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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1513 of 2022

Sanjay Singh S/o. Ram Singh Aged About 22 Years R/o Tiwragudi
Chhaperpara, Police Station Ramanujnagar,, District : Surajpur, Chhattisgarh
... Appellant (s)

versus

State Of Chhattisgarh Through Station House Officer, Police Station
Ramanujnagar,, District : Surajpur, Chhattisgarh
... Respondent(s)

(cause title taken from CIS)

For Appellant (s)	:	Ms. Nirupama Bajpai, Advocate through legal aid
For State	:	Mr. Ashish Shukla, Addl. Advocate General

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Ravindra Kumar Agrawal, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

13.08.2026

1. Heard Ms. Nirupama Bajpai, learned counsel for the appellant through legal aid. Also heard Mr. Ashish Shukla, Addl. Advocate General for the Respondent/ State.
2. The present criminal appeal has been filed by the appellant under Section 374(2) of Code of Criminal Procedure against the impugned

judgment of conviction and sentence dated 10.08.2022 passed by learned Additional Sessions Judge, FTSC, Surajpur, Dist- Surajpur (C.G.) in Special Sessions Case No.50/2019 whereby the appellant has been convicted and sentenced in the following manner:-

S.No	Conviction	Sentence
1	Under Section 376 (3) of IPC	R.I. for 20 years and fine of Rs. 200/- in default of payment of fine additional R.I. for 06 months.
2.	Under Section 4(2) of Protection of Children from Sexual Offences Act, 2012.	R.I. for 20 years and fine of Rs. 200/-, in default of payment of fine further R.I. for 06 month. (All the sentences shall run concurrently)

3. The case of the prosecution is that on 11.09.2019, the victim lodged a written report (Ex.P/1) at Police Station-Ramanujnagar stating that on 10.09.2019, at about 10:00 a.m., when she was going to the forest to attend the call of nature, the appellant Sanjay Singh came from behind, caught hold of her hand and took her towards the culvert, where he committed rape upon her and, when she raised an alarm, threatened to kill her. At that time, her uncle and others reached the spot, whereupon the appellant left the victim and fled from the place of occurrence. On the basis of the said report, FIR (Ex.P/2) was registered at Police Station-Ramanujnagar as Crime No. 138/2019, initially for offences punishable under Section 376 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012, (in short 'POCSO Act'). The victim was medically examined by PW/5 Dr. Seema Gupta, who submitted her medical examination report (Ex.P/9). Her hymen was found to be old torn and the doctor opined that there were

no signs of recent sexual intercourse. Two vaginal slides were prepared and handed over for forensic examination. During investigation, the Investigating Officer seized the clothes of the victim and the appellant vide seizure memos (Ex.P/4 and Ex.P/7), respectively, and also prepared the spot map (Ex.P/3). The vaginal slides and seized articles were forwarded to the Regional Forensic Science Laboratory, Ambikapur, and the FSL report (Ex.P/26) was received, according to which semen stains and human spermatozoa were detected on the victim's underwear, vaginal slide and the underwear of the appellant. During investigation, the Investigating Officer also collected the school records relating to the victim's date of birth, including the attested copies of the Dakhil-Kharij register and declaration register, as well as the certificate issued by the Headmaster. According to the said school records, the victim's date of birth was 20.02.2004, and accordingly, on the date of the incident, i.e. 10.09.2019, she was aged about 15 years, 6 months and 21 days, and was below 16 years of age. Statement of the victim under Section 164 of Cr.P.C. and other witnesses under Section 161 of Cr.P.C. have been recorded and after completion of usual investigation, charge-sheet was filed before the learned trial Court.

4. The learned trial Court framed charges against the appellant for the offences punishable under Sections 376(3) and 506-B of the Indian Penal Code and Section 4(2) POCSO Act. The charges were read over and explained to the appellant, who denied the allegations, pleaded not guilty, and claimed to be tried.
5. In order to prove the charges against the appellant, the prosecution has examined as many as 10 witnesses. The statement of the

appellant under Section 313 of the Code of Criminal Procedure was also recorded, wherein he denied the circumstances appearing against him, pleaded innocence and stated that he had been falsely implicated in the case. The appellant expressed his intention to adduce defence evidence; however, he did not examine any witness in his defence.

