

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. : 242 of 2020****Reserved on : 02.09.2026****Date of decision: 30.09.2026****Uploaded on : 30.09.2026**

State of H.P.**...Appellant.****Versus**

Desh Raj**...Respondent.*****Coram******The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.******The Hon'ble Mr. Justice Bhupesh Sharma, Judge.******Whether approved for reporting?¹ Yes.***

***For the Appellant : Mr. Yashwardhan Singh Chauhan,
Senior Additional Advocate
General.******For the Respondent: Mr. Hitesh Khajuria, Advocate,
vice Ms. Kiran Dhiman, Advocate.***

Bhupesh Sharma, Judge

This appeal has been filed by the State of Himachal Pradesh against the judgment of acquittal dated 24.10.2019, passed by the learned Special Judge, Kullu & Lahaul-Spiti, District at Kullu, H.P., in Sessions Trial Reg. No.61(3) of 2015, titled, 'State of H.P. vs. Desh Raj', whereby,

¹ Whether the reporters of the local papers may be allowed to see the Judgment? Yes

the respondent (hereinafter to be referred to as the 'accused'), has been acquitted of the charges under Sections 363, 376(2) (n) of Indian Penal Code (for short 'IPC') and under Section 5(1) read with Section 6 of The Protection of Children From Sexual Offences Act, 2012 (for short 'POCSO Act').

2. The accused was forwarded to face trial for the commission of offences punishable under Sections 363 and 376 of IPC and Section 4 of POCSO Act, by SHO Police Station Sadar, Kullu, District Kullu, H.P., in case FIR No.177 of 2015 dated 20.07.2015. The accused was charged for the commission of offences punishable under Sections 363, 376 (2) (n) of Indian Penal Code (for short 'IPC') and under Section 5(1) read with Section 6 of the 'POCSO Act') and was subsequently acquitted by learned trial Court vide impugned judgment dated 24.10.2019, in Sessions Trial No.61(3) of 2015, titled, 'State of Himachal Pradesh vs. Desh Raj'.

3. Briefly, the facts relevant for the disposal of this appeal, in short, are as under:-

3(a). On 28.06.2015, at about 03:00/04:00 P.M., at village 'T', District Kullu, H.P., the accused kidnapped the Victim Child/ Prosecutrix 'K', (name and identity withheld)

minor, aged 16½ years from the lawful guardianship of her parents and thereafter subjected her to repeated forcible sexual intercourse (penetrative sexual assault) at village 'S' and other places, without her consent and against her will.

3(b). The Victim Child/ Prosecutrix 'K', aged 16 ½ years resident of Village 'T', Tehsil Bhuntar, District Kullu, H.P. was a student of 10+1 at Government Senior Secondary School, 'C' in the year 2015. On 28.06.2015, she went missing from her home during the day time when her parents had gone to work. It is alleged that the accused kidnapped the minor Prosecutrix 'K' from the lawful guardianship of her parents and subjected her to forcible sexual intercourse (penetrative sexual assault) in a Khokha/ 'Tin-Shed', at Village 'S'. She was compelled, induced, enticed and allured by the accused to accompany him on the false promise of marriage. She was repeatedly subjected to forcible sexual intercourse (penetrative sexual assault) during the intervening period w.e.f. 28.06.2015 to 01.07.2015, by putting her under fear and threat. On 01.07.2015, the Victim Child/Prosecutrix 'K' was left by the accused at Dhalpur, (Kullu) where she joined her family. On 20.07.2015, the

complainant 'S', being father of the Victim Child/ Prosecutrix 'K' filed an application to the police narrating the facts, circumstances and incidents alleging the involvement of the accused, accordingly, case FIR No.177 of 2015 dated 20.07.2015 under Sections 363, 376 of IPC and Section 6 of POCSO Act, 2012 was registered against the accused at Police Station Sadar, Kullu, District Kullu, H.P.

3(c). Pursuant to registration of case FIR No.177 of 2015 dated 20.07.2015, under Sections 363, 376 of IPC and Section 6 of POCSO Act, 2012, the investigation commenced. The Victim Child/Prosecutrix 'K' was sent for medical examination at Regional Hospital, Kullu. The police also got her statement recorded under Section 164 Cr.P.C before learned Chief Judicial Magistrate, Lahaul & Spiti at Kullu on 29.07.2015. The Victim Child/ Prosecutrix 'K' while making statement before the Court alleged the involvement of the accused in the said incident and accordingly, he was arrested by the police on 02.09.2015.

