

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. Appeal No. : 436 of 2023****Reserved on : 01.09.2026****Date of decision: 15.09.2026****Uploaded on : 15.09.2026**

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**Kripal Chauhan****...Appellant.****Versus**

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**State of Himachal Pradesh.****...Respondent.*****Coram******The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.******The Hon'ble Mr. Justice Bhupesh Sharma, Judge.******Whether approved for reporting?<sup>1</sup> Yes***

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***For the Appellant : Mr. Karan Kapoor, Advocate.******For the Respondent: Mr. J.S. Guleria, Deputy Advocate General.***

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**Bhupesh Sharma, Judge**

The appellant/ accused calls in question the legality of the conviction recorded in terms of sections 457 and 376 of Indian Penal Code, (in short 'IPC') passed by the learned Additional Sessions Judge, Fast Track Special Court (Rape/POCSO), Sirmaur at Nahan, H.P., in Sessions Trial No.32-ST/7 of 2019 (CIS CNR No.HPSI010028022019), titled, "State of H.P. vs. Kirpal Chauhan", whereby the appellant/ accused (hereinafter shall be referred to as

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<sup>1</sup> Whether the reporters of the local papers may be allowed to see the Judgment? Yes

the 'accused'), has been convicted for the offence punishable under sections 457 and 376 of IPC and has been sentenced to undergo rigorous imprisonment for a term of 5 years and to pay a fine of Rs.2,000/- for offence punishable under section 457 of IPC and also to undergo rigorous imprisonment for a term of 10 years and to pay a fine of Rs.5,000/- for the commission of offence punishable under section 376 of Indian Penal Code with default clauses. The benefit of set off under section 428 of the Code of Criminal Procedure has been given to the accused.

2. The accused was sent to face trial for commission of offence under sections 457, 376 and 511 of IPC and section 8 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act, 2012'), by the Station House Officer, Police Station Paonta Sahib, District Sirmaur, H.P. in case FIR No.274 of 2018 dated 29.09.2018.

3. The accused was charged and prosecuted for the commission of offences under sections 457 and 376 IPC and section 4 of POCSO Act, 2012 and was convicted by the learned trial Court vide impugned judgment of conviction and order of sentence dated 09.03.2023, passed in Sessions Trial No.32-ST/7 of 2019 titled "State of H.P. Vs. Kirpal Chauhan".

4. The case of the prosecution, as set out against the accused person, in brief, is as under:-

4(a) On intervening night of 20/21st September, 2018, at about 11:30 P.M., at village Khodowal, Tehsil Paonta Sahib, District Sirmaur, H.P., in the labour quarters of Snowchem Chips Factory, the accused entered in the residential premises of the Complainant 'S' and committed penetrated sexual offence/rape upon the Victim Child/ Prosecutrix 'N', minor 'aged 12 years'. The accused after committing the offence fled away from the spot.

4(b). On 29.09.2018, the Complainant 'S' being mother of the Victim Child/ Prosecutrix 'N' filed a complaint against the accused for registration of the case under sections 457, 376 of I.P.C. and under the relevant provisions of POCSO Act, 2012. On the basis of the disclosure of the facts enumerated in the complaint, case FIR No.274 of 2018 dated 29.09.2018, under sections 457, 376 and 511 of I.P.C. and section 4 of POCSO Act, 2012 was registered at Police Station, Paonta Sahib, District Sirmaur against the accused.

5. Pursuant to the registration of case FIR No.274 of 2018 dated 29.09.2018, under sections 457, 376 and 511 of I.P.C. and section 4 of POCSO Act, 2012, the investigation was entrusted to S.I. Mehar Chand. The Victim Child/ Prosecutrix 'N' was

subjected to medical examination on 29.09.2019 at Civil Hospital, Paonta Sahib. Her clothes and other samples were preserved. She was also referred for dental opinion and Psychological evaluation before Child Psychologist, as she was noticed to be mentally retarded by Dr. Richa Upadhyay, while conducting her initial medical examination. Statement of the Victim Child/ Prosecutrix 'N' under section 164 of Code of Criminal Procedure was recorded on 01.10.2018 by Additional Chief Judicial Magistrate, Paonta Sahib, District Sirmaur, H.P.

