



CGHC010170882024

2026:CGHC:29282-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1009 of 2024

Satyadev Bhagat S/o Shri Ashok Bhagat Aged About 24 Years Cast-Uroan, Occupation- Farmer, Resident Of Village- Jaymaraga, Chowki-Manora, Police Station- Jashpur, District : Jashpur, Chhattisgarh

... Appellant

versus

State of Chhattisgarh Through- Police Out- Post-Manora, The Station House Officer Of Police Station- Jashpur, District : Jashpur, Chhattisgarh

... Respondent

(Cause-title taken from Case Information System)

For Appellant	: Mr. Sanjeev Kumar Sahu, Advocate
For Respondent/State	: Ms. Anusha Naik, Deputy Government Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

13.07.2026

1. Heard Mr. Sanjeev Kumar Sahu, learned counsel appearing for the appellant as well as Ms. Anusha Naik, learned Deputy Government Advocate, appearing for the State/respondent.

2. This criminal appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is directed against the judgment of conviction and order of sentence dated 22.04.2024 passed by the Additional Sessions Judge, additional Charge F.T.C. Jashpur, District Jashpur, Chhattisgarh in POCSO Case No.57/2021 whereby the appellant has been convicted and sentenced in the following manner :-

<u>Conviction</u>	:	<u>Sentence</u>
Under Section 363 of the Indian Penal Code, 1860		Rigorous imprisonment for 05 years with fine of Rs.1000/-, in default of payment of fine, additional simple imprisonment for 03 months.
Under Section 365 of the Indian Penal Code, 1860		Rigorous imprisonment for 05 years with fine of Rs.1000/-, in default of payment of fine, additional simple imprisonment for 03 months.
Under Section 366-A of the Indian Penal Code, 1860		Rigorous imprisonment for 05 years with fine of Rs.1000/-, in default of payment of fine, additional simple imprisonment for 03 months.
Under Section 368 of the Indian Penal Code, 1860		Rigorous imprisonment for 05 years with fine of Rs.1000/-, in default of payment of fine, additional simple imprisonment for 03 months.
Under Section 376(2) (I) sub-section 376(3) of the Indian Penal		Rigorous imprisonment for 20 years with fine of Rs.2000/-, in default of payment of fine,

Code, 1860 and Under Section 6 of the Protection of Children from Sexual Offences Act, 2012		additional simple imprisonment for 01 year.
It was directed to run all the sentences concurrently.		

3. Learned State counsel submits that notice issued to PW-1 father of the victim has been served, but none has appeared on behalf of the victim to contest the present appeal.
4. The prosecution case, in brief but as emerging from the evidence adduced before the learned trial Court, is that the father of the victim (PW-1) lodged an oral report at Police Outpost Manora, Police Station Jashpur, alleging that on 23.07.2021 his minor daughter, aged about 15 years 1 month and 28 days, had left their residence at Village Sanna stating that she was going to Village Jaymarga to the ancestral house where her elder brother was residing. However, instead of reaching there, she went to the house of Sukan Lal, the maternal uncle of the appellant-accused Satyadev Bhagat, and started residing there with the appellant. Upon receiving information, the mother of the victim (PW-2) went to the said house, brought the victim back and left her at the residence of her elder uncle (PW-8) at Village Jaymarga before returning home. On the following day, i.e., 25.07.2021, when the victim was staying at her uncle's house, the appellant allegedly enticed her away once again. Village witnesses Mahendra Ram

(PW-7) and Kartik Ram noticed the appellant taking the victim away and informed her father over telephone. The father, along with family members, searched for the victim but neither she nor the appellant could be traced. On the basis of the aforesaid oral report, First Information Report (Ex.P/1) was registered against the appellant for the offence punishable under Section 363 of the Indian Penal Code.

5. During the course of investigation, the investigating agency constituted a police team for tracing the victim. After sustained efforts, the victim was recovered from the custody and company of the appellant from Piska More, Ranchi, State of Jharkhand, and a Recovery Panchnama (Ex.P/12) was prepared. After recovery, the victim was handed over to her parents under Supurdnama (Ex.P/2). During investigation, the statements of the witnesses under Section 161 CrPC were recorded, wherein it was revealed that after enticing the victim, the appellant had taken her from Jaymarga to the house of his maternal uncle Sujan Lal and thereafter to the house of his sister at Village Dumri. Subsequently, both of them proceeded to Ranchi, where they stayed together in the houses of acquaintances and thereafter in a rented accommodation near Ravi Steel Chowk. According to the prosecution, during the entire period the appellant kept the victim away from the lawful guardianship of her parents on the false assurance of marriage and repeatedly subjected her to forcible sexual intercourse.

6. As part of the investigation, the victim was medically examined by Dr. Pallavi (PW-10) on 06.12.2021 pursuant to police requisition (Ex.P/19). The doctor prepared the medical examination report (Ex.P/20) and the prescribed medical proforma (Ex.P/21). During examination, vaginal slides and the undergarment of the victim were collected, sealed and handed over to the police. The appellant was also subjected to potency examination by Dr. Uday Bhagat (PW-9), who prepared the medical report (Ex.P/17) in the prescribed format (Ex.P/18) opining that the appellant was capable of performing sexual intercourse. The seized vaginal slides and undergarments of the victim were seized under Seizure Memo (Ex.P/23) and were subsequently forwarded to the Forensic Science Laboratory for chemical examination. The FSL report (Ex.P/27) revealed the presence of semen stains and human spermatozoa on the vaginal slides as well as on the undergarment of the victim.
7. During investigation, the victim was also produced before the learned Judicial Magistrate for recording of her statement under Section 164 of the Cr.P.C., for which the Investigating Officer submitted an application (Ex.P/24). The Investigating Officer further obtained the school admission register and educational records relating to the victim for determination of her age. The father of the victim (PW-1), pursuant to notice (Ex.P/6), produced the school admission register, which was seized vide Seizure Memo (Ex.P/7). The certified extract of the admission register

(Ex.P/9-C) disclosed the date of birth of the victim as 26.05.2006.

The prosecution also obtained the spot map prepared by the Patwari Praveen Tirkey (PW-5), which was exhibited as Ex.P/15, besides the spot map prepared during investigation (Ex.P/4). After completion of investigation and upon finding sufficient material, charge-sheet was filed against the appellant.

8. The learned trial Court framed charges against the appellant for the offences punishable under Sections 363, 365, 366-A, 368 and 376(2)(I) read with Section 376(3) of the Indian Penal Code, 1860 (for short, "IPC") read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO"). The appellant abjured guilt, pleaded false implication and claimed to be tried.
9. In order to bring home the charges framed against the appellant, the prosecution examined as many as fifteen witnesses and adduced both oral and documentary evidence. PW-1, the father of the victim, proved the lodging of the First Information Report (Ex.P/1), narrated the circumstances in which the victim went missing from the lawful guardianship of her parents, and deposed regarding the efforts made by the family to trace her. He further proved the recovery of the victim, the Supurdnama by which her custody was restored to her parents (Ex.P/2), the consent furnished for her medical examination (Ex.P/3), and also proved the seizure of the school admission register relating to the date of

birth of the victim through seizure memo (Ex.P/7). PW-2, the mother of the victim, fully corroborated the testimony of PW-1 regarding the victim initially being found at the house of the appellant's maternal uncle, her subsequent disappearance, the information received from relatives, the lodging of the report, recovery of the victim from Ranchi, and her medical examination. She also proved the consent memo executed for the medical examination of the victim.

