



2025:CGHC:7983-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on : 03-01-2025

Judgment delivered on : 14-02-2025

CRA No. 363 of 2020

1 - Rajiv Kumar @ Raju S/o Baratu Ram Yadav Aged About 26 Years R/o Village- Jongra, Police Station- Sakti, District- Janjgir-Champa, Chhattisgarh, At Presently Resided At Dindayal Colony Dhimrapur, Raigarh, Chhattisgarh.

2 - Satya Narayan Dewangan @ Satya S/o Vinay Kumar Dewangan Aged About 30 Years R/o Palace Road Sarangarh, Ward. No. 13, Police Station- Sarangarh, District- Raigarh, Chhattisgarh.

--- Appellants

versus

State Of Chhattisgarh Through Station House Officer- Chakradhar Nagar, District- Raigarh, Chhattisgarh.

--- Respondent

CRA No. 404 of 2020

Tej Kumar (Wrongly Mentioned In The Judgment Raju) S/o Chandramani Nishad Aged About 22 Years R/o Chandrapur Bhaliyapara, Police Station Chandrapur, District Janjgir Champa Chhattisgarh

---Appellant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Chakradhar Nagar, District Raigarh Chhattisgarh.

- Respondent

CRA No. 559 of 2020

Akbar Khan @ Raj S/o Salim Khan Aged About 23 Years R/o Sarangarh,
Dipapara Police Station Sarangarh, District Raigarh Chhattisgarh.

---Appellant

Versus

State Of Chhattisgarh Through Police Station Chakradhar Nagar, District
Raigarh Chhattisgarh.

--- Respondent

CRA No. 79 of 2021

Kailash Kumar Bareth S/o Late Brihaspat Bareth Aged About 24 Years R/o
Chandrapur Yadav Mohalla, Thana Chandrapur, District Janjgir Champa,
Chhattisgarh

--- Appellant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station
Chakradhar Nagar, District Raigarh, Chhattisgarh.

--- Respondent

For Appellants : Mr. Ishwar Jaiswal, Mr. Anuroop Panda and Mr.
Rahil Arun Kochar, Advocates.
For Respondent : Mr. Akhilesh Kumar, Govt. Adv.

Hon'ble Smt. Justice Rajani Dubey, J
Hon'ble Shri Justice Narendra Kumar Vyas, J

C A V Judgment

Per Rajani Dubey, J

Since all these appeals arise out of judgment of conviction and order of sentence dated 18.2.2020 passed by Additional Sessions Judge, Fast Track Court, Raigarh in Special Criminal Case under the POCSO Act No.9/2019, they are being disposed of by this common judgment. The appellants have been convicted and sentenced as under:

Conviction	Sentence
Appellant No.1 Rajiv Kumar in CRA No. 363/2020	
Under Section 354 of Indian Penal Code.	RI for two years, fine of Rs.1000/-, in default to suffer additional RI for three months.
Under Section 8 of Protection of Children from Sexual Offences Act, 2012.	RI for three years, fine of Rs.2000/-, in default to suffer additional RI for four months.
Appellant No.2 Satya Narayan Dewangan @ Satya in CRA No.363/2020	
Under Section 12 of POCSO Act.	RI for two years, fine of Rs.1000/-, in default to suffer additional RI for three months.
Appellant Tej Kumar in CRA No.404/2020 and appellant Kailash Kumar Bareth in CRA No. 79/2021	
Under Section 21 of POCSO Act.	RI for six months, fine of Rs.1000/-, in default to suffer additional RI for three months.
Under Section 6 read with 17 of POCSO Act.	RI for twenty years, fine of Rs.5000/-, in default to suffer additional RI for six months.
Appellant Akbar Khan @ Raj in CRA No. 559/2020	
Under Section 376(2)(n)/376(3) of IPC.	RI for twenty years, fine of Rs.5000/-, in default to suffer additional RI for six months.
Under Section 6 of POCSO Act.	RI for twenty years, fine of Rs.5000/-, in default to suffer additional RI for six months.

All the sentences were directed to run concurrently.

