



2026:CGHC:516

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1051 of 2023

Judgment Reserved on : 04-12-2025

Judgment Delivered on : 06-01-2026

Gangaram Jangade S/o Ghurva Ram Jangade Aged About 48 Years R/o Dumarpali, Police Station Pamgarh, District Janjgir - Champa Chhattisgarh

... Appellant / Accused

versus

State Of Chhattisgarh Through Station In Charge, Police Station Pamgarh, District - Janjgir - Champa Chhattisgarh

... Respondent

(Cause title taken from Case Information System)

For Appellant	:	Mr. Hemant Kumar Agrawal, Advocate
For Respondent / State	:	Mr. Shailesh K. Puriya, Panel Lawyer
For Objector	:	Mr. Udhoo Ram Koshaley, Advocate.

Hon'ble Shri Justice Naresh Kumar Chandravanshi

CAV Judgment

1. This criminal appeal has been preferred by appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity 'CrPC') challenging the judgment of conviction and order of sentence dated 25.04.2023 passed by the learned Upper Sessions Judge (F.T.C.), Janjgir, District Janjgir-Champa (CG) (henceforth referred to as 'Fast

Track Court') in Sessions Case No.62/2022, whereby the appellant / accused has been convicted for the offence punishable under Section 376(2)(l) of the Indian Penal Code, 1860 (for short "IPC") and sentenced to undergo RI for 10 years with fine of Rs.5,000/- and in default of payment of fine, to undergo 100 days' additional RI.

2. The case of the prosecution, in brief, is that on 28.07.2022, when daughter of complainant, who is said to be physically and mentally retarded, had gone to attend nature's call towards canal, there appellant laid her on the ground and raped her. On hearing screams made by victim, her mother and aunt (बड़ी माँ) rushed to the place of incident, upon seeing them, the appellant fled from the spot. Written complaint (Ex. P-1) was made by mother of victim in Police Station Pamgarh, District Janjgir-Champa, based on which, an FIR (Ex. P-2) was registered against the appellant for the offence punishable under Section 376(2)(i) of the IPC. During course of investigation, statement of victim under Section 164 of the CrPC was got recorded from the concerned Judicial Magistrate First Class, spot map (Ex.P-4) was prepared, victim was got examined by Dr. Nisha Suryavanshi (PW-6), who, vide MLC report (Ex.P-6), opined that no external or internal injury was found on the person of victim and she was habitual to sexual intercourse. However, she prepared two vaginal slides of the victim and also collected her underwear, handed over the same to the concerned police station for FSL examination. Medical examination of appellant was also got conducted by Dr. Aman Sahu (PW-7), who, vide MLC report (Ex.P-7), opined positive. Underwear of appellant was also seized vide seizure memo (Ex.P-10). Statements of witnesses under

Section 161 of the CrPC were recorded, panchnama (Ex.P-5) was prepared with regard to soil stained clothes of victim, which she wore during the said act. The appellant was arrested. Seized underwear & vaginal slides of victim, and underwear of appellant were sent for chemical examination to the Regional Forensic Science Laboratory, Bilaspur in which, vide FSL report Ex. P-16, in underwear of appellant, semen and human *spermatozoa* have been reported to be found, but in vaginal slides of victim and her underwear, no semen and human *spermatozoa* have been reported to be found. After completion of investigation, a charge sheet for the offence under Section 376(2)(l) of the IPC was filed against the appellant.

3. Learned Fast Track Court framed charge under Section 376(2)(l) of the IPC against the appellant, who abjured the guilt and entered into trial.
4. So as to bring home the charge, the prosecution examined as many as 8 witnesses and exhibited 16 documents, statement of the appellant/ accused under Section 313 of the Cr.P.C. was recorded, in which, he denied all the incriminating circumstances appearing against him in the prosecution's evidence claiming himself to be innocent and false implication. The appellant has not examined any witness in his defence.
5. After considering the evidence brought by the prosecution, learned Fast Track Court vide judgment dated 25.04.2023 convicted and sentenced the appellant, as mentioned in opening paragraph of this judgment. Being aggrieved, the appellant has preferred instant appeal.
6. Learned counsel appearing for the appellant / accused would submit that it is a case of prosecution itself that the victim was physically and

