



CGHC010254582022



2026:CGHC:35904-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1256 of 2022**

Nanka Das Alias Kormiha S/o Mahavir Das Aged About 60 Years R/o Village Parsa Bhairavgarh, Police Station Ambikapur, District - Surguja (C.G.)

... Appellant(s)**versus**

State of Chhattisgarh Through - Aarakshi Kendra - Police Station, Ambikapur, District - Surguja (C.G.)

...Respondent(s)

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Anand Mohan Tiwari, Advocate.
For Respondent/State	:	Mr. Jitendra Shrivastava, Government Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****13.08.2026**

1. Heard Mr. Anand Mohan Tiwari, learned counsel for the appellant. Also heard Mr. Jitendra Shrivastava, learned Government Advocate, appearing for the State/respondent.

2. Learned counsel for the appellant submits that the present appeal

was assigned to him by the Chhattisgarh High Court Legal Services Committee, Bilaspur, for representing the appellant. However, due to an inadvertent mistake, a composite Vakalatnama came to be filed. The said inadvertent procedural defect is condoned, and the appeal is heard finally.

3. This criminal appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "the CrPC"), is directed against the impugned judgment dated 29.06.2022 passed by the learned Additional Sessions Judge, Fast Track Special Court (POCSO Act), Ambikapur, District Surguja (C.G.) (for short, "the trial Court"), in Special Criminal POCSO Trial No. 66 of 2019, whereby the appellant has been convicted and sentenced as follows:

Conviction under Section	Sentence
Section 450 of the Indian Penal Code (<i>for short, 'IPC'</i>)	Rigorous imprisonment (<i>for short, 'R.I.'</i>) for 05 years and fine of Rs.3,000/-, in default of payment of fine, 06 months R.I. more.
Section 376(a) (b) of the IPC	R.I. for life and fine of Rs.5,000/-.
Section 506 Part 2 of the IPC	R.I. for 03 years and fine of Rs.2,000/-, in default of payment of fine, 03 months R.I. more.
All sentences to be run concurrently	

4. The prosecution case, in brief, is that on 02.09.2019, the father of the victim/informant lodged a report at Police Station Ambikapur stating that on the said date, the electricity connection at the house of his mother-in-law had developed a fault, which he had gone to repair, and had taken

his daughter, i.e. the victim, along with him. After repairing the electrical connection, he went to his house to have his meals, while his mother-in-law went to the field for transplanting paddy. The victim and the appellant remained at his mother-in-law's house watching television. When he returned to his mother-in-law's house after having his meals, he found one shutter of the door open and the other closed. On entering the house, he saw the appellant lying on top of his daughter on the floor, with a gamchha stuffed into the mouth of the victim, and the appellant was forcibly having sexual intercourse with her. He immediately rushed inside, pulled the appellant away and removed the gamchha from the mouth of the victim. The victim, while crying, stated that the appellant, who was her grandfather, had forcibly committed the said act with her by threatening that if she disclosed the incident to anyone or raised an alarm, he would kill her and throw her away. Thereafter, the informant pulled the appellant outside the house and started reprimanding him. In the meantime, other villagers also arrived and came to know about the incident.

5. On the basis of the report lodged by the father/informant of the victim, First Information Report (Ex.P/4) was registered as Crime No.523/2019 at Police Station Ambikapur for offences punishable under Sections 376-A, 376-B and 506 of the Indian Penal Code and Sections 5(m)/6 of the Protection of Children from Sexual Offences Act, 2012 (for short, the "POCSO Act"), and investigation was taken up.

6. During investigation, Investigating Officer Smt. Anita Aayam, Sub-Inspector (PW-8), recorded the First Information Report (Ex.P/4) on 02.09.2019 at Police Station Ambikapur on the basis of the complaint

lodged by the father/informant of the victim, registering Crime No. 523/2019 for the aforesaid offences.

