



CGHC010360732022

2026:CGHC:34456-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1775 of 2022

Milan Bharti S/o Bhuru Bharti, Aged About 32 Years R/o Village Tihalipali, Police Station Sarshiva, District Balodabazar Bhatapara (Chhattisgarh)

... Appellant

versus

State of Chhattisgarh Through Police Station Sarshiva, District Balodabazar Bhatapara (Chhattisgarh)

... Respondent

(Cause-title taken from Case Information System)

|                      |   |                                               |
|----------------------|---|-----------------------------------------------|
| For Appellant        | : | Mr. Akath Kumar Yadav, Advocate               |
| For Respondent/State | : | Mr. Jitendra Shrivastava, Government Advocate |

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

Judgment on Board

Per Ramesh Sinha, Chief Justice

06.08.2026

1.
- Heard Mr. Akath Kumar Yadav, learned counsel for the appellant as well as Mr. Jitendra Shrivastava, learned Government Advocate, appearing for the State/respondent.

2. The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') questioning the impugned judgment of conviction and order of sentence dated 20.09.2022 passed by the Additional District and Sessions Judge, FTSC (POCSO Act), Balodabazar (C.G.) in Special Sessions Case (POCSO) No.45/2019, by which, the appellant has been convicted and sentenced as under :-

| <b><u>Conviction</u></b>                                                     |   | <b><u>Sentence</u></b>                                                                                                         |
|------------------------------------------------------------------------------|---|--------------------------------------------------------------------------------------------------------------------------------|
| Under Section 376(2)(f) of the Indian Penal Code, 1860                       | : | Life imprisonment with fine of Rs.1,000/-, and in default of payment of fine, additional rigorous imprisonment for six months. |
| Under Section 376(2)(i) of the Indian Penal Code, 1860                       | : | Life imprisonment with fine of Rs.1,000/-, and in default of payment of fine, additional rigorous imprisonment for six months. |
| Under Section 6 of the Protection of Children from Sexual Offences Act, 2012 | : | Life imprisonment with fine of Rs.2,000/-, and in default of payment of fine, additional rigorous imprisonment for six months. |
| All the sentences shall run concurrently.                                    |   |                                                                                                                                |

3. Learned State counsel submits that notice issued to the mother of the victim (PW-3) has been served, but none has appeared on behalf of the victim to contest the present appeal.

4. The prosecution case, in brief, is that on 02.08.2019, a report was lodged at Police Station Sarsiwa, District Balodabazar-Bhatapara by Bhuru Bharti, the grandfather of the victim, alleging that the appellant, who is the father of the victim, had committed repeated sexual assault upon his own minor daughter aged about 13-14 years. It was alleged that the appellant was living separately with his family and was habituated to consuming liquor and quarrelling with his wife, due to which she had gone to her parental home. On the intervening night of 01/02.08.2019, the appellant took his children to his house and at about 12:30 a.m. committed forcible sexual intercourse with the victim. On the following morning, the victim disclosed the incident to her grandfather, who also informed the village Sarpanch. The victim further revealed that the appellant had been repeatedly subjecting her to sexual intercourse even prior to the said incident. On the basis of the said report, First Information Report was registered against the appellant for offences punishable under Sections 376(2)(f) and 376(2)(i) of the Indian Penal Code, 1860 (for short, 'IPC') and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'), whereafter investigation was set in motion.
5. During the course of investigation, the statement of the victim under Section 164 of the Cr.P.C. was recorded. The victim was medically examined and vaginal slides were collected and forwarded for forensic examination. The Investigating Officer also

prepared the spot map, recorded the statements of material witnesses under Section 161 Cr.P.C., and collected documentary evidence relating to the age of the victim, including the admission register and school records of the Government Primary School, which recorded her date of birth as 18.08.2007, establishing that she was below eighteen years of age on the date of occurrence. Upon completion of investigation and finding sufficient material against the appellant, charge-sheet was filed before the competent Court for the aforesaid offences.