10. The victim herself was examined as PW-3. Although she resiled from her previous statements during trial and did not support the prosecution case in material particulars, she admitted her recovery by the police from Ranchi under the recovery panchnama (Ex.P/12), admitted her signatures on the consent memo (Ex.P/13), and acknowledged that after her recovery she was handed over to her parents. Since she departed from her earlier version, she was declared hostile and extensively cross-examined by the prosecution.
11. PW-4 Ajay Kumar was examined as a seizure witness. PW-5 Praveen Tirkey, the Patwari, proved the spot map prepared during investigation (Ex.P/15). PW-6 Smt. Monica Mudihar, the Assistant Teacher of the school attended by the victim, proved the school admission and withdrawal register containing the date of birth of the victim, as well as the seizure thereof by the Investigating

Officer, thereby establishing the documentary evidence relating to the age of the victim.

12. PW-7 Mahendra Ram, a relative witness, deposed that he had seen the victim accompanying the appellant and informed the father of the victim about the same. PW-8 Jaychand Ram, another relative, also supported the prosecution to the extent that the victim had been taken away by the appellant from his village and that despite search she could not be traced immediately.
13. The medical evidence was adduced through PW-9 Dr. Uday Bhagat, who conducted the potency examination of the appellant and proved the medical examination report (Ex.P/17) and the prescribed format (Ex.P/18), opining that the appellant was capable of performing sexual intercourse. PW-10 Dr. Kumari Pallavi, who medically examined the victim, proved the requisition for medical examination (Ex.P/19), the medical examination report (Ex.P/20), and the prescribed proforma (Ex.P/21). She deposed that the hymen of the victim was found ruptured, two fingers could be admitted easily into the vagina, vaginal slides and undergarments were collected and sealed for forensic examination, and in her opinion the victim had been subjected to sexual intercourse, though final opinion regarding recent intercourse was reserved pending FSL examination.
14. PW-11 Ishwar Prasad Warle, Assistant Sub-Inspector and a member of the police team constituted for recovery of the victim,

proved that the victim was recovered from the custody of the appellant at Ranchi and proved the recovery panchnama (Ex.P/12). PW-12 Tejaswari Swarnkar, the woman police officer, proved recording of the statement of the victim under Section 161 Cr.P.C.

- 15.** The investigation was further proved by PW-13, who corroborated the recovery proceedings and investigation conducted after tracing the victim. PW-14 Ramnath Ram, the Assistant Sub-Inspector, proved registration of the First Information Report (Ex.P/1), preparation of the spot map (Ex.P/4), seizure proceedings (Ex.P/5), and the initial investigation carried out by him. PW-15 Chandraprakash Tripathi, the Investigating Officer, gave a comprehensive account of the investigation conducted by him. He proved the applications sent for medical examination of the victim and the appellant (Ex.P/16, Ex.P/19 and Ex.P/22), seizure of vaginal slides and undergarments (Ex.P/23), forwarding of the victim for recording of her statement under Section 164 Cr.P.C. (Ex.P/24), requisition for preparation of Patwari map (Ex.P/26), forwarding of the seized articles for forensic examination, and proved the FSL report (Ex.P/27), wherein human semen and spermatozoa were detected on the vaginal slides and undergarments of the victim.
- 16.** Thus, the prosecution, besides examining the aforesaid witnesses, brought on record the documentary evidence including

the First Information Report (Ex.P/1), Supurdnama (Ex.P/2), consent memos (Ex.P/3 and Ex.P/13), spot map (Ex.P/4), seizure memos (Ex.P/5, Ex.P/7 and Ex.P/23), school admission register and certified extracts regarding the age of the victim (Ex.P/9-C), recovery panchnama (Ex.P/12), medical examination reports (Ex.P/17, Ex.P/20), applications sent during investigation (Ex.P/16, Ex.P/19, Ex.P/22, Ex.P/24 and Ex.P/26), Patwari map (Ex.P/15), and the Forensic Science Laboratory report (Ex.P/27), besides other connected documents exhibited during trial. The defence, on the other hand, did not examine any witness in support of its case and merely exhibited one document (Ex.D/1).

17. After completion of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure. The appellant denied every incriminating circumstance appearing against him in the prosecution evidence, pleaded complete innocence, and asserted that he had been falsely implicated owing to previous animosity. He denied having kidnapped the victim, denied having confined or subjected her to sexual intercourse, disputed the prosecution evidence regarding her recovery from his custody, and also questioned the documentary evidence relied upon by the prosecution. However, despite being afforded full opportunity, the appellant neither entered the witness box nor examined any witness in defence. Except producing Ex.D/1, no oral or documentary evidence was

adduced to probabalise his defence or to rebut the statutory presumptions available under the provisions of the POCSO Act.

- 18.** Upon a thorough appreciation of the entire oral, documentary, medical and scientific evidence brought on record, the learned Special Judge (POCSO), after recording detailed findings on every point for determination, held that the prosecution had successfully established that the victim was below 16 years of age on the date of the incident; that she had been taken away from the lawful guardianship of her parents by the appellant without their consent; that she was wrongfully confined at different places; and that during the period she remained in the custody of the appellant she was repeatedly subjected to penetrative sexual assault.
- 19.** The learned trial Court found that the evidence of the parents of the victim (PW-1 and PW-2), the testimony of the independent witnesses to the extent it supported the prosecution, the documentary evidence regarding the age of the victim, the recovery of the victim from the custody of the appellant, the medical evidence of PW-9 and PW-10, the testimony of the Investigating Officers (PW-11, PW-14 and PW-15), and the Forensic Science Laboratory report (Ex.P/27) constituted a complete chain of evidence proving the guilt of the appellant beyond all reasonable doubt. Consequently, the learned trial Court convicted the appellant Satyadev Bhagat for the offences

punishable under Sections 363, 365, 366-A, 368 and 376(2)(i) read with Section 376(3) of the IPC read with Section 6 of the POCSO Act and sentenced him as indicated in the opening paragraph of this judgment. Aggrieved by the judgment of conviction and order of sentence, the present criminal appeal has been preferred by the appellant.

- 20.** Mr. Sanjeev Kumar Sahu, learned counsel appearing for the appellant, assailed the impugned judgment of conviction and order of sentence passed by the learned Special Judge (POCSO) and submitted that the same is wholly unsustainable in law as well as on facts. It was contended that the learned trial Court has failed to appreciate the oral as well as documentary evidence in its correct perspective and has recorded findings which are contrary to the material available on record. According to the learned counsel, the impugned judgment is based upon improper appreciation of evidence, erroneous application of law and unwarranted inferences drawn from the prosecution case. It was submitted that the findings recorded by the learned trial Court are perverse, contrary to settled principles governing criminal jurisprudence and, therefore, deserve to be set aside by this Court.
- 21.** Elaborating his submissions, learned counsel contended that the prosecution itself has failed to establish beyond reasonable doubt that the victim was below the age prescribed under the provisions

of the POCSO Act on the date of the alleged incident. It was argued that the evidence regarding the age of the victim is highly doubtful and suffers from serious infirmities. Learned counsel submitted that no authentic birth certificate issued by the competent authority was produced before the Court and the prosecution merely relied upon school records, the authenticity and correctness of which were never independently established. It was further contended that the medical evidence also does not conclusively determine the age of the victim, inasmuch as the doctor did not furnish any definite opinion regarding her age. According to the learned counsel, in the absence of cogent and reliable evidence regarding the age of the victim, the learned trial Court committed a grave illegality in holding that the victim was a minor and in extending the benefit of the provisions of the POCSO Act against the appellant.