7. During investigation, prior to arranging for the medical examination of the victim, the Investigating Officer obtained the consent of her mother vide Ex.P/6. A requisition (Ex.P/11) was thereafter sent to the District Medical Officer, Ambikapur, for conducting the medical examination of the victim, pursuant to which her medical examination was conducted and the medical report (Ex.P/6A) was prepared. The Investigating Officer, on the basis of the information furnished by the informant and the victim, inspected the place of occurrence and prepared the spot map (Ex.P/1). The appellant was arrested in the presence of witnesses and an arrest memo (Ex.P/12) was prepared. Intimation regarding his arrest was given to his daughter vide Ex.P/12A.

8. From the place of occurrence, one off-white cotton gamchha, measuring 170 cm in length and 83 cm in width, having a cut portion at one edge and stains/marks thereon, was seized in the presence of witnesses vide seizure memo (Ex.P/5). A requisition (Ex.P/13) was sent to the Doctor at District Hospital, Ambikapur, for medical examination of the appellant. The appellant was medically examined and his medical report was prepared vide Ex.P/22. Another requisition (Ex.P/14) was sent to the Doctor at District Hospital, Ambikapur, for examination of the seized gamchha, and the corresponding examination report is Ex.P/23.

9. During investigation, the Investigating Officer, Smt. Anita Aayam (PW-8), seized, in the presence of witnesses, the vaginal slides prepared by the Doctor and produced by Woman Constable Philomina Panna, No.

488, in a sealed packet, and prepared seizure memo (Ex.P/15). The underwear of the appellant was produced in a sealed packet by Constable Manish Singh, No. 002, and the same was seized in the presence of witnesses vide seizure memo (Ex.P/16). The gamchha allegedly used by the appellant during the occurrence was produced in a sealed packet by Woman Constable Sarla Toppo, No. 279, and was seized vide seizure memo (Ex.P/17). A requisition (Ex.P/7) was sent to the Headmaster of Government Primary School, Parsa, for production of a certified copy of the admission and withdrawal register relating to the date of birth of the victim. Pursuant thereto, Radheshyam, Headmaster, produced the certified copy of the admission and withdrawal register, which was seized vide seizure memo (Ex.P/8). The Headmaster also produced the certificate relating to the date of birth of the victim, marked as Ex.P/18, wherein her date of birth was recorded as 29.12.2008, and the same was seized.

10. During investigation, the Investigating Officer submitted a report (Ex.P/19) before the Judicial Magistrate First Class, Ambikapur, for recording the statement of the victim under Section 164 of the Code of Criminal Procedure. A requisition (Ex.P/10) was also sent to the Tahsildar, Ambikapur, for preparation of the Patwari's spot map of the place of occurrence. Pursuant thereto, the concerned Patwari prepared the spot map (Ex.P/2) in the presence of witnesses. Through the Superintendent of Police, Surguja, a report (Ex.P/20) was forwarded to the Joint Director, Regional Forensic Science Laboratory, Ambikapur, for chemical examination of the seized articles, and acknowledgment thereof (Ex.P/20A) was received. Thereafter, the office of the Joint Director, Regional Forensic Science Laboratory, Ambikapur, forwarded the chemical

examination report in respect of the seized articles, marked as Ex.P/21.

11. The statements of the victim and the witnesses were recorded in accordance with their respective narrations. Upon completion of the investigation, the charge-sheet was filed before the learned trial Court.

12. The learned trial Court framed charges against the appellant for offences punishable under Sections 450, 376-A, 376-B and 506 Part-II of the Indian Penal Code and Sections 5(d)/6 and 5(f)/6 of the POCSO Act. The charges were read over and explained to the appellant, who denied the same and claimed to be tried.

13. After completion of the prosecution evidence, the appellant was examined under Section 313 of the CrPC. During such examination, a total of 123 questions were put to him. In his answers, the appellant denied the incriminating circumstances appearing against him and stated that he had been falsely implicated by the family members of the victim due to a family dispute and previous enmity. He pleaded innocence and stated that he had not committed the alleged offence. The appellant did not examine any witness or adduce any evidence in defence.

14. In order to bring home the charges against the appellant, the prosecution examined 09 witnesses and exhibited 23 documents in support of its case.