3(d). During the course of investigation, the police recovered and took into possession Khind (mattress) from Khoka/ Tin-Shed and clothes of the Victim Child/

Prosecutrix 'K' on 22.07.2015 vide recovery and seizure memo's. The accused was also subjected to medical examination on 02.09.2015 at Regional Hospital, Kullu. The clothes of the Victim Child/ Prosecutrix 'K' and her samples preserved during her medical examination were sent to forensic examination and DNA profiling at State F.S.L. Junga and separate reports in this context were procured.

3(e). The police after conducting the detailed investigation found involvement of the accused in the incident, therefore, Final Report under Section 173(8) of the Code of Criminal Procedure was filed against the accused for the commission of the offences punishable under Sections 363, 376 of IPC and Section 4 of the POCSO Act, 2012 and accordingly he was sent for trial before the learned Special Judge (POCSO), Kullu, District Kullu, H.P.

4. On finding a prima facie case, the accused was charged and put up for trial for commission of offences punishable under Sections 363, 376(2)(n) of IPC and Section 5(1) read with Section 6 of the POCSO Act, 2012, vide order dated 22.02.2016. He pleaded not guilty and claimed to be tried.

5. The prosecution in order to substantiate and prove the allegations and accusations against the accused examined 23 witnesses including Victim Child /Prosecutrix 'K', her parents and brother.

6. The Victim Child/Prosecutrix 'K' was examined as PW4, her mother as PW5, her brother as PW8 and her father as PW9. Apart from the aforesaid witnesses, the prosecution examined Dr. Ramesh Chand as PW10, Dr. Saurabh Sood as PW11, Dr. Atal Sharma as PW12 and Dr. Dechen Wangmo as PW14. These witnesses remained associated during medical examination of the Victim Child/ Prosecutrix 'K' and accused during the course of investigation. Investigating Officers SI Naresh Chand and SI Rinchen Gialchhan were examined as PW22 and PW23 respectively. Other witnesses examined by the prosecution are formal in nature, who remained associated during police investigation at various stages.

7. Prosecution apart from examining the aforesaid witnesses, also heavily relied upon the documentary evidence i.e. the application for obtaining date of birth certificate of the Victim Child/Prosecutrix 'K' (Ext.PW1/A) moved to Secretary,

Gram Panchayat, Birth Certificate of Victim Child/ Prosecutrix 'K' (Ext.PW1/B), recovery of 'Khind' (Ext.P9) seized vide seizure memo Ext.PW4/A, recovery and seizure memo of shirt and salwar (Ext.PW4/B), statement of prosecutrix recorded under Section 164 Cr.P.C. before learned Chief Judicial Magistrate Lahaul and Spiti, Kullu (Ext.PW4/C), Complaint dated 20.07.2015 (Ext.PW9/A), Copy of FIR No.177/2015 dated 20.07.2015 under Sections 363, 376 IPC and Section 4 of POCSO Act, registered at Police Station Sadar, District Kullu (Ext.PW9/B), application for conducting medical examination of the accused (Ext.PW10/A), MLC of accused (Ext.PW10/B), application for conducting medical examination of the Victim Child/ Prosecutrix 'K' (Ext.PW14/A), MLC of Victim Child/ Prosecutrix 'K' (Ext.PW14/B), report of RFSL, Mandi (Ext.PX-1), DNA report (Ext.PX) and spot map (Ext.PW23/A).

8. 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 22.06.2019. The accused has denied the prosecution case in its entirety by raising the defence of denial simpliciter and

false implication at behest of the parents of the Victim Child/ Prosecutrix 'K'.

9. Learned trial Court after considering the materials on record and hearing learned counsel for the parties, acquitted the accused of the charged offences i.e. under Sections 363, 376(2)(n) of IPC and Section 5(1) read with Section 6 of the POCSO Act, 2012 vide impugned judgment dated 24.10.2019.

10. Feeling aggrieved and dissatisfied with the judgment of acquitted passed by learned trial Court vide impugned judgment dated 24.10.2019, in Sessions Trial No.61(3) of 2015, titled, 'State of Himachal Pradesh vs. Desh Raj', the appellant-State filed the instant appeal before this Court on following various grounds:-

- That the impugned judgment passed by the learned trial Court is wrong on facts as well as on law, hence, the same is liable to be set aside.
- That the impugned judgment is based on hypothetical reasoning, surmises and conjectures, hence, liable to be set aside.
- That the learned trial Court has appreciated the evidence on record in a slipshod and perfunctory manner and

has acquitted the accused on the flimsy grounds.