mentally disabled, which has also been noted by Judicial Magistrate First Class in her deposition recorded under Section 164 of the CrPC. In this regard, note has also been appended by learned Upper Sessions Judge, in deposition of victim, despite that, neither her deposition has been recorded with the assistance of interpreter nor it has been recorded in writing of victim in question-answer form. Though learned Upper Sessions Judge has noted that statement made by victim is understandable from her words and gesture, but recording of her deposition has not been video-graphed, as has been provided under Section 119 of the Evidence Act, 1872, therefore, deposition of victim cannot be considered as legal evidence in the eye of law. In this regard, he relied on the decision of Hon'ble Supreme Court in the case of ***State of Rajasthan vs. Darshan Singh alias Darshan Lal, [(2012) 5 SCC 789]*** and decision of High Court of Sikkim in the case of **Bhim Bahadur Basnett Vs. State of Sikkim** [Crl. A. No. 03/2022 decided on 6-12-2023]. He further submitted that there are material contradictions and omissions in the deposition of victim (P.W. 2), her mother (P.W. 1) and her aunt (बड़ी माँ) (P.W. 3) with regard to where alleged incident occurred and in which position of the appellant, PW-1 and PW-3 saw the incident. PW-3 has stated that when they reached to the spot, that time, the victim (P.W. 2) was fainted but it does not get support from deposition of the victim (P.W. 2) and her mother (P.W. 1) also. He next submitted that deposition of victim with regard to offence of rape does not get support from medical evidence. Thus, the impugned judgment is perverse to the evidence available on record and also against the law. Hence, he prays that this appeal may be allowed and the appellant be acquitted of the said charge.

7. *Per contra*, learned State counsel supported the impugned judgment.
8. Mr. Udho Ram Koshaley, learned counsel appearing on behalf of the complainant / victim would submit that the victim /complainant has no objection, if appellant / accused is acquitted of the said charge levelled against him.
9. I have heard learned counsel for the parties and perused the material available on record along with record of the Fast Track Court.
10. P.W. 2 is victim. She has stated in her deposition that, at the time of incident of 28-7-2022, when she had gone to attend nature's call across the canal, then the appellant/accused gagged her mouth and committed rape with her. When she cried calling her mother, seeing her coming, the appellant ran away. She has further stated that, police got examined her from the doctor. In cross-examination, the victim (P.W. 2) has admitted that, though the appellant threw her on the field, which was rough, despite that, she did not sustain injury on her back. She has denied the suggestion that, she did not try to prevent herself. She has also denied the suggestion of learned defence counsel that, prior to the incident, she had made physical relation with the appellant many times. She has denied the suggestion that, at the time of incident, she had talked with him and she herself disrobed herself.
11. P.W. 1 is mother of the victim. As per her deposition, when the victim (P.W. 2) had gone to attend nature's call across the canal, at that time, she was sitting on the terrace of the house of her Jeth (Pati ke Bade Bhai). She has further stated that, when the victim screamed, she along with her Jethani (Pati ke Bade Bhai ki Patni) went to the place from

where the scream was coming, then she saw the appellant committing rape of victim and upon seeing them, he ran away from there. Thereafter, they brought the victim and made written complaint (Ex. P-1) on the basis of which, FIR (Ex. P-2) was registered. Though, there is omission in her police statement Ex. D-1 on the point that, at the time of incident, she was sitting on the terrace of the house of her Jeth and she had seen the incident, but her Jethani (P.W. 3) has also supported her statement that, at the time of incident, mother (P.W. 1) of the victim was sitting near the stair of their house, then on being called by her, both of them went towards the field from where scream was coming, where she saw the appellant running away from the place of incident, the victim was present there and her clothes were opened. She has also stated that, the victim told them that, the appellant took her gagging her mouth and rapped her.