6. The learned trial Court, upon finding a prima facie case, framed charges against the appellant under Sections 376(2)(f) and 376(2)(i) of the IPC and Sections 4 and 6 of the POCSO Act. The appellant denied the charges and claimed to be tried. No defence evidence was adduced on his behalf.
7. In order to establish its case, the prosecution examined twelve witnesses, including the victim, her mother, her grandfather, the village Sarpanch, the medical experts, the Headmaster who proved the school records relating to the age of the victim, and the Investigating Officers.
8. The prosecution also exhibited the First Information Report, the statement of the victim recorded under Section 164 Cr.P.C., the medical examination report, forensic science laboratory report, school admission register and other documentary evidence collected during investigation.

9. The statement of the appellant under Section 313 of the Code of Criminal Procedure was recorded, wherein he denied all the incriminating circumstances appearing against him and pleaded false implication. His defence was that the victim and her mother had falsely implicated him owing to domestic disputes and because he had objected to the victim's association with a boy named Atul.
10. The learned trial Court, upon completion of the trial and after a meticulous appreciation of the oral and documentary evidence brought on record by the prosecution, found that the prosecution had succeeded in proving beyond reasonable doubt that the appellant, being the biological father of the minor victim, had repeatedly committed aggravated penetrative sexual assault upon her. Consequently, by the impugned judgment of conviction and order of sentence dated 20.09.2022 passed by the learned Additional District and Sessions Judge, FTSC (POCSO Act), Balodabazar (C.G.) in Special Sessions Case (POCSO) No.45/2019, the appellant was convicted for the offences punishable under Sections 376(2)(f) and 376(2)(i) of the IPC and Section 6 of the POCSO Act and sentenced in the manner indicated in paragraph 2 of this judgment.
11. Aggrieved thereby, the appellant has preferred the present appeal calling in question the legality, validity and correctness of the impugned judgment of conviction and order of sentence.

- 12.** Mr. Akath Kumar Yadav, learned counsel for the appellant would submit that the impugned judgment of conviction and order of sentence suffers from serious legal and factual infirmities. It is contended that the learned trial Court has failed to properly appreciate the oral and documentary evidence available on record and has erroneously held the appellant guilty of the offences punishable under Sections 376(2)(f) and 376(2)(i) of the IPC and Section 6 of the POCSO Act. According to learned counsel, the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt and the findings recorded by the learned trial Court are perverse and contrary to the evidence available on record.
- 13.** It is further submitted by Mr. Yadav that there is no direct and cogent evidence connecting the appellant with the alleged offences and that he has been falsely implicated in the present case. Learned counsel would argue that the prosecution witnesses have made material omissions and contradictions in their statements, rendering their testimonies unreliable. It is also contended that the prosecution has failed to prove the presence and participation of the appellant in the alleged crime and, therefore, the conviction recorded under the IPC and the POCSO Act is wholly unsustainable.
- 14.** Lastly, it is urged by Mr. Yadav that the learned trial Court has failed to consider the evidence in its correct perspective,

particularly the admissions elicited during the cross-examination of the prosecution witnesses, and has overlooked material discrepancies in the prosecution case. It is, therefore, submitted that the impugned judgment of conviction and order of sentence dated 20.09.2022 deserves to be set aside and the appellant is entitled to be acquitted of all the charges by extending to him the benefit of doubt.

- 15.** Per contra, Mr. Jitendra Shrivastava, learned Government Advocate appearing for the State/respondent, would submit that the impugned judgment of conviction and order of sentence passed by the learned trial Court is based on a proper and meticulous appreciation of the entire oral and documentary evidence available on record. It is contended that the prosecution has succeeded in proving beyond reasonable doubt that the appellant, being the biological father of the victim, repeatedly committed aggravated penetrative sexual assault upon his minor daughter. Learned State counsel would submit that the learned trial Court has rightly appreciated the testimony of the victim, which is natural, consistent and inspires confidence, and the same is duly corroborated by the evidence of the mother of the victim, the medical evidence, the FSL report and the documentary evidence relating to the age of the victim.
- 16.** It is further submitted by Mr. Shrivastava that the school records conclusively establish that the victim was below eighteen years of

age on the date of the occurrence and, therefore, her consent, even if assumed, is wholly immaterial in the eyes of law. Learned State counsel would argue that the prosecution witnesses have withstood lengthy cross-examination and no material contradiction or omission has been elicited so as to discredit the prosecution case. The defence of false implication set up by the appellant is a mere bald assertion, unsupported by any acceptable evidence, and has rightly been rejected by the learned trial Court.