6. The police after conducting detailed investigation found the accused for being involved in commission of offence under sections 457, 376 and 511 of I.P.C. and section 8 of POCSO Act, 2012 and accordingly, he was challaned for commission of said offences and was put up for trial before learned Additional Sessions Judge, Fast Track Special Court (Rape/POCSO), Sirmaur at Nahan, H.P.

7. The prosecution in order to prove and substantiate the allegations and accusations against the accused examined 11 witnesses. The Victim Child/ Prosecutrix 'N' was examined as PW-6 and her mother, being complainant was examined as PW7. Apart from this, PW-1 Vikram Chauhan is the witness of fact. Medical Officer associated during the course of investigation i.e. Dr. Richa

Upadhyay was examined as PW4 and Dr. Ravinder (Dental Officer) as PW5. The Investigating Officer, S.I. Mehar Chand was examined as PW9. The other witnesses examined by the prosecution are formal in nature, who remained associated during the course of investigation.

8. Prosecution apart from examining the aforesaid witnesses, also heavily relied upon the documentary evidence, placed on record, which was collected against the accused during the course of investigation. The material documents, which are placed on record, are the application for registration of case under sections 457, 376 and 511 of I.P.C. and section 4 of POCSO Act, 2012 (Ext.PW7/A), Medico Legal Certificate of the Victim Child/ Prosecutrix 'N' (Ext.PW4/B), her statement recorded under section 164 of Code of Criminal Procedure (Ext.PW6/A), psychological opinion/assessment of the Victim Child/ Prosecutrix 'N' (Ext.PW9/C), State Forensic Science Laboratory report No.3297 SFSL Bio. (273)/18 dated 30.10.2018 (Ext.PW9/A) and copy of FIR No.274 of 2018 dated 29.09.2018 of Police Station Paonta Sahib (Ext.PW8/A). Apart from this, there are other documents, which were prepared by the Investigating Officer during the course of investigation.

9. The substance of the prosecution case was put to the accused under section 313 of the Code of Criminal Procedure,

recorded by the learned trial Court on 03.03.2023. The accused has denied the prosecution case in its entirety by raising the defence of denial simplicitor and false implication at behest of the complainant and her husband due to money dispute.

10. Learned trial court after considering the material on record and hearing learned counsel for the parties, found the accused guilty for commission of offence under sections 457 and 376 of IPC and accordingly, he was convicted vide impugned judgment of conviction and order of sentence on 09.03.2023.

11. Feeling aggrieved and dissatisfied with the judgment of conviction and order of sentence dated 09.03.2023, passed by learned Additional Sessions Judge, Fast Track Special Court (Rape/POCSO), Sirmaur at Nahan, H.P. in Sessions Trial No.32-ST/7 of 2019 titled "State of H.P. Vs. Kirpal Chauhan", the accused filed the instant appeal before this Court on following various grounds:-

- that the learned trial Court has passed the judgment without appreciating the proper facts of the case and without taking into consideration the law with respect to the sterling witness.
- that there is serious contradiction in the statements of the prosecution witnesses, rather improvement in the statement of PW5, mother of the Prosecutrix and the learned trial Court

has overwhelmed the statement given by the Prosecutrix and passed the sentence solely upon the same.

- that the learned trial Court has materially erred in convicting the appellant, whereas, there is not even an iota of evidence against the accused/appellant.
- that the medical report does not support the prosecution version and the learned trial Court has not appreciated the fact that no semen was detected from the clothes of the Prosecutrix, which were gathered from the spot and allegedly worn by the Prosecutrix on the fateful night.
- that there is a delay in lodging the FIR in the said matter as the incident was allegedly happened on 21.09.2018 and the matter was reported on 29.09.2018.
- that the learned trial Court has not appreciated the fact that there is a money dispute between the parties.
- that no independent witness was examined by the prosecution to check the veracity of the allegations made by the complainant against the accused.
- that the medical evidence also shows that there was no sign of injuries on the body of the Prosecutrix including private part especially.
- that the complaint has been written by the scribe, but the scribe and the father of the Prosecutrix had not been examined by the prosecution during trial.
- that the Prosecutrix deposed before the learned trial Court that she had bolted the room from inside before sleeping at night but there was no evidence on record which shows that the bolt of the door was broken.

- that the conviction is based upon the sole testimony of the Prosecutrix and the medical evidence does not support the version of the prosecution.

