

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal (DB) No. 79/2021

CNR: RJHC020340632021 | URN: CRLAD / 143U / 2021

Mahesh Kumar Sharma S/o Shri Gopal Jal, Aged About 29 Years,
R/o Village Devaliya P.S. Renwal Dist. Jaipur

----Appellant

Versus

State Of Rajasthan, Through PP

----Respondent

For Appellant(s)	:	Mr. Chitrank Sharma
For Respondent(s)	:	Mr. Amit Kumar Punia, PP

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE PRAVEER BHATNAGAR
Judgment

- | | |
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| 1. Date of conclusion of arguments | <u>31/08/2026</u> |
| 2. Date on which the judgment
was reserved | <u>31/08/2026</u> |
| 3. Whether the full judgment or only the
operative part is pronounced | <u>Full Judgment</u> |
| 4. Date of pronouncement | <u>08/09/2026</u> |

Per: Praveer Bhatnagar, J

1. This appeal is directed against the impugned Judgment dated 21.12.2019 passed in the Sessions case number 6/18 (37/15) in FIR Number 754/2014, Police Station Harmada, Jaipur, whereby the appellant has been convicted & sentenced under Sections 363 and 366 (a) of the IPC and under Sections 5(m)/6 of the POCSO Act. The appellant has been sentenced for the aforesaid offences as follows:-

Offences under Section	Punishment imposed	In default of payment of fine to further undergo
363 IPC	7 years rigorous imprisonment with fine of Rs.10,000/-	Additional 3 months Simple Imprisonment
366 (a) IPC	10 years rigorous imprisonment with a fine of Rs.20,000/-	Additional 6 months Simple Imprisonment
5(m)/6 POCSO Act	Life Imprisonment with a fine of Rs.1,00,000/-	Additional 1 year Simple Imprisonment

All the sentences shall run concurrently.

2. The basic facts of the case are that on 27.12.2014, the complainant, PW-7 'X', submitted a report at the scene of the incident, Chak Jaitpura, stating that an unknown person had left his daughter, 'R', aged 6 years, in a bloody state at Chak Jaitpura. He received the information from an unknown person. When he went there, he saw that his daughter, "R", was terrified and blood was coming out of her underwear. It is further stated in the report that his daughter left home for the fields in the morning when a man lured her away who after kidnapping, committed rape on her and dumped her at Chak Jaitpura. The report also mentions that her daughter, 'R', was at home at 11 a.m., and she left the home with three or four copies, a mobile phone, a newspaper, and a magazine; however, she did not reach the fields. Someone kidnapped her midway.

3. A case was registered at Police Station Harmada under FIR No. 754/2014, for the offence under sections 363 and 376 of the Indian Penal Code and Section 4 of the POCSO Act, and the investigation was conducted. After the necessary investigation, a charge sheet was submitted against the accused-appellant Mahesh Kumar Sharma, on 15.02.2015, for the offence under Section 376

(2) (H) of the Indian Penal Code and Sections 4, 5 (m)/6 of the Protection of Children from Sexual Offences Act, 2012.

4. The accused appellant was charged with offences under Sections 363, 366(a), and 376(2) (i) of the Indian Penal Code and Section 5(m)/6 of the POCSO Act. The prosecution examined 33 witnesses, and in defence, the appellant accused was examined as DW1.

5. The learned Trial Court, vide impugned Judgment dated 21.12.2019, convicted and sentenced the appellant for the offence under sections 363, 366 (a) of the Indian Penal Code and 5(m)/6 of the POCSO Act, as referred to in paragraph 1 of this judgment.

6. The learned appellant's counsel questioned the veracity of the victim PW 5 'R's statements, as the concerned doctor, PW 9 Dr. Mahendra, in his deposition, did not state any external injuries on her body. However, the witness states that she sustained injuries on her teeth. He further argued that, in her deposition, the victim 'R' named the accused; however, the incident was lodged against an unknown person and the identification conducted of the accused appellant during the investigation is also questionable.

7. Furthermore, learned counsel for the appellant questioned the date of birth mentioned in the school certificate, contending that there was no foundation for how it was entered therein. He vehemently questions the statements of witnesses PW 10 Daulat and PW 12 'Z' because PW 10 Daulat in his Examination-in-Chief, stated that he instructed his son, PW 12 'Z', to drop "R" at her house; however, PW 12 'Z', in his deposition, has stated that he left "R" at the Masjid; thus, it creates doubt over their version.