- 17.** Lastly, Mr. Shrivastava would submit that the findings recorded by the learned trial Court are based on cogent and reliable evidence and do not suffer from any perversity, illegality or misappreciation of evidence warranting interference by this Court in exercise of appellate jurisdiction. It is, therefore, submitted that the conviction of the appellant under Sections 376(2)(f) and 376(2)(i) of the IPC and Section 6 of the POCSO Act, along with the sentence imposed thereunder, has been rightly recorded and the present appeal, being devoid of merit, deserves to be dismissed by affirming the impugned judgment of conviction and order of sentence dated 20.09.2022.
- 18.** We have heard learned counsel for the parties at length, considered their rival submissions made herein-above, and carefully perused the entire record of the case with utmost circumspection.

**19.** In light of the rival submissions advanced by learned counsel for the parties and upon perusal of the record, the following points arise for consideration in the present appeal:-

(i) Whether the learned trial Court has rightly held that the victim was a minor and a "child" within the meaning of Section 2(d) of the Protection of Children from Sexual Offences Act, 2012, at the time of the commission of the offence?

(ii) Whether the learned trial Court has rightly concluded, on the basis of the oral and documentary evidence available on record, that the appellant repeatedly committed rape upon his minor daughter, thereby committing the offences punishable under Sections 376(2)(f) and 376(2)(i) of the IPC and Section 6 of the POCSO Act?

(iii) Whether the findings of conviction and the sentence imposed upon the appellant by the learned trial Court by judgment dated 20.09.2022 suffer from any illegality, perversity or infirmity warranting interference by this Court in exercise of its appellate jurisdiction?

**20.** We shall first examine Point No. (i), namely, whether the learned trial Court was justified in holding that the victim was a "child" within the meaning of Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 at the time of the commission of the offence, so as to attract the provisions of the said Act.

21. When a person is charged for the offence punishable under the POCSO Act, or for rape punishable in the Indian Penal Code, the age of the victim is significant and essential ingredient to prove such charge and the gravity of the offence gets changed when the child is below 18 years, 12 years and more than 18 years. Section 2(d) of the POCSO Act defines the “child” which means any person below the age of eighteen years.
22. In ***Jarnail Singh Vs. State of Haryana, (2013) 7 SCC 263***, the Hon’ble Supreme Court laid down the guiding principles for determining the age of a child, which read as follows:

*“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :*

*“12. Procedure to be followed in determination of Age.? (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*

*(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the*

*child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.*

*(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –*

*(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;*

*(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*

*(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;*

*(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.*

*and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the*

*absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.*

*(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.*

*(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.*

*(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub- rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”*

*23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a*

*child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the victim VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.”*

- 23.** Section 2(d) of the POCSO Act unequivocally defines a “child” as any person who has not completed eighteen years of age. The legislative intent underlying the said provision is to afford the widest possible protection to persons below the age of majority from sexual exploitation and abuse. Thus, for invocation of the provisions of the POCSO Act, the foundational requirement is that the prosecution must satisfactorily establish that the victim was below eighteen years of age on the date of occurrence. Likewise, in the present case, the prosecution has also projected the age of the victim as below sixteen years for the purposes of attracting aggravated penal consequences under the Indian Penal Code, as it then stood, thereby making the determination of age a crucial and determinative issue.
- 24.** At the outset, it is pertinent to note that the consistent defence of the appellant, as emerging from his statement recorded under Section 313 Cr.P.C., is one of complete denial and false implication. The appellant has not disputed the relationship between himself and the victim, who is his biological daughter. However, no cogent documentary or oral evidence has been adduced by the defence to dislodge the prosecution case regarding the age of the victim or to establish that she had attained majority on the date of the incident.
- 25.** In order to establish the age of the victim, the prosecution Rajni Bharti (PW-3), the mother of the victim, has unequivocally

deposed that the victim was about 13 years of age at the time of the occurrence. She has further stated that the victim was the eldest among her children and was residing with the family when the appellant repeatedly subjected her to sexual assault. Despite lengthy cross-examination, nothing substantial has been elicited to discredit her testimony either with regard to the age of the victim or the relationship between the parties. The learned trial Court has, therefore, rightly placed reliance upon her evidence.