12. Therefore, it is prayed that the present appeal be allowed and the impugned judgment of conviction and order of sentence dated 09.03.2023 be set aside and the accused/appellant be acquitted for the offences for which he has been prosecuted and convicted by the learned trial Court.

13. We have heard learned counsel for the appellant, learned Deputy Advocate General for the respondent-State and have also carefully gone through the records.

14. The prosecution in order to prove the allegations and accusations against the accused, has heavily relied upon the statement of the Victim Child/ Prosecutrix 'N', examined as PW6 and her mother / complainant 'S', examined as PW7. Apart from this, there is an application dated 29.09.2018 Ext.PW8/B, which was filed by the complainant for registration of the case under relevant provisions of law against the accused before the police.

15. Learned trial Court while recording the findings held that the prosecution has failed to prove on record that the victim was under 18 years of age at the time of alleged occurrence, therefore, she was not held to be a 'Child', as defined under section 2 (1)(d) of

the POCSO Act, 2012 and accordingly, provisions of POCSO Act, 2012 were not found to be applicable.

16. Before adverting to the evidence of the Victim Child/ Prosecutrix (PW6) and her mother / complainant (PW7), it may be fruitful to refer to the relevant case laws, which are attracted to the facts and circumstances of the present case and are reproduced as under:-

17. The Hon'ble Supreme Court in **Mohd. Imran Khan vs. State (Govt. of NCT of Delhi), (2011)10 Supreme Court Cases 192**, has held as under:-

*“15. It is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust. The Prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury. Therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Indian Evidence Act, 1872 (hereinafter called 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 of Evidence Act 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. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the 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 prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. If the totality of the circumstances appearing on the record of the case disclose that the Prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. The court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. Rape is not merely a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the Prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence. (Vide: State of Maharashtra v. Chandraprakash Kewalchand Jain, AIR 1990 SC 658; State of U.P. v. Pappu @Yunus & Anr. AIR 2005 SC 1248; and Vijay @ Chinee v. State of M.P., (2010) 8 SCC 191).*

*Thus, the law that emerges on the issue is to the effect that statement of Prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the Prosecutrix.*

18. In **State of Maharashtra Vs. Chandraprakash Kewalchand Jain AIR 1990 SC 658**, the Hon'ble Supreme Court held that a woman, who is the victim of sexual assault, is not an

accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under :-

*"A prosecutrix 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 alive to and 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 prosecutrix, there is no rule of law or practice incorporated in the 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 prosecutrix 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 prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the*

*prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."*

19. In **State of U.P. Vs. Pappu @Yunus & Anr. AIR 2005 SC 1248**, the Hon'ble Supreme Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. The Hon'ble Supreme Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under :-

*"It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the Prosecutrix on its face value, it may search for evidence, direct or circumstantial, which*

*would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do."*

20. In **State of Punjab Vs. Gurmit Singh & Ors. AIR 1996 SC 1393**, the Hon'ble Supreme Court held that in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Hon'ble Supreme Court observed as under :-

*"The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that*

*become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.....The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.....Seeking corroboration of her statement before replying upon the same as a rule, in such cases, amounts to adding insult to injury.....Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.*

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*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 prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix 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 prosecutrix 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 molestations."*

21. In **State of Orissa Vs. Thakara Besra & Anr. AIR 2002 SC 1963**, the Hon'ble Supreme Court held that rape is not mere a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

22. In **State of Himachal Pradesh Vs. Raghubir Singh (1993) 2 SCC 622**, the Hon'ble Supreme Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by the Hon'ble Supreme Court in **Wahid Khan Vs. State of Madhya**

**Pradesh (2010) 2 SCC 9**, placing reliance on earlier judgment in **Rameshwar Vs. State of Rajasthan AIR 1952 SC 54.**

23. The Hon'ble Supreme Court in the case of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat [1983(3) SCC 217]** has laid down the elaborate guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the Court.