15. Upon appreciation of the oral and documentary evidence available on record, the learned trial Court convicted the appellant and sentenced him as mentioned in paragraph 03 of the impugned judgment. Being aggrieved by the judgment of conviction and the order of sentence, the

appellant has preferred the present appeal.

16. Learned counsel appearing for the appellant submits that the impugned judgment of conviction and the consequent order of sentence passed by the learned trial Court are contrary to law and the evidence available on record and, therefore, deserve to be set aside. It is contended that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. According to learned counsel, the testimony of the victim suffers from material inconsistencies and does not inspire confidence. It is further submitted that the other evidence adduced by the prosecution does not furnish reliable corroboration to the material allegations against the appellant. He further submits that the learned trial Court has failed to properly appreciate the contradictions and omissions appearing in the evidence of the prosecution witnesses and has recorded the finding of guilt on the basis of assumptions and presumptions rather than cogent, reliable and legally admissible evidence. It is, therefore, submitted that the appellant is entitled to the benefit of doubt.

17. Learned counsel appearing for the appellant, in addition to assailing the finding of conviction, submitted that even otherwise, having regard to the facts and circumstances of the case, the age of the appellant, the nature of the evidence available on record and the circumstances in which the occurrence is alleged to have taken place, the sentence imposed upon the appellant is unduly harsh. It was, therefore, submitted that, in the event this Court is not inclined to interfere with the conviction, the sentence of imprisonment for life may kindly be reduced to a lesser sentence commensurate with the facts and circumstances of the case.

18. *Per contra*, learned counsel appearing for the State opposed the submissions advanced on behalf of the appellant and supported the impugned judgment of conviction and order of sentence. It was submitted that the learned trial Court has rightly appreciated the evidence available on record and has correctly recorded the finding of guilt against the appellant. Learned State counsel further submitted that, considering the nature and gravity of the offence committed against a child and the statutory scheme of the POCSO Act, no case for reduction of the sentence is made out. It was, therefore, prayed that the appeal be dismissed and the conviction and sentence imposed by the learned trial Court be affirmed.

19. It is submitted by the learned State counsel that the testimony of the victim is natural, consistent and inspires confidence and that the same is duly supported by the evidence of other prosecution witnesses and the documentary and medical evidence available on record. Learned State counsel further submits that the discrepancies, if any, pointed out by the learned counsel for the appellant are minor in nature and do not go to the root of the prosecution case. He further submits that the offence committed against the victim is grave and serious in nature and that the appellant, being the grandfather of the victim, was in a position of trust and proximity to her. It is contended that the learned trial Court, after duly considering the facts and circumstances of the case and the gravity of the offence, has imposed an appropriate sentence, which does not call for any interference by this Court. The learned State counsel, therefore, submits that the alternative prayer made on behalf of the appellant for reduction of the sentence of imprisonment for life is also liable to be rejected. It is prayed

that the appeal be dismissed and the judgment of conviction and order of sentence passed by the learned trial Court be affirmed.

20. We have heard learned counsel for the parties and considered their rival submissions made hereinabove. We have also carefully and meticulously gone through the original record of the learned trial Court.

21. The first question that arises for consideration before this Court is whether the learned trial Court was justified in holding that the victim was a minor on the date of the incident and, consequently, whether the provisions of the POCSO Act were attracted to the case.

22. The determination of the age of the victim assumes considerable significance in a prosecution under the POCSO Act, as the applicability of the provisions thereof depends upon the victim being a “child” within the meaning of Section 2(d) of the POCSO Act. Section 2(d) defines “child” to mean any person below the age of eighteen years. Therefore, the age of the victim has to be determined with reference to the date of the alleged occurrence.

23. In the present case, the prosecution has asserted that the date of birth of the victim is 29.12.2008. In order to establish her age, the prosecution has relied upon the school record pertaining to the victim. The relevant Admission and Discharge register (Ex.P/9C) of Government Primary School, Parsa, Police Station Kotwali, Ambikapur, District Surguja (C.G.), was produced and exhibited in evidence. The said document records the date of birth of the victim as 29.12.2008. The document was proved through PW-6, who was the Head Teacher of the said school. PW-

6 stated that the victim was admitted to Class-I on 25.06.2014 and that her date of birth was recorded in the school register as 29.12.2008. However, in his cross-examination, PW-6 admitted that he was not aware of the basis or source on the basis of which the date of birth of the victim had been entered in the school register. Thus, although PW-6 proved the school record, he had no personal knowledge regarding the source of the information on the basis of which the date of birth of the victim was originally recorded in the register.