- 22.** Learned counsel further submitted that the evidence brought on record clearly suggests that the appellant and the victim were acquainted with each other and were involved in a consensual love affair. It was argued that the conduct of the victim, as emerging from the prosecution evidence itself, indicates that she had voluntarily accompanied the appellant of her own free will and was not subjected to any inducement, coercion or force. It was contended that the surrounding circumstances completely belie the prosecution story of kidnapping or abduction and, therefore, the essential ingredients constituting the offences punishable

under Sections 363, 365, 366-A and 368 of the IPC have not been established. Learned counsel urged that the learned trial Court ignored the surrounding circumstances and the probabilities emerging from the evidence and proceeded to convict the appellant merely on assumptions and presumptions.

- 23.** Learned counsel next submitted that the findings recorded by the learned trial Court are perverse and contrary to the evidence available on record. It was argued that the Court below failed to appreciate the prosecution evidence in accordance with the settled principles governing appreciation of evidence in criminal trials. According to him, the prosecution witnesses have made material improvements over their earlier statements and their testimonies suffer from serious contradictions, omissions and inconsistencies touching the core of the prosecution case. It was submitted that these material discrepancies create substantial doubt regarding the truthfulness of the prosecution version; however, the learned trial Court brushed aside these infirmities without assigning cogent reasons and proceeded to record conviction against the appellant. It is further contended that the impugned judgment is based more on surmises and conjectures than on legal evidence. Learned counsel submitted that the prosecution has failed to establish an unbroken chain of circumstances pointing exclusively towards the guilt of the appellant. According to him, the evidence adduced by the prosecution is neither wholly reliable nor of such quality as would

inspire the confidence of the Court. It was argued that several material witnesses have not supported the prosecution case in its entirety, while the testimony of the victim herself does not support the allegations levelled against the appellant. In these circumstances, it was submitted that the learned trial Court ought to have extended the benefit of doubt to the appellant instead of recording his conviction.

- 24.** Learned counsel also contended that the prosecution has miserably failed to prove the charges beyond reasonable doubt by leading trustworthy, cogent and convincing evidence. It was argued that the prosecution evidence falls far short of the standard required for recording conviction in a criminal case and, therefore, the appellant could not have been held guilty merely on the basis of suspicion or conjectures. It was submitted that the cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond all reasonable doubt has not been adhered to by the learned trial Court while recording the impugned judgment. Learned counsel lastly submitted that the essential ingredients constituting the offences punishable under Sections 363, 365, 366-A, 368 and 376 of the IPC read with Section 6 of the POCSO Act were not established from the evidence brought on record. According to him, neither the ingredients of kidnapping nor those relating to aggravated penetrative sexual assault have been proved in accordance with law. It was contended that the learned trial Court has misread the

evidence, ignored the material inconsistencies appearing in the prosecution case and has erroneously returned findings of guilt against the appellant. It was, therefore, prayed that the impugned judgment of conviction and order of sentence be set aside, the appellant be acquitted of all the charges levelled against him by extending the benefit of doubt, and the present appeal be allowed.

- 25.** Per contra, Ms. Anusha Naik, learned Deputy Government Advocate, appearing for the State, vehemently opposed the appeal and supported the impugned judgment of conviction and order of sentence passed by the learned Special Judge (POCSO). It was submitted that the learned trial Court has meticulously appreciated the entire oral, documentary, medical and scientific evidence available on record and has recorded well-reasoned findings of fact, which do not suffer from any perversity, illegality or infirmity warranting interference by this Court in exercise of appellate jurisdiction. According to the learned State counsel, the impugned judgment is founded upon a proper appreciation of evidence and settled principles of criminal jurisprudence and, therefore, calls for no interference.
- 26.** Learned State counsel submitted that the prosecution has been able to establish beyond all reasonable doubt that the victim was a minor on the date of the incident. Inviting the attention of this Court to the evidence of PW-6 Smt. Monica Mudihar, the Assistant Teacher, and the school admission register seized

during investigation vide Ex.P/7 and the certified extract Ex.P/9-C, it was contended that the date of birth of the victim has been duly proved as 26.05.2006, on the basis of contemporaneous school records maintained in the ordinary course of official business. It was argued that the testimony of PW-1, the father of the victim, and PW-2, the mother of the victim, also consistently establishes the age of the victim. It was further submitted that the learned trial Court has rightly relied upon the documentary evidence in view of the principles laid down by the Hon'ble Supreme Court governing determination of age under the Juvenile Justice Act and the POCSO Act. Therefore, the contention of the appellant that the age of the victim has not been proved is wholly misconceived and deserves to be rejected.

- 27.** Learned State counsel further submitted that merely because the victim turned hostile during trial, the entire prosecution case does not become liable to be discarded. It was argued that the evidence of a hostile witness is not to be rejected in toto and the Court is entitled to rely upon such part of the testimony which inspires confidence and finds corroboration from other reliable evidence on record. In the present case, although PW-3, the victim, did not support the prosecution in material particulars, she categorically admitted her recovery by the police from Ranchi vide Recovery Panchnama (Ex.P/12) and also admitted her signatures on the consent memo (Ex.P/13). These admissions, coupled with the consistent testimony of PW-1, PW-2, PW-7, PW-8, PW-11,

PW-14 and PW-15, clearly establish that the victim remained in the custody and company of the appellant from the date of her disappearance till her recovery. It is further submitted that the testimony of the parents of the victim, namely PW-1 and PW-2, inspires complete confidence and has remained substantially unshaken during cross-examination. Their evidence clearly establishes that the victim had left her house and thereafter the appellant took her away from the lawful guardianship of her parents without their consent. Their version finds complete corroboration from the testimony of PW-7 Mahendra Ram, who had seen the appellant accompanying the victim, and PW-8 Jaychand Ram, who also supported the prosecution with regard to the disappearance of the victim and the subsequent events. Learned State counsel submitted that these witnesses have no reason whatsoever to falsely implicate the appellant and their evidence has rightly been relied upon by the learned trial Court.

- 28.** Learned State counsel further argued that the medical and scientific evidence fully corroborates the prosecution case. Referring to the evidence of PW-10 Dr. Kumari Pallavi, it was submitted that the doctor found the hymen of the victim ruptured, noticed that she had undergone sexual intercourse and collected vaginal slides and undergarments for forensic examination. The testimony of PW-9 Dr. Uday Bhagat further establishes that the appellant was capable of performing sexual intercourse. Most importantly, the Forensic Science Laboratory Report (Ex.P/27)

conclusively establishes the presence of human semen and spermatozoa on the vaginal slides as well as the undergarments of the victim. According to the learned State counsel, this scientific evidence lends complete assurance to the prosecution case and completely demolishes the defence sought to be raised by the appellant.

- 29.** Learned State counsel further submitted that the prosecution has successfully established the recovery of the victim from the custody of the appellant at Ranchi through the evidence of PW-11 Ishwar Prasad Warle and PW-15 Chandraprakash Tripathi, which is duly corroborated by the Recovery Panchnama (Ex.P/12). It was contended that the recovery of the victim from the exclusive company of the appellant constitutes a vital incriminating circumstance which the appellant has failed to explain in his statement recorded under Section 313 of the Cr.P.C. The appellant has neither furnished any plausible explanation regarding the circumstances in which the victim remained with him for several months nor has he adduced any defence evidence to probabalise his version. She further submitted that the defence theory of a consensual relationship is legally untenable in view of the proved minority of the victim. Once the prosecution has established that the victim was below the prescribed age under the POCSO Act on the date of occurrence, any alleged consent on her part becomes wholly immaterial and legally inconsequential. It was argued that the provisions of the POCSO

Act are founded upon the principle that a child is incapable of giving valid consent for sexual activity and, therefore, the plea of consensual relationship raised by the appellant deserves outright rejection.