24. In **Ved Parkash versus State of Himachal Pradesh (2005(1) SLC 395)**, the Hon'ble Supreme Court while dealing with the question of value of the statement of the Prosecutrix, held as under:-

*"8. At may be pointed out at the very outset that by now it is well settled that conviction of a person accused of the commission of rape can be based on the sole testimony of the prosecutrix because she is not an accomplice but victim of the offence, hence, the injured person. Her evidence can also not be suspected for the reason that no self respecting woman would come forward to lower her dignity and self esteem by making false allegations of rape on her. Therefore, a conviction can be based on the statement of the prosecutrix when her statement is found cogent, reliable and confidence inspiring. In case for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look into other evidence which may lend assurance to her testimony.. In a case where the prosecutrix is adult and of full understanding the Court can base conviction on her evidence unless shown to be infirm or untrustworthy. In case the prosecutrix has no motive to falsely implicate the accused the Court should ordinarily have no hesitation in accepting her evidence."*

25. The Hon'ble Supreme Court in **Aman Kumar and another vs. State of Haryana, (2004)4 SCC 379** held as under:-

*“5. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would suffice.*

*7. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (See Joseph Lines IC & K 893). It is well-known in the medical world that the examination of smegma loses all importance after twenty four hours of the performance of the sexual intercourse. (See Dr. S.P. Kholi, Civil Surgeon, Ferozepur v. High Court of Punjab and Haryana thr. Registrar (1979) 1 SCC 212). In rape cases, if the gland of the male organ is covered by smegma, it negatives the possibility of recent complete penetration. If the accused is not circumcised, the existence of smegma round the corona gland is proof against penetration, since it is rubbed off during the act. The smegma accumulates if no bath is taken within twenty four hours. The rupture of hymen is by no means necessary to constitute the offence of rape. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact. The actus reus is complete with penetration. It is well settled that the prosecutrix cannot be considered as accomplice and, therefore, her testimony cannot be equated with that of an accomplice in an offence of rape. In examination of genital organs, state of hymen offers the most reliable clue. While examining the hymen, certain anatomical characteristics should be remembered before assigning any significance to the findings. The shape and the texture of the hymen is variable. This variation, sometimes permits penetration without injury. This is possible because of the peculiar shape of the orifice or increased elasticity. On the other hand, sometimes*

*the hymen may be more firm, less elastic and gets stretched and lacerated earlier. Thus a relatively less forceful penetration may not give rise to injuries ordinarily possible with a forceful attempt. The anatomical feature with regard to hymen which merits consideration is its anatomical situation. Next to hymen in positive importance, but more than that in frequency, are the injuries on labia majora. These, viz. Labia majora are the first to be encountered by the male organ. They are subjected to blunt forceful blows, depending on the vigour and force used by the accused and counteracted by the victim. Further, examination of the females for marks of injuries elsewhere on the body forms a very important piece of evidence. To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Section 376 IPC."*

26. The Hon'ble Supreme Court in **Tarkeshwar Sahu vs. State of Bihar (now Jharkhand, (2006)8 SCC 560**, held as under:-

*10. Under Section 375 IPC, six categories indicated above are the basic ingredients of the offence. In the facts and circumstances of this case, the prosecutrix was about 12 years of age, therefore, her consent was irrelevant. The appellant had forcibly taken her to his Gumti with the intention of committing sexual intercourse with her. The important ingredient of the offence under Section 375 punishable under Section 376 IPC is penetration which is altogether missing in the instant case. No offence under Section 376 IPC can be made out unless there was penetration to some extent. In absence of penetration to any extent would not bring the offence of the appellant within the four corners of Section 375 of the Indian Penal Code. Therefore, the basic ingredients for proving a charge of rape are the accomplishment of the act with force. The other important ingredient is penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the*

*private part of the victim completely, partially or slightly would be enough for the purpose of Sections 375 and 376 IPC. This Court had an occasion to deal with the basic ingredients of this offence in the case of State of U.P. v. Babul Nath. In this case, this Court dealt with the basic ingredients of the offence under Section 375 in the following words:- "8. It may here be noticed that Section 375 of the IPC defines rape and the Explanation to Section 375 reads as follows:*

*"Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."*

*From the Explanation reproduced above it is distinctly clear that ingredients which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To constitute the offence of rape neither Section 375 of IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains. But in the present case before us as noticed above there is more than enough evidence positively showing that there was sexual activity on the victim and she was subjected to sexual assault without which she would not have sustained injuries of the nature found on her private part by the doctor who examined her."*

