was found that the appellant committed sexual intercourse with the prosecutrix under the false pretext of marriage on the back side of the house of the prosecutrix and thereafter in the house of the appellant.

4. After due investigation, an offence was registered against the appellant and his father namely Nazar Mohammad at Police Station Jiyawan under Sections 363, 343, 366-A, 368, 376(C), 109 of the Indian Penal Code and Section 4/6 of the Protection of Children From Sexual Offences Act and charge-sheet was filed



before Special judge (POCSO Act, 2012).

5. The Special Judge framed the charges under Sections 363, 366, 343, 368, 376 (3), 376(2)(N) of the IPC and Section 3(A) read with Section 4 & 5 (L) read with Section 6 of the POCSO Act against the appellant and under Sections 343, 368 of the IPC and Section 19(1) read with Section 21(1) of the POCSO Act against the father of the appellant namely Nazar Mohammad.

6. Both the accused persons abjured their guilt and pleaded that they have been falsely implicated in the case. The accused examined Ramakant Sharma (DW-1), Head Master of Govt. Middle School, Harra Chandel, District Singrauli as a defence witness.

7. The trial Court on appraisal of oral and documentary evidence available on record acquitted accused Nazar Mohammad of the offence under Sections 343, 368 of the IPC and Sections 19(1) read with Section 21(1) of the POCSO Act and convicted the appellant for the offences as mentioned hereinabove. Hence, this appeal.

8. Learned counsel for the appellant submits that the trial Court has failed to appreciate the oral as well as documentary evidence available on record in its proper perspective and has committed an error in convicting the appellant for the aforesaid offences. It is contended that there is no cogent or plausible evidence to establish the complicity of the present appellant in the alleged offence. There is no evidence on record to indicate that the appellant had committed sexual intercourse with the prosecutrix. It is further submitted that the prosecutrix was in a continuous relationship with the present appellant.

9. *Per contra*, Shri Arvind Singh, learned Public Prosecutor for the respondent—State, supports the impugned judgment. He submits that after proper analysis of the oral and documentary evidence produced by the prosecution, the trial Court



has rightly convicted the appellant under the aforesaid sections, and no error has been committed in the findings recorded by the trial Court. He further submits that the prosecutrix has fully supported the prosecution case in her statement before the Court, wherein she categorically stated that the appellant committed sexual intercourse with her forcefully. She further stated that she shouted at the relevant time, but since a marriage function was going on and loud music/DJ was being played, her voice could not be heard by anyone. Taking advantage of the said situation, the accused committed the act. It is also submitted that the prosecutrix was a minor at the time of commission of the offence. The DNA report is positive, and therefore, the impugned judgment does not call for any interference. Hence, the appeal deserves to be dismissed.

10. We have heard learned counsel for the parties and have also perused the record.

**Determination of age:-**

11. The victim (PW-1), in her testimony, stated that she was 13 years old and studying in Class VII at Gayatri High School, Ogdadi, Bargawan. In paragraph 11 of her statement, she again mentioned her age as 13 years. She stated that she does not know her date of birth and that her father admitted her to Class I. In paragraph 12, she denied the suggestion that she had studied at Government Primary School, Harra Chandel, Deosar. She herself stated that her grandmother used to go to the said school for cooking mid-day meals and that she used to accompany her, whereupon the school authorities enrolled her name on their own. In paragraph 13, she stated that she was not aware that her date of birth was recorded as 12.09.2002 in the Government Primary School, Harra Chandel, Deosar. In paragraph 17, she stated that she studied up to Class V at Navayug Bal Purva Madhyamik



Vidyalaya, Deosar.

12. The mother of the victim (PW-2) stated in her testimony that her daughter was 14 years old and had studied up to Class VI. She further stated that her husband admitted the victim to Navayug School, Deosar. In paragraph 7 of her cross-examination, she stated that she does not remember the exact date of birth of the victim. She further stated that it was her husband who got the victim admitted to Class I, but she does not remember the year. In paragraph 8, she denied the suggestion that the victim was admitted to Class I at Government Primary School, Harra Chandel, where her date of birth (12.09.2002) was recorded on an estimated basis.

13. The father of the victim (PW-3) stated that the victim was 14 years old and had studied up to Class V. He stated that he admitted her to Navayug School, Deosar. In paragraph 5 of his cross-examination, he stated that the victim's date of birth is 04.06.2006. In paragraph 7, he admitted that his mother had been working as a cook at Harra Chandel School for about 15 years and that the victim's name was also recorded in the Government Primary School, Harra Chandel, Deosar. He himself stated that he did not enroll her name there and that the school authorities did so on their own. In paragraph 9, he stated that no birth certificate was prepared for the victim. He further stated that the victim studied up to Class V and thereafter was not admitted to any other school.