- 30.** Learned State counsel also contended that the alleged contradictions and omissions highlighted by the appellant are trivial and relate only to insignificant details which do not affect the substratum of the prosecution case. It was submitted that the learned trial Court has rightly distinguished between material contradictions and normal discrepancies arising from lapse of time and has assigned cogent reasons for accepting the prosecution evidence. According to him, no material contradiction has been brought on record which would create any reasonable doubt regarding the prosecution story. It is lastly submitted that the findings recorded by the learned trial Court are based upon a comprehensive appreciation of the entire evidence on record, including the ocular testimony of the prosecution witnesses, the documentary evidence relating to the age of the victim, the recovery proceedings, the medical evidence and the scientific evidence. The prosecution has succeeded in proving each and every ingredient of the offences punishable under Sections 363, 365, 366-A, 368 and 376(2)(i) read with Section 376(3) of the IPC read with Section 6 of the POCSO beyond all reasonable doubt. It was, therefore, submitted that the impugned judgment of conviction and order of sentence are well founded in law and on

facts, suffer from no legal infirmity and deserve to be affirmed. Accordingly, it is prayed that the present criminal appeal be dismissed.

- 31.** We have heard learned counsel for the parties at length and have carefully perused the entire record of the trial Court with utmost circumspection. The submissions advanced on behalf of both sides have been duly considered in the light of the factual matrix of the case and the legal principles governing the field. Each material aspect of the matter has been examined to determine whether any infirmity, perversity, or jurisdictional error exists in the impugned order so as to warrant interference by this Court.
- 32.** The first and foremost question that arises for consideration is whether the victim was a minor, i.e., below 18 years of age, on the date of the alleged incident ?
- 33.** This issue assumes paramount significance, as the determination of the victim's age has a direct bearing on the applicability of the provisions of the POCSO Act and the corresponding penal provisions under the IPC. The age of the victim is a foundational fact, and its correct ascertainment is essential for deciding the nature of the offence, the culpability of the accused, and the statutory presumptions that may come into play. Therefore, before advertng to any other aspect of the matter, it is necessary to examine, with due care and on the basis of the evidentiary material available on record, whether the prosecution has

satisfactorily established that the victim was indeed below 18 years of age at the relevant point of time.

- 34.** We have bestowed our anxious consideration to the evidence available on record with regard to the age of the victim, since the determination of her age assumes considerable significance for attracting the provisions of the POCSO Act. The prosecution has relied upon both oral and documentary evidence to establish that the victim was below 16 years of age on the date of the incident. In this regard, reliance has been placed upon the testimony of PW-1 the father of the victim, PW-2 her mother, PW-3 the victim herself, PW-6 Smt. Monica Mudihar, Assistant Teacher of the school where the victim had studied, and the documentary evidence comprising the notice issued for production of school records (Ex.P/6), the seizure memo (Ex.P/7) and, most importantly, the certified copy of the Admission-cum-Dakhil-Kharij Register (Ex.P/9-C). As per the said admission register, the date of birth of the victim is recorded as 26.05.2006.
- 35.** PW-1, the father of the victim, has categorically deposed that the date of birth of his daughter is 26.05.2006 and that on the date of occurrence she was about 15 years of age. He further stated that pursuant to the notice issued by the Investigating Officer (Ex.P/6), he produced the school admission register before the police, which was seized vide seizure memo (Ex.P/7). Although, during cross-examination, he admitted that at the time of admission in

the school he did not possess any birth certificate or Kotwari Register extract, nothing substantial could be elicited to discredit his testimony regarding the age of the victim. His evidence remained consistent insofar as the date of birth of the victim is concerned.

- 36.** PW-2, the mother of the victim, has also supported the prosecution case by stating that at the relevant point of time the victim was about 15 to 16 years of age. Though she did not specifically mention the exact date of birth in her deposition, her testimony fully corroborates the evidence of PW-1 regarding the minority of the victim at the time of the incident. Her cross-examination does not disclose any material contradiction which would cast doubt on the prosecution case regarding the age of the victim.
- 37.** The victim (PW-3), though she did not support the prosecution on the material aspects of the occurrence and was declared hostile, nevertheless admitted in her evidence that her date of birth is 26.05.2006 and that she was about 15 years of age when her testimony was recorded before the trial Court. Thus, even though she resiled from her earlier statement with regard to the occurrence, her testimony lends corroboration to the prosecution case regarding her age. It is well settled that the evidence of a hostile witness is not to be discarded in its entirety and such part

of the testimony which inspires confidence can certainly be relied upon.

- 38.** PW-6 Smt. Monica Mudihar, the Assistant Teacher of the school where the victim had studied, proved the admission register maintained in the ordinary course of official business. She deposed that, in compliance with the notice issued by the Investigating Officer (Ex.P/6), the original admission register was produced before the police, whereafter its certified copy was taken on record and the original was returned. She proved the certified extract of the Admission-cum-Dakhil-Kharij Register (Ex.P/9-C), wherein the date of birth of the victim has been recorded as 26.05.2006. She further identified the seizure proceedings (Ex.P/7) whereby the school records were taken into possession during investigation. Nothing material has been elicited in her cross-examination to create any doubt regarding the genuineness or authenticity of the school records. Merely because the witness was not the person who had originally made the entry in the admission register or because she could not state the basis on which the date of birth was initially entered, the evidentiary value of the register maintained in the ordinary course of official duties does not stand diminished. The document is a public record maintained by the educational institution in discharge of its official functions and is admissible under Section 35 of the Indian Evidence Act.

39. Having considered the entire oral and documentary evidence available on record, we are of the considered opinion that the prosecution has satisfactorily established that the victim was a minor on the date of the incident. The evidence of PW-1, PW-2 and PW-3 finds due corroboration from the documentary evidence proved through PW-6, particularly the certified extract of the Admission-cum-Dakhil-Kharij Register (Ex.P/9-C), which records the date of birth of the victim as 26.05.2006. The incident having occurred on 23.07.2021, the victim was 15 years, 1 month and 28 days old on the date of occurrence. No evidence whatsoever has been adduced by the defence to rebut the said documentary evidence or to establish that the entry regarding the date of birth was manipulated or fabricated. In the absence of any rebuttal evidence, the learned trial Court has rightly accepted the school record as the best available evidence regarding the age of the victim in accordance with the principles laid down by the Hon'ble Supreme Court. We, therefore, find no infirmity in the finding recorded by the learned trial Court that the victim was below 16 years of age on the date of the incident and was, therefore, a "child" within the meaning of Section 2(1)(d) of the POCSO Act.
40. Very recently, the Hon'ble Supreme Court in the matter of ***Birka Shiva v. State of Telangana, 2025 SCC OnLine SC 1454*** has observed as under:

"8. The evidentiary value of such an entry made in public or official registers may be admissible in

evidence under Section 35 of the Indian Evidence Act, 1872. However, admissibility is distinct from probative value. While such documents may be admitted into evidence, their evidentiary weight depends on proof of their authenticity and the source of the underlying information. Mere production and marking of a document as exhibited by the Court does not amount to proof of its contents. Its execution has to be proved by leading substantive evidence, that is, by the 'evidence of those persons who can vouchsafe for Hereinafter referred to as the 'Evidence Act' the truth of the facts in issue'. [See: *Narbada Devi Gupta v. Birendra Kumar Jaiswal*] We may refer to a few judicial pronouncements of this Court in this regard:

8.1. This Court, in *Birad Mal Singhvi v. Anand Purohit*, held that the entries contained in the school register are relevant and admissible but have no probative value unless the person who made the entry or provided the date of birth is examined. It was observed:

"14. ... If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value. ... The date of birth mentioned in the scholars' 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 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. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three

conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to the date of birth made in the school register is relevant and admissible under Section 35 of the Act, but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. ... The courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made is examined..."