02. Case of the prosecution, in brief, is that on 19.2.2019 father of the prosecutrix lodged a missing report stating that on 18.2.2019 at around 11

pm her daughter/prosecutrix, aged about 14 years, had gone out of home without informing anyone and is not traceable. Based on the written complaint (Ex.P/1), the police registered FIR (Ex.P/2) against unknown person under Section 363 of IPC. During investigation, she was recovered on 24.1.2019 from a Rain Basera (Night Shelter/Lodge) at Bus Stand, Transport Nagar vide recovery panchanama Ex.P/4. It revealed during the course of investigation that on 18.1.2019 in the night accused Vivek @ Vicky Yadav and accused Rajeev Kumar Yadav @ Raju offered lift to the prosecutrix in their van. While she was sitting in the van, accused Rajeev Yadav kissed her and accused Vivek @ Vicky took her to his home and committed rape on her. Next day, accused Rajeev Yadav took her from the house of accused Vivek and dropped her off at Chandrapur.

03. The prosecutrix purchased one used mobile at Chandrapur from one mobile shop and accused Kailash, who was working in the said mobile shop, purchased a SIM in his name and gave it to her and made arrangement for her night stay in the house of his acquaintance Naina Manjhi. Next day morning, accused Kailash got her dropped at Sarangarh through his friend accused Tej Kumar Nishad @ Raju. Thereafter, accused Tej Kumar left her at Sarangarh with accused Satyanarayan @ Satya Dewangan who molested her. Accused Satyanarayan @ Satya, Tej Kumar and Kailash Bareth took the prosecutrix to a garden for discussing about making arrangement for her stay where accused Akbar Khan also came. There accused Kailash Bareth took back the SIM from the prosecutrix which was given by him to her. Thereafter, at the instance of accused Satyanarayan and Kailash, the prosecutrix went to the house of accused Akbar where he made her drink liquor at night and committed repeated sexual intercourse with her. Next day morning, accused

Satyanarayan and Akbar made her sit in a bus bound for Raigarh. At Raigarh Bus Stand, she happened to meet accused Amit Singh who got her stay at a lodge and in the evening took her on a motorcycle on the pretext of roaming around and committed rape on her.

04. After recovery of the prosecutrix, her statement under Section 164 of CrPC was recorded vide Ex.P/22. She was produced before the Child Welfare Committee where her statement Ex.P/25 was recorded. Spot map was prepared at the instance of prosecutrix vide Ex.P/3. After obtaining consent of the prosecutrix and her mother, medical examination of the prosecutrix was got done vide Ex.P/8 by PW-2 Dr. Menka Patel who advised for her examination by radiologist and dentist for age determination. Vaginal slides of the prosecutrix were prepared and sent to FSL for examination and report Ex.P/83 was received from there. The accused persons were also subjected to medial examination vide Ex.P/10, P/12 and P/14. Dakhil-kharij register of the school where the prosecutrix was studying and the certificate given on the basis of entry in the said register, were was seized vide Ex. P/16 & P/17. After recording statements of witnesses and completing the necessary formalities of investigation, charge sheet under Sections 363, 354, 354(A-1), 376, 34 of IPC and Sections 4, 6, 7, 8, 11, 12 & 18 of POCSO Act was filed against the accused persons before the concerned jurisdictional Magistrate.

05. Learned trial Court framed charges under Sections 376(2)(n), 376(3) of IPC and Section 6 of POCSO Act against accused Akbar Khan; under Section 376(3) of IPC and Section 6 of POCSO Act against accused Amit Kumar Singh; under Sections 363, 354 of IPC and Section 8 of POCSO Act against accused Rajeev Kumar @ Raju; under Section 376(3) of IPC and

Section 4 of POCSO against accused Vivek @ Vicky; under Section 354 of IPC and Sections 8 & 12 of POCSO Act against accused Satyanarayan Dewangan @ Satya; under Section 21 of POCSO Act against accused Tilak Ram Sidar; under Sections 21 & 6/17 of POCSO Act against accused Kailash Kumar Bareth and Tej Kumar Nishad. The accused persons abjured their guilt and prayed for trial.

06. In order to prove its case the prosecution examined total 15 witnesses. Statements of the accused persons were recorded under Section 313 of CrPC in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no witness was examined by them in defence.