The victim in her statement nowhere stated that she left the house with PW 12 'Z', therefore, the version of PW 12 'Z' to be irrelevant.

8. Per contra, the learned Public Prosecutor, defends the conviction and sentence held in the impugned judgment against the accused-appellant. He argues that the sole testimony of PW 5 'R' is sufficient to establish the appellant's guilt for offence under Sections 363 and 366 (a) of the IPC, as well as Section 5 (m)/6 of the POCSO Act. He contends that PW 5 'R' explicitly stated in her deposition that the accused-appellant forced her into a relationship and committed rape on her. She further testified that the appellant was intoxicated and fled away from the crime scene after commission of offence with her. She also identified the accused in jail, and her thumb impression appears on identification memo Exhibit P-7. He also contended that during cross-examination, nothing surfaced to discredit PW 5's testimony, which the learned Trial Court duly accepted.

9. The learned Public Prosecutor also points out that PW 5 'R' underwent a medical examination by Lady Doctor PW 1, Dr. Charusmita, on the very day the report was filed on 27.12.2024. She testified that the victim's hymen was torn and bleeding, with traces of blood found around the tear during internal examination. Vaginal swabs and blood samples were collected for forensic analysis. Dr. Charusmita further opined that penetration involved a hard and blunt object, as recorded in her medical report bearing her signature, Exhibit P-1. Furthermore, besides PW-5's testimony, other evidence available on record supporting the conviction. PW 6 Munnir Khan and PW-16 Suresh Kumar stated that they had seen

the accused with the victim on a motorcycle and identified him during the jail identification parade conducted on 09.01.2015. Additionally, the FSL report (Exhibit P-72) confirms the presence of human semen on the pyjama and underwear of PW 5 'R', as well as in the vaginal swab collected from the victim.

10. The victim was only six years old at the time of incident, this fact is confirmed by her father, PW 7 'X', mother, PW 8 'Y', and PW 26 Harinarayan. PW 26 Harinarayan testified that the victim was admitted to Vidhya Mandir Secondary School, Karanasar, with her date of birth recorded as 19.01.2008. He also submitted her scholar register, bearing her and her father's names at Serial No. 661. Based on this evidence (Exhibit P-42), the Public Prosecutor requests the Court to dismiss the appeal.

11. Heard & perused the record.

12. In the instant case, the following points were required to be established by the prosecution:-

1. Whether, at the relevant period, the age of Victim PW 5 'R' was about six years?
2. Whether PW 5 - Victim 'R', was kidnapped and subjected to rape on 27.12.2014?
3. Whether the Appellant accused after kidnapping the victim committed rape.

13. Before delineating issue Nos. 1 & 2, we deem it proper to elucidate the law on the acceptance of Child witness testimony in a criminal trial. Honble Apex Court, in the Judgment of **The State of Madhya Pradesh v. Balveer Singh 2025 LiveLaw (SC) 243** held that the Evidence of a child witness for all purposes is

deemed to be on the same footing as any other witness, as long as the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children to falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outright at the slightest discrepancy; rather, it must be evaluated with great circumspection. While appreciating the testimony of a child witness, the courts must assess whether the evidence is a voluntary expression, not influenced by others, and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration of the testimony of a child witness before any reliance is placed on it. The insistence on corroboration is a measure of caution and prudence that the courts may exercise when the peculiar facts and circumstances of the case warrant it.

14. Furthermore, in a criminal trial, it is the bounden duty of the prosecution to establish the facts beyond reasonable doubt & must establish the guilt of the accused with clear, cogent, and convincing evidence; the principle does not demand absolute 100% mathematical certainty or precision. A "reasonable doubt" is not a fanciful, imaginary, or conjectural doubt. The doubt must be based on reason, logic, or evidence, not speculation. In **State of U.P. v. Krishna Gopal, AIR 1988 SC 2154**, the Court clarified that reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. The courts can't define what constitutes reasonable doubt; however, Reasonable doubt can stem directly from conflicting

testimony, missing investigative links, or a general lack of convincing evidence presented by the prosecution.

15. In a criminal trial, the investigating officer or a witness can't answer a question that has cropped up in the cross-examination. It's not possible that every suggestion needs to be replied to in the way the defendant thought; if a suggestion shackles the prosecution case & even an ordinary prudent person thinks that, in the absence of affirmative answers, the backbone of the prosecution case has been entirely gone, then only that doubt may be coined as reasonable doubt.