(Emphasis Supplied)

This decision has been consistently followed by this Court in Pratap Singh v. State of Jharkhand; Babloo Pasi v. State of Jharkhand; Murugan v. State of T.N.; State of M.P. v. Munna; C. Doddanarayana Reddy v. C. Jayarama Reddy; and Manak Chand v. State of Haryana.

8.2. A coordinate Bench of this Court in *State of Chhattisgarh v. Lekhram*, through S.B. Sinha, J., clarified that though entries in school registers are admissible under Section 35 of the Evidence Act, their evidentiary value improves only when corroborated by oral testimony of persons who are aware of its content, such as parents or the person who made the entry at the time of admission. It held as under:

"12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW 5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the victim disclosed her date of birth. The father of the victim also deposed to the said effect.

13. ...The materials on record as regards the age of the victim were, therefore, required to be considered in the aforementioned backdrop. It may be true that an entry in the school register is not conclusive, but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the victim."

8.3. Similarly, this Court in *Satpal Singh v. State of Haryana*, stated that though a document may be admissible, but to determine whether the entry contained therein has any probative value, may still be required to be examined in the facts and circumstances of a particular case. It held as follows:

"26. In *Vishnu v. State of Maharashtra* [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217] while dealing with a similar issue, this Court observed that very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by unimpeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the municipal corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded.

x x x

28. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the court/authority to examine its probative value. The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case."

8.4. In *Madan Mohan Singh v. Rajni Kant*, this Court held that the entries made in the official record may be admissible under Section 35 of the Evidence Act, but the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded. It was held as follows :

“20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register/school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

21. ... For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded. ...”

8.5. This Court, in *Alamelu v. State*, while dealing with a similar factual matrix, held that the prosecution had failed to prove that the girl was a minor at the relevant date since the transfer certificate of a Government School showing age was not duly proved by witnesses. It observed as under:

“40. Undoubtedly, the transfer certificate, Ext. P-16 indicates that the girl's date of birth was 15-6-1977. 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. 31-7-1993. 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 Evidence Act, 1872. 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. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person who made the entry or who gave the date of birth is examined.

41. We may notice here that PW 1 was examined in the Court on 9-8-1999. In his evidence, he made no reference to the transfer certificate (Ext. P-16). He did not mention the girl's age or date of birth. PW 2 was also examined on 9-8-1999. She had also made no reference either to her age or to the transfer certificate. It appears from the record that a petition was filed by the complainant under Section 311 CrPC seeking permission to produce the transfer certificate and to recall PW 2. This petition was allowed. ... In her cross-examination, she had merely stated that she had signed on the transfer certificate, Ext. P-16 issued by the school and accordingly her date of birth was noticed as 15-6- 1977. She also stated that the certificate has been signed by the father as well as the Headmaster. But the Headmaster has not been examined. Therefore, in our opinion, there was no reliable evidence to vouchsafe for the truth of the facts stated in the transfer certificate."

(Emphasis supplied)

9. In the attending facts, we find that the evidentiary value of Ex.P11 is significantly undermined in the absence of corroborating material. We say so for the following reasons:

(i) PW-13, who is the Headmaster of Zilla Parishad High School, Chandanapur, Peddapalli District (erstwhile Karimnagar District), stated that the victim studied in his school from 2007 to 2013, i.e., 6th Class to 10th Class and that the Admission Register records her date of birth as 3rd November 1996. However, in his cross-examination, he admitted that he had no personal knowledge as to the source or basis on which the date of birth was recorded therein or if the recorded date of birth was correct or not. The relevant part of his testimony is extracted hereunder:

"...In our school there is not clerk to maintain records. I did not produce any certificate pertaining

to earlier school I, In which P.W.3 studies up to 5th Class. There must be basis for entering date of birth of a student in our school such as her earlier school record. I do not have personal knowledge as to what record was produced by parents of P.W. 3 as basis to enter her date of birth in our school as I was not Head Master in 2007.

I cannot say in which school P.W.3 studied up to 5th Class. In the nominal roll register of our school, the signature of P.W.3 was obtained. I do not have personal knowledge whether the said date of birth of P.W.3 was correct or not and I am giving evidence only on the basis of record.”

(Emphasis Supplied)

(ii) The prosecution has failed to examine the person who had made the entry in the Admission Register to ascertain on what basis such an entry was made. More so, the entry in respect of the date of birth of the victim in the primary school register, i.e., 1st Class to 5th Class, has not been produced and proved before the Courts below to verify the age as per its records. It is also not possible to ascertain from the records as to whether the date of birth was provided by the parents or simply entered at the behest of another party, without verification, at the time of admission to Zilla Parishad High School.

(iii) The testimonies of PW-1, PW-2 and PW-3 are also telling that none of them mentioned the victim's age with specificity. There is no reference to Ex.P11, and no attempt was made by the prosecution to adduce corroborative testimony regarding the victim's date of birth from her family members.

Thus, while examining the issue at hand, on the anvil of the principles elucidated above, it is essential to notice that the prosecution has failed to toe the line of legal requisites. There is nothing on record to corroborate the date of birth of the victim as recorded in the birth certificate (Ex.P11) issued by the school. Therefore, it cannot be relied upon to definitely determine the age of the victim and held with certainty that the victim was below sixteen/eighteen years of age.

11. Furthermore, none of the victim's family members, i.e., her mother and brothers have said anything about the age of the victim in their

depositions made in the Court. Even the victim is effectively silent on this aspect, only stating that she and her siblings were born approximately two years apart and thereby making an estimation of their ages as well as her own. Throughout her deposition, the victim has remained silent with regard to her particular date of birth.

12. Well, suffice it to say that Courts of law cannot make a determination of guilt in thin air, based on estimations. In the present facts and circumstances, the proof submitted by the prosecution in the form of Ex.P11 (birth certificate issued by the school) was not sufficient to arrive at a finding that the victim was less than sixteen/eighteen years of age, especially when such a document was not sufficiently corroborated. Therefore, it was neither safe nor fair to convict the appellant based on it, particularly in the context where the age of the victim was such a pivotal factor. "

- 41.** Reverting to the facts of the present case in the light of the aforesaid legal principles, it is evident that the prosecution has sought to establish the age of the victim primarily on the basis of the school Dakhil-Kharij Register (Ex.P/9-C), coupled with the oral testimony of the victim (PW-3), her father (PW-1), her mother (PW-2), the Assistant Teacher Smt. Monika Mudihar (PW-6), and the Investigating Officer. According to Ex.P/9-C, the date of birth of the victim has been recorded as 26.05.2006, on the basis of which the trial Court concluded that she was aged 15 years, 01 month and 28 days on the date of the alleged incident i.e. 23.07.2021. However, a careful scrutiny of the evidence would reveal that the prosecution has failed to establish the source or authenticity of the said entry. PW-1, the father of the victim, has categorically admitted in his cross-examination that at the time of admission in the school he did not possess either a birth

certificate or Kotwari Register or any authentic record regarding the date of birth of the victim. Thus, the very foundation on which the entry in the school register came to be recorded remains completely unexplained.