07. Learned trial court after hearing counsel for the respective parties and appreciating the oral and documentary evidence on record, convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment. Hence these appeals.

08. Learned counsel for the appellants in CRA No. 363/2020 submits that the impugned judgment is arbitrary, illegal and contrary to the facts and circumstances of the case. There is no direct evidence to connect the appellants with the crime in question. There is no allegation of sexual assault against the appellants by the prosecutrix but ignoring this aspect, learned trial court has convicted them which is illegal. Even there is no evidence regarding age of the prosecutrix that she was minor on the date of incident. There are material contradiction and omission in the statements of the witnesses which makes the whole prosecution case doubtful.

09. Learned counsel for appellants in CRA No. 404/2020 and CRA No. 79/2021 would submit that the learned trial failed to appreciate para 37 of cross-examination of the prosecutrix wherein she has stated that accused Kailash and Tej Kumar have not committed any offence with her. Further, PW-2 Dr. Menka Patel in para 8 of her cross-examination has clearly stated that she did not notice any symptom of forcible sexual intercourse on the body of the prosecutrix. The prosecution has also not proved the fact that the prosecutrix was minor on the date of incident. There is absolutely no evidence to prove that the appellants instigated or abetted the other accused persons to commit the crime. Most importantly, names of appellants Tej Kumar and Kailash are neither mentioned in the FIR nor in the statements under Sections 161 & 164 of CrPC of the prosecutrix. Therefore, conviction of these appellants is liable to be set aside.

10. Learned counsel for appellant in CRA No. 559/2020 would submit that conviction of appellant Akbar Khan is bad in law as there is no positive and legally admissible evidence to establish the offence of rape against him. Statements of all the prosecution witnesses are full of contradiction, omission and improvement, hence not reliable. Looking to the conduct of the prosecutrix and the manner in which the incident is said to have taken place, it prima facie appears to be a false and concocted case and as such, the solitary testimony of the prosecutrix cannot be made the basis of conviction of the appellant. Even medical evidence also lends no support to the prosecution case regarding rape. No cogent and reliable evidence as to age of the prosecutrix is there on record. The person who made entry in the Dakhil-kharaj register regarding date of birth of the prosecutrix has not been examined. The FIR was lodged on 19.1.2019 and there has is no conclusive

proof as to on which date the accused made physical relation with her. No explanation has been given by the prosecution for this delay. He further submitted that there is no proof of compliance of Section 157 of CRPC and there are circumstances which indicate that the report was not even lodged on the same day but it was written on the next day mentioning ante-date and time. He submits that even as per prosecution case itself the prosecutrix had ample opportunities to raise hue and cry to escape from the clutches of the accused persons but she didn't do so. As per statement of the prosecutrix, no offence of rape was committed by the appellant Akbar Khan.

Reliance has been placed on the decisions in the matters of ***Alamelu and others Vs. State represented by Inspect of Police and others, (2011) 2 SCC 385, Sanjay Kumar Nayak Vs. State of CG, AIR 2006 SC 2157*** and order dated 3.10.2024 of this Court in ***CRA No.154/2023, Shatruhan Nirmalkar Vs. State of CG*** and other connected appeals.

11. On the other hand, learned counsel for the State opposing the contention of the appellants would submit that the learned trial Court after due appreciation of oral and documentary evidence on record has rightly convicted and sentenced the appellants by the impugned judgment which calls for no interference by this Court. Therefore, all these appeals being devoid of any substance are liable to be dismissed.

12. Heard learned counsel for the respective parties and perused the material available on record.

13. It is clear from the record of learned trial Court that the accused Akbar Khan was charged under Sections 376(2)(n), 376(3) of IPC and Section 6 of