- 26.** The evidence of the mother stands duly corroborated by the testimony of the victim (PW-4), who has consistently stated that she was a minor and was repeatedly subjected to sexual assault by the appellant, her biological father. The learned trial Court has rightly found her testimony to be natural, trustworthy and worthy of acceptance. Nothing material has been brought on record to discredit her version.
- 27.** The prosecution has further examined Maniram Kurre (PW-8), the Headmaster of Government Primary School, Tihalipali, who proved the admission register (Ex.P-12 and Ex.P-12C). His evidence clearly establishes that the date of birth of the victim is 18.08.2007. He has also explained that the entry was made on the basis of the records received from the previous school and maintained in the ordinary course of official business. The authenticity of the school record has remained unimpeached. The

learned trial Court has, therefore, rightly relied upon the said documentary evidence.

- 28.** The testimony of PW-8 finds further corroboration from the evidence of the Investigating Officer, Assistant Sub-Inspector Shravan Kumar Netam (PW-12), who has proved the seizure of the admission register during the course of investigation and has categorically stated that, upon verification, the date of birth of the victim was found to be 18.08.2007. We find no reason to disbelieve the said evidence, which lends complete assurance to the prosecution case on the question of age.
- 29.** The contention advanced on behalf of the appellant that the school records cannot be relied upon since the original entry was not made by PW-8 deserves to be rejected. The admission register is an official record maintained in the ordinary course of business and carries due evidentiary value. More importantly, no material has been placed on record by the defence to demonstrate that the entries therein were fabricated or manipulated. The learned trial Court has, therefore, committed no error in placing reliance upon the said records.
- 30.** It is equally significant that the appellant has failed to produce any documentary evidence, such as a birth certificate, Aadhaar Card or any other public document, to probabalise his plea that the victim had attained majority on the date of the occurrence. A mere denial in the statement recorded under Section 313 Cr.P.C. or

suggestions put to the prosecution witnesses during cross-examination cannot outweigh the cogent oral and documentary evidence adduced by the prosecution.

- 31.** On an independent re-appreciation of the entire evidence, we are satisfied that the learned trial Court has rightly held that the victim was born on 18.08.2007 and was, therefore, below eighteen years of age on the date of the occurrence. We find no perversity, illegality or infirmity in the finding so recorded by the learned trial Court. The said finding deserves to be, and is hereby, affirmed.
- 32.** Accordingly, Point No. (i) is answered against the appellant by holding that the learned trial Court has rightly concluded that the victim was a "child" within the meaning of Section 2(d) of the Protection of Children from Sexual Offences Act, 2012, and we affirm the said finding.
- 33.** We shall now consider Point Nos. (ii) and (iii) together, as they are closely interconnected. The principal question that arises for consideration is whether the learned trial Court was justified in holding that the appellant, being the biological father of the victim, had repeatedly committed aggravated penetrative sexual assault upon his minor daughter and, consequently, in convicting him for the offences punishable under Sections 376(2)(f) and 376(2)(i) of the IPC and Section 6 of the POCSO Act. Upon re-appreciation of the evidence available on record, the issue is whether the findings

recorded and the conviction imposed by the learned trial Court warrant any interference in the present appeal.

- 34.** Having carefully re-appreciated the entire evidence available on record, we are of the considered opinion that the learned trial Court has rightly appreciated the evidence in its proper perspective and has recorded the finding of guilt on the basis of cogent, reliable and trustworthy evidence. We find no perversity, illegality or misreading of the evidence so as to warrant interference with the well-reasoned judgment of conviction.
- 35.** The learned trial Court has rightly placed reliance upon the testimony of the victim (PW-4). Her deposition is clear, natural and consistent throughout. She has categorically deposed that the appellant, who is her biological father, repeatedly subjected her to forcible sexual intercourse for a considerable period and also narrated the incident which took place on the intervening night of 01/02.08.2019. Despite lengthy cross-examination, nothing material has been elicited to discredit her testimony or to create any doubt regarding its truthfulness. The learned trial Court has, therefore, rightly accepted her evidence as wholly reliable.
- 36.** The testimony of the victim finds substantial corroboration from the evidence of her mother, Rajni Bharti (PW-3). The learned trial Court has rightly noticed that PW-3 has categorically deposed that the appellant repeatedly committed sexual assault upon their minor daughter and that whenever she objected to such acts, the

appellant assaulted and threatened her. Her evidence not only corroborates the version of the victim but also inspires confidence, as no material contradiction or omission affecting the substratum of the prosecution case has been brought out during her cross-examination.