6. After appreciation of the oral as well as documentary evidence adduced by the prosecution, the learned trial Court found the appellant guilty of the offences punishable under Section 376(3) of the Indian Penal Code and Section 4(2) of the POCSO Act, while acquitting him of the charge under Section 506-B of IPC. Accordingly, the appellant has been convicted and sentenced as has been mentioned in the earlier part of this judgment, hence this appeal.
7. Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt and that there are material omissions, contradictions and inconsistencies in the evidence of the prosecution witnesses. It is further submitted that the prosecution has failed to establish by legally admissible and reliable evidence that the victim was below 16 years of age on the date of the incident. The school records relied upon by the prosecution do not satisfactorily establish the date of birth of the victim, particularly when PW-8, the Headmaster, admitted that the entry regarding the date of birth was not made by him and that he could not state the basis on which such entry was recorded, while no birth certificate or other document was produced to establish the source of the said entry. Learned counsel would further submit that the victim herself did not state her exact date of birth and her father (PW-4) also admitted that no birth certificate had been prepared and no document relating to her

date of birth had been produced at the time of her admission in the school. It is further argued that the testimony of the victim regarding the alleged sexual assault requires careful scrutiny in view of the circumstances emerging in her cross-examination and the fact that the material witnesses have not fully supported the prosecution case. The medical evidence also does not corroborate the allegation of recent forcible sexual intercourse, as no external or internal injuries were found on the person of the victim and the doctor opined that there were no signs of immediate sexual intercourse. Though the FSL report records the presence of semen stains and human spermatozoa on certain articles, the same by itself does not establish that the alleged sexual act was forcible or was committed in the manner alleged by the prosecution. Learned counsel would therefore submit that the prosecution has failed to establish the essential ingredients of the offences beyond reasonable doubt and, consequently, the appellant is entitled to the benefit of doubt and deserves to be acquitted of the offences under Section 376(3) of the IPC and Section 4(2) of the POCSO Act.

8. On the other hand, learned State counsel opposes the arguments advanced by the learned counsel for the appellant and submits that the prosecution has successfully proved its case beyond reasonable doubt by leading cogent and reliable oral as well as documentary evidence. It is submitted that the prosecution has duly established that on the date of the incident the victim was a minor below 16 years of age on the basis of the *Dakhil-Kharaj* Register (Ex. P-12C) and Declaration Register (Ex. P-13C) reflecting her date of birth as 20.02.2004, which has been duly proved by the Headmaster (PW-8) and validated under

Section 94 of the Juvenile Justice Act. It is further submitted that the testimony of the victim (PW-1) is trustworthy and inspires confidence, as she unequivocally affirmed before the learned Trial Court that the appellant forcibly dragged her near a culvert while she was going to the forest and committed sexual assault upon her, and her version is duly corroborated by the statements of her parents (PW-4 & PW-6), her brother (PW-2), her uncle (PW-3), as well as the FSL Report (Ex. P-26) confirming the presence of human spermatozoa and semen stains on the victim's undergarments, vaginal slides, and the appellant's undergarments. Under the statutory mandates of Sections 29 and 30 of the POCSO Act, a legal presumption exists against the appellant which he failed to rebut. Since the victim was a minor, any question of consent or prior acquaintance is wholly immaterial in the eyes of law. Therefore, the learned Trial Court has rightly appreciated the entire evidence on record and recorded the conviction of the appellant under Section 376(3) of the IPC and Section 4(2) of the POCSO Act, and the impugned judgment of conviction and order of sentence dated 10.08.2022 warrants no interference by this Court.

9. We have heard learned counsel for the parties and perused the record of the learned trial Court.
10. The first and the foremost question arises for consideration would be as to age of the victim whether she was minor and less than 18 years of age on the date of incident or not.
11. The prosecution has mainly relied upon the school records, including the certified copy of the Dakhil-Kharij register (Ex.P/12C), declaration register (Ex.P/13C) and the certificate issued by the Headmaster (Ex.P/16), to establish the age of the victim, which were sought to be

proved through PW-8, the Headmaster of Primary School, Tiwargudi Chhaperpara. PW-8 deposed that the relevant school records containing the victim's date of birth were produced before the Investigating Officer and seized vide seizure memo (Ex.P/11). According to the said school records, the date of birth of the victim was recorded as 20.02.2004. However, in his cross-examination, PW-8 admitted that the entry relating to the victim's date of birth in the admission register (Ex.P/12) had not been made by him and, therefore, he could not state the basis on which the said date of birth had been entered in the register. He further admitted that the date of birth was not entered by him personally. Thus, although the prosecution has relied upon the school records to establish the age of the victim, the evidence on record indicates that the author and source of the original entry recording the date of birth were not established and no independent birth certificate or primary document was produced to substantiate the basis of the date of birth recorded therein.