POCSO Act; accused Amit Kumar Singh was charged under Section 376(3) of IPC and Section 6 of POCSO Act; accused Rajeev Kumar @ Raju was charged under Sections 363, 354 of IPC and Section 8 of POCSO Act; accused Vivek @ Vicky under Section 376(3) of IPC and Section 4 of POCSO; accused Satyanarayan Dewangan @ Satya under Section 354 of IPC and Sections 8 & 12 of POCSO Act; accused Tilak Ram Sidar under Section 21 of POCSO Act and accused Kailash Kumar Bareth and Tej Kumar Nishad under Sections 21 & 6/17 of POCSO Act. After appreciation of oral and documentary evidence, the learned trial Court acquitted accused Amit Kumar Singh of charge under Section 376(3) of IPC and Section 6 of POCSO Act; accused Rajeev Kumar @ Raju of the charge u/s 363 of IPC; accused Vivek @ Vicky of the charge u/s 363, 376(3) of IPC and Section 4 of POCSO Act; accused Satyanarayan @ Satya of the charge u/s 354 of IPC and Section 8 of POCSO Act and acquitted accused Tilakram Sidar of the charge u/s 21 of POCSO Act.

14. As per prosecution case, on the date of incident the prosecutrix was below 18 years of age. Learned trial Court relying upon the entry regarding date of birth of the prosecutrix made in Dakhil-Kharij register and certificate of the Principal (Ex.P/17) came to the conclusion that on the date of incident she was below 16 years of age.

15. PW-1 prosecutrix states that her age is 14 years and her date of birth is 6.9.2004. However, she then volunteers that actually she is 17 years and her birth year is 2002. In cross-examination she admits that as per school register, her date of birth is 6.9.2005.

16. PW-10 mother of the prosecutrix states that date of birth of her daughter/prosecutrix is 6.9.2005. She admits in cross-examination that she does not remember as to after how many years of her marriage, the prosecutrix was born. She volunteers that the prosecutrix is getting 14 years. She also admits that no birth certificate of the prosecutrix was given to the police.

17. PW-13 father of the prosecutrix also states that date of birth of the prosecutrix is 6.9.2005. He also admits that birth of the prosecutrix took place at their home in Bihar and he did not get birth certificate of the prosecutrix prepared. He states that copy of the birth certificate given to them by the Sarpanch was submitted in the school and neither original nor copy thereof was given to the police.

18. PW-3 Ignasiyus Kerketta, Teacher, states that due to preoccupation of the Principal, he has appeared with her authorization letter for recording of evidence. He has proved seizure of Dakhil-Kharij register from the Principal by the police vide Ex.P/37. He states that this register records date of birth of the prosecutrix as 6.9.2005. He has proved signature of the Principal on the said register. In cross-examination he states that it is true that they admit children in their school after seeing their birth certificate. However, he admits that there is no birth certificate of the prosecutrix annexed with the Dakhil-Kharij register. He also admits that it is not mentioned in this register that date of birth of the prosecutrix is recorded on the basis of her birth certificate.

19. PW-2 Dr. Menka Patel medically examined the prosecutrix and advised for examination of the prosecutrix by a radiologist and dentist for age

determination vide her report Ex.P/8. She admits that no such examination of the prosecutrix for age determination was got done.

20. The Hon'ble Apex Court in the matter of ***Alamelu and another Vs. State, represented by Inspector of Police, (2011) 2 SCC 385*** observed in paras 40 & 48 of its judgment as under:

“40. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded.

48. We may further notice that even with reference to Section 35 of the Indian Evidence Act, a public document has to be tested by applying the same standard in civil as well as criminal proceedings. In this context, it would be appropriate to notice the observations made by this Court in the case of *Ravinder Singh Gorkhi Vs. State of U.P.*⁴ held as follows:-

"The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the

purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted."

21. The Supreme Court in the matter of ***Manak Chand alias Mani vs. State of Haryana, 2023 SCC Online SC 1397*** has reiterated the law laid down by it in the matter of ***Birad Mal Singhvi vs. Anand Purohit, 1988 (Supl.) SCC 604*** and observed that the date of birth in the register of the school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth. It was further reiterated that if the date of birth is disclosed by the parents, it would have some evidentiary value but in absence the same cannot be relied upon. For sake of brevity para No. 14 & 15 of the judgment are reproduced hereunder:-

"14 This Court in ***Birad Mal Singhvi v. Anand Purohit (1988) Supp SCC 604*** had observed that the date of birth in the register of a school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth.

"14.... The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given

by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth such an entry will have no evidentiary value.”