24. The victim (PW-1), in her deposition, stated that she did not remember her exact date of birth, though she stated that she knew that she was born in December 2008. She further stated that she was studying in Class-V. The father of the victim (PW-2) and her mother (PW-3) also stated in their respective depositions that the victim was aged about 11 years and was studying in Class-V.

25. Thus, the prosecution has relied upon the school record as well as the oral testimony of the victim and her parents to establish her age. If the date of birth recorded in the school register, i.e. 29.12.2008, is accepted, the victim was about 10 years and 8 months old on the date of the incident, i.e. 02.09.2019, and was admittedly below eighteen years of age. Nevertheless, since PW-6 was unable to state the source or basis of the entry relating to the date of birth, the evidentiary value of such entry requires examination in accordance with the settled principles governing determination of the age of a child.

26. In *Jarnail Singh v. State of Haryana*, reported in (2013) 7 SCC 263, the Hon'ble Supreme Court, while considering the question of

determination of the age of a child, laid down the guiding principles to be followed in this regard. The relevant observations of the Hon'ble Supreme Court read as follows:

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

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

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

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

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

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

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

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

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee

shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

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

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

23. *Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out*

of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.”

27. The principle laid down by the Hon'ble Supreme Court in **Jarnail Singh** (supra) makes it clear that, while determining the age of a child, the Court has to adopt the procedure and hierarchy of evidence contemplated under the applicable law and has to assess the reliability of the documents produced for establishing the date of birth. A mere entry in a school record cannot be treated as conclusive in every case, particularly where the person proving the document has no knowledge of the source or basis of

the original entry. The Court is required to examine the evidentiary foundation of such entry and the other material available on record.

28. In the present case, the school record records the date of birth of the victim as 29.12.2008. Though PW-6 admitted that he was unaware of the basis on which the said date of birth was entered in the register, there is no material on record to suggest any other date of birth of the victim. On the contrary, the victim herself stated that she was born in December 2008, while her father and mother consistently stated that she was about 11 years of age and was studying in Class-V.

29. It is also significant that the incident occurred on 02.09.2019. Even if the date of birth recorded in the school register is taken into consideration, the victim was only about 10 years and 8 months old on the date of the occurrence. Thus, she was far below the statutory age of eighteen years prescribed under Section 2(d) of the POCSO Act.

30. The evidence relating to the age of the victim, therefore, has to be considered cumulatively and not in isolation. The school record, the statement of the victim that she was born in December 2008, and the evidence of her parents regarding her age, when considered together, establish that the victim was below eighteen years of age on the date of the incident. The mere fact that PW-6 was unable to state the source of the original entry in the school register does not, in the facts of the present case, render the entire prosecution evidence relating to age unreliable.

31. We are, therefore, of the considered view that the prosecution has established that the victim was below eighteen years of age on the date of

the occurrence and was, consequently, a “child” within the meaning of Section 2(d) of the POCSO Act. The learned trial Court was, therefore, justified in holding that the provisions of the POCSO Act were attracted to the present case.

32. Having answered the question regarding the age of the victim, the next question that arises for consideration is whether the prosecution has been able to establish, beyond reasonable doubt, the occurrence alleged against the appellant and his involvement therein.

33. In order to prove the aforesaid charge, the prosecution has principally relied upon the testimonies of the victim (PW-1) and her father, the complainant (PW-2), who is an eyewitness to the incident.

34. We have carefully gone through the testimony of the victim (PW-1). At the time of recording her evidence before the learned trial Court, the victim stated her age to be 11 years. Considering her age, the learned trial Court treated her as a child witness and put certain preliminary questions to ascertain whether she was competent to understand the questions and give rational answers thereto. Upon being satisfied that she was capable of understanding the questions put to her and answering them appropriately, her examination-in-chief was commenced.