- 42.** PW-6, Smt. Monika Mudihar, who was examined to prove the seizure of the school admission register and its certified copy (Ex.P/9-C), has merely proved the production and seizure of the document but has not stated that she had made the entry relating to the date of birth of the victim or that the same was entered on the basis of any authentic public document. The prosecution has not examined the person who originally admitted the victim in the school or who actually made the relevant entry in the admission register. No evidence whatsoever has been adduced to establish the basis on which the date of birth 26.05.2006 came to be recorded in the school records. Consequently, the school register remains an unproved document so far as the source of the date of birth is concerned.
- 43.** It is further significant that although PW-3 (the victim), PW-1 (her father) and PW-2 (her mother) have stated that the victim was about 15 to 16 years of age and her date of birth was 26.05.2006, none of them has disclosed the basis of such assertion. On the contrary, PW-1 has expressly admitted that at the time of school admission he had no birth certificate or Kotwari Register. The prosecution has also failed to produce any municipal birth

certificate, Panchayat birth register, hospital birth record, Anganwadi record, vaccination register, or any contemporaneous public document to corroborate the alleged date of birth. Thus, the oral testimony of the parents and the victim merely reiterates the school entry and does not independently establish the age of the victim.

- 44.** The Investigating Officer has also admitted that during investigation he seized only the school Dakhil-Kharij Register after issuing notice (Ex.P/6) and no effort appears to have been made to collect the primary documents on the basis of which the date of birth was originally recorded in the school records. The prosecution has, therefore, withheld the best available evidence relating to the age of the victim. It is a settled principle that where the source document forming the basis of the school entry is neither produced nor proved, the entry in the school register by itself cannot be treated as conclusive proof of age.
- 45.** It is also pertinent to note that the victim was medically examined by PW-10 Dr. Kumari Pallavi. Though the doctor advised radiological examination for age determination, no ossification test or any other scientific age determination examination was ultimately conducted. Consequently, there is no medical opinion on record corroborating the prosecution's assertion that the victim was below sixteen or even below eighteen years of age on the date of occurrence. Thus, the prosecution has also failed to avail

the alternative mode of age determination contemplated under law.

- 46.** The learned trial Court, while recording a finding that the victim was below sixteen years of age, proceeded solely on the basis of the school admission register (Ex.P/9-C) and the oral assertions of the victim and her parents. The trial Court failed to appreciate that the very source of the entry in Ex.P/9-C remained unproved and that PW-1 himself admitted absence of any birth certificate or contemporaneous record at the time of admission. The trial Court further erred in drawing an adverse inference against the appellant merely because the defence did not produce any contrary document. In criminal jurisprudence, the burden always lies upon the prosecution to prove every foundational fact beyond reasonable doubt and such burden never shifts merely because the accused has not adduced defence evidence.
- 47.** In the considered opinion of this Court, the prosecution has failed to produce cogent, reliable and legally admissible evidence of sterling quality to conclusively establish that on the date of the alleged incident the victim was below sixteen years or even below eighteen years of age. The school Dakhil-Kharij Register (Ex.P/9-C), unsupported by the foundational documents on the basis of which the date of birth was recorded, cannot by itself constitute conclusive proof of age. In the absence of a birth certificate, Panchayat or municipal records, Kotwari Register,

contemporaneous public documents, or a medical opinion determining age, serious doubt persists regarding the exact age of the victim. Such doubt must necessarily enure to the benefit of the appellant in accordance with the settled principles governing criminal trials.

- 48.** The next question that arises for consideration is whether the appellant had committed rape upon the victim or not?
- 49.** This issue goes to the very root of the prosecution case and requires a careful evaluation of the testimony of the victim, the corroborative medical and forensic evidence, and the surrounding circumstances brought on record. Since the charge of rape carries grave penal consequences, the Court must scrutinize the evidence with due sensitivity while ensuring adherence to the well-settled principles governing appreciation of evidence in sexual offence cases.
- 50.** The law is equally clear that the sole testimony of the victim, if found to be cogent, credible, and trustworthy, is sufficient to sustain a conviction and does not require further corroboration. At the same time, the Court must remain mindful that the evidence must inspire confidence and must not suffer from inherent improbabilities or material contradictions.
- 51.** Accordingly, to determine whether the offence of rape stands established, it becomes necessary to examine the version of the victim, the medical findings, the conduct of the parties, and other

attendant circumstances to assess whether the prosecution has proved the charge beyond reasonable doubt.

52. Very recently, in the matter of ***Tilku Alias Tilak Singh v. The State Of Uttarakhand, 2025 INSC 226***, the Supreme Court while dealing with the case of ***S. Varadarajan Vs. State of Madras, AIR 1965 SC 942***, has held as under :-

“16. Even if the finding of the learned Single Judge of the High Court that the victim was between 16 to 18 years of age is to be accepted, in our view, the offence under Sections 363 and 366 IPC would still not be made out.

17. This Court in the case of S. Vardarajan v. State of Madras had an occasion to consider almost similar facts that arise for consideration in the present case. This Court has observed thus:

“7.It will thus be seen that taking or enticiting away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. Here, we are not concerned with enticement but what we have to find out is whether the part played by the appellant amounts to “taking” out of the keeping of the lawful guardian of Savitri. We have no doubt that though Savitri had been left by S. Natarajan at the house of his relative K. Natarajan she still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law “taking”. There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K. Natarajan at the instance or even a suggestion of the appellant. In fact she candidly admits that on the morning of October 1st, she herself telephoned to the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got

into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided to marry the appellant. There is no suggestion that the appellant took her to the Sub-Registrar's office and got the agreement of marriage registered there (thinking that this was sufficient in law to make them man and wife) by force or blandishments or anything like that. On the other hand the evidence of the girl leaves no doubt that the insistence of marriage came from her side. The appellant, by complying with her wishes can by no stretch of imagination be said to have taken her out of the keeping of her lawful guardian. After the registration of the agreement both the appellant and Savitri lived as man and wife and visited different places. There is no suggestion in Savitri's evidence, who, it may be mentioned had attained the age of discretion and was on the verge of attaining majority that she was made by the appellant to accompany him by administering any threat to her or by any blandishments. The fact of her accompanying the appellant all along is quite consistent with Savitri's own desire to be the wife of the appellant in which the desire of accompanying him wherever he went was course implicit. In these circumstances we find nothing from which an inference could be drawn that the appellant had been guilty of taking away Savitri out of the keeping of her father. She willingly accompanied him and the law did not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him. She was not a child of tender years who was unable to think for herself but, as already stated, was on the verge of attaining majority and was capable of knowing what was good and what was bad for her.....”

18. It is thus clear that the victim, who according to the learned Single Judge of the High Court, was between 16 to 18 years of age was very

much in the age of understanding as to what was right and wrong for her.”