27. The Hon'ble Supreme Court in **Narender Kumar vs. State (NCT of Delhi), (2012)7 SCC 171** held as under:-

*"29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape*

*case the victim and other witness have falsely implicated the accused. Prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide: Tukaram & Anr. v. The State of Maharashtra,, AIR 1979 SC 185; and Uday v. State of Karnataka, AIR 2003 SC 1639).*

*30 . Prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.”*

28. The Hon'ble Supreme Court in **Munna vs. State of Madhya Pradesh, (2014) 10 SCC 254**, has reiterated the principle that testimony of prosecutrix is almost at par with an immediate witness and can be acted upon without corroboration.
29. Reiterating its earlier view in **Mohd. Iqbal v. State of Jharkhand,(2013) 14 SCC, 481, Narender Kumar v. State (NCT of Delhi), (2012) 7SCC 171, the Hon'ble Supreme Court in Mukesh v. State of Chhattisgarh, (2014) 10 SC 327**, has held that

sole testimony of prosecutrix is sufficient to establish commission of rape, even in the absence of any corroborative evidence.

30. Reiterating the earlier view, the Hon'ble Supreme Court in **Sham Singh vs. State of Haryana (2018) 10 SCC 34, State (NCT of Delhi) vs. Pankaj Chaudhary (2019) 11SCC 575 and Ganesan vs. State (2020) 10 SCC 573** held that sole testimony of the prosecutrix is sufficient to establish commission of rape if 'duly corroborated'.

31. The testimony of the Victim Child/ Prosecutrix 'N' examined as PW6 is to be assessed keeping in view the law laid down by the Hon'ble Supreme Court in cases referred supra.

32. Needless to mention that the learned Trial Court apparently relied upon the testimony of the Victim Child/ Prosecutrix 'N' (PW-6), which was found to be duly corroborated by the testimony of her mother (PW-7) in proving the allegations and accusations against the accused.

33. Learned counsel for the appellant has strenuously argued that the evidence of Victim Child/ Prosecutrix 'N' cannot be relied upon in view of the document Ext.PW9/E, which is a psychological opinion and evaluation given by Child Psychiatric and her assessment, whereby, the Victim Child/ Prosecutrix 'N' was found with severe mental retardation (MR) and intellectual disability of 90%.

The aforesaid fact was further reaffirmed by the Assistant Professor, Department of Psychiatry, Dr. Y.S.P.G.M.C. & Hospital Nahan, District Sirmaur, H.P. Learned counsel for the appellant also pointed out that the learned trial Court while recording the statement of the Victim Child/ Prosecutrix 'N' (PW6) did not adhere to prescribed procedure and failed to record its satisfaction regarding the competence / capability of the Prosecutrix either to depose or make statement regarding the incident. He also pointed out contradictions and infirmities in the prosecution evidence rendering the same vulnerable.

34. In order to address the points raised by the learned counsel for the appellant/ accused, duly rebutted by the learned Deputy Advocate General, we have carefully gone through the entire evidence. Before embarking upon and appreciating the ocular evidence of the Victim Child/ Prosecutrix 'N' (PW-6), it may be pertinent to refer to the material on record to ascertain whether the Victim Child/ Prosecutrix 'N' (PW-6) is a competent witness in view of her medical reports i.e. MLC dated 29.09.2018 Ext.PW4/B, Psychiatric opinion and assessment dated 03.10.2018 Ext.PW9/E. Dr. Richa Upadhyay (PW-4) while conducting medical examination of the Victim Child/ Prosecutrix 'N', opined that she was not correctly responding to every verbal communications and accordingly, she was referred for Psychiatrist's opinion to Dr. Y.S.P.G.M.C. & Hospital

Nahan, District Sirmaur, H.P., where, apparently she was assessed by the Child Psychologist and also examined by the Assistant Professor, Department of Psychiatry. Although, these witnesses did not step into the witness box, nevertheless, the child psychologist's opinion and assessment report is on record as Ext.PW9/C and can be looked into and appreciated. The Prosecutrix on being examined was opined with intellectual disability of 90% and suffering from severe mental retardation (MR). It may be apt to reproduce the opinion rendered by the Assistant Professor, Department of Psychiatry, Dr. Y.S.P.G.M.C. & Hospital Nahan, District Sirmaur, H.P. , which reads as under:-

*“Patient assessed clinically and with formal I.Q. testing by clinical psychologist. Patient has severe intellectual disability on formal I.Q. testing. Clinically, patient was at times comprehending questions put to her in simple language and at other instances was not replying appropriately. Patient is incapable of giving valid statement in view of current examination. ”*

35. The aforesaid medical evidence clearly indicates that the Victim Child/ Prosecutrix 'N' was suffering from severe mental retardation with intellectual disability of 90% and was incapable of giving statement in view of the said medical condition. The factum that the Victim Child/ Prosecutrix 'N' was suffering from severe mental retardation can also be inferred after going through her statement recorded under section 164 of Cr.P.C. i.e. Ext.PW6/A,

which was recorded by the learned Additional Chief Judicial Magistrate, Paonta Sahib on 01.10.2018, wherein, there is a specific observation that the Prosecutrix is stated to be mentally as well as vocally challenged. Since she did not know the meaning of oath, her statement was recorded without oath in the presence of her mother, being her interpreter.

36. Surprisingly, the Victim Child/ Prosecutrix 'N' when stepped into the witness box as PW6 was examined on oath despite the fact that she was suffering from severe mental retardation and with intellectual disability of 90% and opined to be incapable of giving valid statement, by the Department of Psychiatry. There is nothing on record that the said mental condition of the Victim Child/ Prosecutrix 'N' (PW6) improved during the intervening years when she was medically examined by the Child Psychologist and when she was examined in the Court by the learned trial Court. Apart from this, there is no other observation of the learned trial Court regarding her mental state of health. Therefore, the oral evidence of the Prosecutrix (PW-6) is to be considered with suspicion considering her mental state of health, as reflected in medical evidence Ext.PW4/B (MLC) and Ext.PW9/C (Psychiatric assessment report).

37. Ext.PW7/A is the application for registration of case filed by the complainant (mother of the Prosecutrix) before the Police

putting on record material facts and sequence of events unfolding the incident dated 20.09.2018 at 11:30 P.M. The aforesaid document set into motion the criminal investigation leading to registration of case FIR No.274 of 2018 dated 29.09.2018 under sections 457, 376 and 511 of I.P.C. and section 4 of the POCSO Act, 2012 Ext.PW8/B. Therefore, the aforesaid document is to be considered minutely vis a vis oral evidence of the complainant, examined as PW7.

38. As per para No.5 of the application Ext.PW7/A, which reads as under:-

*“5. That the entire family in the intervening night of 20<sup>th</sup> & 21<sup>st</sup> September, 2018 was sleeping in their respective rooms. The children were sleeping in a separate room and the complainant and her husband were sleeping in a separate room.”*

39. In order to seek corroboration to the facts set out in para No.5 of the application Ext.PW7/A, we have carefully gone through the evidence of the Victim Child/ Prosecutrix (PW-6) and her mother/ complainant (PW-7). The facts contained and referred hereinabove are not duly corroborated since there are material contradictions in the oral evidence of these witnesses on the aforesaid aspects of the matter. The Prosecutrix ‘N’ in her evidence states that she was sleeping alone in the room, whereas, her

mother / complainant (PW-7) states that she was sleeping along with her sibling.

40. Also referring to para No.6 of the application Ext.PW7/A, which reads as under:-

*“That at about 11:30 P.M., the complainant heard cries of her daughter and thereafter, the complainant immediately went into the room of the children, where ‘N’ was weeping and whose salwar and shirt were opened and one Kirpal Chauhan was also lying in the charpai of the children of complainant, on asking by the complainant from her daughter, as to why she is weeping, then she told that she has been raped by Kirpal Chauhan. ”*

41. The facts contained hereinabove are also not wholly substantiated considering the evidence of the complainant/ mother of the Prosecutrix examined as PW-7. As per her evidence, on night, at about 11:30 P.M., she heard screams of her daughter and went to her room and in the room she saw that accused was committing sexual intercourse with her daughter. The aforesaid fact that the complainant saw accused committing the offence, is conspicuously missing from the facts enumerated in para No.6 of the application Ext.PW7/A. The initial version of the complainant stands remarkably improved by her while giving statement in the Court. Therefore, the aforesaid material contradiction cannot be brushed aside, which apparently renders the

evidence of the complainant (PW-7) vulnerable and unworthy of credence.