35. In her examination-in-chief, the victim (PW-1), while identifying the appellant, stated that she knew him and used to address him as her grandfather in relation. She stated that, at the time of the incident, she was at the house of her maternal grandmother situated at village Parsa. Her maternal grandmother had prepared food and thereafter gone to the field

for transplanting paddy, leaving the victim alone in the house watching television. At about 10:00 a.m., while she was watching television, the appellant came there and dragged her into her grandmother's room. She stated that the appellant was under the influence of liquor. After taking her into the room, the appellant threw her down, removed his clothes as well as her underwear, lay on top of her, touched her private part (vagina) with his private organ (penis) and forcibly inserted his penis into her vagina. When she experienced severe pain and cried out, the appellant stuffed a gamchha into her mouth and thereby prevented her from raising an alarm.

36. The victim further stated that the appellant threatened her that if she disclosed the incident to anyone, he would cut her head off with a *pahasu* (a sharp-edged rural implement used for cutting vegetables). Thereafter, her father arrived at the house, and at that time she was crying profusely. Her father sent the appellant away to his house to fetch a fishing hook. She further stated that when her father asked her the reason for crying, she disclosed to him that the appellant had taken her into the room, laid her down, opened her underwear, touched her private part and inserted his private organ into her private part, causing her severe pain. She also told him that the appellant had stuffed a gamchha into her mouth and had threatened her with dire consequences if she disclosed the incident. She stated that she subsequently narrated the incident to her maternal grandmother, mother and father. She further stated that a report regarding the incident was lodged at the police station. Thereafter, the police personnel sent her to the hospital along with her parents, where a woman doctor examined her private parts. She also identified the place of occurrence to the police, and in the spot map (Ex.P/1), she had marked

her name at point "A to A". She further identified the place of occurrence to the Patwari, and her signature appears at point "A to A" on the spot map (Ex.P/2). She also stated that her statement under Section 164 of the Code of Criminal Procedure had earlier been recorded before the Court, and her name appears at point "A to A" thereon in Ex.P/3.

37. In her cross-examination, the victim admitted the suggestion put to her by the defence that, about one to two hours after her father had gone to have his meals, the appellant had come to her maternal grandmother's house to watch television. She further admitted that, at the time of the incident, the appellant had tied both her hands behind her back and stuffed a gamchha into her mouth. She volunteered that he had done so when she started shouting. She stated that the appellant had tied her hands with a gamchha and that the said gamchha was white in colour; the gamchha stuffed into her mouth was also white in colour. The victim further admitted the defence suggestion that both the gamchhas had been taken away by the police. She also stated that, during the commission of the alleged act, she had attempted to free herself and had cried out. She further admitted that the incident had occurred about two hours after her father had gone to have his meals. Thus, notwithstanding the cross-examination, the material part of the testimony of the victim regarding the occurrence, the manner in which the appellant had subjected her to the alleged act, the use of the gamchha and the threat extended by him remained substantially unshaken.

38. The father of the victim/informant (PW-2), in his deposition, identified the appellant as a resident of his village and stated that the victim was his

daughter. He stated that, on the date of the incident, the electricity connection at his mother-in-law's house had developed a fault and, therefore, he had gone there along with his daughter to repair it. After repairing the electrical connection, he switched on the television and the victim started watching it. After some time, the appellant also came there and started watching television. His mother-in-law went to the field for transplanting paddy, while he went to his house to have his meals.

39. PW-2 further stated that, after about two hours, he returned to his mother-in-law's house after having his meals. He found one shutter of the door open and the other closed. On entering the house, he saw the appellant lying on top of his daughter and committing a wrongful act with her. He also saw a gamchha stuffed into the mouth of the victim. He informed his wife and the neighbours about the incident. At that time, the victim was crying profusely. After consoling her and asking her about the incident, she told him that the appellant had taken her into the room, laid her down, removed her underwear, touched her private part and was inserting his private organ into her private part. She also told him that she was experiencing severe pain in her private part and that the appellant had stuffed a gamchha into her mouth. She further informed him that the appellant had threatened her with dire consequences if she disclosed the incident to anyone. He also stated that the victim was extremely frightened at the time. On hearing the commotion, several persons gathered there and some persons in the crowd also assaulted the appellant. Thereafter, he brought the victim to the hospital at Ambikapur and subsequently went to Police Station Ambikapur, where the FIR (Ex.P/4) was lodged. He further stated that the police prepared the spot map (Ex.P/1) at his

instance and that the Patwari also prepared the spot map (Ex.P/2). The police also visited the place of occurrence and seized the gamchha, for which seizure memo (Ex.P/5) was prepared.