15. In our opinion, the proof submitted by the prosecution with regard to the age of the prosecutrix in the form of the school register was not sufficient to arrive at a finding that the prosecutrix was less than sixteen years of age, especially when there were contradictory evidences before the Trial Court as to the age of the prosecutrix. It was neither safe nor fair to convict the accused, particularly when the age of the prosecutrix was such a crucial factor in the case.”

22. In light of aforesaid decisions of the Hon'ble Supreme Court, we find that in the present case, there is no such clinching and legally admissible evidence brought on record by the prosecution to prove the fact that the prosecutrix was minor on the date of incident. Though Dakhil-Kharij registered has been produced by the prosecution but author of the entry made in the said register regarding date of birth of the prosecutrix has not been examined. There is no evidence to show as to on what basis the said date of birth was entered in this register. Despite being advised by PW-2 Dr. Menka Patel, no medical examination of the prosecutrix was got done by the prosecution for determining her age. Thus, it is clear that the prosecution has failed to prove the fact that at the time of incident the prosecutrix was minor.

23. PW-1 prosecutrix states that she did not like her parents and not want to live with them, so she went out of the house at 11 pm all alone and called

her friend Nihal Sharma on mobile. She had already eloped with him earlier. On being called, Nihal Sharma came with his two friends at the indicated place but she refused to go with them. Then Nihal Sharma called his brother Abhishek Sharma who scolded them and told that he would drop them at their house, on which she declined. However, as there she had some dispute with Nihal, she started going all alone from there but Nihal was making her phone calls repeatedly, so she threw the SIM after breaking it. Thereafter, accused Rajeev and Vivek met her near bypass who were in a van. Rajeev asked her as to where she was going, on which she replied that they have nothing to do with it. Rajeev insisted for giving her lift and Vivek also tried to convince her. Thereafter, she sat in their van and they took her towards bypass. Rajeev told that they cannot leave her at night, so she should go to the house of Vivek. Thereafter, Rajeev went back to his house in van and she went with Vivek on his motorcycle to his house at Beladula where one friend of Vivek was there who was in an inebriated condition. There Vivek asked her to leave her at her house. She further states that as she had talked with one person from the mobile of Rajeev, so her father was repeatedly calling Rajeev on his mobile. Hence Rajeev came to the house of Vivek and took her to Chandrapur and at that time also Vivek asked for dropping her at her house but she declined. Thereafter, they left her at Chandrapur and moved away. There she purchased a mobile in exchange of her chain and narrated the whole incident to the shopkeeper. Accused Kailash who was working in the said shop, called his friend. His friend then took her to her house where she stayed the whole night. Next morning, she along with Kailash and his friend went towards Chandrapur Mandir where Kailash called Raju and asked him to leave her at Sarangarh. Thereafter, Raju left her at Saragarh on his motorcycle and asked as to where she would

stay, on which she requested him to make her arrangement in any lodge as she has run away from home. Raju asked her to wait near Prince Lodge where his friend is coming. When she asked the staff member of Prince Lodge for staying there, he replied that if she pleased the customers, she would be allowed to stay there. She informed about it to Raju over phone but he went away from there saying that he is getting a call from his home.

24. The prosecutrix states that thereafter she went to Sarangarh bus stand and after charging her mobile again called Raju who asked her to come near Prince Lodge and go with the boy standing there with a scooty. Accused Satya was also there with that boy. She went with that boy on his scooty to an outer area and accused Satya was also with them on his motorcycle. However, on the way that boy misbehaved with her, on which she scolded him and informed accused Satya about it. Satya said to her that Raju told them to make arrangement for her but when she asked Raju over phone, he denied to have said so, rather he told that she is not that kind of girl. After her refusal to go with that boy, Satya asked her to come to his home, then she went to his home at Sarangarh where his wife was there. However, he forbade her from telling anything to his wife and told that Raju and Kailash would come in the evening, then they will plan further. In the evening, Raju and Kailash came to his house and then she along with Satya, Kailash and Raju went to a garden at Sarangarh for discussion where accused Akbar arrived. They asked her to drop her at her house but she declined. At that point of time, Kailash informed that police came in search of you (prosecutrix) at Chandrapur and then broke the SIM given to her by him. Thereafter, Raju left her at the house of Akbar where mother and brother of Akbar were there. She stayed there at night. However, after leaving her there

Akbar went to his friends and returned at night. She states that she had another SIM, she talked with Nihal Sharma who told her that he is coming to take her back but she refused because police were searching her and asked her to be in contact.