37. The learned trial Court has also rightly relied upon the testimony of Bhuru Bharti (PW-2), who has deposed that after the incident the victim disclosed the occurrence to him, whereupon he informed the village Sarpanch and thereafter the report was lodged. The prompt disclosure made by the victim and the prompt initiation of criminal proceedings constitute an additional circumstance lending assurance to the prosecution case.
38. The ocular version of the victim receives due corroboration from the medical evidence. The learned trial Court has rightly relied upon the testimony of the medical officer and the medical examination report, which support the prosecution case and do not contradict the version of the victim in any material particular. The forensic evidence collected during investigation also lends further assurance to the prosecution case. The learned trial Court has, therefore, rightly appreciated the medical and scientific evidence in conjunction with the ocular testimony.
39. The Hon'ble Supreme Court in ***State of Himachal Pradesh v. Shree Kant Shekari, (2004) 8 SCC 153***, has categorically held that medical evidence cannot be viewed in isolation and must be

appreciated in conjunction with the testimony of witnesses, and where both are consistent, the evidentiary value of the prosecution case stands strengthened.

- 40.** We also find that the learned trial Court has rightly placed reliance upon the documentary evidence adduced by the prosecution to establish the age of the victim. The admission register of the concerned school, duly proved by the Headmaster (PW-8), records the date of birth of the victim as 18.08.2007. The said document has been maintained in the ordinary course of official business and its authenticity has not been impeached during the course of trial. The learned trial Court has rightly held that, in the absence of any material to indicate interpolation or fabrication, the entries contained in the school records deserve due evidentiary value. The testimony of PW-8, read in conjunction with the evidence of the Investigating Officer, leaves no manner of doubt regarding the correctness of the date of birth recorded in the school register.
- 41.** We further find that the appellant has failed to produce any reliable documentary evidence to rebut the prosecution case regarding the age of the victim. Neither any birth certificate nor any public document or other reliable evidence has been brought on record to demonstrate that the victim had attained the age of majority on the date of the occurrence. The learned trial Court has, therefore, rightly accepted the documentary evidence

produced by the prosecution and correctly concluded that the victim was below eighteen years of age at the relevant point of time and was, therefore, a "child" within the meaning of Section 2(d) of the Protection of Children from Sexual Offences Act, 2012. We find no illegality or perversity in the said finding warranting interference in the present appeal.

42. Having regard to the evidence discussed hereinabove, we are of the considered opinion that the learned trial Court has rightly invoked the statutory presumption contained in Section 29 of the POCSO. The prosecution has successfully established the foundational facts, namely, that the victim was a minor and that she was subjected to aggravated penetrative sexual assault by the appellant. Once these foundational facts stood established by cogent and reliable evidence, the statutory presumption under Section 29 of the POCSO Act came into operation, thereby shifting the evidentiary burden upon the appellant. Except taking a plea of false implication and making bald suggestions during cross-examination, the appellant has not adduced any evidence capable of rebutting the statutory presumption.
43. The Hon'ble Supreme Court in ***State of Rajasthan v. Asharam Bapu, (2023) 8 SCC 1***, has reiterated in unequivocal terms that Section 29 of the POCSO Act creates a reverse burden clause, and once the prosecution establishes foundational facts, the Court shall presume the accused to be guilty unless the contrary is

proved. It has further been held that mere denial or bald assertion of innocence does not discharge the statutory burden cast upon the accused.