40. In cross-examination, PW-2 stated that, on the date of the incident, he had gone to his mother-in-law's house to repair the electricity connection and, after completing the electrical work, had gone home to have his meals. He stated that it took him approximately half an hour to have his meals and that he thereafter returned to his mother-in-law's house. When he reached there, he saw the appellant lying on top of the victim. He further stated that bedding had been spread on the floor and that some portion of the body was also on the floor. PW-2 denied the suggestion that the victim had not disclosed anything regarding the incident to him. He also denied the suggestion that the report had been lodged against the appellant merely to avoid any action arising out of the assault or altercation that had taken place with the appellant. Thus, the material particulars of the occurrence narrated by PW-2 remained substantially intact in cross-examination.

41. The medical evidence assumes relevance at this stage. Dr. Manorama Minj (PW-4), who examined the victim, proved the medical examination report (Ex.P/6). She stated that, upon examination of the victim on 02.09.2019, no external injury was found on her body. However, redness was present around the vaginal opening. The hymen was present. Vaginal discharge and anal swab samples were collected, two slides were prepared, sealed and handed over to the concerned constable with a recommendation for chemical examination.

42. Dr. Minj further stated that, upon examination of the brown-coloured panty produced by the woman constable, no stain or mark was found thereon. The panty was thereafter sealed and handed over to the constable for chemical examination. In her opinion, an attempt at penile penetration into the vagina of the victim had been made, and she advised chemical examination for a definite opinion.

43. In cross-examination, Dr. Minj denied the suggestion that no sign indicative of recent sexual intercourse was found during the examination. She volunteered that redness was present around the vaginal opening and that it was on account of the said finding that she opined that an attempt at sexual penetration had been made. Thus, the medical witness remained firm in her material assertion regarding the finding of redness around the vaginal opening and the opinion regarding an attempt at sexual penetration.

44. As regards the medical examination of the appellant, Dr. Deepak Chandravanshi (PW-9) proved the medical reports (Ex.P/22 and Ex.P/23). He stated that, on 02.09.2019, he examined the appellant's genitalia. On examination, the secondary sexual characteristics were found to be fully developed and the cremasteric reflexes were present. No disease was found. According to him, the appellant was physically capable of performing sexual intercourse.

45. Dr. Chandravanshi further stated that, during the medical examination, the appellant's blue-coloured underwear having green and blue stripes was produced before him for examination. After examination, the same was sealed and handed over to the concerned constable with

advice for chemical examination. He further stated that, on 04.09.2019, Woman Constable Sarla Toppo, No. 279, produced the gamchha seized in Crime No. 523/2019 of Police Station Ambikapur before him. On examination, the gamchha was found to be off-white in colour and measured approximately 83 cm × 175 cm. A torn portion measuring about 25 cm was present in the middle and stains/marks were found at several places. The stains were marked and the gamchha was sealed and handed over to the woman constable with a recommendation for chemical examination.

46. In cross-examination, Dr. Chandravanshi admitted that, while giving his opinion, he had recorded that, having regard to the presence of cremasteric reflexes and the advanced age of the appellant, it was not possible to state with certainty whether the appellant was capable of performing sexual intercourse. Thus, the witness did not give an unequivocal opinion regarding the appellant's sexual capability. However, it is equally significant that the witness did not state that the appellant was incapable of performing sexual intercourse.