12. Mother of the victim (P.W. 1), the victim (P.W. 2) and her aunt (Badi Maa) have admitted the suggestion of learned defence counsel that, there was toilet in the house of the victim, but mother (P.W. 1) of victim and her aunt (P.W. 3) have stated in their deposition that, the victim could not sit on that toilet, therefore, she used to go to attend nature's call outside the house. Though, there are contradictions in deposition of mother (P.W. 1) of victim and her aunt (P.W. 3) that, at which place, the mother of the victim was sitting in the house of P.W. 3 as her mother (P.W. 1) has stated that, she was sitting on the terrace of the house of P.W. 3, whereas P.W. 3 herself has stated in her cross-examination that, she was sitting near the stair of their house. Uncle (P.W. 4) of the victim has stated that, mother of the victim was sitting outside their

house, but no suggestion has been taken from them that, the stair of their house is not situated outside their house. Further, when a person goes to other's/neighbour house, then normally, some times she/he sits at one place and some times, at another place. Therefore, aforesaid contradictions in the statements of witnesses, is not found to be material contradictions. P.W. 4 is husband of P.W. 3 and elder brother of father of victim, who has stated himself to be handicapped, but he has also supported deposition of the mother (P.W. 1) of the victim, the victim (P.W. 2) and her aunt (P.W. 3) that, after the incident, when the victim was brought, she told him that, the appellant had rapped her.

13. Alleged incident is said to have occurred at 17.00 hrs on 28-7-2022 and FIR (Ex. P-2) was lodged on same day at 19.30 hrs. Thus, it is found that, the FIR was lodged immediately after the incident.
14. At the time of incident, when the victim screamed, her mother (P.W. 1) and her aunt (P.W. 3) were present in the house of P.W. 3, which is situated across the canal. That house and place of incident has also been shown in the spot map (Ex. P-4) prepared by the Investigating Officer Om Prakash Kurre (P.W. 8). The victim (P.W. 2) and her aunt (P.W. 3) have denied the suggestion of learned defence counsel that, the screams / shouting made from the scene of the incident, would not have reached to the house of P.W. 3. Though, mother (P.W. 1) of the victim, has stated that, when they went to the place of incident, she saw the appellant committing rape upon the victim and upon seeing them, he ran away from there, but Aunt of victim (P.W. 3) has not stated that, she had seen the appellant rapping the victim, rather she has stated that, she only saw the appellant running from the place of incident, but

she has also stated that, the victim was present there and her clothes were opened and the appellant who was wearing shirt ran away with a Lungi wrapped around his bottom. Though, P.W. 3 has stated that, the victim was fainted, which does not get support from deposition of victim (P.W. 2) herself and her mother (P.W. 1), but a victim suffering from such trauma, sometimes becomes bewildered / shocked. Aunt (P.W. 3) of the victim is an illiterate lady, therefore her aforesaid statement is found to be purview of her own assessment. Hence, aforesaid omission is not found to be grave to discard her statement.

15. On next date of the incident i.e. 29-7-2022, Dr. Nisha Suryavanshi (P.W. 6) medically examined the victim in which she found scratch mark on the neck of the victim. Apart from that, she did not find any external or internal injury on the body of the victim. She has admitted in cross-examination that, she did not find any symptom on the person of the victim with regard to commission of rape with her. She has also admitted the suggestion of learned defence counsel that, if a victim is thrown on the rough surface then she may sustain injury. Dr. Nisha Suryavanshi (P.W. 6) preserved two vaginal slides of the victim and also preserved her undergarment, which was seized by ASI Om Prakash Kurre (P.W. 8) vide seizure memo Ex. P-9. The appellant was medically examined by Dr. Aman Sahu (P.W. 7) in which he did not find any external injury on his genital organ and he reported vide MLC report Ex. P-7 that, he was competent to perform sexual intercourse. The underwear of the appellant was also seized by Investigating officer Om Prakash Kurre (P.W. 8) vide seizure memo Ex. P-10. Vaginal slide of the victim, her underwear and underwear of the appellant were sent by the police for

chemical examination to Regional Forensic Science Laboratory, Bilaspur (FSL). As per the FSL report (Ex. P-16), in vaginal slide of the victim and her underwear, no semen stains and human spermatozoa were reported to be found, and in underwear of the appellant, semen stains and human spermatozoa has been reported to be found, but, it was not sufficient for serum examination. Learned defence counsel referring to the medical report of victim as well as the appellant and the FSL report, argued that, both the reports do not support the case of the prosecution, therefore, only on the basis of deposition of the victim and her relatives, in absence of any independent witness, appellant cannot be convicted for the offence of rape.