44. Similarly, in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217***, the Supreme Court has observed that in cases involving sexual offences, especially against minors, the testimony of the victim or prosecution witnesses cannot be discarded on minor inconsistencies, omissions, or absence of independent corroboration, if the core of the prosecution case inspires confidence and remains intact. The Court further emphasized that undue importance should not be attached to trivial discrepancies which do not go to the root of the matter.
45. Further, in ***Jarnail Singh*** (supra), the Hon'ble Supreme Court has authoritatively laid down that school records maintained in the regular course of institutional duty constitute the most reliable and primary evidence for determination of age in cases under the POCSO Act. It has been held that such records, if duly proved and not shown to be unreliable, should ordinarily be accepted as conclusive proof of age.
46. Further, in ***State of Madhya Pradesh v. Madanlal, (2015) 7 SCC 681***, the Apex Court has clearly held that consent of a minor is immaterial in the eyes of law and cannot constitute a valid defence either under Section 376 IPC or under the provisions of the POCSO Act. It has been categorically observed that the

legislative intent behind the POCSO Act is to provide absolute protection to children below 18 years from sexual exploitation, and therefore, any alleged consent given by a minor has no legal sanctity.

- 47.** The principal defence of the appellant is one of false implication. The appellant has neither offered any plausible explanation for the incriminating circumstances appearing against him nor has he adduced any cogent evidence in defence to probabalise his plea. Mere denial in the statement recorded under Section 313 of the Code of Criminal Procedure and bald suggestions put to the prosecution witnesses during cross-examination are wholly insufficient to discredit the otherwise consistent and trustworthy prosecution evidence. The learned trial Court has, therefore, rightly rejected the defence set up by the appellant.
- 48.** On a cumulative appreciation of the entire evidence on record, the following circumstances stand firmly established:—
- (i) the victim was below eighteen years of age at the time of the occurrence and was, therefore, a "child" within the meaning of Section 2(d) of the POCSO Act;
  - (ii) the appellant, being the biological father of the victim, repeatedly subjected her to penetrative sexual assault over a considerable period;

- (iii) the testimony of the victim is cogent, consistent and wholly reliable and inspires confidence;
- (iv) the evidence of PW-2 and PW-3 lends substantial corroboration to the version of the victim;
- (v) the medical evidence and the documentary evidence collected during investigation support the prosecution case in material particulars; and
- (vi) the appellant has failed to rebut the statutory presumption available in favour of the prosecution under the provisions of the POCSO Act.

- 49.** These circumstances constitute a complete and unbroken chain pointing unerringly towards the guilt of the appellant and completely rule out every hypothesis consistent with his innocence.
- 50.** In view of the foregoing discussion, we are of the considered opinion that the learned trial Court has rightly appreciated the entire oral and documentary evidence in its proper perspective. The findings recorded by the learned trial Court are based upon sound appreciation of evidence and settled principles of criminal jurisprudence and do not suffer from any perversity, illegality or material irregularity.
- 51.** Consequently, we find no reason to interfere with the well-reasoned findings recorded by the learned trial Court holding the

appellant guilty of the offences punishable under Sections 376(2) (f) and 376(2)(i) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012. The prosecution has successfully proved the guilt of the appellant beyond reasonable doubt.

- 52.** Accordingly, Points No. (ii) and (iii) are answered in the affirmative, in favour of the prosecution and against the appellant. The findings recorded by the learned trial Court on the said issues are hereby affirmed.
- 53.** Having carefully considered the entire evidence available on record in its cumulative perspective and upon close scrutiny of the findings recorded by the learned Trial Court, we are of the considered opinion that the learned Trial Court has rightly appreciated the oral and documentary evidence brought on record by the prosecution and has arrived at a well-reasoned conclusion regarding the guilt of the appellant. The impugned judgment reflects a proper consideration of the testimony of the victim (PW-4), the evidence of her mother Rajni Bharti (PW-3), grandfather Bhuru Bharti (PW-2), medical evidence, documentary evidence relating to the age of the victim and other incriminating circumstances emerging from the record.
- 54.** The learned Trial Court has rightly placed reliance upon the testimony of the victim (PW-4). Her statement, when considered in its entirety, is found to be natural, consistent and trustworthy.

She has specifically stated that the appellant, being her biological father, repeatedly subjected her to sexual assault. Despite detailed cross-examination, the defence has failed to bring out any material contradiction, omission or circumstance which could affect the credibility of her testimony. The learned Trial Court has, therefore, rightly accepted her evidence.