She further states that Akbar came at night and asked her if she consumes liquor and she told him that she does occasionally. Thereafter, Akbar brought liquor and made her drink liquor. After that she fell asleep and has no knowledge what happened thereafter. At around 1 am she heard that Akbar's mother was shouting at him; Akbar told her that she is responsible for this quarrel and she should have stayed in a lodge. Thereafter, she along with Akbar went into another room and Akbar moved away from there. Then she called Nihal and informed him about the whole incident, on which he told her as to why she consumed liquor, if anything would have been done to her, she could not remember and told her to ask Akbar about it and don't disconnect the call. When she asked Akbar as to what had happened at night, he said that nothing such happened and started laughing. Thereafter, Akbar slept in the room and she was also there in that room surfing her mobile. She states that next day at 3 am she along with Akbar left the home and met accused Satya at 5 am at bypass road. Thereafter, Akbar leaving her with Satya went away saying that he would come back after getting fuel refilled in the vehicle. When she was with Satya, he told her that he felt like kissing her, on which she warned him to stay away from her. When Akbar came back, she asked him to make a phone call to Raju and Kailash and then she talked to them over phone. They told her to go back home. She states that when she informed Akbar about the conduct of Satya, he said to her "he (Satya) is only saying, everything happened

between you and me at night". When she asked as to what happened, he replied that only kissing. Thereafter, Akbar and Satya left her at Baramkela where Nihal Sharma came to meet her as she had already told him to come there and asked her to leave for Raigarh but when she refused, he made her sit in a bus with his friend Ashutosh for going to Raigarh. At Sarangarh bus stand she called Abhishek, brother of Nihal and on his arrival, she narrated the whole incident to him and went to the house of Ashutosh where she informed about the entire incident to his uncle who is in police department. Though his uncle insisted for lodging report, however, on their request not to lodge report or else she would be defamed in the society, he did not lodge any report.

25. She further states that she went to Rain Basera with accused Amit where accused Tilak was there and she stayed there for 3-4 days. On the same day accused Amit came to her at Rain Basera and insisted for going out to roam around, so she went with him on his bike towards city. However, while returning she asked as to why he to going back by a different route, on which he replied that it is a shortcut and asked her for sexual favour, to which she scolded him. Thereafter, accused Amit stopped the bike and tried to touch her. At that time, one car was coming from opposite direction, she told him that she is going to stop it, on which he got afraid and left her at Rain Basera. Thereafter, she made a call to her friend Kailash who informed her that Rajeev, Akbar, Vivek, Kailash, Raju and Satya have been apprehended by the police and asked her to talk to Nihal. At that time, she received a call from Nihal. Next day, the police reached Rain Basera and took her to police station.

26. She was declared hostile by the prosecution and cross-examined where she admitted that she left her home with her clothes and Rs.5,000/- without informing her mother and father. In her statement under Section 164 of CrPC, the prosecutrix states that accused Akbar forcibly made her drink liquor and thereafter made forcible indecent advancement to her and that she was not aware of all this and Akbar told her about this in the morning. However, when prosecution after declaring her hostile cross-examined her she states that Akbar forcibly made her drink liquor and then committed rape on her whereas accused Satya and Amit molested her. She denied the suggestion that accused Amit committed forcible sexual intercourse with her.

27. In para 36 she states that after consuming liquor at the house of Akbar she slept there and next day Akbar told her that he had kissed her. She further admits that Akbar told her that he did nothing to her. She then volunteers that it was told in presence of Satya. In para 37 she admits that accused Kailash and Tejkumar did not do anything wrong to her and she did not lodge any report against them with the police. In para 35 she admits that she went with Raju and Vivek at the behest of Deepak of her own. In para 31 she admits that Vicky @ Vivek did not misbehave with her in any manner, he wanted to drop her at her house and that she went to Chandrapur of her own will.

28. PW-4 Renu Mandavi registered FIR (Ex.P/2) on the basis of written complaint Ex.P/1 of the complainant and admitted that the complainant told her that she had scolded the prosecutrix regarding studies, therefore, she went away without telling anyone.

29. PW-5 Naina Mali, PW-6 Sitaram Patel and PW-9 Sameer Pandey have not supported the prosecution case. The prosecution declared them hostile and cross-examined where they denied all the suggestions of prosecution.

30. PW-8 Pawan Parmanik states that the prosecutrix was recovered from a Rain Basera at new bus stand as per recovery memo Ex.P/4 which bears his signature from B to B part. In cross-examination he admits that he signed this document at the behest of police. In para 23 he states that accused Tilak was with the prosecutrix at the Rain Basera when she was recovered from there. He also admits that in the recovery memo it is not mentioned that the prosecutrix was recovered from the possession of any particular person.

31. PW-10 mother of the prosecutrix and PW-13 father of the prosecutrix state that the prosecutrix left the home of her own and they searched for her and when she was found nowhere, a missing report was lodged with the police. They denied the suggestion that they had scolded the prosecutrix in connection with her studies, therefore, she left home.

32. PW-2 Dr. Menka Patel examined the prosecutrix on 25.1.2019 and did not find any external or internal injury on her body. In her opinion, the prosecutrix was habitual to sexual intercourse. Her report is Ex.P/8. In cross-examination she admits that during medical examination of the prosecutrix she did not find any symptom of forcible sexual intercourse on her body.

33. As already discussed above, based on the oral and documentary evidence adduced by the prosecution it has failed to prove that the prosecutrix was below 18 years of age on the date of incident. A bare perusal of the evidence of the prosecutrix shows that her conduct during the

alleged incident is very suspicious. She admits that she left her home as she does not like her parents and thereafter met the accused persons. However, her parents have stated that they never scolded her for studies and that on the night when she left her home also they did not rebuke her. This apart, the prosecutrix alleges that accused Akbar committed rape upon her after making her drink liquor. However, she also admits that after consuming liquor, she slept and did not know what happened thereafter. Further, she states that it is accused Akbar who told her later that he committed rape on her after making her drink liquor. From her evidence it is clear that she had ample opportunities to go back to her home or inform the police about the alleged act of the accused persons but she deliberately did not do so and continued to roam around with the accused persons from one place to another till she was recovered by the police from the Rain Basera. She herself states that on many occasions the accused persons asked her for dropping her at her home but she refused.

34. It is a trite law that to hold an accused guilty for commission of an offence of rape or sexual assault, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. Ordinarily the evidence of the prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if her evidence is reliable, no corroboration is necessary. While rape causes the greatest distress and humiliation to the victim, a false allegation of rape causes equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. Indisputably, in a case of

sexual assault, the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.

35. Keeping in view the aforesaid settled legal principles, if we examine the evidence of the prosecutrix, her conduct during the alleged incident and subsequent thereto, it transpires that she was a consenting party to the act of the accused/appellants. Her evidence is neither corroborated by any oral or medical evidence at all. Thus, in the given facts and circumstances of the case and the evidence adduced by the prosecution, we have no hesitation in holding that the prosecution has miserably failed to prove its case against the appellants beyond reasonable doubt and as such, learned trial Court was not justified in holding them guilty of the offence under Sections 6, 6/17, 8, 12, 21 of the Act of 2012 and Section 376(2)(n)/376(3) of IPC.

36. In the result, all the criminal appeals are allowed. The impugned judgment of the learned trial Court is hereby set aside and consequently, the appellants are acquitted of the charges leveled against them by extending them benefit of doubt. Appellants Tej Kumar, Kailash Kumar Bareth, Rajeev Kumar @ Raju and Satyanarayan Dewangan @ Satya are reported to be on bail, therefore, their bail bonds shall remain in operation for a period of six months from today in view of provisions of Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023.

Appellant Akbar Khan is reported to be in jail, therefore, he be set free forthwith if not required in connection with any other offence. However, as per provisions of Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023,

he shall execute a bail bond for a sum of Rs.25,000/- to the satisfaction of the trial Court for his appearance before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against this judgment and such bond shall be in force for a period of six months.

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

**Sd/
(Rajani Dubey)
Judge**

**Sd/
(Narendra Kumar Vyas)
Judge**