16. Likewise, it is relevant to refer to the law on the sufficiency of the sole testimony of the prosecutrix. It is no longer *res integra* that a conviction can be based solely on the uncorroborated testimony of the prosecutrix if the court finds her conduct natural, cogent, and credible. The Hon'ble Apex Court have repeatedly emphasised that a victim of a sexual offence is not an accomplice; rather, she is an injured survivor of a crime, and her testimony stands on a higher pedestal. Thus, it is settled law that even the lack of medical evidence, external injuries, or injuries to private parts does not automatically invalidate the credibility of the prosecutrix.

17. Therefore, on the anvil of the aforesaid principles. we will deal with the testimony of the Child witness & other witnesses to find out that the offence as alleged was committed & the accused appellant has been rightly held guilty for the same.

Point Number 1: Whether, at the relevant period, the age of Victim PW 5 'R' was about six years?

18. The prosecution relied upon the following witnesses to establish the age of the Victim:

- (A) PW 7 'X' (Victim's Father),
- (B) PW 8 'Y' (Victim's Mother),
- (C) PW 1 Dr. Charusmita, Gynaecologist (Conducted Medical Examination of the victim's genitals),
- (D) PW 9 Dr. Mahendra Singh (Medical Jurist Associated with Dr Charusmita),
- (E) PW 18 Dr. A. K Shukla (Victim's treating doctor),
- (F) PW 12 'Z' (Victim's cousin),
- (G) PW 17 Vikram Singh (Investigating Officer).

(H) PW 26 Harinarayan (Principal, Bhawani Adarsh Vidhya Mandir, in which the victim was admitted in Class I) to prove the victim's date of Birth.

19. To establish the victim's age, her parents, PW 7 'X' and PW 8 'Y' and her cousin, PW 12 'Z', stated during their examination-in-chief that she was about six years old. During cross-examination, no evidence was presented to challenge her age. The documents prepared by the aforementioned doctors, respectively Ex P1 and Ex P36, also indicate her age as six years. Additionally, her date of birth is recorded as 19.01.2008, in the school register (Ex P 42) and in the certificate (Ex P 41) issued by PW 26 Harinarayan. The arguments presented are indeed unfathomable, considering that the victim is well below the age of majority. If this had been a case involving a girl close to reaching adulthood, such arguments might have held weight; however, in this particular case, they are entirely baseless. Therefore, we do not find any infirmity in the impugned judgment, concluding PW 5 'R' victim's age around six years.

Point Number 2: Whether PW 5, Victim 'R', was kidnapped and subjected to rape on 27.12.2014?

20. The prosecution rests its case on the following witnesses:-

- (A) PW 5 'R' (victim)
- (B) PW 1 Dr. Charusmita
- (C) PW 9 Dr. Mahendra Singh (Medical Jurist Associated with Dr. Charusmita).
- (D) PW 18 Dr. A. K. Shukla (Victim's treating doctor)
- (E) PW 17 Vikram Singh (Investigating Officer)
- (F) PW 7 'X' (Victim's Father)
- (G) PW 6 Munir Khan
- (H) PW 16 Suresh Kumar

21. The prosecution has led two sets of evidence to prove the aforesaid points, which may be further classified in two sub-categories: (A) Substantive Evidence (B) Corroborative Evidence.

22. Firstly, we will appreciate the Substantive piece of evidence led by the prosecution.

The victim, in her statement, has categorically stated that she was subjected to a wrongful act.

Victim's Father PW 7 'X', in his deposition, stated that, on information received from PW 13 Prahlad, he reached Chak Jaitpura & found that her daughter was in trepidation, her *pyjama* was soaked with blood, and her legs also had blood stains. At the crime spot, the soil was also soaked with blood. Her daughter reported to her that she was subjected to rape and that she was lured by a man who took her on a motorcycle. Thereafter, he reported the matter by filing a written report (Ex 10). PW 7

further stated that her daughter's clothes were also sealed through Ex P 2.

23. PW 13 Prahlad corroborates PW 7 'X's statement up to the extent that he saw the victim weeping & her clothes were dirty, though he does not state that her clothes were blood-soaked; however, his statements are relevant to the extent that the police arrived at the place of occurrence where PW 7 'X' submitted a written report.