14. Jitendra Sharma (PW-7) stated that he has been working as Headmaster of Navayug Bal Purva Madhyamik Vidyalaya, Deosar, since 2004. He produced the original scholar register maintained by the school for the period from 01.07.2010 to 10.04.2013, containing entries from registration number 346 to 626. The relevant entry pertaining to the victim is at registration number 548, wherein it is recorded that she was admitted to Class I on 03.07.2012 and her date of birth was



recorded as 04.07.2006. In his cross-examination, he stated that the victim's father was present at the time of admission but did not submit any birth certificate. He further admitted that the date of birth was recorded on the basis of an estimated date provided by the victim's father.

15. Ramakant Sharma (DW-1) stated that he has been working as Headmaster of Government Primary School, Harra Chandel, Deosar, since 03.08.2019. According to the scholar register maintained from the year 2007 to 2011, the victim's name is recorded at registration number 1340 as having been admitted to Class I. In the said entry, her date of birth is mentioned as 12.09.2002 and the date of admission as 07.07.2008. In his cross-examination, he stated that he was not posted at the school on 07.07.2008 and therefore could not say who made the entry. He further stated that there were no signatures of the Headmaster or any authorized person against the entry. In Exhibit D-1, the victim's name at registration number 1340 appears to have been struck out and rewritten without any initials. He stated that he could not confirm who made these corrections or on what basis the date of birth was recorded. He further stated that the register was neither certified by any senior officer nor sealed with any name or designation, and the page numbering was also incomplete. The scholar register was not authenticated by any competent authority.

16. Thus, upon considering the entire testimony of this defence witness, it is evident that the scholar register produced by him is itself doubtful. It is not clear as to who made the relevant entries. Therefore, the date of birth of the victim recorded in Exhibit D-1 as 12.09.2002 cannot be accepted. Even otherwise, the incident occurred on 25.06.2019, and even if the said date of birth is accepted, the victim would still have been below 17 years of age on the date of the incident. On the other hand, the oral and documentary evidence produced by the prosecution



appears to be reliable. The testimonies of the victim, her parents, and Jitendra Sharma (PW-7), Headmaster of Navayug Bal Purva Madhyamik Vidyalaya, Deosar, are consistent with each other. From the testimony of Jitendra Sharma (PW-7), it is clear that the victim's date of birth was recorded on the basis of information supplied by her father.

17. The Hon'ble Supreme Court in **Jarnail Singh vs. State of Haryana (2013) 7 SCC 263** has propounded the following principles in paragraphs 23 and 24, which reads as under:-

"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 of a child who is a victim of crime. For, in our view, there is hardly any difference insofar 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, PW 6. 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 child concerned 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 child concerned, 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, PW 6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied up to 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, PW 6 on the next available basis in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW 4) to prove the age of the prosecutrix VW, PW 6. Satpal (PW 4) was the Head Master of Government High School, Jathlana, where the prosecutrix VW, PW 6 had studied up to Class 3. Satpal (PW 4) had proved the certificate Ext. PG, as having been made on the basis of the school records indicating that the prosecutrix VW, PW 6 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, PW 6. 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, PW 6. The deposition of Satpal, PW 4 has not been contested. Therefore, the date of birth of the prosecutrix VW, PW 6 (indicated in Ext. PG as 15-7-1977) assumes finality. Accordingly it is clear that the prosecutrix VW, PW 6, 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, PW 6 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, PW 6 had accompanied the appellant-accused Jarnail Singh of her own free will, and had consensual sex with him, the same would have been clearly inconsequential, as she was a minor."

18. Similarly, in **State of Madhya Pradesh vs. Anoop Singh (2015) 7 SCC 773** , the Hon'ble Supreme Court, in paragraphs 13 to 16, laid down guiding principles,



which are as follows:

"13. In the present case, the central question is whether the prosecutrix was below 16 years of age at the time of the incident? The prosecution in support of their case adduced two certificates, which were the birth certificate and the Middle School Certificate. The date of birth of the prosecutrix has been shown as 29-8-1987 in the birth certificate (Ext. P-5), while the date of birth is shown as 27-8-1987 in the Middle School Examination Certificate. There is a difference of just two days in the dates mentioned in the abovementioned exhibits. The trial court has rightly observed that the birth certificate, Ext. P-5 clearly shows that the registration regarding the birth was made on 30-10-1987 and keeping in view the fact that registration was made within 2 months of the birth, it could not be guessed that the prosecutrix was shown as underaged in view of the possibility of the incident in question. We are of the view that the discrepancy of two days in the two documents adduced by the prosecution is immaterial and the High Court was wrong in presuming that the documents could not be relied upon in determining the age of the prosecutrix.