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

*“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the*

*scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."*

56. In the matter of ***Alakh Alok Srivastava v. Union of India and others, (2018) 17 SCC 291***, in paras 14 and 20, it is observed as under:

*"14. At the very outset, it has to be stated with authority that the Pocso Act is a gender legislation. This Act has been divided into various chapters and parts therein. Chapter II of the Act titled "Sexual Offences Against Children" is segregated into five parts. Part A of the said Chapter contains two sections, namely, Section 3 and Section 4. Section 3 defines the offence of "Penetrative Sexual Assault" whereas Section 4 lays down the punishment for the said offence. Likewise, Part B of the said Chapter titled "Aggravated Penetrative Sexual Assault and Punishment therefor"*

*contains two sections, namely, Section 5 and Section 6. The various subsections of Section 5 copiously deal with various situations, circumstances and categories of persons where the offence of penetrative sexual assault would take the character of the offence of aggravated penetrative sexual assault. Section 5(k), in particular, while laying emphasis on the mental stability of a child stipulates that where an offender commits penetrative sexual assault on a child, by taking advantage of the child's mental or physical disability, it shall amount to an offence of aggravated penetrative sexual assault.”*

\*\*\*

*“20. Speaking about the child, a three Judge Bench in M.C. Mehta v. State of T.N. (1996) 6 SCC 756 “1. ... “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.”*

- 57.** The Supreme Court in the matter of ***Nawabuddin v. State of Uttarakhand (CRIMINAL APPEAL NO.144 OF 2022)***, decided **on 08.02.2022** has held as under:-

*“10. Keeping in mind the aforesaid objects and to achieve what has been provided under Article 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent*

*manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.*

*Children are precious human resources of our country; they are the country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. As observed and held by this Court in the case of **State of Rajasthan v. Om Prakash, (2002) 5 SCC 745**, children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. In the case of **Nipun Saxena v. Union of India, (2019) 2 SCC 703**, it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even*

*reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.”*

58. When considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version. In ***State of H.P. v. Shree Kant Shekar, (2004) 8 SCC 153***, the Hon<sup>ble</sup> Supreme Court held as follows:

*“21. It is well settled that a victim complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the victim on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice, would suffice.”*

59. On these lines, the Hon'ble Supreme Court in **Shivasharanappa and Others v. State of Karnataka, (2013) 5 SCC 705**, observed as follows:

*“17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable.”*

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

*“12. The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology “shall not be less than....”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the*

*fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the victim/child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court."*

61. Applying the law laid down by the Hon'ble Supreme Court to the facts of the present case and as observed hereinabove, this Court finds no reason whatsoever to doubt the credibility, consistency and trustworthiness of the victim. The testimony of the victim is further strengthened by the evidence of her mother Rajni Bharti (PW-3) and grandfather Bhuru Bharti (PW-2). Their evidence establishes the circumstances in which the victim disclosed the incident and the subsequent lodging of the report. The learned Trial Court has rightly found that the evidence of these witnesses lends assurance to the version of the victim and supports the prosecution case on material particulars.
62. The learned Trial Court has also correctly appreciated the documentary evidence produced by the prosecution to establish the age of the victim. The school records, duly proved by the concerned witness, establish that the victim was below eighteen

years of age at the relevant point of time and was, therefore, a "child" within the meaning of Section 2(d) of the POCSO Act. The appellant has failed to produce any reliable documentary or oral evidence to rebut the said finding recorded by the learned Trial Court.

- 63.** The medical evidence available on record has also been considered by the learned Trial Court in its proper perspective. The medical evidence, coupled with the ocular testimony of the victim and other surrounding circumstances, provides necessary assurance to the prosecution case. The learned Trial Court has rightly appreciated that the prosecution evidence, when considered as a whole, establishes the commission of the offence by the appellant beyond reasonable doubt.
- 64.** The law is well settled that in cases of sexual offences under the POCSO Act, the testimony of the victim/victim assumes paramount importance and can be made the sole basis of conviction if it is found to be trustworthy and of sterling quality. The Hon'ble Supreme Court in ***Rai Sandeep @ Deenu*** (supra) has laid down the test of a "sterling witness", whose testimony must be of such quality that it inspires implicit confidence and does not suffer from any material infirmity. The victim in the present case clearly satisfies this standard, her version being consistent, natural and duly corroborated by medical and scientific evidence. Further, in ***Alakh Alok Srivastava*** (supra), the Hon'ble

Supreme Court has emphasized that courts must deal with child sexual abuse cases with utmost sensitivity and seriousness, ensuring that the protective object of the POCSO Act is not diluted by hyper-technical approaches. Similarly, in **Nawabuddin** (supra), it has been reiterated that undue insistence on corroboration in cases involving sexual offences against minors would defeat the very object of the statute. Tested on the aforesaid principles, the testimony of the victim in the present case stands fully established and deserves acceptance in its entirety.