24. PW 17 Vikram Singh, (Investigating Officer) also deposed that he reached Village Chak Jaitpura after receiving information from the control room along with other police officials. Thereafter, he found other villagers present and PW 7 'X' submitted a written report Ex. P 10 alleging kidnapping & rape of her daughter by an unknown person. The victim, PW 5 'R', was immediately sent to the hospital with a lady constable and other police officials, and a case was registered under Sections 363 and 376 of the Indian Penal Code and Section 4 of the POCSO Act. He also deposed that the place of the incident was inspected at the instance of PW 7 'X' & site plan Ex. P2 was prepared. He also collected blood-smeared soil along with soil samples, packed them in a plastic bag, and thereafter further wrapped & sealed them in a cloth by preparing a memo, Ex P 3. The victim was referred to J.K. Lone Hospital.

25. In the relevant cross-examination of the aforementioned witnesses, nothing material emerged that would cast doubt on the prosecution story. The court finds that the victim immediately disclosed the incident to her father, PW 7 'X', who rushed to the scene of crime after receiving information from PW 13 Prahlad. He observed that PW 5 'R' was in a state of trepidation and had spots

of blood on her *pyjamas*. The police official, PW 17 Vikram Singh, who also arrived at the spot after receiving a call from the control room, observed the same and promptly forwarded the victim to the hospital for medical examination from where she was referred to J.K. Lone Hospital. Upon inspecting the site, he found marks of motorcycle tyres, blood on the soil, a pouch of liquor, the victim's mobile phone, and the papers she was carrying. PW 17 has recovered all these articles through Memo Exhibit P 3 to 5.

26. The victim was only six years old at the time, and the accused was a stranger to her; in the FIR, it was also mentioned that an unknown person raped her. Therefore, these circumstances leave no room for the court to harbour any doubt about the prosecution's story & confirms that the victim was sexually abused. The statements of PW 10 Daulat and PW 12 'Z' has no relevancy about the commission of offence with victim PW 5 'R' and their evidence are relevant upto the extent that on the date of offence PW 10 Daulat instructed his son PW 12 'Z' to leave the victim at the field, however, instead of leaving, the victim PW 5 'R', at the field, he dropped her near to the Masjid. Therefore, their statements have no direct or indirect bearing over the actual facts i.e. with regard to the commission of rape with the victim. As already discussed that corroboration of victim's statements are only law of prudence and not rule of law. However, to rule out any suspicion, we would now discuss the other corroborative piece of evidence led by the prosecution.

27. Firstly, we will refer to the statements of the doctors who treated & examined the Victim PW 5 'R'.

PW 18, Dr. A. K. Shukla deposed that he was the unit head on 27.12.2014 in the J.K. Lone Hospital Pediatric Department, and the victim was admitted in her ward at 06:26 P.M. and she was having an internal vaginal injury with blood stains. He examined the victim & informed the medical jurist, who also examined the victim. He further deposed that on 28.12.2014, the victim was operated on for first degree Vaginal tear and she remained hospitalised from 26.12.2014 to 03.01.2015. The witness also endorsed the bed head ticket i.e. Ex P 36, confirming the aforesaid facts. PW 1 Dr Charusmita & PW 9 Dr. Mahendra also medically examined the victim.

28. PW 1 Dr. Charusmita examined the victim's genital parts. She found vaginal tearing with blood stains & fresh tearing of the hymen, further detailing these facts in written Report Ex P1, with an opinion that the victim's vaginal injury was due to penetration of a hard object and to confirm the rape, victims Vaginal swab and Vaginal Smear were preserved & handed over for FSL Examination.

29. PW 9, Dr. Mahendra, corroborates PW 1 Dr. Charusmita's version by confirming his signature on Ex P1. In his cross-examination, nothing material surfaced to make their testimony questionable. Thus, from their evidence, the prosecution has been able to establish the fact that the victim was subjected to rape. The learned Appellants' counsel has not assailed the findings of the impugned judgment about the collection of the victim's clothes and its scientific analysis to find out the commission of rape. The FSL report has been exhibited as Ex P 72, which demonstrates that Human Semen was detected in Exhibits 2 & 6 (Victim's

pyjama & vulvo-vaginal swab, which fortifies the prosecution case & leaves no room for the court to conclude that the victim was subjected to rape.