- That the learned trial Court has not only failed to view the prosecution evidence in its proper perspective but at the same time has set unrealistic standards to evaluate the direct and cogent prosecution evidence. The reasoning of the learned trial Court is manifestly unreasonable and unsustainable as there was warrant at all for the trial Court to discard the well reasoned and consistent testimony of the prosecution witnesses on material points.
- That the learned trial Court has discarded the testimony of prosecution witnesses for untenable reasons in the absence of any proof of enmity no reasons whatsoever have been assigned for discarding the version of official witnesses. The acquittal in this case is in disregard of material evidence on record and as such, the same is unreasonable, therefore, the impugned judgment is liable to be set aside.
- That the learned trial Court has not appreciated the statement of PW-4 prosecutrix who has specifically deposed in the Court that when she was studying in 10+1 in Government Senior Secondary School C” and was alone in her house and her parents had gone to pluck plums on daily wages at place Ratocha. At about 4:00 P.M. accused came to her house, enticed her and on her refusal the accused forcibly took her away from village Sharsh

to a Tin-shed (Khokha). She has further stated that in the night accused/convict committed sexual assault on her and in the morning, at about 4:00 A.M. ha went towards Fagu. The learned trial Court has not taken into consideration that the prosecutrix was minor on the date of alleged incident, as such the judgment of the learned Trial Court is contrary to the evidence available on record.

- That PW-5, mother of prosecutrix has also specifically stated that on the date of alleged incident she along with her husband had gone to work out side for plucking plums and her two children had gone to graze cow, when prosecutrix was not found in the house then inquired from the children who told that the accused Desh Raj has taken her away. The accused was duly identified by PW5 and she has categorically deposed before the Court that the prosecutrix had told her that the accused had sexually assaulted her in the shed (Khokha). She was medically examined. She has further deposed that the age of her daughter was 16 years at the time of commission of offence as her daughter was in 10+1 class at that time, The Ld, Trial Court has ignored the statements of these material witnesses and acquitted the accused person. Studying Hence, the judgment of learned Trial Court deserves to be set-aside. record and the same deserves to be set-aside.

- That the brother of the prosecutrix has also specifically stated that the accused had taken the prosecutrix with him and duly identified him in the Court.
- PW-9, the father of the prosecutrix has also deposed that his children deposed that the prosecutrix was kidnapped by the accused and was found at Kullu after four days. Ext.PW9/B was lodged by him, however, the learned trial court has acquitted the accused without appreciating the evidence in right perspective.
- That the learned trial Court has also failed to appreciate the evidence of PW-11 Dr. Saurabh Sood, and PW12 Dr. Atal Sharma, whose opinion clearly establishes that on the date of alleged offence, the prosecutrix was minor.

11. Therefore, it is prayed that the present appeal be allowed and the impugned judgment of acquittal be set aside.

12. We have heard learned Senior Additional Advocate General for the appellant-State, learned counsel for the respondent-accused and have also carefully gone through the records as well as the findings recorded by the learned trial Court while passing the impugned judgment dated 24.10.2019.

13. Learned Senior Additional Advocate General has strenuously argued that the learned trial Court failed to appreciate the material evidence on record, leading to a miscarriage of justice. The prosecution case stands completely supported, corroborated by the Victim Child/ Prosecutrix 'K', examined as PW4, and her parents examined as PW5 and PW9. Furthermore, there is sufficient medical and forensic evidence to suggest that the Victim Child/ Prosecutrix 'K' was kidnapped from the lawful guardianship of her parents and was repeatedly subjected to forcible sexual intercourse (penetrative sexual assault) w.e.f. 28.06.2015 to 01.07.2015. The learned trial Court fell into error by disbelieving the statement of the Victim Child/ Prosecutrix 'K', which is strictly in consonance with the prosecution allegations, therefore, the judgment of acquittal dated 24.10.2019, passed in Sessions Trial No.61(3) of 2015, titled, '*State of Himachal Pradesh vs. Desh Raj*', suffers from material irregularities and being bad in eyes of law and is liable to be set aside and the accused needs to be convicted for the commission of offences under Sections 363, 376 IPC and Section 6 of the POCSO Act, 2012.