16. The alleged incident occurred on the rough surface of the field. The victim (P.W. 2) has stated in her deposition that, she has sustained scratch injury near her neck, which also gets support from deposition of Dr. Nisha Suryavanshi (P.W.6), who found scratch injury on her neck, which she has opined to have been sustained within 24 hrs. Since the appellant had gagged her mouth and dragged her also, therefore, it seems that, aforesaid injury was sustained by the victim on that count. Further, the Investigating Officer Om Prakash Kurre (P.W. 8) has proved Panchnama (Ex. P-5), which has also been supported by Aunt of the victim (P.W. 3) and her uncle (P.W. 4), wherein it has been stated that, since it was rainy season therefore, there was mud and dirt on the Kurti worn by the victim at the time of incident. Since the incident occurred during rainy season, hence the fact that, the victim did not sustain any injury on her back, cannot be considered significant. Further Hon'ble Supreme Court in the case of **Krishan Vs. State of**

Haryana [(2014) 13 SCC 574], has held that, it is not expected that every rape victim should have injury on her body to prove her case. In this context, in the case of **State of Rajasthan Vs. N.K., the Accused** [(2000) 5 SCC 30], Hon'ble Supreme Court has held inter alia that '18.The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case.'. In the instant case, alleged incident occurred in rainy season, therefore, not sustaining injury by the victim on her back is not found to be vital in view of aforesaid judgment rendered by the Apex Court. Further, the victim had sustained injury on her neck, which also gets support from medical evidence and back side of her Kurti also contained stains of mud and dirt, therefore, aforesaid contention raised by learned defence counsel is not found to be sustainable.

17. The victim (P.W. 2) and her mother (P.W. 1) have admitted the suggestion of learned defence counsel that the appellant had taken Rs. 500/- as loan from them, but they have denied the suggestion of the defence counsel that, since the appellant did not return aforesaid amount, therefore, they have falsely implicated him in instant case. In this regard, mother (P.W 1) of victim has specifically stated that, the appellant had equalized that amount by ploughing their field through tractor. Even otherwise, it is highly improbable that, for the meager sum

of Rs. 500/-, the victim or her parents would fabricate an allegation of rape against the appellant, a charge that carries severe social stigma and is inherently harmful to the victim's own reputation and future. Therefore, aforesaid contention is found to be improbable.

18. I am not inclined with the submission made by learned counsel for the appellant as it is settled proposition of law that conviction of the accused could be based on sole testimony, without corroboration and it has also been held that the sole testimony of victim should not be doubted by the Court merely based on assumptions and surmises.
19. In the case of **Ganesan vs. State, reported in (2020) 10 SCC 573**, the Hon'ble Supreme Court observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the victim is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. In the aforesaid case, the Hon'ble Supreme Court had an occasion to consider the series of judgments on conviction on the sole evidence of the victim. In paragraphs 10.1 to 10.3, it was observed and held as under:

“10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in **Vijay [Vijay v. State of M.P., (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639]** , it is observed in paras 9 to 14 as under : (SCC pp. 195-98)

“9. In **State of Maharashtra v. Chandraprakash Kewalchand Jain [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550 : 1990 SCC (Cri) 210]** this Court held that a woman, who is the victim of sexual assault, is not an accomplice

to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under : (SCC p. 559, para 16)

'16. A prosecutrix of a sex offence cannot be put on a 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 alive to and 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 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 shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose 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.'

10. In ***State of U.P. v. Pappu*** [***State of U.P. v. Pappu***, (2005) 3 SCC 594 : 2005 SCC (Cri) 780] this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under : (SCC p. 597, para 12)

'12. 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 upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of 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 do.'