65. The defence plea of false implication raised by the appellant has rightly been rejected by the learned Trial Court. Except making suggestions during cross-examination and denying the allegations in his statement recorded under Section 313 of the Cr.P.C., the appellant has not produced any material evidence to substantiate his defence. The prosecution, having established the foundational facts, was entitled to the benefit of the statutory presumption under Section 29 of the POCSO Act, and the appellant has failed to rebut the same by any cogent evidence.
66. Upon an independent re-appreciation of the entire evidence available on record, we find that the learned Trial Court has rightly appreciated the testimony of the victim (PW-4), who has categorically narrated the manner in which she was subjected to repeated sexual assault by the appellant, who is none other than her biological father. Her testimony is natural, consistent and

inspires confidence. Despite lengthy cross-examination, nothing substantial could be elicited from her evidence to discredit her version or to create any doubt regarding the occurrence of the incident. The learned Trial Court has, therefore, rightly placed reliance upon her testimony.

- 67.** The evidence of the victim finds substantial corroboration from the testimony of her mother Rajni Bharti (PW-3) and grandfather Bhuru Bharti (PW-2). Their evidence establishes the circumstances in which the victim disclosed the incident and the subsequent lodging of the report. The prompt disclosure by the victim and the consistent version of the prosecution witnesses lend assurance to the prosecution case. The learned Trial Court has rightly appreciated their evidence in its proper perspective and has recorded findings based upon the same.
- 68.** The prosecution has also successfully established the age of the victim through the documentary evidence brought on record. The school admission register, duly proved by the Headmaster (PW-8), establishes that the date of birth of the victim was 18.08.2007 and, therefore, she was below eighteen years of age on the date of occurrence. The said evidence remained unimpeached during trial. The appellant has failed to produce any reliable documentary or oral evidence to rebut the said finding. Thus, the learned Trial Court has rightly held that the victim was a child within the meaning of Section 2(d) of the POCSO Act.

- 69.** The medical evidence and other documentary evidence available on record have also been rightly considered by the learned Trial Court while appreciating the prosecution case. Though the medical evidence is not required to be treated as substantive evidence in isolation, it provides necessary assurance to the ocular testimony of the victim and the surrounding circumstances proved by the prosecution. The entire evidence, when considered cumulatively, establishes the commission of aggravated penetrative sexual assault upon the minor victim by the appellant.
- 70.** In view of the foregoing analysis, this Court finds itself in complete agreement with the reasoning and conclusions arrived at by the learned Trial Court. The prosecution has successfully established its case beyond all reasonable doubt, and the appellant has failed to rebut the statutory presumption or probabalise his defence in any manner whatsoever.
- 71.** Accordingly, having found no illegality, perversity or infirmity in the findings recorded by the learned Trial Court, this Court affirms the judgment of conviction and order of sentence dated 20.09.2022 passed by the learned Additional District and Sessions Judge, FTSC (POCSO Act), Balodabazar (C.G.) in Special Sessions Case (POCSO) No.45/2019. Consequently, the appeal preferred by the appellant, being devoid of merit, is hereby **dismissed**. The conviction recorded and sentence imposed by the learned Trial Court shall remain undisturbed.

- 72.** It is further stated at the Bar that the appellant is in jail. He shall serve out the sentence as awarded by the learned Trial Court in accordance with law.
- 73.** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
- 74.** Let a certified copy of this order alongwith the original record be transmitted to trial Court concerned forthwith for necessary information and action, if any.

**Sd/-**  
**(Ravindra Kumar Agrawal)**  
**Judge**

**Sd/-**  
**(Ramesh Sinha)**  
**Chief Justice**

Anu

**Head-Note**

Testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Court 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.