30. As far as the kidnapping of the victim is concerned, apart from the statement of victim herself. PW 6 Munir Khan and PW 16 Suresh Kumar, in their depositions before the Trial Court, specifically stated that the victim arrived with a person on a motorcycle. They further testified that on the same day, they came to know the victim had been subjected to rape. Their evidence, therefore, corroborates the victim's statement that the person who brought her on the motorcycle kidnapped her and subsequently committed rape.

Point Number 3: Whether the Appellant accused after kidnapping the victim committed rape?

31. In order to establish the aforesaid fact, the prosecution relied upon following witnesses:-

- A) PW 5 'R'
- B) PW 29 Birbal Singh,
- C) PW 6 Muneer,
- D) PW 16 Suresh,
- E) PW 25 Sitaram
- F) PW 17 Vikram Singh.

32. We have already concluded in the foregoing point number two that the victim was subjected to rape & now we are only dealing with the fact of whether the accused committed rape on the victim PW 5 'R' or not. PW5 'R', in her statement rendered before the Trial Court, which was recorded in question-answer form, has specifically answered that she identified the accused in jail and Exhibit P-7 bears her thumb impression. Similarly, when

she was cross-examined by putting a specific question that whether the person who took you in the forest, was known to you, the witness replied that “नहीं। मैंने उसे पहले कभी नहीं देखा।”

She has also specified the procedure adopted by the concerned authority who conducted the identification parade and on the questions put by the accused which reads as follows:-

- “1. प्रश्न : महेश का नाम आपने पापा के कहने से लिया है क्या?
उत्तर : मुझे महेश का नाम लेने के लिए पापा ने नहीं कहा था।
2. प्रश्न : जेल में महेश को पहचानने से पहले आपके पापा ने घर पर उसकी फोटो दिखा दी थी?
उत्तर : नहीं।
3. प्रश्न : जेल में महेश को पहले से ही अलग खड़ा कर रखा था?
उत्तर : नहीं, सबके साथ खड़ा कर रखा था।
4. प्रश्न : जेल में महेश की पहचान किसने करवायी?
उत्तर : किसी ने नहीं करवायी, मैंने खुद ने ही पहचाना था।”

33. It was also suggested to the witness that the accused-appellant had not committed any sexual offence, to which the witness denied the suggestion. Thus, throughout her cross-examination, the witness remained consistent with her examination-in-chief, wherein she specifically stated that the accused-appellant had committed rape upon her. She further identified the accused-appellant during the identification parade conducted in jail, as recorded in Exhibit P-7, i.e., the identification parade memo. The answers given by the victim in reply to the cross-examination confirm that the accused-appellant committed rape of the victim. In the cross-examination, the victim was not subjected to a specific defence that arose during the statement of the accused-appellant recorded under Section 313 of the Cr.P.C. Thus, after going through the entire statements of PW 5 'R', we do

not find that the victim's statements are the result of tutoring or a result of any enmity; rather, the victim understood the questions & replied to them firmly.

34. It is also relevant to refer to the statement of PW-17 Vikram Singh, the Investigating Officer of the case, who stated that the accused was arrested through Exhibit P-13 and was kept under veil. Thereafter an identification parade was conducted before SDO Amer. He also stated that, in the identification parade conducted before SDO Amer, the victim identified the accused-appellant; thus, the victim's evidence is further corroborated by the identification parade conducted by the SDO. The concerned SDO, i.e., PW-29 Beerbal Singh, was also examined before the Trial Court and in his examination-in-chief he deposed that on 09.01.2015, an identification parade of accused Mahesh Kumar Sharma was conducted and the victim rightly identified him. He further deposed that the memo of the identification parade was prepared as Exhibit P-35, which bears his signature and the victim's thumb impression. In the cross-examination of PW-29 Birbal Singh, nothing substantive came out to suggest that the identification was not properly conducted.

35. It is also relevant to refer that the clothes of the accused-appellant were also recovered by investigating officer PW-17 Vikram Singh through Exhibit P-16 and were properly preserved in a sealed cover and deposited in the police station Malkhana. PW-17's statement further shows that the accused-appellant's clothes, along with the victim's clothes and other articles, were sent to the FSL laboratory for forensic analysis. In the FSL report, Exhibit P-72, human semen was detected in Exhibit No. 2, which is the

victim's pyjamas, and also on her underwear. The accused's underwear and pants were also found stained with the semen. Thus, from the FSL report, it is also confirmed that it was the accused only who committed rape with the victim.