42. As per the application Ext.PW7/A and the facts contained in para No.7, it is evident that the complainant gave beatings to the accused and thereafter, he ran away and concealed himself in some unknown place. However, the aforesaid facts have been expressly contradicted by the complainant in her oral evidence. As per her version, she dragged the accused from the back and gave 2-3 blows of slap and called her husband. They confined the accused in a room and called her brother-in-law (Jeth), who reached in the day time on the next day. Her brother-in-law (Jeth) opened the door of the room, in which, the accused was confined and while they were talking, the accused ran away. Therefore, the fact that the accused was confined in the room after incident also does not find mention in the evidence of the Victim Child/ Prosecutrix 'N' since, as per her version, the accused ran away from the spot on the night of incident.

43. The facts set out in the application Ext.PW7/A, which forms the essence of allegations, are not wholly substantiated and corroborated by the ocular evidence, either by the Prosecutrix (PW-6) or by her mother/ complainant (PW-7).

44. The medical evidence i.e. MLC (Ext.PW4/B) and forensic evidence i.e. the State Forensic Science Laboratory report No.3297 SFSL Bio. (273)/18 dated 30.10.2018 (Ext.PW9/A) fail to corroborate the prosecution allegations against the accused. Dr. Richa Upadhyay (PW-4), Medical Officer, Civil Hospital Paonta Sahib, while medically examining the Prosecutrix 'N' on 29.09.2018, did not find any physical or sexual injury on the person of the prosecutrix. There were no external signs of injuries over the genital organs as per her observation. Admittedly, the samples of the Victim Child/ Prosecutrix 'N', preserved during her medical examination i.e. pubic hair, vaginal slides, cervical slides, which were sent for forensic examination to SFSL and the SFSL report No.3297 SFSL Bio. (273)/18 dated 30.10.2018 (Ext.PW9/A) is referred as under:

*“The exhibits/cuttings were subjected to biological analysis in the laboratory ‘Benzidine test’ was performed to detect the presence of blood. Acid phosphatase test, and microscopic examination were carried out to detect the presence of semen. On the basis of aforesaid examination, result was as under:-*

*(1) Blood and semen was not detected on exhibit-1a (underwear, ‘N’), exhibit-1b (vest, ‘N’), exhibit-2 (vaginal slides, ‘N’), exhibit-3 (cervical slides, ‘N’), and, exhibit-4 (pubic hair, ‘N’).”*

45. Having considered the aforesaid Forensic evidence, the factum of the sexual assault upon the prosecutrix cannot be

inferred. After carefully analyzing meticulously the oral and documentary evidence led by the prosecution, the allegations and accusations against the accused are not proved beyond reasonable doubt. The accused having been falsely implicated by the complainant cannot be ruled out since it is emerging on record that parties had some money dispute. Learned trial Court apparently, misread, mis-interpreted and misconstrued the oral and documentary evidence and completely erred in relying upon the evidence of the Prosecutrix (PW-6) and her mother/complainant (PW-7).

46. The medical evidence led by the prosecution was apparently overlooked, wherein, the Prosecutrix was opined to be incapable of giving valid statement in view of her severe mental retardation.

47. Therefore, the impugned judgment of conviction and order of sentence dated 09.03.2023, passed by the learned trial Court in Sessions Trial No.32-ST/7 of 2019 titled "State of H.P. Vs. Kirpal Chauhan", is not sustainable and is set aside. Hence, the appeal is allowed and the appellant/ accused is acquitted of all the charges. He be set free, if not required, in any other case.

48. The fine amount, if any, deposited by the appellant, be refunded to him, but after the expiry of limitation to file an

appeal/revision and in case of appeal/revision, the same be dealt with as per the orders of Hon'ble Supreme Court.

49. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023), the appellant is directed to furnish bail bonds in the sum of ₹25,000/- with one surety bond in the like amount to the satisfaction of learned Registrar Judicial within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the appellant on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court. A copy of this judgment along with the record of the learned trial Court be sent back forthwith. Pending applications, if any, also stand disposed of.

**(Vivek Singh Thakur)**  
**Judge**

**15<sup>th</sup> September, 2026**

(Sanjeev2)

**(Bhupesh Sharma)**  
**Judge**