- 53.** PW-1, the father of the victim, has deposed that he was residing at Village Sanna, whereas his elder brother along with his family was residing in their ancestral house situated at Village Jaymarga. The appellant was not a stranger to the family, but was a near relative/close family acquaintance, being a resident of the same village and closely connected through his maternal uncle, Sukan Lal, whose house was situated at Jaymarga. According to PW-1, on 23.07.2021, the victim left their house stating that she was going to the ancestral house at Village Jaymarga. However, instead of going there, she went to the house of Sukan Lal and started residing there along with the appellant. Upon receiving information regarding the same, PW-2, the mother of the victim, immediately proceeded to Village Jaymarga, brought the victim from the house of Sukan Lal and left her at the house of PW-8 (the elder paternal uncle of the victim), before returning to Village Sanna. On the following day, PW-7 informed him over telephone that the appellant had again taken away the victim from the house of PW-8. Thereafter, PW-1 immediately rushed to Jaymarga along with his nephew, searched for the victim and the appellant, but both had disappeared. Despite making every possible effort to trace her whereabouts, she could not be located, whereafter he lodged the First Information Report (Ex.P/1). PW-1 has further deposed that after about six months the police informed him that the victim had been recovered from Piska More, Ranchi

(Jharkhand) from the custody and company of the appellant. He identified his signatures on the Supurdnama (Ex.P/2), consent memo for medical examination (Ex.P/3), spot map (Ex.P/4), notice for production of school records (Ex.P/6), seizure memo of the school admission register (Ex.P/7), and also proved the seizure of the school Dakhil-Kharij Register. During his cross-examination, PW-1 admitted that when the victim was admitted to school, he did not possess any birth certificate, Kotwari Register or any other authentic document evidencing her date of birth. He also admitted that on the date when the victim left home, she had informed the family that she was going to Jaymarga. He denied the suggestion that he bore any animosity towards the appellant or that a false report had been lodged because he disapproved of the appellant. He also denied the defence suggestion that the victim had voluntarily accompanied the appellant of her own free will.

- 54.** PW-2, the mother of the victim, has substantially corroborated the testimony of PW-1. She deposed that after receiving information that the victim was staying at the house of the appellant's maternal uncle, Sugan Lal, she immediately went to Jaymarga and found the victim in the company of the appellant at the said house. She thereafter brought the victim from there and left her at the house of PW-8 before returning to Village Sanna. On the following day, PW-7 telephonically informed the family that the appellant had again taken away the victim. Despite repeated searches by the family members, the victim remained untraceable

for several months. Subsequently, the police informed them that both the victim and the appellant had been found at Ranchi, Jharkhand, from where they were brought back to Jashpur. PW-2 proved the Supurdnama (Ex.P/2) whereby custody of the victim was restored to her parents and also proved the consent memo (Ex.P/11) for the medical examination of the victim. In her cross-examination, PW-2 admitted that before leaving home the victim had stated that she was going to Jaymarga. She also admitted that when she visited Jaymarga she had met the victim there and had stayed with her for one night before returning to Sanna. She denied the suggestion that she had intentionally left the victim behind or that the victim had voluntarily gone away with the appellant.

- 55.** The victim (PW-3), however, did not support the prosecution case during trial and was declared hostile. In her examination-in-chief, she categorically denied that the appellant had abducted her or had taken her away on the promise of marriage. She further denied that the appellant had ever committed sexual intercourse with her or had taken her to the house of his maternal uncle or his sister. She stated that although she had gone to Ranchi during July, 2021, she had not gone there with the appellant. Nevertheless, she admitted that she had been recovered by the police from Piska More, Ranchi, and that the Recovery Panchnama (Ex.P/12) had been prepared in her presence. She also admitted her signatures on the consent memo for medical

examination (Ex.P/13) and acknowledged that after her recovery she was handed over to her parents under Supurdnama (Ex.P/2).

- 56.** After being declared hostile, the victim was extensively cross-examined by the Public Prosecutor. She denied that she had become acquainted with the appellant in December, 2020, that they had exchanged mobile numbers, or that she had been in regular telephonic contact with him. She further denied that on the appellant's asking she had gone to Manora, from where the appellant took her to the house of his maternal uncle at Jaymarga and established physical relations with her on the assurance of marriage. She also denied that thereafter the appellant had taken her to the house of his sister at Village Dumri and subsequently to Ranchi, where they stayed together for about one month and the appellant repeatedly subjected her to sexual intercourse against her will. She specifically denied having made any such statements before the police. However, she admitted that the police had recovered her from Ranchi and that several documents bore her signatures, though she asserted that the contents thereof had neither been read over nor explained to her before obtaining her signatures.
- 57.** PW-7, Mahendra Ram, the maternal uncle of the victim, has substantially supported the prosecution case. He deposed that on the relevant day he had seen the victim in the company of the appellant proceeding towards the house of Sujan Lal. When he

requested that she be sent back, the appellant assured him that she would shortly return. Thereafter, when PW-7 himself went to bring the victim back, he found her at the house of Sukan Lal. According to him, when he asked the victim to accompany him, the appellant intervened, asserted that the victim was his wife, objected to her being taken away, quarrelled with him and even picked up an axe. Despite repeated requests, the appellant refused to allow the victim to accompany him. Subsequently, when PW-7 again visited the appellant's house, both the appellant and the victim had disappeared. He thereafter informed PW-1 about the incident. During cross-examination, PW-7 reaffirmed that on 25.07.2021 he had seen the victim accompanying the appellant and had immediately informed PW-1 over telephone. He denied the suggestion that the appellant had not taken away the victim or that she had voluntarily remained with him.

- 58.** PW-8, the elder paternal uncle of the victim, though declared hostile, admitted several material circumstances supporting the prosecution case. He admitted that the victim had come to Village Jaymarga but, instead of coming to his house, had gone to the house of Sukan Lal where the appellant was residing. He further admitted that PW-2 had brought the victim from the house of Sukan Lal and left her at his residence. He also admitted that on the following day the appellant again took away the victim from his house, whereafter she remained untraceable and ultimately a report was lodged with the police.

- 59.** PW-9, Dr. Uday Bhagat, who medically examined the appellant on 06.12.2021, found that the appellant possessed fully developed secondary sexual characteristics and was physically capable of performing sexual intercourse. He proved the requisition memo (Ex.P/16), the medical examination report (Ex.P/17), and the prescribed medical proforma (Ex.P/18).
- 60.** PW-10, Dr. Kumari Pallavi, conducted the medical examination of the victim on 06.12.2021 pursuant to the police requisition. She deposed that the victim was physically and mentally healthy and that no external injuries were present on her body. On genital examination, she found no fresh injuries or bleeding; however, the hymen was torn and two fingers could be introduced easily into the vagina. Vaginal slides and the undergarment of the victim were collected, sealed and handed over to the police for forensic examination. She opined that the victim had already undergone sexual intercourse, though she advised forensic examination for giving a conclusive opinion regarding recent sexual intercourse. She proved the requisition memo (Ex.P/19), the medical examination report (Ex.P/20), and the prescribed medical proforma (Ex.P/21). During cross-examination, she clarified that although she was of the opinion that the victim had undergone sexual intercourse, a definite opinion regarding its recency could only be given after receipt of the forensic report.

61. PW-11 and PW-15, the Investigating Officers, have deposed in detail regarding the investigation conducted by them. They proved the registration of the FIR (Ex.P/1), preparation of the spot map (Ex.P/4), issuance of notice for production of the school admission register (Ex.P/6), seizure of the school Dakhil-Kharij Register (Ex.P/7), recovery of the victim from the custody of the appellant at Piska More, Ranchi under the Recovery Panchnama (Ex.P/12), seizure of the vaginal slides and undergarments (Ex.P/23), forwarding of the victim for recording of her statement under Section 164 CrPC (Ex.P/24), requisition for preparation of the Patwari map (Ex.P/26), and forwarding of the seized articles to the Regional Forensic Science Laboratory for examination. The vaginal slides and undergarments collected during the medical examination of the victim were thereafter forwarded to the Regional Forensic Science Laboratory for scientific examination. As reflected in the Forensic Science Laboratory Report (Ex.P/27), human semen and spermatozoa were detected on the vaginal slides as well as on the undergarment of the victim. The learned trial Court placed considerable reliance upon the said forensic report, read conjointly with the medical evidence of PW-10, the recovery of the victim from the company and custody of the appellant after several months, and the surrounding circumstances established through the testimonies of PW-1, PW-2, PW-7 and PW-8. The trial Court ultimately concluded that the appellant, who was a near relative and a person well known to the

victim and her family, had taken advantage of the trust reposed in him, abducted the minor victim from the lawful guardianship of her parents, kept her in his custody at different places including Ranchi, and repeatedly subjected her to sexual intercourse during the period from 23.07.2021 until her recovery on 05.12.2021, notwithstanding the fact that the victim resiled from her earlier statements during the course of trial.