47. On a cumulative consideration of the testimony of the victim (PW-1), her father (PW-2), the medical evidence of Dr. Manorama Minj (PW-4) and the evidence of Dr. Deepak Chandravanshi (PW-9), it is apparent that the victim has consistently attributed the occurrence to the appellant. Her testimony regarding the presence of the appellant, the manner in which she was taken into the room, the use of the gamchha, the threat extended by the appellant and her immediate disclosure to her father finds material support from the testimony of PW-2 and the surrounding circumstances.

48. It is well settled that the testimony of a victim of sexual assault is not to be discarded merely because it is not corroborated in every material particular. At the same time, the Court is required to carefully scrutinise her testimony and determine whether it inspires confidence and is free from material infirmity. Minor discrepancies, omissions or variations which do not affect the core of the prosecution case cannot, by themselves, constitute a ground for discarding otherwise trustworthy evidence.

49. In the present case, the discrepancies and variations pointed out by the defence do not affect the substratum of the prosecution case. The victim was a child at the relevant time. Her testimony regarding the material features of the occurrence has remained consistent. Her conduct immediately after the occurrence, the fact that she was found crying, her disclosure to her father and the presence of the gamchha, coupled with the medical finding of redness around the vaginal opening, lend assurance to her version.

50. The testimony of the victim is also required to be appreciated keeping in view the fact that the occurrence took place inside the house and that the victim was subjected to threats and physical restraint. In such circumstances, minor variations regarding peripheral details cannot be elevated to the status of material contradictions so as to discard the entire prosecution case.

51. In the Indian society refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is

likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the *sine qua non* for conviction in a rape case. The observations of Vivian Bose, J. in ***Rameshwar v. The State of Rajasthan***, reported in (***AIR 1952 SC 54***) were:

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge....”

52. Crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court,

therefore, shoulders a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the victim, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the victim inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the victim must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation. This position was highlighted in ***State of Punjab v. Gurmeet Singh***, reported in **(1996) 2 SCC 384**.

53. A victim of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the

evidence of the victim. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the victim it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the victim must necessarily depend on the facts and circumstances of each case. But, if a victim is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the victim does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

54. The Hon'ble Supreme Court in the matter of ***Ranjit Hazarika v. State of Assam***, reported in ***AIR 1998 SC 635*** has held that the evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime, but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice.

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

"In our considered opinion, the 'sterling witness' should

be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without

any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

56. Applying the aforesaid principles to the facts of the present case, we find that the testimony of the victim (PW-1) inspires confidence. Her evidence regarding the occurrence, the identity of the appellant, the manner in which the occurrence took place, the use of the gamchha and the threat extended by the appellant is substantially consistent. Her immediate conduct after the occurrence, the fact that she was found crying, her disclosure to her father and the medical finding of redness around the vaginal opening lend assurance to her version.

57. The testimony of father of the victim (PW-2) is also significant. He claims to have reached the place of occurrence and seen the appellant lying on top of the victim, with a gamchha stuffed into her mouth. The subsequent disclosure made by the victim to him is consistent with the material particulars narrated by her before the Court. Nothing material has been elicited in his cross-examination so as to render his testimony wholly unreliable.

58. The absence of external injuries on the body of the victim does not, in the facts of the present case, furnish a sufficient ground to discard her testimony. The medical evidence records redness around the vaginal

opening and the examining doctor opined that an attempt at penile penetration had been made. The absence of other external injuries, therefore, does not contradict the ocular account of the victim.

59. We are also conscious of the fact that there are certain variations in the testimony of the victim and PW-2 regarding the sequence and duration of events. However, such variations do not affect the substratum of the prosecution case. The Court is required to distinguish between material contradictions which go to the root of the prosecution case and normal variations which may occur in the narration of an incident, particularly when the witness is a child and the evidence is recorded after passage of time.

60. The defence has suggested that the appellant has been falsely implicated on account of a family dispute and previous enmity. However, no material has been brought on record to establish such a motive of false implication. The mere suggestion made in cross-examination, without any supporting evidence, cannot by itself create a reasonable doubt in an otherwise consistent prosecution case.

61. The appellant has also not led any evidence in defence. Though the absence of defence evidence by itself cannot be used to fill any lacuna in the prosecution case, in the present case the prosecution evidence, independently considered, is sufficient to establish the material allegations against the appellant.