14. This Court in *Mahadeo v. State of Maharashtra* [(2013) 14 SCC 637 : (2014) 4 SCC (Cri) 306] has held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is applicable in determining the age of the victim of rape. Rule 12(3) reads as under:

"12. (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.”

15. This Court further held in para 12 of Mahadeo [(2013) 14 SCC 637 : (2014) 4 SCC (Cri) 306] , as under : (SCC p. 641)

“12. ... Under Rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rules 12(3)(a)(i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of the juvenile in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well.”

(emphasis supplied)

This Court therefore relied on the certificates issued by the school in determining the age of the prosecutrix. In para 13, this Court observed : (Mahadeo case [(2013) 14 SCC 637 : (2014) 4 SCC (Cri) 306] , SCC p. 641)

“13. In light of our above reasoning, in the case on hand, there were certificates issued by the school in which the prosecutrix did her Vth standard and in the school leaving certificate issued by the school under Ext. 54, the date of birth of the prosecutrix has been clearly noted as 20-5-1990, and this document was also proved by PW 11. Apart from that the transfer certificate as well as the admission form maintained by the Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20-5-1990. The reliance placed upon the said evidence by the courts below to arrive at the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of the occurrence was perfectly justified and we do not find any grounds to interfere with the same.”

16. In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at



the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rule 12(3)(b). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence in the form of Exts. P-5 and P-6 cannot be discarded. Therefore, the trial court was correct in relying on the documents."

19. The main argument advanced by counsel for the appellant is that Dr. Aakriti Jaiswal had examined the victim medically and had advised for conducting X-rays of the right wrist, right elbow, right knee, and pelvic bone for determination of age. In such circumstances, as per the principle propounded by the Hon'ble Supreme Court in case of **Sunil vs. State of Haryana (2010) 1 SCC 742**, not conducting the ossification test would be a serious error. Paragraph 24 of the said judgment is significant, which reads as follows:-

"24. Dr. Verma, PW 1, who had clinically examined the prosecutrix, found that her secondary sex characters were well developed. The short question in the facts and circumstances of this case that remains to be determined is whether the prosecutrix was a minor? Dr. Sadhna Verma, PW 1 who examined the prosecutrix referred her for verification to the dental surgeon and the radiologist. The failure of getting the prosecutrix examined from the dental surgeon or the radiologist despite the fact that she was referred to them by Dr. Sadhna Verma, PW 1 is a serious flaw in the prosecution version. We are not laying down as a rule that all these tests must be performed in all cases, but in the instant case, in the absence of primary evidence, reports of the dental surgeon and the radiologist would have helped us in arriving at the conclusion regarding the age of the prosecutrix."

20. On the basis of the principle propounded by the Hon'ble Supreme Court, the appellant cannot derive any benefit, since the same paragraph itself clarifies — "We are not laying down as a rule that all these tests must be conducted in all cases." Hence, it is clear that while a medical expert recommends an ossification test in cases, it is not mandatory.



21. Thus, from the above it is clear that if the doctor conducting the medical examination of the victim advises for an ossification test to determine her age, but the ossification test is not conducted, it will not affect the prosecution's case — provided that other documents such as the date of birth certificate issued by the school, or the matriculation or equivalent certificate from the concerned examination board, if available, are produced. In the absence of these, a birth certificate issued by the municipal or local body or panchayat authority may be relied upon. Only in the absence of all the aforesaid documents can the age be determined on the basis of an ossification test or any other latest medical examination.

22. Apart from this, the case of Sunil vs State of Haryana (*supra*) has been considered by the Hon'ble Supreme Court in the case of Jarnail Singh (*supra*), the above point has been discussed in detail in paragraphs 21 and 25 as follows.

"21. In order to support his contention, that the prosecutrix was not a minor at the time of occurrence, the learned counsel for the appellant placed reliance on the judgment rendered in Sunil v. State of Haryana [(2010) 1 SCC 742 : (2010) 1 SCC (Cri) 910 : AIR 2010 SC 392] . Ordinarily, we would have extracted the observations on which reliance was placed, but for reasons that would emerge from our conclusion, we consider it inappropriate to do so.

25. Since the judgment relied upon by the learned counsel for the appellant is distinguishable on facts. And since the judgment relied upon had not made any reference to the 2007 Rules, we are of the view that the same would not be relevant for the purposes of determining the age of the prosecutrix VW, PW 6, specially in the background of the evidence led by the prosecution through Satpal (PW 4) to establish.