- 62.** The law is well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the victim. However, there is an important caveat which is that the testimony of the victim must inspire confidence. Even though the testimony of the victim is not required to be corroborated, if her statement is not believable, then the accused cannot be convicted. The prosecution has to bring home the charges leveled against the appellant beyond reasonable doubt, which the prosecution has failed to do so in the instant case.
- 63.** Therefore, in the facts and circumstances of the present case, this Court is of the considered opinion that it would not be safe to sustain the conviction of the appellant for the offence of rape merely on the basis of assumptions and presumptions. The victim herself, who is the star witness of the prosecution, has not supported the prosecution case in any material particular. She has categorically denied that the appellant had abducted her, taken her away on the promise of marriage, or committed sexual

intercourse with her. Though she admitted that she was recovered by the police from Ranchi and identified her signatures on certain documents, she specifically stated that the contents thereof had neither been read over nor explained to her. Once it has already been held that the prosecution has failed to establish beyond reasonable doubt that the victim was below eighteen years of age on the date of the alleged occurrence, her consent assumes legal significance. In such circumstances, it cannot automatically be presumed that every act of sexual intercourse, if any, was against her will or without her consent, particularly when the victim herself has completely denied the allegations.

- 64.** Having bestowed anxious consideration to the rival submissions and having carefully reappreciated the entire evidence available on record, this Court finds that the prosecution has failed to establish the charge under Section 376 IPC beyond reasonable doubt. Although it is well settled that conviction can be based on the sole testimony of the victim if it inspires confidence and is of sterling quality, in the present case the victim has completely resiled from the prosecution story and has not supported the allegations either of kidnapping or of forcible sexual intercourse. The prosecution, therefore, is left to rely upon circumstantial, medical and scientific evidence, which by themselves do not complete the chain necessary for recording conviction.

- 65.** It is significant to notice that the appellant was not a stranger but was a near relative/close family acquaintance of the victim and her family. The evidence of PW-1, PW-2 and PW-7 itself demonstrates that both families were known to each other and the appellant used to visit the house of his maternal uncle Sugan Lal situated in Village Jaymarga. The victim was admittedly recovered after several months from Ranchi; however, during trial she specifically denied that she had gone to Ranchi with the appellant, denied that the appellant had taken her away from the lawful guardianship of her parents, and further denied that he had established physical relations with her. Thus, the very foundation of the prosecution story stands demolished by its own principal witness.
- 66.** The medical and scientific evidence also does not carry the prosecution case to its logical conclusion. PW-10 Dr. Kumari Pallavi found that the hymen of the victim was ruptured and opined that she had undergone sexual intercourse. The Forensic Science Laboratory report detected human semen and spermatozoa on the vaginal slides and undergarments of the victim. However, neither the medical evidence nor the FSL report identifies the appellant as the person responsible for the said intercourse. The scientific evidence merely establishes that the victim had engaged in sexual intercourse at some point of time; it does not prove, either independently or in conjunction with other evidence, that such intercourse was with the appellant or that it

was against her will and without her consent. In the absence of a trustworthy ocular account from the victim herself, the medical and forensic evidence remains only corroborative in nature and cannot, by itself, establish the guilt of the appellant.

- 67.** The evidence of PW-1 and PW-2, being the parents of the victim, and that of PW-7 and PW-8, is confined substantially to the circumstances relating to the disappearance of the victim and her subsequent recovery. None of these witnesses had any personal knowledge regarding the alleged commission of rape. Their evidence cannot substitute the direct testimony of the victim, who has not only failed to support the prosecution case but has expressly denied the allegations attributed to the appellant. Their evidence is, therefore, insufficient to establish the offence under Section 376 IPC beyond reasonable doubt.
- 68.** It is trite that while the testimony of a victim ordinarily commands great weight and does not require independent corroboration if found trustworthy, the Court must nevertheless be satisfied that such testimony inspires complete confidence. In the present case, the victim has not merely made certain omissions or minor contradictions; rather, she has altogether repudiated the prosecution version and has denied every material allegation against the appellant. The prosecution has thus failed to produce any substantive evidence establishing either forcible sexual intercourse or absence of consent. Further, once the prosecution

has failed to establish that the victim was a child within the meaning of Section 2(1)(d) of the POCSO Act, the statutory presumptions available under the Act also cease to operate. The principles reiterated by the Hon'ble Supreme Court in ***Tilku @ Tilak Singh*** (supra), following ***S. Varadarajan*** (supra), also assume significance in the facts of the present case.

- 69.** On an overall appreciation of the evidence, this Court is satisfied that the prosecution has failed to establish an unbroken chain of circumstances pointing exclusively towards the guilt of the appellant. The victim has not supported the prosecution; the documentary evidence relating to her age has been found unreliable; the medical and forensic evidence only indicates that sexual intercourse had taken place but does not establish either the identity of the appellant as the perpetrator or the absence of consent; and there is no other independent evidence sufficient to sustain the conviction. These circumstances, taken cumulatively, create a serious and reasonable doubt regarding the prosecution story.
- 70.** It is a cardinal principle of criminal jurisprudence that suspicion, however grave or strong, can never substitute legal proof. The burden always rests upon the prosecution to establish every essential ingredient of the offence beyond reasonable doubt, and such burden never shifts. Where the evidence admits of two

reasonably possible views, the one favourable to the accused must necessarily prevail.

- 71.** In view of the foregoing discussion, this Court is of the considered opinion that the prosecution has failed to prove beyond reasonable doubt the offences punishable under Sections 363, 365, 366-A, 368 and 376(2)(i) read with Section 376(3) of the IPC read with Section 6 of the POCSO Act. The prosecution has failed to establish the minority of the victim, has further failed to prove that she was taken away by the appellant by force or inducement, and has also failed to establish that the appellant committed penetrative sexual assault upon her against her will or without her consent.
- 72.** Consequently, this Court is of the considered opinion that the prosecution has failed to prove its case against the appellant beyond all reasonable doubt. The appellant is, therefore, entitled to the benefit of doubt and deserves to be acquitted of all the charges for which he has been convicted by the learned trial Court.
- 73.** Accordingly, the appeal deserves to and is hereby **allowed**. The judgment of conviction and order of sentence dated 22.04.2024 passed by the learned trial Court, is set aside. The appellant is acquitted of all the charges levelled against him. The appellant is reported to be in custody. He shall be released forthwith, if his detention is not required in connection with any other case.

- 74.** Keeping in view the provisions of Section 437-A CrPC (now Section 481 of the Bhartiya Nagarik Suraksha Sanhita, 2023), the appellant is directed to forthwith furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- with one surety in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.
- 75.** The trial Court record along with the copy of this judgment be sent back forthwith to the trial Court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice