



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRA-D-34-2019  
Reserved on : 22.12.2025  
Date of Decision:25.02.2026**

**SHAMMI**

**.... Appellant**

**Versus**

**U.T. CHANDIGARH**

**.... Respondent**

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL  
HON'BLE MRS. JUSTICE RAMESH KUMARI**

Present : Mr. Atul Lakhanpal, Senior Advocate with  
Mr. Karan Jangra, Advocate and  
Ms. Neha Lakhanpal, Advocate for the appellant.

Mr. Rajiv Vij, Addl. Public Prosecutor,  
U.T., Chandigarh.

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**RAMESH KUMARI, J.**

- The instant appeal is filed by the appellant (hereinafter referred to as accused) against the judgment of conviction dated 19.12.2018 in case arising out of FIR No.25 dated 31.01.2018 registered under Section 6 of POCSO Act (for short-the Act) and Sections 376(2) and 506 of IPC at Police Station Maloya, Chandigarh vide which the appellant was convicted and sentenced as under:-

Offence U/S	Imprisonment	Fine	In default of payment
6 of POCSO Act	Rigorous Imprisonment for fifteen years	Rs.1,55,000/-	To further undergo rigorous imprisonment for one year

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506 of IPC	Rigorous imprisonment for one year	Rs.2,000/-	To further undergo rigorous imprisonment for three months
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Both the sentences were ordered to run concurrently.

**2. FACTS OF THE PROSECUTION'S CASE**

- i) On 31.01.2018, PW-3 SI Mini Bhardwaj received a message regarding some incident pertaining to a girl in the area of Police Station Maloya. She reached Police Station Maloya and from there she came to know that PW1-victim is admitted in Govt. Multi Specialty Hospital, 16 Chandigarh. She went to the hospital where PW-7 ASI Ashok Kumar along with other police officials was present with the PW1 victim. Mother of PW1 along with counselor Varinder Sharma was also present there. PW1-victim got recorded her statement Ex.P1 to PW3 SI Mini Bhardwaj that her mother is working as a cook in some house and her father is working in Sector 16 Chandigarh in furniture shop. On 31.01.2018, she was alone in her house as it was school holiday. Her parents had gone for work. She was watching TV. At about 10:30 AM, someone knocked the door of the house. She saw a boy standing near the window. He asked her who lives in front of her house. She replied that nobody is residing in front of their house. Then he asked for water. As soon as she opened the door to give water to him, he came inside, threw her on the double bed and bolted the



door from inside. He gagged her mouth and removed her clothes. He committed wrong act with her. Due to the said act, she was in pain and even started bleeding. He also threatened to kill her in case she disclosed about the occurrence to anybody. He also took money from the piggy bank kept in their house and fled away from there. She had never seen that boy earlier but can identify him if he comes in front of her.

(3) **POLICE INVESTIGATION**

- (i) **PW3 SI Mini Bhardwaj** made her endorsement Ex.P-7 on statement Ex.P-1 of victim on the basis of which, FIR Ex.P-9 was registered. MHC also made endorsement Ex.P-8 on Ex.P-7.
- (ii) PW1 was got medically examined from PW2 Dr. Chiranjeev Kaur and she issued MLR Ex. P-5. After medical examination of PW1, PW2 Dr. Chiranjeev Kaur handed over duly sealed parcel consisting of clothes, vaginal swab, nail clipping and blood sample along with sample seal and other documents to PW3 SI Mini Bhardwaj vide memo Ex.P-6.
- (iii) Rough site place Ex.P-10 of the place of occurrence was prepared on the indication of PW1. Woolen bed sheet was recovered which was converted into a parcel, sealed with seal of "AS" vide Ex..P-11. Statement Ex. P-3 of PW 1 victim under Section 164 Cr.P.C was also got recorded.



- (iv) Accused was spotted coming from the side of Sector 39 Chandigarh near light point, Dadumajra and at the identification of PW1 victim, he was arrested by PW-7 ASI Ashok Kumar vide memo Ex. P-12.
- (vi) The accused was got medico-legally examined from PW-4 Dr. Gurdeep Kaur on the basis of police request Ex.P-14 and she issued MLR Ex.P-15. Sample of blood of accused was also taken which was prepared into parcel, sealed and handed over to Police vide memo Ex.P-19.
- (vii) The samples were deposited with MMHC with seal intact and in due course sent to FSL.
- (viii) The age of victim was also got verified from the record of Registrar Birth and Death, Chandigarh vide Ex. P-16 and she was found to be minor.

**(4) PRESENTATION OF CHALLAN & FRAMING OF CHARGES**

After completion of investigation, report under Section 173 Cr.P.C was presented against the accused and he was charged for committing offences under Sections 376(2), 506 of IPC and Section 6 of the Act to which the accused pleaded not guilty and claimed trial.

**(5) PROSECUTION EVIDENCE**

In order to prove its case, prosecution examined as many as 9 witnesses and their statements are as under:-

**(i) Testimony of PW1 victim**



PW1 victim in her statement before the Court proved statement Ex.P1 recorded by the Police and also her statement Ex.P-3 recorded by learned JMIC under Section 164 Cr.P.C. She also deposed about the occurrence and her medical examination, preparation of site plan at her instance and arrest of accused.

(ii) **Investigative evidence**

(a) **PW3 SI Mini Bhardwaj**, who is the investigating officer, proved investigation of the case. As per his testimony, she recorded statement of PW1-victim, sent ruqa for registration of FIR, got the victim medically examined, prepared site plan and took into possession bed sheet from the house of PW1, got the statement of PW1 under Section 164 Cr.P.C record and arrested the accused. She proved the following documents:

- (i) Ex. P-1 statement of PW1-victim.
- (ii) Ex. P-7 endorsement made on statement of PW1.
- (iii) Ex. P-8 endorsement on FIR
- (iv) Ex. P-9 FIR
- (v) Ex. P-5 MLR pertaining to victim
- (vi) Ex. P-6 memo vide which parcels of clothes, vaginal swab, nail clipping and blood sample and documents were taken from doctor.
- (vii) Ex. P-10 Site plan of the place of occurrence



- (viii) Ex. P-11 memo vide which woolen bed sheet was taken into possession from the house of PW1.
  - (ix) Ex.P-12 memo of personal search of accused.
  - (x) Ex. P-13 memo vide which PW1 was handed over to her mother.
- (b) **PW-7 ASI Ashok Kumar** in his testimony before the Court corroborated the statement of PW3 SI Mini Bhardwaj.
- (c) **PW-5 Madhu Malhotra**, posted as Statistical Assistant in the office of Registrar Birth & Death, MC, Chandigarh proved verification report Ex. P-10 pertaining to date of birth of PW-1 and attested copy of relevant entry in the Register vide Ex.P-17. The original Register was produced by her at the time of recording of her statement and she specifically stated that date of birth of PW-1 victim as 14.05.2006.
- (iii) **MEDICAL EVIDENCE:-**
- (a) **PW2 Dr. Chiranjeev Kaur**, Department of Gynae, GMSH-16, Chandigarh, medico-legally examined PW1 on 31.01.2018. As per her testimony, before conducting medico-legal examination, she obtained consent of victim and of her mother vide Ex.P-4 and prepared MLR vide Ex.P-5. She also stated that there was a mid line fresh vaginal injury 2.5x1.1 cm. She also prepared parcels of clothes, vaginal swab, nail clipping and blood sample,



sealed it and handed over to the Police along with sample seal and documents vide memo Ex.P-6. She also opined that possibility of sexual intercourse could not be ruled out.

- (b) **PW-4 Dr. Gurdeep Kaur** medico-legally examined the accused on 01.02.2018 on the basis of police request Ex.P-14. She also opined that there was nothing to suggest that the accused was incapable of performing sexual intercourse. As per her testimony, she took blood sample of accused and sealed it in a parcel and handed over to the Police. She also proved MLR of the accused vide Ex. P-15.

(iv) **LINK EVIDENCE:-**

- (a) **PW-6 HC Sanjeev Kumar, MMHC** deposed about handing over the case property to him by PW3 SI Mini Bhardwaj (pertaining to victim) and PW-7 ASI Ashok Kumar (pertaining to accused) and he made entry in register No No.19 vide entry No.247 proved the entry vide memo Ex.P-18. He also stated that he sent sealed parcels for depositing to CFSL through C. Parveen Kumar but it could not be deposited and he handed over to him. He also deposed about keeping the case property in intact condition.

- (b) **PW-9 C. Parveen Kumar** also stated that on 04.04.2018, PW-6 HC Sanjeev Kumar handed over case



property to him for depositing the same in CFSL, Sector 36, Chandigarh but due to objection raised by CFSL, it could not be deposited.

He also stated that on 30.07.2018, he was again handed over 6 sealed parcels along with sample seal by MMHC Sanjeev Kumar for depositing the case property with CFSL and he deposited the case property along with sample seals at CFSL at Chandigarh on the same day and obtained receipt and handed over the same to MMHC. He also deposed about keeping the case property in intact condition till it was in his possession.

(v) **SCIENTIFIC EVIDENCE:-**

**PW-8 Ms, Sunita Verma**, Scientist-B, Bio Division, CFSL, Chandigarh deposed that on 30.07.2016, 6 sealed parcels along with specimen seals were obtained through C. Parveen Kumar. The seals were intact and tallied with the specimen seals. The description of parcels had been given by her in her report and the contents of the parcels were analyzed for the purpose of DNA analysis. After analysis, they were exhibited as contained in the said parcels and she arrived at the conclusion as stated in report in Ex.P-20 and also specifically stated that detailed report E. P-20 be read as a part of her testimony.

(vi) **COURT WITNESS**



**Mother of PW-1 victim** was summoned as court witness and she in her statement before the Court deposed that she is working as a cook. She leaves for her work at 8:00 am and comes back home at about 1:30-2:00 PM. On 31.01.2018, she had gone for her work and her daughter PW-1 was at home as it was her holiday. At about 9:30 AM, she saw missed calls from her daughter and she immediately called her back and then her daughter told her that she was in great pain. She immediately went to her home and saw that her daughter was naked and bleeding profusely. She thought that may be she had her menstruation. She told her daughter to wear warm Pajama. She (daughter) was totally perplexed and did not know what to do. She gave her underwear which she had worn on the previous night which was lying nearby and took her daughter to hospital. The doctor did not allow them to touch the child and ask them to call the Police. She called her husband who called Police. After that, her daughter disclosed the incident and disclosed the name of accused to the Police. Her daughter specifically identified the accused. She also deposed that she had physical relations with her husband on the previous night.

(6) After closure of prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C. The incriminating circumstances



appearing in evidence were put to him to which he pleaded false implication.

**(7) DEFENCE EVIDENCE**

Accused examined seven defence witnesses, whose testimonies are as follows:

- (i) **DW-1-Gehna** stated that on 31.01.2018, she was watching TV with her children. She did not hear screaming of the girl as the television was on high volume but when she came out of her room, she heard the screams of victim. She knocked at victim's door but she did not open the door. After 5 minutes, she again heard her screams and went back to her house and then she opened the door and she saw the victim and she was smeared in blood. She had already called her mother through her mobile. She was alone when she saw her.
- (ii) **DW-2 Kali Parsad @ Pandey** stated that he is working as a driver at HBM Bansal Super Market, SCF-39, Sector-7, Chandigarh and on 31.01.2018, he reached at the shop at about 10:00AM-10:30AM. After lunch break, their employer sent him and Shammi to deliver goods. He along with accused went to deliver goods at about 3:30 PM. After returning from delivering goods at about 4:00 to 5:00 PM, when he parked the car, two persons came to them and one person asked about Shammi to which Shammi came forward and then one person apprehended



Shammi and when he asked him who he was, he told that they were from Chandigarh Police.

- (iii) **DW-3 Mahavir Bansal**, Proprietor of HBM Bansal stated that accused Shammi worked in his shop as daily wage worker. He reached his shop at about 10:30 AM. He had installed CCTV cameras in his shop and submitted the pen drive but he was ignorant about the date when the accused was arrested from outside his shop at about 4:00 to 5:00 PM. He also stated that the accused was on duty on that day according to CCTV footage and he had called up someone from Shop No.43 to prepare pen drive and had given the required pin number to him. DW-3 also tendered in evidence certificate under Section 65B of Indian Evidence Act vide Ex. DB and two pen drives Ex. DC and DD.
- (iv) **DW-4 Dharmvir**, father of accused stated that on 31.01.2018, he woke up at 8:00 AM. Accused also woke up at 8:30 AM. He dropped the accused on Aactiva and accused took the bus for his work at 9:50AM. Thereafter he returned to home. Accused reached at his duty (work place) at 10:35AM. At about 5:00 PM, he received a call from the employer that police persons came and arrested his son. When he reached at the shop, employer told him that one police person namely, SI Parminder had shared his phone number. He called SI Parminder Singh but there was



no reply. When he reached Police Station, he was told that investigation was going on and the accused would be let off after the investigation but the police did not release the accused and was produced in the Court on the next day.

- (v) **Mandeep Singh**, who is also numbered as DW-4 brought the record of Mobile No.7973551373 and proved the customer application form Ex.DW1/A, call details record for the period 31.01.2018 to 02.02.2018 vide Ex. DW1/B, tower location Ex. DW1/C and certificate under Section 65 B of Indian Evidence Act, vide Ex. DW1/D.
- (vi) **DW5 Ravinder Kumar**, Assistant, Nodal Officer, Vodafone Idea proved the record pertaining to mobile No.8054733889, customer application form Ex. DW2/A, call details record for the period 31.01.2018 to 02.02.2018 vide Ex. DW2/B, tower location vide Ex. DW2/C and certificate under Section 65B of Indian Evidence Act, vide Ex. DW2/D.
- (vii) **DW-6 Soravdeep Singh**, Nodal Officer, Bharti Airtel proved the records pertaining to mobile Nos. 8427343285, 8457791257 and 8457791256, customer application form vide Ex. DW3/A to Ex. DW3/C, call details record for period 31.01.2018 to 02.02.2018 vide Ex. DW3/D to Ex.DW3/F, tower location of above mentioned mobile numbers vide Ex. DW3/G and certificate under Evidence Act vide Ex. DW3/H.



(8) The learned Special Judge, Special Court framed following points for determination :

*1. Whether prosecution had led plausible evidence to bring home the guilt of the present accused?*

*2. Whether offence under Sections 376(2), 506 IPC and that of Section 6 of the Protection of Children from Sexual Offences Act, 2012 is made out against the accused?*

Thereafter, learned Special Judge heard the arguments of parties and vide impugned judgment convicted the accused and sentenced him as referred to supra.

(9) **ARGUMENTS OF LEARNED DEFENCE COUNSEL**

Learned counsel for the accused *inter alia* submitted that the accused has been falsely implicated in this case and that he had not committed any offence. He contended that :

(i) At the fateful time, accused was present with his employer DW-3 Mahavir Bansal as stated by DW-3 Mahavir Bansal and DW-2 Kali Parsad @ Pandey.

(ii) PW1 in her statement Ex. P1 did not name the accused although accused is residing on the upper portion of the house, whereas PW-1 is residing on the ground floor, as stated by her during her cross examination. In MLR Ex. P-5, PW1 described the history of sexual assault by some unknown person when she was alone at home at about



10:30 AM on 31.01.2018. She has named the accused for the first time when her statement Ex. P-3 under Section 164 Cr.P.C was recorded.

- (iii) The Court examined mother of the victim as Court witness. Her testimony is an afterthought. Her testimony that she made the victim to wear her own underwear is to fill up the lacunae of prosecution case and to explain the presence of semen on the panty and the said semen did not match with the reference blood sample of accused.
- (iv) Link evidence is missing.
- (v) Ex. P-5 MLR states that outer clothing, panty, pajama and cotton pad, clothing inner, the samples of nail, vaginal swabs and blood of PW-1 were taken. However, in FSL report Ex. P-20 did not state that parcels contain cloth pad however, an off white colour panty of victim was found in the parcel instead of cloth pad and the semen found on the off white panty of victim did not match with the DNA profile recovered from the standard reference blood sample of accused. No semen was detected on the vaginal swabs and bed sheet.
- (vi) DW-1 knocked the door of PW1 when she heard her screams but PW1 did not open the door and this also proves the false implication of accused. Learned defence counsel contended that wrongful act is done with PW-1



by someone else and not by accused and only under the pressure of her parents, PW1 had named the accused.

**(10) ARGUMENTS OF LEARNED STATE COUNSEL**

Learned State counsel while relying upon the testimony of prosecution witnesses examined and the documents proved on record before the learned trial Court, prayed for dismissal of appeal in hand.

**(11) DISCUSSION**

**(a) Age of PW1**

The accused is charged under Section 6 of POCSO Act which is a special statute to protect the children from sexual offences. It is imperative to first determine whether PW1 was a child as defined under Section 2(d) of the said Act. Under Section 2(d) 'child' means any person below the age of 18 years. In order to prove the age of PW1, prosecution examined PW-5 Madhu Malhotra Statistical Assistant from the office of Registrar Birth & Death, MC, Chandigarh who proved the verification report Ex. P-10 pertaining to date of birth of PW1. At the time of recording of her statement in the Court, original register pertaining to birth was produced in the Court and relevant entry is exhibited vide Ex. P17. As per this entry P-17, verification report P-10 and the statement of PW-5 Madhu Malhotra, the date of birth of PW1 is 14.05.2006. The alleged offence is committed on 31.01.2018. Meaning thereby, on the said date, the age of PW1 was 11 years and 07 months. Therefore, PW1 was not only below 18 years of age but also below 12 years of



age. Penetrative sexual assault is aggravated when committed on a child below 12 years of age as stipulated in Section 5(m) of POCSO Act and punishable under Section 6 of said Act.

(12) **Identity of accused**

- (a) As observed earlier, in order to prove the prosecution's allegation against the accused, victim herself stepped into the witness box as PW1. Before recording her statement, certain questions were put to her by learned trial Court to assess her competency to depose. It was only after she was found to be a competent witness, her statement was recorded in the Court.

Her statement recorded in the Court on oath reads as under :

*“I know and understand English language. I am residing at the above said given address with my parents. My mother is working as a cook in some house and my father is working in Sector-16, Chandigarh with some furniture shop. On 31.01.2018 I was alone in my house as my parents had gone for their respective work. In the morning in between 9.00 to 10.00 AM. I was in the house as it was holiday in my school. The door of my house was bolted from inside, my neighbourer namely Shammi came from the window which was closed and inquired whether anybody was residing in front of my house. Thereafter he requested me to give water to him. When I went to fetch water and came back with the glass of water, I opened the door to give water to him. He came inside the house and bolted the door from inside. He throw me on the bed and gagged my mouth. Thereafter*



*he put his penis in my vagina and committed rape upon me. I was profusely bleeding and the accused thereafter threatened me that he will kill me in case I disclosed about the occurrence to anybody. For this purpose he had also pressed my throat. Thereafter he ran away from my house. I made complaint Ex. P1 which bears my signatures at point A. Police prepared rough site plan at my instance. The police got conducted my medical-examination.”*

She also deposed about recording of her statement Ex.P-3 before Magistrate and identified the accused as the person who committed rape upon her.

- (b) The statement of DW-1 Gehna also proved that she heard the screams from the room of PW1 and she knocked the door but nobody opened and after 5 minutes, she again heard the screaming and knocked the door of the victim and when she opened the door, she saw victim smeared in blood and victim had already called her mother through her mobile phone. Statement of DW-1, also proves that PW1 was sexually violated.
- (c) PW1 victim neither in her statement Ex.P-1 got recorded to PW-3 SI Mini Bhardwaj, nor when she was medically examined by PW-2 Dr. Chiranjeev Kaur state the name of the accused. She named the accused for the first time when her statement Ex.P-3 under Section 164 Cr. P.C. was recorded. PW1 specifically named the accused in

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her statement recorded in the Court. The accused is residing on the upper portion of the building whereas PW1 along with her family is residing on the ground floor, as stated by her during cross examination. PW-1 was mere a child of tender age below 12 years at the time of commission of offence. In her statements Ex. P-1 and Ex.P-3 as well as in her statement recorded in the Court, she specifically stated that accused threatened to kill her in case she disclosed about the incident to anybody. It is for this reason that she out of fear had not named the accused in her first statement Ex.P-1 recorded by PW-3 and did not name the accused even when she was medically examined. The accused was arrested on the identification of PW1 as stated by PW1 and PW3 SI Mini Bhardwaj. Simply because the accused is not named in commission of offence in statement Ex.P-1, it does not mean that accused can get away with the offence. The circumstances of not naming him in the statement of PW1 are well explained. Accused not only violated the person of PW1 but also instilled fear in her mind by threatening to kill her. Therefore, the contention of learned defence counsel that the identity of accused is not established in this case, cannot be accepted.

**(13) PLEA OF ALIBI OF ACCUSED**

- (a) Accused had taken the plea of alibi and he examined DW-2 Kali Parsad @ Pandey, DW-3 Mahavir Bansal, DW-4 Dharamvir. DW4 is none but father of accused. As per the statement of DW-2 Kali Parsad @ Pandey and DW-3 Mahavir Bansal, accused reached in the shop where he was working at 10:30 AM. As per the statement of DW-2 Kali Parsad @ Pandey the work place is at HBM Bansal Super Market, SCF-39, Sector-7, Chandigarh. The village where PW1 and accused were staying in Daddu Majra, Chandigarh. Accused was residing on the first floor of the house where PW1 along with her family residing on the ground floor. The offences committed between 9 AM to 10 AM. The offence was committed within the periphery of city of work place of accused, it was very easy for the accused to leave the place of offence and join his work place as there is gap of about 30-45 minutes of his reaching his place of work. Statement of DW-4 Dharamvir that he dropped his son on activa and he took bus for his work for 9:15 AM cannot be believed because he being father of the accused, he has every reason to depose in favour of the accused to save him from the consequences of his beastility.



- (b) The accused has also examined DW-4 Mandeep Singh, DW-5 Ravinder Kumar Assistant Nodal Officer, Vodafon Idea, DW-6 Soravdeep Singh, Nodal Officer, Bharti Airtel who produced the record of mobile numbers. The accused has not taken the specific plea when his statement under Section 313 Cr.P.C. was recorded, which specific mobile number he was using on the relevant day. Even when his statement under Section 313 Cr.P.C was recorded, he had not taken the plea of alibi and simply pleaded innocence and false implication. Moreover, the learned trial Court rightly scrutinized the electronic record and concluded that call detail records produced by the accused do not rebut the cogent evidence produced by the prosecution. Call details of the accused starts only at 11:46 AM.

**(14) RELEVANCY OF TESTIMONY OF COURT WITNESS**

- (a) It is the case of the prosecution that the mother of PW1 took her to GMSH Sector-16, Chandigarh. This fact is mentioned in the FIR Ex.P-9. However, the mother of PW1 was not cited as one of the witness in the list of witnesses appended with report under Section 173 Cr.P.C. The mother of the witness was ordered to be summoned vide order dated 18.10.2018. This order reads as follows :-



*“Defence Closed. Arguments heard. During the course of arguments learned defence counsel has contended that the DNA of the accused does not match with the DNA of the samples which was sent to the CFSL however the girl has duly identified the accused in her statement before the Court though Victim is aged only about 13 years and the first person who disclosed regarding the occurrence was her mother. In such circumstances, and in the interest of justice, I deem it fit to summon the mother of the victim as a Court witness. Mother of the victim be summoned for 22/10/18 as a Court witness.”*

- (b) Statement of mother of PW1 as Court witness was recorded on 22.10.2018. Supplementary statement of accused under Section 313 Cr.P.C. was recorded on the same date and case was again listed for defence evidence. Thereafter, the accused examined DW-5 and DW-6 as defence witnesses on 19.11.2018. The trial remained pending before learned trial Court till 19.12.2018, on which date, the accused closed his defence evidence and the counsel for the State and counsel for the defence addressed arguments. Accused was held guilty on 19.12.2018 and sentenced on 21.12.2018. The accused had not challenged order dated 18.10.2018 vide which the mother of PW1 was ordered to be summoned as court witness. Section 311 of Cr.P.C. (as applicable at the relevant



time) bestowed power on the Court to summon material witness. This Section reads as under:

*“311. Power to summon material witness, or examine person present: Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”*

(c) The Hon’ble Apex Court in plethora of cases has interpreted the importance of adducing evidence and the power under Section 311 of the Cr.P.C. The Apex Court in the case of ***Natasha Singh vs. CBI 2013 (5) SCC 741, 2013(5) SCC 741***, has held as under :

*“15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or*



*to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.*

*16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and*



*proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial.”*

- (d) It is imperative that the rules of procedure, designed to ensure justice are scrupulously followed, [*Vide Talab Haji Hussain v. Madhukar Purshottam Mondkar* [AIR 1958 SC 376: 1958 Cri LJ 701]. *Zahira Habibulla H. Sheikh v. State of Gujarat* [(2004) 4 SCC 158: 2004 SCC (Cri) 999: AIR 2004 SC 3114], *Zahira Habibullah Sheikh (5) v. State of Gujarat* [(2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367], *Kalyani Baskar v. M.S. Sampooram* [(2007) 2 SCC 258: (2007) 1 SCC (Cri) 577], *Vijay Kumar v. State of U.P.* [(2011) 8 SCC 136: (2011) 3 SCC (Cri) 371: (2012) 1 SCC (L&S) 240] and *Sudevanand v. State* [(2012) 3 SCC 387: (2012) 2 SCC (Cri) 179].], *Rajaram Prasad Yadav Vs.State Of Bihar* 2013 (14) Scc 461, "

- (e) Hon'ble Apex Court in *Rajaram Prasad Yadav Vs. State of Bihar, 2013 (14) SCC 461*, held as under:-

*“17.14. The power under Section 311 Cr.P.C. must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid*



*reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well, as a human right."*

- (f) Hon'ble Apex Court in the case of ***State Rep. By the Deputy Superintendent of Police vs. Tr. N. Seenivasagan AIR 2021 SC 2441***, has observed as under:

*"13. In our view, having due regard to the nature and ambit of Section 311 of the Cr.P.C, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any Court may, at any stage of any inquiry, trial or other proceedings under the CrPC, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person "if his evidence appears to it to be essential to the just decision of the case". The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.*



14. *In Manju Devi v. State of Rajasthan*, a two-Judge bench of this Court noted that an application under Section 311 could not be rejected on the sole ground that the case had been pending for an inordinate amount of time (ten years there). Rather, it noted that the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness". Speaking for the Court, Justice Dinesh may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other



*proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case."*

- (g) Therefore, the object of Section 311 is that there should not be failure of justice on account of inability of either party to bring the valuable evidence on record or leaving ambiguity in the statement of witnesses examined from either side. Power under Section 311 Cr.P.C. to the Court is discretionary power which needs to be exercised to unearth the truth and to meet the ends of justice. The power needs to be exercised for strong and valid reason with caution and circumspection. The Court can recall any witness for re-examination or further examination if it is necessary in the interest of justice. The Court can summon a person at any stage of proceedings under Section 311 Cr.P.C. "At any stage of the proceedings" also includes the stage before pronouncement of judgment. There was no illegality or perversity in the order of learned trial Court in summoning the Court witness after closure of evidence and hearing the



arguments because at that stage, the learned trial Court had not rendered the judgment of conviction. To clear the ambiguity regarding the report of FSL Ex. P-20 and the testimony of PW2 Dr. Chiranjeev Kaur who medically examined PW1 and collected the samples and handed over to the Police, the statement of PW1 was imperative. Court witness, being mother of PW1, accompanied her when PW1 was medically examined. PW1 was a mere child below 12 years of age at the relevant time and she may not be aware of the certain facts which were in the exclusive knowledge of her mother/Court witness. Her testimony became all the more important because it was necessary to unearth the truth surrounding the samples /articles collected at the time of medical examination of PW1 and which were later on, in due course, deposited with FSL and report of FSL Ex.P-20 was brought on record. Above all, the interest of accused was taken care of because he was also confronted with the statement of Court witness by recording his supplementary statement under Section 313 Cr.P.C. and thereafter accused was afforded opportunity to lead defence evidence.

**(15) LINK EVIDENCE**

As observed earlier, PW-6 HC Sanjeev Kumar stated about deposit of case property with him by PW-3 SI Mini Bhardwaj and



PW-7 ASI Ashok Kumar. He also deposed that he sent the case property through PW-9 C. Parveen Kumar to the office of FSL but it could not be deposited because of certain objection raised by CFSL Chandigarh and the case property was handed over to him. However, as per the statement of PW-9 C. Parveen Kumar, PW-6 MMHC Sanjeev Kumar, handed over the case property to him on 04.04.2018 which could not be deposited due to an objection and on 30.07.2018 he was again handed over 6 sealed parcels with sample seals by MMHC Sanjeev Kumar for depositing in the office of CFSL and he did the needful on the same day and obtained receipt, which he handed over to MMHC Sanjeev Kumar. Report Ex.P-20 also proved that the case property consisting of 6 sealed parcels along with samples seals were deposited by C. Parveen Kumar in the office of FSL. Silence on part of PW-6 MMHC Sanjeev Kumar handing over the case property on 30.07.2018 to PW-9 C. Parveen Kumar is because his statement was recorded in the Court on 18.07.2018 and till that time, case property was in his possession and it was handed over to PW-9 C. Parveen Kumar only on 30.07.2018 i.e. after recording of his statement in the Court. No suggestion is put to PW-6 MMHC Sanjeev Kumar or PW-9 C. Parveen Kumar that they tampered with the parcels/case property. Since the case property was kept in intact condition, as per the statement of both the witnesses, the contention of learned defence counsel that link evidence is missing in this case, cannot be accepted.



(17) **EFFECT OF PRESENCE OF SEMEN ON THE PANTY THAT DID NOT MATCH WITH THE REFERRAL BLOOD OF THE ACCUSED:**

(a) PW-2 Dr. Chiranjeev Kaur stated that the samples i.e. clothes, vaginal swab, nail clipping and blood sample as given in the MLR were taken and after sealing them in an intact condition were handed over to Police along with sample seal and documents for analysis which were taken into Police possession vide memo Ex.P-6. MLR Ex.P-5 reveals that the samples taken were listed at Sr. No.1, 2, 12, 13, 15, 20 and 21 which are as under:

SR. No.	Step No. (As per the Protocol)	Item	Sample taken or not (if not, reason thereof)
01.	3A	Clothing outer	Taken (panty, Pajama, Cotton Pad)
02.	3B	Clothing inner	Taken
12.	9	Vaginal Swabs- Anterior	Taken (Lower and Upper Vagina)
13.	9	Vaginal Swabs- Posterior	Taken (Lower and Upper Vagina)
15.	9	Vaginal Swabs- Laterral (2 NUMBERS)	Taken (Lower and Upper Vagina)
20.	14	Blood Collection	Taken (plaint and edta vials)
21.	15.	Urine Collection	Not taken



- (b) FSL report Ex. P-20 reveals that the case property consisting of 6 sealed parcels were deposited on 31.07.2018 in the office of CFSL and the description of sealed parcels is as under :-

S.No.	Parcel No.	Seal Impression/No. Of seals	Description	Laboratory Exhibit No.	Findings
1.	P-1	MLC-SMO/GH-16/CHD/03	One sealed cloth parcel stated to contain Exhibits:		Preliminary & Confirmatory Test for human semen. Semen was detected in Exhibit- Ex.8523701B (source: one off-white color panty of victim)
			One pink colour pyjama of victim	Ex.8523701A	
			One off-white colour printed panty of victim	Ex.8523701B	
			As mentioned in the forwarding letter in serial No.1(3), parcel stated to contain a cloth pad. However, an off-white color panty of victim was found in the parcel instead of a cloth pad	Ex.8523701C	
2.	P-2	MLC-SMO/GH-16/CHD/03	One sealed cloth parcel stated to contain following Exhibits:		Results of Autosomal STR plus & Y-chromosome STR types: Refer to the table No. 2 & 3.
			One outer vaginal swab stated to be of victim	Ex.8523702A	
			One Middle vaginal swab stated to be of victim	Ex.8523702B	



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			Nail Clippings stated to be of victim	Ex.8523702C
3.	P-3	MLC- SMO/GH-16/CHD/03	Standard reference blood sample of victim	Ex.8523703A
			Standard reference blood sample of victim	Ex.8523703B
4.	P-4	GMSH-16/MOT-CHD/04	One sealed cloth parcel stated to contain following exhibits:	
			One sky blue colour underwear stated to be of accused	Ex.8523704A
			One navy blue colour underwear stated to be of accused (no spit cutting taken)	Ex.8523704B
			One checked underwear stated to be of accused (no spit cutting taken)	Ex.8523704C
			One navy blue colour lower stated to be of accused	Ex.8523704D
5.	P-5	GMSH-16/MOT-CHD/01	Standard reference blood sample of accused	Ex.8523705
6.	P-6	AS/01	One sealed parcel containing one woolen bed sheet.	Ex.8523706



(c) This report categorically stated that although parcel 1(iii) stated to contain cloth pad, however, an off white panty of victim was found in the parcel instead of cloth pad. All the samples were subjected to DNA profiling and as per FSL report Ex. P-20, proved in the statement of PW-8 Ms. Sunita Verma, the result of DNA profiling of exhibits as under:

1. The human male autosomal STR profile and Y-chromosomal STR profile obtained from Exhibit-852370TB (off-white color panty of victim) do not match with DNA profile recovered from standard reference blood sample of the accused, Exhibit-8523705.
2. The human female autosomal STR profile obtained from Exhibits-8523704A (sky blue color underwear) is consistent with DNA profile recovered from reference blood sample of victim Exhibit-85237034.
3. The human male autosomal STR profile obtained from Exhibit- 8523704D (navy blue color lower of accused), is consistent with DNA profile recovered from standard reference blood sample of accused, Exhibit- 8523705.
4. The human female autosomal STR profile obtained from Exhibits-8523701A & 8523701C (pink color pyjama & off-white color printed panty of victim, respectively) and Exhibits-8523702A & 8523702B (vaginal swab of



victim) and Exhibit-8523706 (bed sheet), found to be consistent with DNA profile recovered from standard reference blood sample of victim, Exhibit-85237034.

- (d) This report Ex.P-20 reveals that only the off white colour panty of victim was subjected to DNA profiling of human male autosomal STR profile which did not match with the standard reference blood sample of accused. Court witness categorically deposed in her statement in the Court that *“At about 9:30 am I saw missed calls from my daughter and immediately I called her back. My daughter replied the phone and she was in great pain. I immediately rushed back home. On reaching home I saw that my daughter was naked and she was not in a position to speak. She was bleeding profusely and I thought that may be she has started with her menstruation. I was shocked to see my daughter. My daughter used to wear warm Pajama. I was totally perplexed and did not know what to do. I immediately took my underwear which I had worn on the previous night and which was lying nearby and I immediately put my underwear on my daughter and rushed to the hospital.”*
- (e) The statement of Court witness explains the reason for presence of semen on the off white panty which certainly could not match with the referral blood of the accused.



The accused cannot take benefit of this fact which is well clarified by the prosecution. Court witness who is mother of PW1 had no reason to depose against the accused in the absence of any previous enmity.

(18) **EFFECT OF CONTRADICTION REGARDING CASE PROPERTY**

As observed earlier as per MLR Ex.P-5, the articles i.e. panty, pyjama, cotton pad of victim were prepared in two parcel and handed over to the Police along with other samples. However, as per FSL report, cotton pad was not amongst the articles received in the FSL. PW-8 Ms. Sunita Verma admitted as correct that cotton pad of the victim was not deposited in FSL as mentioned in forwarding letter, however, an underwear of white colour of victim was deposited at the CFSL. As per the testimony of Court witness, who is mother of PW1 victim, she gave her own panty to her daughter which she was wearing previous night. As per FSL report, this panty was found having semen stains but not of accused. Since the article was a panty and it was also used as a pad by the victim and for this reason there seems to be confusion over the total number of articles which were taken by the PW-2 Dr. Chiranjeev Kaur. For the purpose of determining the guilt of the accused, whole of the prosecution evidence including FSL report Ex. P-20 as a whole is to be scrutinized and not one piece of evidence here and there. For this reason, the contradiction regarding non receipt of cotton pad in the office of FSL is immaterial and is liable to be ignored.



(19) **ABSENCE OF SEMEN ON THE VAGINAL SWABS, PYJAMI AND BED SHEET**

As per FSL report Ex. P-20, “the human female autosomal STR profile was obtained from Exhibits-8523701A & 8523701C (pink color pyjama & off-white color printed panty of victim, respectively) and Exhibits-8523702A & 8523702B (vaginal swab of victim) and Exhibit-8523706 (bed sheet), was found to be consistent with DNA profile obtained from standard reference blood sample of victim, Exhibit-85237034.” These articles were not subjected to the human male autosomal STR profile of the standard reference blood sample of accused but only with the standard reference blood of PW1. For this reason there cannot be any finding regarding the DNA profile of accused on these samples.

(20) **PRESENCE OF BLOOD OF PW1 VICTIM ON THE UNDERWEAR OF ACCUSED**

It is the case of the prosecution that one sky blue coloured underwear of accused was also taken in Police possession after medical examination of accused and deposited in the office of FSL. As per FSL report, Ex.P-20, “2. *the human female autosomal STR profile was obtained from exhibit-.8523704A (sky blue colour underwear), which is consistent with DNA profile recovered from standard reference blood sample of victim (name withheld) exhibit-8523703A*”. PW-8 Ms. Sunita Verma during her cross examination stated that “*it is correct that out of two panties only one was found containing semen and that too did not match with the DNA profile*



*with the Shammi, however, the underwear of Shammi was found consistent with the DNA profile of victim (name withheld) as mentioned at Sr. No.2.”* She denied the suggestion that the blood samples can be tampered with. PW-8 Ms. Sunita Verma, Scientist is categorical in her testimony that “ *we always received the sample parcels in sealed condition and if parcels are not intact at the time of receiving, they are not accepted by the CFSL authorities and returned as very moment to the concerned official.*” This proved that the samples deposited in the office of FSL were not tampered with at any stage. The Police official who investigated this case had no reason to tamper with the case property. The accused cannot wriggle out of this strong piece of incriminating evidence. Accused failed to explain how his underwear was having the DNA profile of PW1 victim. The statement of the victim coupled with FSL report depicting that the underwear of accused was having human female autosomal STR profile which is found consistent with DNA profile recovered from standard reference blood sample of PW1 and the mid line fresh vaginal injury 2.5x1.1 cm on the person of PW1 victim conclusively proved that she was subjected to penetrative sexual assault by none other but accused who faced trial in this case.

- (21)** PW1 had no reason to depose against the accused and to save real culprit had there been any other than accused. Thus, the statement of PW1 is of sterling quality and cannot be ignored. Accused was known to her and arrested on her identification. As observed earlier, initially she did not name the accused for the simple reason that she was



threatened by him but only when she had the company of her mother, Police and the presence of Judicial Magistrate, she mustered courage to name the accused for the first time while recording her statement Ex.P-3 by the Magistrate.

Once the prosecution proved foundational facts constituting the ingredients of offences for which the accused is charged, there is a statutory presumption that can be invoked against the accused under Section 29 of POCSO Act, which the accused failed to rebut. Section 29 reads as under:

*“29. Presumption as to certain offences.-Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”*

The statement of PW1 victim that on the fateful morning accused entered in the room at the pretext of taking water and committed penetrative sexual assault upon her which resulted in bleeding from her private part, coupled with blood stained bed sheet recovered from the spot which was found stained with her blood and a mid line fresh vaginal injury 2.5x1.1 cm as noticed during her medical examination and the fact that the underwear of accused was having female DNA profile which was found matching with the referral blood of PW1 proved that it was only accused and none else who indulged in aggravated penetrative sexual assault with PW1.

**(22) CONCLUSION**

In view of above discussion, we find that the learned trial Court returned the findings correctly on the points for determination, holding the accused guilty of aggravated penetrative sexual assault. There is no perversity or irregularity in the impugned judgment. The judgment of learned trial Court is upheld and the appeal is dismissed being devoid of merits.

**(GURVINDER SINGH GILL)**  
**JUDGE**

**(RAMESH KUMARI)**  
**JUDGE**

**25.02.2026**

*Syoti-77*

Whether speaking/reasoned: Yes/No.  
Whether reportable : Yes/No