36. It is also pertinent to note that during the investigation, it was revealed that, before the incident, the accused & victim were seen together on a motorcycle. To establish this fact, the prosecution relied upon PW-6 Munir Khan & PW-16 Suresh.

37. PW-6 Munir Khan, in his examination-in-chief, specifically stated that on 27.12.2014, he was working as a salesman at Shubham Kisan Seva Kendra petrol pump, Radhakrishanpura. At around 01:00 P.M., a man came on a motorcycle, asked for petrol, and paid fifty rupees. He also deposed that a girl, about five to six years old, was sitting on the motorcycle tank. He further deposed that the person who asked to fill petrol in the motorcycle was intoxicated. The witness further deposed that the girl was wearing a red-coloured jacket and green *pyjamas*. The man went with the girl, and in the evening he came to know that a girl of six years was subjected to rape. In his examination-in-chief, he also deposed that identification was conducted and that he identified the accused appellant in jail. The identification memo is Exhibit P-8, which bears his signature. He has also identified the accused appellant before the court. In the relevant cross-examination, he denied the suggestion that the man who came with the girl had covered his face with a muffler. He has also denied that the accused's photo was shown to him. Thus, the testimony of the witness PW-6 remained unshattered & further corroborates the victim's version that the accused committed rape on her.

38. PW-16 Suresh Kumar, in his examination-in-chief, stated that the accused-appellant came with the victim, who was aged between five and six years, and asked for a quarter of liquor; he gave him a quarter of liquor on payment of rupees ninety. He has also deposed that the accused-appellant was intoxicated and he fell from his motorcycle. Thereafter, the man went with the girl child. He has also stated that after around three to four hours, he got the information that near Badi Nadi at Chak Jaitpura a person on a motorcycle committed rape on a girl and fled away. He has also stated that after hearing the news, he went to the place of occurrence and saw the girl, and she was the same girl whom he saw with the accused. The girl was wearing a red jacket and green *pyjamas*. He also stated that, 15 to 20 days earlier, Sitaram came to his shop with the accused-appellant, and he remembered the name as Sitaram due to some altercation which took place for the cost of liquor. He also deposed that on 09.01.2015, SDO, Amer conducted the identification parade, and he identified the accused. The identification memo, Exhibit P 18, bears his signature. In the relevant cross-examination, he reiterated that the accused appellant came to his shop 15 to 20 days before the incident. He specifically stated in cross-examination that the accused appellant came with the victim. In cross-examination, the witnesses again reiterated that the accused appellant came with the victim, and the victim was carrying books, etc. He firmly answered in cross-examination that when he went to the place of occurrence, the accused was not present. No suggestion was made to the witness regarding the identification parade. Thus, PW 16's testimony also confirmed that, before the incident, the accused appellant was

seen with the victim, and there is no cogent reason to disbelieve PW 16 Suresh Kumar Sharma.

39. PW 25 Sitaram's statements are relevant only to the extent that he went with the accused to the liquor shop and met PW16 Suresh, 15-20 days before the incident. In his deposition, he has corroborated the version of PW 16 Suresh Kumar. It is pertinent to mention that PW 25 Sitaram Sharma is the younger brother of the accused-appellant, and in his statement he has specifically stated that 15 to 20 days before the incident, he went with his brother accused-appellant to the liquor shop located in Radhakrishnapura. An altercation took place with the shopkeeper. In his cross-examination, nothing substantial was suggested which cast doubt over his testimony. Thus, from the statement of the aforesaid witnesses, it is further confirmed that on 27.12.2014, the accused appellant, after kidnapping the victim PW-5 'R', committed rape with the Victim and left her at Badi Nadi, Jaitpura.

40. The learned counsel for the appellant could not satisfy the court that the evidence of the aforesaid witnesses is not trustworthy or suffers from any infirmity. Therefore, in the entirety of the prosecution story, we are of the view that the learned trial court has rightly convicted and sentenced the accused under Sections 363, 366(a) of the IPC and Section 5(m)/6 of the POCSO Act and sentenced him accordingly.

41. We find no merit in the appeal. Resultantly, the appeal is dismissed.

(PRAVEER BHATNAGAR),J

(MAHENDAR KUMAR GOYAL),J