



2026:CGHC:3194-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1226 of 2021

Mohd. Hussain @ Salim S/o Shri Mohd. Ali, Aged About 40 Years R/o Santoshi Nagar, Taj Nagar, P.S. Tikrapara, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

... Appellant(s)

versus

State Of Chhattisgarh Through P.S. Tikrapara, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

... Respondent(s)

For Appellant(s) : Mr. Kashif Shakeel, Advocate

For Respondent(s) : Mr. Saurabh Sahu, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

20.01.2026

1. Heard Mr. Kashif Shakeel, learned counsel for the appellant. Also heard Mr. Saurabh Sahu, learned Panel Lawyer, appearing for the respondent/State.

2. This criminal appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is directed against the impugned judgment of conviction and order of sentence dated 30.09.2021, passed by the learned Additional District Judge, First Fast Track Special Court, Raipur (C.G.), in Special Criminal Case No. 55/2019, by which the appellant has been convicted for the offences punishable under Section 376 (AB) of the IPC and sentenced him to life imprisonment (till remainder of natural life) and fine of Rs.50,000/-, in default of payment of fine additional rigorous imprisonment for 01 year.

3. Case of the prosecution, in brief, is that the father of the victim submitted a written report at Police Station Tikrapara stating that on 12.03.2019 at about 10:00 p.m., he was present at his residence. His minor daughter had gone towards the bathroom and did not return for a considerable time. Upon going to enquire, he noticed the accused Hussain standing in the vacant space adjoining the bathroom and found him committing an act constituting sexual assault upon the victim child. On seeing the complainant, the accused fled from the spot. It is further alleged that upon enquiry, the victim disclosed that the accused had subjected her to similar acts on four to five occasions earlier. On the basis of the said written report, FIR No. 194/2019 was registered at Police Station Tikrapara for offences punishable under Section 376 of the IPC and Sections 3 and 4 of the POCSO Act, 2012, and the matter was taken up for investigation.

4. During investigation, the accused was arrested. Upon completion

of investigation, sufficient material was found against the accused, and consequently, a charge-sheet was filed before the Court of the then Seventh Additional Sessions Judge (FTC), Raipur on 11.04.2019.

5. On 07.05.2019, charges under Section 376-AB of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 were framed against the accused. The charges were read over and explained to him, to which he pleaded not guilty and claimed trial.

6. In support of its case, the prosecution examined seven witnesses and exhibited twenty-five documents. After completion of prosecution evidence, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, wherein he denied the allegations and claimed false implication.

7. In defence, the accused examined one witness, namely Mrs. Amina Bee (DW-1). Thereafter, the defence evidence was closed on 04.09.2021.

8. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in paragraph-2 of the judgment. Hence, this appeal.

9. Mr. Kashif Shakeel, learned counsel for the accused/appellant submits that the judgment of conviction and sentence dated 30.09.2021 passed by the Learned trial Court, is contrary from the facts available on record and is liable to be set-aside. The learned Court below has

convicted the appellant only on the ground of presumption and suspicious. There is no sufficient evidence which shows that the appellant has committed above mentioned offences. The prosecution has not produced any reliable evidence which shows that the appellant has committed sexual assault with the victim forcefully.

10. Learned counsel for the appellant submits that the impugned judgment is contrary to the law as well as the facts and circumstances of the case, inasmuch as the learned trial Court has grossly misappreciated and misunderstood the evidence available on record. It is contended that the prosecution has failed to establish its case beyond reasonable doubt, yet the Court below has proceeded to record conviction on surmises and conjectures. Particular emphasis is placed on the testimony of the medical witness, PW-7 (Doctor), who categorically deposed that upon internal examination the hymen of the victim was found intact and that there were no signs of injury, swelling, redness or bleeding in or around the genital area. She further stated that the genitalia were normal and healthy and that there were no indications of recent sexual intercourse. The doctor also opined that since the hymen was intact, a final opinion could not be given and no vaginal slide was prepared. According to learned counsel, this medical evidence completely demolishes the prosecution version and renders the allegation of rape highly doubtful. It is further submitted that the learned trial Court failed to properly appreciate the material omissions and contradictions in the statements of prosecution witnesses, particularly the victim, who in her statement under Section 161 Cr.P.C.

did not allege penetration but stated that the act was committed between the thighs, thereby materially deviating from the prosecution case. Learned counsel further argues that the alleged place of occurrence is an open courtyard situated between the bathroom and the residential room of the victim's family, which is visible to nearby residents, making the prosecution story inherently improbable. It is also contended that there existed prior animosity between the victim's father and the appellant in relation to a dispute concerning rent and patta, and that the criminal case was instituted with an ulterior motive to settle scores and harass the appellant and his family, a fact which emerges from the evidence of various witnesses. Lastly, it is urged that the learned trial Court erred in discarding the testimony of Amina Bee (DW-1), a material defence witness, merely by branding her as an interested witness, without assigning any cogent or justifiable reasons, thereby vitiating the findings recorded in the impugned judgment.