14. Per contra, learned counsel for the respondent-accused defended the judgment of the acquittal passed by the learned trial Court and submitted that there is no material evidence on record to prove the complicity of the accused. The evidence of the Victim Child/ Prosecutrix 'K' (PW4) does not inspire confidence and there are material contradictions, which renders her version vulnerable and unworthy of credence. Similarly, her parents have also failed to support the prosecution allegations on material points and the medical evidence produced on record does not support the factum of forcible sexual intercourse (penetrative sexual assault) having been committed by the accused. Since the accused has been falsely implicated on account of personal disputes, therefore, the judgment of acquittal dated 24.10.2019 warrants no interference.

15. The learned Special Judge on meticulously considering and evaluating the evidence disbelieved the prosecution case on the basis of material contradictions and infirmities emerging on record. The learned trial Court did not rely upon the evidence of the Victim Child/ Prosecutrix 'K' and her parents.

16. Since, the present appeal has been filed against the judgment of acquittal, therefore, the scope of powers of the Appellate Court in the case of an appeal against acquittal needs to be considered before embarking upon the factual matrix.

17. The scope of the powers of the Appellate Court in case of an appeal against acquittal has been elaborately dealt with by the Hon'ble Apex Court in **Muralidhar alias Gidda & another vs. State of Karnataka reported in (2014) 5 SCC 730**, which reads as under :-

"10. Lord Russell in Sheo Swarup [1], highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said,

"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh[2] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed:

"7.....the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [3], Madan Mohan Singh [4], Atley [5], Aher Raja Khima [6], Balbir Singh [7], M.G. Agarwal [8], Noor Khan [9], Khedu Mohton [10], Shivaji Sahabrao Bobade [11], Lekha Yadav [12], Khem Karan [13], Bishan Singh [14], Umedbhai Jadavbhai [15], K. Gopal Reddy [16], Tota Singh [17], Ram Kumar [18], Madan Lal [19], Sambasivan [20], Bhagwan Singh [21], Harijana Thirupala [22], C. Antony [23], K. Gopalakrishna [24], Sanjay Thakran [25] and Chandrappa [26]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the

witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

18. The Hon’ble Supreme Court in **Rajesh Prasad vs. State of Bihar & another, (2022) 3 SCC 471**, observed as under:-

“31. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarized as follows:

31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai (1982) 1 SCC 352] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to

the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunchalam v. P.S.R. Sadhanantham (1979) 2 SCC 297] An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana vs. Lakhbir]

31.2. However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarized as follows:

31.2.1. Where the approach or reasoning of the High Court is perverse;

(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. vs. Shanker 1980 Supp SCC 489]

(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were “interested” witnesses. [State of U.P. v. Hakim Singh (1980)]

(c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393]

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of

the crime. [Arunachalam vs. P.S.R. Sadhanantham (1979) 2 SCC 297]

(e) Where the High Court applied an unrealistic standard of “implicit proof” rather than that of “proof beyond reasonable doubt” and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram (1986) 4 SCC 99]

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610]

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it necessary on the part of the prosecution to establish “motive”. [State of A.P. v. Bogam Chandraiah (1990) 1 SCC 445]

31.2.2. Where acquittal would result in gross miscarriage of justice;

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh 1989 Supp (1) SCC] or based on extenuating circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu (1983) 3 SCC 502]

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not

of a trivial nature. [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610].”

19. In **H.D. Sundara & others vs. State of Karnataka, (2023) 9 SCC 581**, the Hon’ble Supreme Court has observed that the appellate court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. The relevant portion of the above judgment is as under:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarized as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. *The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.*

9. *Normally, when an appellate court exercises appellate jurisdiction, the duty of the appellate court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The appellate court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the appellate court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating the oral and documentary evidence, the appellate court must first decide whether the trial court's view was a possible view. The appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only recording such a conclusion an order of acquittal cannot be reversed unless the appellate court also concludes that it was the only possible conclusion. Thus, the appellate court must see whether the view taken by the trial court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the trial court is a possible view, the appellate court cannot interfere with the order of acquittal on the ground that another view could have been taken."*

20. It is more than settled that the powers of Appellate Court while hearing the appeals against the acquittal are not unbridled. There is a clear caveat that in case the view arrived at by the trial Court is a possible one borne from the material on record, the same cannot be viewed differently, even if, there is a possibility of any other view. Reference in

this regard can be made to the judgment passed by Hon'ble Supreme Court in **Jafarudheen and others vs. State of Kerala (2022) 8 SCC 440**, wherein it has been held as under:

“Scope of Appeal filed against the Acquittal: 25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

21. Similar reiteration of law can be found in **Ravi Sharma vs. State (Govt. of NCT) & Anr. (2022) 8SCC 536**.

22. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in **Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion

which no reasonable person could have reached. It was observed at page 440:-

“12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

23. The case of the prosecution, in brief, is that on 28.06.2015, at about 03:00/04:00 P.M., at village ‘T’, District Kullu, H.P., the accused kidnapped the Victim Child/ Prosecutrix ‘K’ (minor), aged 16½ years from the lawful guardianship of her parents and thereafter subjected her to forcible sexual intercourse (penetrative sexual assault) till 01.07.2015.