12. The Hon'ble Supreme Court has considered the admissibility and evidentiary value of the school register with respect to the age of the victim. In paragraphs 40,42,43,44 and 48 of its judgment in **Alamelu and Another Vs. State, represented by Inspector of Police, 2011(2) SCC 385**, the Hon'ble Supreme Court has observed as under:

"40. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the

admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.

42. Considering the manner in which the facts recorded in a document may be proved, this Court in the case of *Birad Mal Singhvi Vs. Anand Purohit*¹, observed as follows:-

"The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined....Merely because the documents Exs. 8, 9, 10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents 1988 (Supp) SCC 604 have no probative value and the dates of birth as mentioned therein could not be accepted."

43. The same proposition of law is reiterated by this Court in the case of *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal*², where this Court observed as follows:-

"The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due

proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue".

44. In our opinion, the aforesaid burden of proof has not been discharged by the prosecution. The father says nothing about the transfer certificate in his evidence. The Headmaster has not been examined at all. Therefore, the entry in the transfer certificate can not be relied upon to definitely fix the age of the girl.

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

"The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a (2006) 5 SCC 584 party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the victim although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the

accused may unjustly be convicted."

13. In case of **Rishipal Singh Solanki Vs. State of Uttar Pradesh & Others, 2022 (8) SCC 602**, while considering various judgments, the Hon'ble Supreme Court has observed in para 33 as under:

"33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.2.2. If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

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33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, declaration is made on the basis of

evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7 This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

33.11. Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015."

14. In case of **P. Yuvaprakash Vs. State represented by Inspector of Police, 2023 (SCC Online) SC 846**, Hon'ble Supreme Court has held in para 14 to 17 as under :

"14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. In a recent decision, in *Rishipal Singh Solanki vs.*

State of Uttar Pradesh & Ors. this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in pari materia) with Section 94 of the JJ Act, and held as follows:

"20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (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. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year."

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94 (2) of the JJ Act, this court held in *Sanjeev Kumar Gupta vs. The State of Uttar Pradesh & Ors* that:

"Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2) (a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)

(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a) (i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

17. In *Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal*, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference."

15. PW/1, the victim has stated that she is presently less than 18 years of age. She did not know her date of birth. PW/4, who is the father of the victim, has stated in his evidence that the Police has seized the Primary School Certificate of the victim, in which the date of birth of the victim is mentioned as 20.02.2004. In cross-examination, he admitted that he is presently aged about 38-39 years and he has got married at the time when he was aged about 18-19 years. The victim is his elder daughter. He admitted that after 1-1 and half years of his marriage, the victim born. He disclosed the fact that the victim has not attained the age of 20 years is based on her Adhar-Card. He further admitted that he has not got prepared the birth certificate of the victim. He had taken her for her admission in the school, but has not produced any document at the time of her admission. He also stated that he did not know, the date of birth of his daughter, subsequently, he stated that it is 20.02.2008 and then 20.02.2004.

- 16.** PW-6, who is the mother of the victim, stated that at the time of incident, the victim was aged about 15 years. She also has not disclosed the date of birth of the victim. In cross-examination, she admitted that she has got married at the age of 16 years and at present the age of her husband is 38-39 years. After 1–1 and half years of her marriage, the victim was born.
- 17.** There is no other evidence produced by the prosecution to prove the age of the victim. Despite referring for her ossification test report, the victim was not subjected for age determination through ossification test and neither her birth certificate nor any other evidence produced by the prosecution. From consideration of the evidence of PW/1 (victim), PW/4 (father of the victim) and PW/6 (mother of the victim), it clearly transpires that the evidence produced by the prosecution is shaky and are not sufficient to determine the age of the victim that she was minor and less than 18 years of age at the time incident. Her school record has also not been proved in accordance with law and therefore, the finding recorded by the learned trial Court appears to be perverse.
- 18.** So far as the offence of rape is concerned, we have again examined the evidence.
- 19.** The victim (PW-1) stated in her evidence that on the date of the incident, at about 10 AM, when she was going to answer the call of nature, the appellant came from back side and dragged her towards culvert. When she tried to shout, he threatened her and committed sexual intercourse with her. At the same time, her uncle and her brother came there. The mobile phone of her uncle was missing and he came there in its search. After seeing the act of the appellant, when he chest him, the appellant fled away. She informed the incident to her