11. Per contra, learned State counsel opposes the appeal and supports the impugned judgment, submitting that the learned trial Court has correctly appreciated the oral and documentary evidence available on record and has recorded findings strictly in accordance with law. It is contended that the testimony of the victim child is natural, cogent and trustworthy and inspires confidence, and that the conviction can safely be based upon her sole testimony, particularly in view of the statutory presumption under Sections 29 and 30 of the Protection of Children from Sexual Offences Act, 2012. Learned State counsel further submits that minor omissions or inconsistencies, if any, in the statements of the

prosecution witnesses do not go to the root of the case and are bound to occur in the testimony of a child witness. With regard to the medical evidence, it is argued that absence of injuries or the finding of an intact hymen does not rule out the commission of sexual assault, especially when the ocular testimony of the victim remains consistent and credible. It is further submitted that the place of occurrence has been duly proved and the incident having taken place during night hours cannot be said to be improbable merely because the location was accessible to others. Learned State counsel also contends that the alleged previous enmity relating to rent or property has not been conclusively established and, in any event, cannot be a ground to discard the otherwise reliable prosecution evidence. It is lastly urged that the learned trial Court has rightly disbelieved the defence witness after due consideration, and no perversity or illegality can be attributed to the findings recorded, warranting interference by this Court.

12. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the learned trial Court with utmost circumspection and carefully as well.

13. Now, the first question for consideration is whether the victim was a minor girl being below the age of 12 or 18 years on the date of incident.

14. In this regard, the prosecution has duly proved the age of the victim through cogent documentary and oral evidence. The Investigating

Officer, Salik Ram Sahu (PW-5), seized the Class-I progress report of the victim vide seizure memo Exhibit P-12, which has been proved as Article A-1, wherein the date of birth of the victim is recorded as 01.09.2011. The said document has been duly proved by the Headmistress of the school, PW-2, who verified the same. Further, the admission/mutation register of the school was seized vide Exhibit P-03, and the certified copy of the said register has been exhibited as Exhibit P-02 and Exhibit P-02C, which also record the date of birth of the victim as 01.09.2011.

15. The oral testimony of the victim (PW-1) and her father (PW-3) consistently establishes that the victim was about 8 years of age at the time of the incident, and their evidence in this regard remained unchallenged in cross-examination. The medical documents Exhibit P-16 and Exhibit P-18, as well as the statement of the victim recorded under Section 164 Cr.P.C. (Exhibit P-01), also mention the age of the victim as 8 years. The defence has not disputed either the documentary or oral evidence relating to the age of the victim.

16. Applying the principles laid down by the Hon'ble Supreme Court in ***Jarnail Singh v. State of Haryana (2013) 7 SCC 263*** and in accordance with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, this Court holds that on the date of the incident, i.e. 12.03.2019, the victim was approximately 7 years and 6 months old, and thus a child below 12 years of age. Accordingly, the prosecution has proved beyond reasonable doubt that the victim was a "child" within

the meaning of Section 2(d) of the POCSO Act and below the age contemplated under Section 376-AB IPC

17. So far as the allegation with regard to rape committed by the appellant against the victim is concerned, in cases of sexual offences, the victim is the primary witness, as the alleged offence is committed directly against her, while other witnesses generally play a corroborative or formal role. In the present case, the victim is an innocent girl of approximately 7 years and 6 months. Given her age, direct independent evidence may be limited, therefore, a careful and holistic analysis of her testimony, supporting evidence, and documentary records is required to reach a conclusion.

18. Being a child under the age of twelve, the victim (PW-01) was first examined to determine her competence to testify. The trial Court posed general questions to ensure she could understand and answer appropriately. Her evidence was then recorded in camera, without oath, in the presence of the accused and his counsel, while the accused was not shown to her. The child witness was subsequently examined and cross-examined in court.

19. The victim (PW-01) stated in her examination that she knows the accused Mohd. Hussain alias Salim, as he lives in her neighbourhood. In clause 3, the victim has stated that the accused's house is adjacent to hers. Whenever she used to go to her bathroom to urinate, the accused used to catch her from behind. Holding her, the accused used to remove her panties and leggings. After this, the accused used to

remove his underwear etc. and put his genitals on her urination place and move his body and after some time, he used to release her. The accused used to give her five rupees and told her not to tell anyone. Due to fear, she did not tell anyone about this.

20. In Paragraph 4 of her examination, the victim stated that the incident occurred approximately three/four/five months ago. At around 10:00 pm, while she was returning from the bathroom, the accused removed her panties and underwear, removed his own underwear, and inserted his genitals into her urinal. Seeing her father entering the bathroom, he released her. Her father yelled at her, and she then went to sleep. In Paragraph 5, the victim stated that her statement had been recorded before a judicial magistrate.

21. The father of the victim (PW-03) in his court statement has stated that he knew Mohammad Hussain alias Salim well because he was his neighbor. On March 12, 2019, around 10:00 p.m., he returned from work and was sitting on his bed in his room. When he did not see the victim, he called his wife where the victim was, on which his wife told him that the victim had gone to the bathroom. When she did not return for a long time, he got up and went to look for the victim, where he saw that in the courtyard, his daughter was removing the lowers worn by the victim and removing his underwear, the accused Mohammad Hussain was inserting his penis into the victim's private parts and was having sexual relations with her and was doing wrong things.

22. The victim's father (PW-3) stated in paragraph 3 of his testimony

in the chief examination that, upon seeing this, he yelled at the accused, who then released the victim and told him that he was actually making love to her. He then brought the victim home and questioned her, and she told him and his wife that the accused, Mohammad Hussain alias Salim, had already had sexual intercourse with her four or five times. After intercourse, the accused would give her five rupees each time and tell her not to tell her parents. In paragraph 4, the witness stated that it was night at that time. Therefore, the incident was not reported that night. The next day, on March 13, 2019, at 11:00 a.m., she informed her acquaintances and relatives about the incident. She then went to Tikrapara Police Station and submitted a written application, Exhibit P-5, regarding the incident. It was presented, on the basis of which FIR of the case Exhibit P-06 was registered by the police.

23. Thus, the father of the victim has also given a proper explanation in his examination for not being able to lodge a report of the incident immediately and has also clarified that on the night of 12-03-2019 at around 10:00 pm, he himself saw the accused committing the crime with the victim, then he took his daughter/victim to his home and questioned her and as it was late in the night, on the very next day i.e. 13-03-2019, the father of the victim immediately went to the police station and lodged a written complaint (Exhibit P-05) and FIR (Exhibit P-06) against the accused, then the delay in lodging the FIR in the case and his evidence regarding the sequence of events after the incident becomes relevant.

24. The father of the victim (PW-03) in the main examination itself accepted the proceedings of the site map (Ex.P-7), consent taken from him and his wife for medical examination of the victim (Ex.P-8 and P-9), seizure memo (Ex.P-10, P-11 and P-12), surrender deed (Ex.P-13), arrest memo (Ex.P-14), map of the spot prepared by the Patwari (Ex.P-15) and his signature on them and related to the investigation, he has supported all the proceedings. This witness has also stated that the police interrogated him regarding the incident and recorded his statement.

25. Thus, the victim (PW-1) and the victim's father (PW-3) have supported the prosecution's case by clearly stating in their court evidence that the accused had committed rape and aggravated penetrative sexual assault on the victim. The victim's father (PW-3) has, through his statements, proved the credibility of the written complaint (Ex.P-05) and the FIR filed on its basis (Ex.P-06). Their statements corroborate the fact that the accused committed the atrocity on the victim. Considering the circumstances of the case, the victim's statements are corroborated by the victim's father (PW-03).

26. Dr. Sudha Samuel (PW-07) examined the victim and issued a medical report (Exhibit P-16). She observed no visible injuries or abnormality and reported that a definite opinion regarding immediate sexual intercourse could not be given due to the intact hymen. The victim's clothing was sent for chemical analysis (Ex.P-17).

27. Dr. P.K. Gupta (PW-04) examined the accused and sent his

underwear for forensic analysis (Ex.P-17).

28. The Forensic Science Laboratory report (Ex.P-25) confirmed the presence of semen and human sperm on both the victim's lower garment and the accused's underwear, corroborating the victim's testimony. The defence argument that the intact hymen negates the offence is legally untenable, as minimal penetration constitutes penetrative sexual assault under Explanation 1 to Section 375 IPC.

29. The defence claimed the complaint arose from a tenancy dispute. However, this was refuted by the victim's father (PW-03) and partially by defence witness Mrs. Amina Bee (DW-01). Evidence shows that the accused and the victim's family lived in separate portions of the same house, sharing a courtyard and bathroom. The location of the incident is confirmed by site maps (Exhibits P-07 & P-15) and corroborates the victim's and her father's testimony.

30. The accused, in his Section 313 CrPC statement, claimed that he only joked with the victim. However, the Court finds this explanation implausible, given the timing and circumstances. The victim's evidence, corroborated by her father and forensic reports, is credible.

31. After considering the testimony of the victim (PW-01), her father (PW-03), medical evidence (PW-07, PW-04), investigative evidence (PW-05), site maps (PW-06), and the FSL report (Ex.P-25), the Court finds that the offence of rape and aggravated penetrative sexual assault on a girl under 12 years of age on 12-03-2019, around 10:00 p.m., is proved beyond reasonable doubt.

32. In view of above discussion, we also affirm finding recorded by the trial Court that the appellant is the perpetrator of instant crime.

33. 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 vs. State of M.P., (2010) 8 SCC 191], it is observed in paras 9 to 14 as under: (SCC pp. 195-98)

“9. In State of Maharashtra vs. Chandraprakash Kewalchand Jain [State of Maharashtra vs. Chandraprakash Kewalchand Jain, reported in (1990) 1 SCC 550] 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. vs. Pappu* [*State of U.P. vs. Pappu*, reported in (2005) 3 SCC 594] 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 vs. Gurmit Singh [State of Punjab vs. Gurmit Singh, reported in (1996) 2 SCC 384], 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.'

12. In *State of Orissa vs. Thakara Besra* [*State of Orissa vs. Thakara Besra*, reported in (2002) 9 SCC 86], 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. vs. Raghubir Singh* [*State of H.P. vs. Raghubir Singh*, reported in (1993) 2 SCC 622], 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 vs. State of M.P.* [*Wahid Khan vs. State of M.P.*, reported in (2010) 2 SCC 9]** placing reliance on an earlier judgment in ***Rameshwar vs. State of Rajasthan* [*Rameshwar vs. State of Rajasthan*, reported in 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 vs. State of Haryana [Krishan Kumar Malik vs. State of Haryana, reported in (2011) 7 SCC 130], 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 vs. State (NCT of Delhi) [Rai Sandeep vs. State (NCT of Delhi), reported in (2012) 8 SCC 21].** 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 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 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.”

34. 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].”

35. Upon careful scrutiny of the evidence, this Court finds that the

prosecution has clearly established the guilt of the accused, Mohd. Hussain @ Salim, beyond reasonable doubt for the offences punishable under Section 376-AB of the Indian Penal Code. The victim (PW-01), a girl of approximately 7 years and 6 months, is the principal witness in the case. Her testimony is consistent, coherent, and reliable, detailing the sequence of acts committed by the accused. Her statements were corroborated by her father (PW-03), an eyewitness, whose account confirms the occurrence of the incident, the circumstances immediately following it, and the reporting of the matter the following day through a written complaint (Exhibit P-05) and the FIR (Exhibit P-06).

36. The medical evidence provided by Dr. Sudha Samuel (PW-07) and Dr. P.K. Gupta (PW-04) indicates that the victim's hymen was intact and no injuries were detected. However, as per Explanation 1 to Section 375 IPC, penetration of the labia majora constitutes penetrative sexual assault. Further, the forensic report (Exhibit P-25) confirms the presence of semen and human sperm on the victim's lower garment (Exhibit P-17) and the accused's underwear (Exhibit P-17), thereby scientifically corroborating the victim's testimony.

37. The investigation conducted by Sub-Inspector Salik Ram Sahu (PW-05) and others was meticulous. All procedural requirements, including seizure memos (Exhibits P-10 to P-12), site maps (Exhibits P-07 & P-15), and consents for medical examination (Exhibits P-08 & P-09), were duly complied with. The defense has not been able to cast doubt on the authenticity of these documents or the integrity of the

investigation.

38. The defense argued that the case arose out of a tenancy dispute. However, evidence shows that the accused and the victim's family resided in separate portions of the same house, sharing only a courtyard and common bathroom. The defense theory of false accusation is unsupported and contradicted by the evidence, including the statements of DW-01 and the victim's father (PW-03).

39. Considering the totality of evidence, the oral testimony of the victim and her father, the corroborative medical and forensic evidence, and the investigative records, the Court finds that the accused deliberately and knowingly committed aggravated penetrative sexual assault on a girl under the age of twelve. The evidence is internally consistent, credible, and unimpeached, and no contradictions or omissions raised by the defense create reasonable doubt about the commission of the offence.

40. Consequently, the conviction and sentence as awarded by the trial court under Section 376-AB of the Indian Penal Code (IPC) is hereby upheld. So far as the conviction under above mentioned Section is concerned, the same is also upheld, however, this Court is of the view that the sentence of life imprisonment (till remainder of natural life), is too harsh and instead, the same is converted to rigorous imprisonment for 20 years. The imposition of fine amount and the default sentence is upheld.

41. The appellant is stated to be in jail. He is directed to serve out the

sentence as modified above.

42. The criminal appeal is **partly allowed** to the extent indicated hereinabove.

43. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing the jail term, 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 the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

44. Let a copy of this judgment and the original record be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Manpreet