24. There are certain undisputed facts, which are required to be mentioned and highlighted in order to understand the incident in better perspective.

25. The Victim Child/ Prosecutrix ‘K’ went missing from her home on 28.06.2015 during the day time. She was later on found by her parents at Dhalpur, Kullu on 01.07.2015. She disclosed to her parents that she had

accompanied the accused. Few days later I.e. on 04.07.2015, she disclosed to her mother of being sexually abused by the accused more than once at various places. On 20.07.2015, the father of the Victim Child/ Prosecutrix 'K' filed a complaint against the accused at Police Station Sadar, Kullu, District Kullu, H.P. for being involved in sexually abusing his daughter, leading to registration of FIR No.177 of 2015 dated 20.07.2015 under Sections 363, 376 of IPC and Section 45 of POCSO Act, 2012, at Police Station Sadar, Kullu, H.P. The medical examination of the Victim Child/ Prosecutrix 'K' was conducted on 20.07.2015 and the accused was arrested on 02.09.2015.

26. Needless to emphasize that the entire prosecution squarely rests upon the sole testimony of the Victim Child/ Prosecutrix 'K', examined as PW4. She is the most material and relevant witness in order to ascertain the involvement of the accused in the incident.

27. Before advertng to the factual matrix and material adduced in support thereof, it may be fruitful to refer to the relevant provisions of law and the ratio of the law laid down by the Hon'ble Supreme Court which may be

relevant in context to the facts and circumstances of the present case.

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

“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.

29. 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 10 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."

30. 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."

31. 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 12 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.

** ** *

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."

32. 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.

33. 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 13 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**.

34. 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.

35. 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."

36. 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

puudendum 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."

37. 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, 15 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."

38. 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 16 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.”

39. 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.

40. 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.

41. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice of the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult

to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Refer: **Vimal Suresh Kamble v. Chaluverapinake Apal S.P. & Anr., AIR 2003 SC 818; and Vishnu v. State of Maharashtra, AIR 2006 SC 508**).

42. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Refer: **Suresh N. Bhusare & Ors. v. State of Maharashtra, (1999) 1 SCC 220**).

43. In **Jai Krishna Mandal & Anr. v. State of Jharkhand, (2010)14 SCC 534**, the Hon'ble Supreme Court while dealing with the issue held:

“The only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality, the story projected by the prosecutrix was so improbable that it could not be believed.”

44. In **Rajoo & Ors. v. State of Madhya Pradesh, AIR 2009 SC 858**, the Hon'ble Supreme Court held that

ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on par with that of an injured witness and if the evidence is reliable, no corroboration is necessary.

The Hon'ble Supreme court however, further observed:

“.....It cannot be lost sight of that rape causes the 12 Session Trial No. Regd-CIS No.1/2014 CIS CNR No.HPSO01-0018432013 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..... 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.”

45. In **Tameezuddin @ Tammu v. State (NCT of Delhi), (2009) 15 SCC 566,** the Hon'ble Supreme Court held

has under:

“It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.”

46. The courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies

in the evidence of witnesses which are not of a substantial character. 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. (Refer: **Tukaram & Anr. v. The State of Maharashtra,, AIR 1979 SC 185; and Uday Vs. State of Karnataka, AIR 2003 SC 1639**).

47. The Hon'ble Supreme Court in **Rai Sandeep alias Deepu vs. State (NCT of Delhi) (2011) 8 SCC 21**, found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies; reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness'.

48. **In Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130**, the Hon'ble Supreme Court held that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunaes.

49. Similarly, the Hon'ble Supreme Court in **Nirmal Prem Kumar & Anr. vs State rep. by Inspector of Police 2024 INSC 193** (neutral citation) disbelieved the prosecution case on material contradictions apparent in the deposition of the prosecution witnesses, including the victim and acquitted the accused of the offence under Section 12 of the POCSO Act.

50. The testimony of the Victim Child/ Prosecutrix 'K', examined as PW4 is to be assessed and evaluated keeping in view the ratio laid down by the Hon'ble Supreme Court referred supra.