In light of the principles laid down by the Hon'ble Supreme Court, it is clear that in the case of Sunil vs. State of Haryana (*supra*), Section 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007



was not taken into consideration; therefore, that judgment is irrelevant in the present context.

23. In addition, the observations made by the Hon'ble Supreme Court in State of M.P. vs. Anoop Singh (*supra*) particularly in paragraphs 16, 17 and 18 are noteworthy which reads as under:-

"16. In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rule 12(3)(b). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence in the form of Exts. P-5 and P-6 cannot be discarded. Therefore, the trial court was correct in relying on the documents.

17. The High Court also relied on the statement of PW 11 Dr A.K. Saraf who took the x-ray of the prosecutrix and on the basis of the ossification test, came to the conclusion that the age of the prosecutrix was more than 15 years but less than 18 years. Considering this the High Court presumed that the girl was more than 18 years of age at the time of the incident. With respect to this finding of the High Court, we are of the opinion that the High Court should have relied firstly on the documents as stipulated under Rule 12(3)(b) and only in the absence, the medical opinion should have been sought. We find that the trial court has also dealt with this aspect of the ossification test. The trial court noted that the respondent had cited *Lakhanlal v. State of M.P.* [2004 SCC OnLine MP 16 : 2004 Cri LJ 3962] , wherein the High Court of Madhya Pradesh said that where the doctor having examined the prosecutrix and found her to be below 18½ years, then keeping in mind the variation of two years, the accused should be given the benefit of doubt. Thereafter, the trial court rightly held that in the present case the ossification test is not the sole criterion for determination of the date of birth of the prosecutrix as her certificate of birth and also the certificate of her medical examination had been enclosed.

18. Thus, keeping in view the medical examination reports, the statements of the prosecution witnesses which inspire confidence and the certificates proving the age of the prosecutrix to be below 16 years of age on the date of the incident, we set aside the impugned judgment [*Anoop Singh v. State of M.P., Criminal Appeal No. 924 of 2006, order dated 10-7-2008 (MP)*] passed by the High Court and uphold the



judgment and order dated 24-4-2006 passed by the Third Additional Sessions Judge, Satna in Special Case No. 123 of 2003."

24. Accordingly, considering the above principles, it is concluded that merely because the doctor conducting the medical examination advised ossification testing to determine the victim's age and such a test was not conducted, the prosecution's case is not affected on that ground. The ossification test becomes necessary only in cases where documents mentioned under sub-section (2) of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 are not available. Therefore, the argument advanced on behalf of the appellant carries no weight. Hence, the trial court's conclusion that on the date of the incident, i.e., 25.06.2019, the victim's age was below 18 years, which is specifically 12 years, 11 months, and 21 days is found to be free from any error.

#### **On Merit**

25. The victim (PW-1) has stated that she had gone to her grandmother's house in Village Harra Chandel to attend her aunt's wedding ceremony. On 25.07.2019 at about 10:00 p.m., she went for nature's call with her friend Reena Yadav. At that time, two persons arrived, picked her up, and took her to the house of the accused, Ayyaz Mohammad. She screamed, but no one heard her due to the loud DJ music. The two persons locked her inside the house of accused Ayyaz Mohammad, who forcibly committed sexual intercourse with her against her will. On the third day of the incident, the police arrived, recovered the victim from the house of accused Ayyaz Mohammad, and took her to the District Hospital, Baidhan for medical examination. Her statement was recorded before the Magistrate (Ex. P/1). Nothing emerged in her cross-examination to discredit her testimony.

26. The mother of the victim (PW-2) testified that on the date of the incident, the victim was missing from the house. The family searched nearby but could not find



her. The victim's friend Reena later informed her that two men, with their faces covered by cloth, had taken the victim away. In the morning, she lodged a report at Jiawan Police Station (Ex. P/2). On 27.06.2019, when the victim met her, she narrated that the accused persons had forcibly confined her in their house and that accused Ayyaz Mohammad had sexual intercourse with her against her will. The witness further stated that when the victim was rescued, her clothes were soaked in blood, and she was extremely distraught. The police recovered the victim from the accused's house and handed her over to the witness.

27. The father of the victim (PW-3) corroborated that when he met his daughter, she told him that the accused persons had forcibly confined her in their house and that accused Ayyaz Mohammad had committed sexual intercourse with her two or three times. The police took the victim to the hospital for medical examination, for which he gave consent. He also confirmed that the police prepared a scene map (Ex. P/3) in his presence.