62. Upon a comprehensive re-appreciation of the evidence available on record, we are of the considered opinion that the prosecution has

succeeded in establishing the involvement of the appellant in the occurrence beyond reasonable doubt. The testimony of the victim is cogent and trustworthy on the core aspects of the occurrence and receives assurance from the testimony of her father and the medical evidence.

63. We shall now consider the applicability of Section 42 of the POCSO Act and the manner in which the learned trial Court has dealt with the overlapping offences under the Indian Penal Code and the POCSO Act.

64. In the present case, the acts alleged against the appellant constitute offences punishable under the relevant provisions of the IPC as well as under the POCSO Act. The learned trial Court, upon finding the appellant guilty, has considered the statutory mandate contained in Section 42 of the POCSO Act.

65. Section 42 of the POCSO Act deals with cases where an act or omission constitutes an offence punishable under the POCSO Act as well as under any other law for the time being in force. The provision contemplates that, in such a situation, the offender shall be liable to punishment under the POCSO Act or under such other law as provides for punishment which is greater in degree.

66. In the present case, the offences under the IPC and the POCSO Act arise out of the same occurrence and substantially overlap in their factual foundation. The learned trial Court, having regard to Section 42 of the POCSO Act, has imposed the punishment under the provision carrying the more severe punishment. Upon examination of the statutory scheme and the findings recorded hereinabove, we find no illegality in the approach

adopted by the learned trial Court warranting interference in appeal.

67. Learned counsel for the appellant has, in the alternative, submitted that, even if the conviction is maintained, the sentence imposed upon the appellant is unduly harsh and disproportionate. It has been prayed that the sentence of imprisonment for life imposed upon the appellant may be reduced to a lesser sentence having regard to the facts and circumstances of the case.

68. *Per contra*, learned counsel appearing for the State has opposed the prayer for reduction of sentence and submitted that the offence was committed against a child and that the learned trial Court, after duly considering the nature and gravity of the offence and the statutory provisions applicable thereto, has imposed the appropriate sentence. It is, therefore, submitted that no case for interference with the sentence is made out and the appeal deserves to be dismissed.

69. We have considered the rival submissions on the question of sentence. The offence in the present case is of a grave nature and has been committed against a child. The manner in which the occurrence was committed, including the use of force, the gagging of the victim with a gamchha and the threat extended to her, are circumstances which cannot be ignored while considering the question of sentence.

70. Having regard to the nature and gravity of the offence, the age of the victim, the manner in which the occurrence was committed and the overall circumstances emerging from the evidence on record, we are not persuaded to take a lenient view in the matter. The sentence imposed by

the learned trial Court cannot be said to be so disproportionate or excessive as to warrant interference by this Court in appellate jurisdiction.

71. We, therefore, find no merit in the alternative prayer made on behalf of the appellant for reduction of the sentence.

72. In view of the foregoing discussion and upon re-appreciation of the entire evidence available on record, we are of the considered opinion that the prosecution has established the guilt of the appellant beyond reasonable doubt. The learned trial Court has duly appreciated the oral, documentary and medical evidence available on record and has committed no error of law or fact in recording the finding of conviction against the appellant.

73. The finding of conviction is neither perverse nor based on misappreciation of evidence. The appellant has failed to demonstrate any material infirmity in the appreciation of evidence by the learned trial Court warranting interference by this Court.

74. Likewise, in view of the applicability of Section 42 of the POCSO Act and the nature and gravity of the offence, we find no ground to interfere with the sentence imposed by the learned trial Court.

75. Consequently, the present appeal, being devoid of merit, is **dismissed**. The judgment of conviction and order of sentence passed by the learned trial Court are hereby affirmed.

76. It is stated at the Bar that the appellant is presently in jail. He shall serve out the sentence as awarded by the learned trial Court.

77. The Registry is directed to transmit the original record to the concerned trial Court for necessary information and compliance. The Registry shall also send a certified copy of this judgment to the Superintendent of the Jail concerned, where the appellant is undergoing sentence, for service upon the appellant, informing him that he is at liberty to challenge the present judgment before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

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

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