11. In *State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316]*, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under : (SCC pp. 394-96 & 403, paras 8 & 21)

'8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not

affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

* * *

21. ... 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.'

(emphasis in original)

12. In ***State of Orissa v. Thakara Besra* [State of Orissa v. Thakara Besra, (2002) 9 SCC 86 : 2003 SCC (Cri) 1080]**, this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In ***State of H.P. v. Raghbir Singh* [State of H.P. v. Raghbir Singh, (1993) 2 SCC 622 : 1993 SCC (Cri) 674]** this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in ***Wahid Khan v. State of M.P.* [Wahid Khan v. State of M.P., (2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208]** placing reliance on an earlier judgment in ***Rameshwar v. State of Rajasthan* [Rameshwar v. State of Rajasthan, 1951 SCC 1213 : AIR 1952 SC 54]**.

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The

court may convict the accused on the sole testimony of the prosecutrix."

10.2. In *Krishan Kumar Malik v. State of Haryana* [*Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61], it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

10.3. Who can be said to be a "sterling witness", has been dealt with and considered by this Court in *Rai Sandeep v. State (NCT of Delhi)* [*Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750]. In para 22, it is observed and held as under : (SCC p. 29)

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under

no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

20. In the case of **State (NCT of Delhi) vs. Pankaj Chaudhary**, reported in **(2019) 11 SCC 575**, it was observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It was further observed and held that sole testimony of victim should not be doubted by Court merely on basis of assumptions and surmises. In paragraph 29, it was observed and held as under:

“29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. **[Vishnu vs. State of Maharashtra [Vishnu vs. State of Maharashtra, reported in (2006) 1 SCC 283].** It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. **[State of Rajasthan vs. N.K. [State of Rajasthan vs. N.K., reported in (2000) 5 SCC 30].**”

21. In the case of **Sham Singh vs. State of Haryana**, reported in **(2018) 18 SCC 34**, the Hon’ble Supreme Court observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It was further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it was observed and held as under:

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape.

They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the 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 court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. **[See State of Punjab vs. Gurmit Singh [State of Punjab vs. Gurmit Singh, reported in (1996) 2 SCC 384] (SCC p. 403, para 21).]**

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of

the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See **Ranjit Hazarika vs. State of Assam [Ranjit Hazarika vs. State of Assam, reported in (1998) 8 SCC 635]**].”

22. Reverting to the facts of the instant case, though the FSL report and the medical report pertaining to the victim do not support the case of the prosecution except an injury on the neck of the victim as also there is no independent witness, but the victim (P.W. 2) has proved the charge leveled upon the appellant which has also been supported by her mother (P.W. 1) and her aunt (P.W. 3). Nothing material has been brought in their cross-examination to discard their statements except minor contradictions and omissions which are not found to be vital. There is no evidence of any enmity or grudge that would suggest the accused was falsely implicated by

the victim party. Therefore, having considered aforesaid law laid down by the Hon'ble Supreme Court, even in absence of corroboration by medical/FSL report and independent witness, deposition of the victim (P.W. 2), her mother (P.W. 1) and her aunt (P.W. 3) cannot be brushed aside. Hence, contention raised by learned counsel for the appellant on this count is not sustainable.

23. Learned defence counsel referring to the statement of the victim recorded under Section 164 of the Cr.P.C. before the Judicial Magistrate First Class, Navagarh, Distt. Janjgir-Champa on 2-8-2022 (not exhibited), deposition of mother of victim (P.W. 1) and note appended by the Fast Track Court in the deposition of the victim strongly submitted that the victim is handicapped physically and mentally, therefore, her deposition ought to have been recorded with the assistance of an interpreter or a special educator and it also should have been video-graphed, as provided in Section 119 of the Evidence Act but learned Fast Track Court has neither recorded deposition of the victim through an interpreter nor a special educator nor has video-graphed her deposition, therefore, deposition of the victim cannot be relied upon.
24. The provisions with regard to a person/witness who is competent to testify himself and if he is unable to communicate verbally, how his evidence will be recorded is provided in Sections 118 and 119 of the Evidence Act, which reads thus :

“118. Who may testify.- All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from

giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. Witness unable to communicate verbally.— A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed."