28. Reena Yadav (PW-4), the victim's friend, stated that on the date of the incident, she and the victim had gone to Krishna Yadav's house to see the marriage procession. Around 10:00 p.m., they went to the Kothari Nala ground for nature's call when accused Nazar Mohammad and Ayyaz Mohammad arrived and grabbed the victim. She shouted, but her voice was drowned out by the DJ music. She then ran to Krishna Yadav's house and informed the victim's mother that accused Nazar Mohammad and Ayyaz Mohammad had taken the victim. The next day, the police inquired about the incident, and she accompanied them to describe the scene. Nothing in her cross-examination warrants discrediting her testimony.

29. The grandfather of the victim (PW-5) corroborated the statements of the victim's mother and father. He stated that when the victim met him, she narrated



that while going for nature's call, accused Nazar Mohammad and Ayyaz Mohammad grabbed her, took her to their house, and accused Ayyaz Mohammad forcibly raped her against her will.

30. Sarnam Singh Baghel (PW-9), the Investigating Officer, testified that during the investigation, he visited the place of incident, inspected it, and prepared the spot map (Ex. P/3) at the instance of the victim's mother. On 27.06.2019, he recorded the statements of the victim's father and witness Reena Yadav. On 05.07.2019, he recorded the statements of the victim's mother, grandfather, and witness Jitendra Tiwari. On 27.09.2019, he searched the house of accused Nazar Mohammad in the presence of witnesses Anil Kumar Dwivedi and Ashish Dwivedi. During the search, the victim was found inside the house. He prepared a search panchnama (Ex. P/9) and a seizure panchnama (Ex. P/10). Thereafter, the victim was brought to the police station, her parents were called, and in the presence of witnesses Smt. Rama Yadav and Shrinath Yadav, she was handed over to her mother. A delivery panchnama (Ex. P/5) was prepared. A medical examination form (Ex. P/11) was prepared, and the victim was sent with a lady constable to the District Hospital, Baidhan for medical examination. On 28.06.2019, he arrested accused Mohammad Ayyaz (arrest memo Ex. P/12) and accused Nazar Mohammad (arrest memo Ex. P/13).

31. Roopa Agnihotri (PW-10) recorded the victim's statement on 28.06.2019.

32. Dr. U.K. Singh (PW-11) examined accused Ayyaz Mohammad and opined that he was capable of sexual intercourse. He sealed two semen slides and the accused's underwear, handing them over to the concerned constable for chemical testing. The medical examination report is Ex. P/18. He further stated that Dr. Akriti Jaiswal medically examined the victim on 28.06.2019. She prepared two slides of the victim's vaginal discharge, her green panty, and pubic hair, which



were handed over to the concerned female constable for chemical examination. In cross-examination, suggestions put to him on behalf of the accused were denied, and no material emerged to benefit the accused.

33. From the evidence of PW-9, it appears that for DNA examination, an EDTA vial containing the victim's blood sample, vaginal slide, pubic hair, and underwear, along with an EDTA vial containing the accused's blood sample, semen slide, and underwear, were sent to FSL, Sagar (letter Ex. P/20). The DNA report (Ex. P/22) confirms a positive DNA match with respect to accused Ayyaz Mohammad.

34. Upon analyzing the prosecution evidence, it is evident that the victim (PW-1) clearly stated that accused Ayyaz Mohammad forcibly committed sexual intercourse with her against her will. She was recovered from his house on the third day of the incident, as documented by the Investigating Officer through the search memo (Ex. P/9) and seizure panchnama (Ex. P/10). This fact is corroborated by the victim's mother (PW-2) and father (PW-3). The fact that accused Ayyaz Mohammad took the victim to his house while she was going for nature's call with her friend Reena Yadav (PW-4) stands proved. The scientific evidence, particularly the positive DNA report, further implicates accused Ayyaz Mohammad. In the cross-examination of the victim, her mother, and father, the defence suggested that accused Ayyaz Khan had supplied 100-200 truckloads of soil to his field without payment, leading to this false case when he demanded his money. This defence is untenable against the overwhelming prosecution evidence, including the victim's recovery from the accused's house on the third day. The accused's alternative plea that the victim was in love with him and went to his house willingly also fails, as the victim was a minor at the time of the incident.



35. In view of the aforesaid analysis, the evidence adduced by the prosecution is found to be credible. This Court is of the considered view that prosecution has proved its case beyond reasonable doubt that the appellant is guilty of the offences charged. We find no infirmity or illegality in the impugned judgment, warranting interference by this Court. The appeal fails and is hereby **dismissed**.

36. Record of the trial Court be sent back immediately.

(VIVEK AGARWAL)  
JUDGE

(RATNESH CHANDRA SINGH BISEN)  
JUDGE

Rao