mother and then lodged the report on the same date. In cross-examination, she admitted that her uncle was searching his mobile phone and in that search, he came to the appellant. She was talking with the appellant near culvert and at that time, her uncle saw them together, by which her uncle become annoying and chased the appellant but the appellant fled away. She further admitted that number of villagers were present at culvert and many of them had gone to answer the call of nature. She further admitted that due to talking with the appellant, her uncle scolded her and when they came back to their house, he informed her parents and then her parents also scolded her. She further admitted that her uncle and her father insisted her to lodge the report of sexual assault by the appellant and instructed her to depose about the offence of rape in the court.

- 20.** From the evidence of the victim, it transpires that when the appellant dragged her towards culvert, she has not raised any alarm though she stated that she was about to raise the alarm but the appellant threatened her. In cross-examination, she admitted that number of persons were present near culvert and many of them reached there after calling of nature. It appears that it was a busy place where number of villagers there at the time of alleged incident. Even the victim has not stated anything that when the appellant laid her down and committing sexual intercourse with her, she tried to protest or resisted the act of the appellant and stated that her uncle saw them in compromising position. It is not the case of the victim that at the time of making physical relation by the appellant with her, she tried to give her nail scratch mark or teeth bite on the body of the appellant. The entire

act and conduct of the victim demonstrate that she was a consenting party with the appellant in making physical relation with him.

- 21.** PW/3, who is the uncle of the victim, who reached on the spot at the time of alleged commission of offence, stated in his evidence that on the date of incident, he lost his mobile phone and was in search of it. When he asked from his children, they informed that it is the appellant who probably having his mobile phone. When he was in search of the appellant, he heard the noise of crying of a girl near culvert. When he saw there, he saw that the appellant was half naked and the victim was crying. He called the appellant to him and asked about mobile phone. At the same time, the mother of the victim also came there and then the appellant fled away from the place. They asked from the victim about the incident, but she did not disclose anything. This witness have declared hostile and has not supported the actual offence of rape which he allegedly seen. In cross-examination, he admitted that there was a family function in the house of the victim and number of relatives gathered there. In cross-examination, he admitted that when he reached on the spot, he saw that the victim was chatting with the appellant and he scolded her. After scolding the appellant, he fled away. He further admitted that the victim has not disclosed anything that she was subjected to rape by the appellant. From the evidence of this witness, it transpires that when he reached on the spot, he heard the noise of crying of a girl and saw that the appellant was half naked and the victim was crying. However, this is not the evidence of the victim that when her uncle came there, the appellant was half naked and she was crying. Further conduct of this witness against normal human behavior when he saw the victim crying and the appellant was

half naked, instead of asking about the incident, he asked the appellant about his mobile phone. He being the uncle of the victim and allegedly reached on the spot when the appellant committed the offence, he should react promptly to get them separated and immediately lodged the report, but he stated that the victim did not disclose anything about rape by him.

22. PW/2, who is the brother of the victim, too have stated that the mobile phone of his uncle was missing and when they were in search of his mobile phone, they came to know that his mobile phone was with the appellant and when they were in search of the appellant, they found him near culvert. When they reached there, they found that the appellant was with the victim, the victim was crying and then the appellant fled away. When they asked about her crying, she informed that the appellant dragged her there. Except this, she did not disclose anything. He also declared hostile and has not supported the prosecution's case. In cross-examination admitted that at the time when they reached near culvert, the appellant was chatting with the victim and after seeing them together, his uncle has got annoyed and scolded them and then the appellant fled away. Likewise (PW/9) also stated that when they were in search of the mobile phone of the uncle of PW/2, they found the appellant with the victim near culvert. Except this, he did not know anything.

23. PW/4, the father of the victim and PW/6, mother of the victim has deposed on the basis of the information given by either the victim or her uncle. PW/4, has stated that on the date of incident, there was a festival celebrating in his house and when his daughter had gone to answer the call of nature, the appellant dragged her towards culvert

and committed rape upon her. Then he lodged the report. In cross-examination, he admitted that there was a busy traffic near the culvert and many persons are roaming there. It was adjusent to the village. He admitted that the report (Ex-P/1) has not been lodged by the victim. Since, he deposed on the basis of information given by the victim, and the victim herself has not been duly supported the prosecution's case and she was not found trustworthy, the evidence of this witness does not have much significance. Likewise, the evidence of (PW/6) mother of the victim is also to the effect that the victim informed her about the incident that the appellant dragged her towards culvert and committed rape upon her, thereafter, they lodged the report. The mother has also been declared hostile and then she stated about the information given by the victim. In her cross-examination, she too have admitted that number of persons visited near culvert and on the date of incident, the mobile phone of PW/3 was went missing in which they were in search and in that process they had gone towards culvert and raised a quarrel with the appellant. In cross-examination, her evidence has shaken by the defence about the location of culvert as well as the process of search of mobile phone of PW/3. Though, she denied the suggestion that the victim did not disclose anything to her but in view of the evidence of the victim herself, the evidence of her mother also does not have much significance in the case.

24.In the matter of *Dola @ Dolagobinda Pradhan Vs. State of Odisha*, reported in **(2018) 18 SCC 695**, the Hon'ble Supreme Court has held in Para 9 :-

9. However, as is also evident from the observations above, such reliance may be placed only if the testimony of the victim appears to be worthy of credence. In this regard, it is also relevant to note the following observations of this Court in *Raju v. State of M.P.* 4, which read thus: (SCC p. 141, paras 10-11)

"10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a victim should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

Having due regard in our mind to the abovementioned settled position in law, we have assessed the entire material on record meticulously.

25. PW-5, Dr. Seema Gupta, who medically examined the victim, has not found any external injury on the body of the victim and she proved her medical examination report (Ex.P/9). Though, in the FSL report (Ex-P/26), semen and sperms were found on the vaginal slides of the

victim, as has been discussed earlier, the victim was consenting party in making physical relation with the appellant, the presence of semen and sperms also have not much significance.

26. The version of the victim commands great respect and acceptability, but if there are some circumstances which cast some doubt in the mind of the court on the veracity of the victim's evidence, then it will not be safe to rely on the said version of the victim. There is contradiction and omissions in the statement of the victim and her parents. The law is well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the victim. However, there is an important caveat which is that the testimony of the victim must inspire confidence. Even though the testimony of the victim is not required to be corroborated, if her statement is not believable, then the accused cannot be convicted. The prosecution has to bring home the charges levelled against the appellant beyond any reasonable doubt, which the prosecution has failed to do in the instant case.

27. From the consideration of the entire evidence produced by the prosecution, we are of the considered opinion that the prosecution has failed to prove beyond reasonable doubt that the appellant committed the alleged offence of penetrative sexual assault punishable under Section 376(3) of the IPC and Section 4(2) of the POCSO Act. The evidence relating to the age of the victim suffers from uncertainty, as the basis and source of the date of birth recorded in the school records have not been satisfactorily established. Further, the testimony of the victim, though alleging commission of rape, requires cautious scrutiny in view of the material circumstances emerging in her cross-examination, while the evidence of the material witnesses does not

furnish independent and reliable corroboration of the alleged forcible sexual assault. The medical evidence also does not disclose any external or internal injury or signs of immediate sexual intercourse, and the evidence of PW-3 and other witnesses does not fully support the prosecution version. Though the FSL report indicates the presence of semen stains and human spermatozoa, such evidence by itself does not establish the commission of forcible sexual assault in the manner alleged. Thus, the prosecution evidence, when considered cumulatively, does not inspire the degree of confidence necessary for sustaining the conviction. Accordingly, the conviction and sentence of the appellant recorded by the learned Trial Court cannot be sustained and the appellant is entitled to the benefit of reasonable doubt.

28. Accordingly, the appeal filed by the appellant is hereby **Allowed**. The impugned judgment of conviction and sentences dated 10.08.2022 passed against the appellant are **set aside**. The appellant is **acquitted** from all the charges.

29. The appellant is reported to be in jail since 12.09.2019. He shall be released forthwith if not required in any other case.

30. Keeping in view the provisions of Section 374 (2) of Code of Criminal Procedure, the appellant is directed to furnish a personal bond for a sum of Rs. 25,000/- in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

31. The trial court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Sagrika