25. Hon'ble Supreme Court in the case of **State of Rajasthan Vs. Darshan Singh alias Darshan Lal** (Supra) relied upon by learned defence counsel, has held in para 28 and 29 as under :-

"28. Language is much more than words. Like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey. But a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing, if literate or through signs and gestures, if he is unable to read and write. A case in point is the silent movies which were understood widely because they were able to communicate ideas to people through novel signs

and gestures. Emphasised body language and facial expression enabled the audience to comprehend the intended message.

29. To sum up, a deaf and dumb person is a competent witness. If in the opinion of the court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath."

26. From a bare reading of aforesaid provision and the judgment referred by Hon'ble Apex court, it is evidently clear that, if a witness is deaf and dumb, but is able to read and write, his / her statement ought to have been recorded by giving him questions in writing and seeking answer from him/her in writing. But in case, such a witness is not able to read and write, his/her statement can be recorded in sign language with the aid of interpreter, if found necessary.

27. But in the instant case, the Judicial Magistrate First Class while recording statement of victim under Section 164 of Cr.P.C. has appended a note in her deposition that, the victim is physically and mentally disabled, but she is able to speak about the incident that happened to her. As per mother of victim (P.W. 1), the victim is physically handicapped, hence she could not speak properly but she can listen and understand.

28. Learned Fast Track Court while recording the evidence of victim/prosecutrix, has appended a note on her deposition that '**The victim appears to be physically weak and not giving clear answer when asked, but her words and gestures, are understandable.....'**
29. Dr. Nisha Suryavanshi (P.W. 6), who examined the victim has stated in her deposition that, the victim was unable to explain things clearly, she seemed mentally weak, but she was able to understand things.
30. From a bare reading of aforesaid statements, the note appended by the JMFC who recorded the statement of victim under Section 164 of the Cr.P.C., the note appended by learned Fast Track Court in deposition of the victim, statement of victim and report of Dr. Nisha Suryavanshi (P.W. 6), it is found that the victim is neither deaf nor dumb nor of unsound mind, rather she is physically and mentally weak and she was not able to speak properly, but she was able to understand the things and also able to speak about the incident, though not in clear words but was understandable. It also does not reflect from the evidence of the victim that, she was not understanding the question(s) and has replied without understanding the questions put to her particularly by the defence counsel. Rather she has given rational answers to the questions put to her. Therefore, not invoking provisions of Section 119 of the Evidence Act by learned Fast Track Court while recording evidence of victim through interpreter or special educator or not doing videography, is not found to be fatal in this case, as it was not required in facts situation of instant case. The case of **Bhim Bahadur Basnett** (supra) relied upon by the learned counsel for the appellant is also not helpful in fact situation of instant case, as in that case, the victim was speech impaired and was communicating only through

gesture, but in instant case, the victim was able to speak, though not clearly but understandable.

31. In view of above discussion, I do not find any perversity or illegality in the impugned judgment holding the appellant guilty for the offence under Section 376(2)(l) of the IPC and sentencing him to undergo RI for 10 years which is minimum jail sentence and fine sentence of Rs. 5,000/- with default stipulation.
32. Consequently, the conviction and sentence as awarded by learned Fast Track Court to the appellant under Section 376(2)(l) of the IPC is hereby upheld.
33. The appellant is stated to be in jail since 29-7-2022 being the date of arrest. He is directed to serve out the remaining part of the sentence.
34. The Criminal appeal is dismissed.
35. Registry is directed to send a certified copy of this judgment along with the original record of the case to the concerned Fast Track Court forthwith for necessary information and compliance and also send a copy of this judgment to the concerned Superintendent of Jail, where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before Hon'ble Supreme Court with the assistance of High Court Legal Aid Committee or the Supreme Court Legal Aid Committee, if he so desire.

Sd/-

**(Naresh Kumar Chandravanshi)
Judge**