51. In order to test the veracity of the deposition of the Victim Child/ Prosecutrix 'K' (PW-4), it may be necessary to make reference to the same. As per her evidence, on 28.06.2015, during the day time, when she was alone in her house, the accused came and enticed her to elope with him. She refused, but the accused forcibly took her away from the village to a Tin Shed (Khokha), where she was subjected to forcible sexual intercourse (penetrative sexual assault) during the night hours. In the morning, at about 04:00 A.M., they went towards Fagu. In the evening, they reached Charornala and thereafter to Bhunter. On 30.06.2015, they came in a bus and alighted at Dhalpur, Kullu. Thereafter, the accused went missing and she met her parents and later she disclosed the incident.

52. It is evident after considering the statement of the Victim Child/ Prosecutrix 'K', that she did not disclose the fact of being sexually assaulted by the accused, when she

returned; however, later after 3-4 days, she disclosed her mother that the accused during the period w.e.f. 28.06.2015 till 01.07.2015, repeatedly subjected her to forcibly sexual intercourse (penetrative sexual assault).

53. Before further embarking upon the facts emerging in the evidence of the Victim Child / Prosecutrix 'K', it may be necessary to go through her statement recorded under Section 164 Cr.P.C., by learned Chief Judicial Magistrate, Lahaul & Spiti at Kullu on 29.07.2015 which is Ext.PW4/C. Pertinently, narration of facts in sequence of evidence disclosed in the aforesaid statement is completely contrary to her evidence given before the Court. As per the aforesaid evidence, the accused came to her house on 28.06.2015, at about 03:00 P.M., when she was alone and indulged in obscene acts. The accused thereafter gagged her mouth and sexually assaulted. She was disrobed by the accused. She tried to resist, but in vain. Later, the accused took her to nearby Tin-Shed (Khokha), confined her and subjected her to forcible sexual intercourse (penetrative sexual assault) during the night time. Later, the accused took her to Bhunter, thereafter to Chandigarh and Kullu. On

04.07.2015, the accused again came to her house in absence of her parents and again attempted to sexually assault her.

54. The oral evidence of the Victim Child/ Prosecutrix 'K' (PW-4) and the narration of facts contained in her statement recorded under Section 164 Cr.P.C. Ext.PW4/C, are completely at variance, there are material contradictions, inconsistencies and improvements, which materially affects the credibility of the prosecution version. These inconsistencies in the prosecution evidence renders the prosecution version considerably doubtful.

55. We have also carefully gone through the evidence of the mother of the Victim Child/ Prosecutrix 'K', examined as PW5 and her father, examined as PW9. The statements of these two witnesses also do not inspire confidence. The father of the Victim Child/Prosecutrix in his ocular evidence as PW9 has come up with a new version, wherein, he states that Victim Child/ Prosecutrix 'K' was kidnapped twice by the accused, compelling him to file a police complaint. This fact is completely new and does not form substratum of the prosecution allegations. Furthermore, it is evident that the Victim Child/Prosecutrix 'K' was found at Dhalpur on

01.07.2015 and the complaint Ext.PW9/A was filed by her father on 20.07.2015. There is a considerable delay in reporting of the matter to the police and such a delay is not well explained on record.

56. Since, the Victim Child/ Prosecutrix 'K' (PW4) was minor at the time of incident, therefore, evidence led by the prosecution is to be carefully examined to ascertain how accompanying of the prosecutrix with accused in reference to prosecution case, would tantamount to abduction within the provisions of Section 366 IPC and her accompanying with the accused w.e.f. 28.06.2015 to 01.07.2015 would tantamount to kidnapping or abduction or enticing, allurements and inducement within the provisions of Section 366 IPC.

57. So far Section 366 IPC is concerned, its essential ingredients are:-

- (i) *Kidnapping or abducting any woman;*
- (ii) *Such kidnapping or abducting must be*
 - (a) *with intent compelled or that she knowing it may to be likely that she will be compelled to marry any person against her will;*
 - (b) *in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.*

The second part of the Section requires two things:-

- (1) *By criminal intimidation or abuse of authority or by compulsion inducing any woman to go from any place; and*
- (2) *Such going must be with intent that she may be, or with knowledge that it is likely that she will be forced or seduced to illicit intercourse, with some person.*

The word 'woman' has been defined in Section 10. It also includes a minor female;

The essential ingredients of Section 376 IPC are:-

- (1) *Sexual intercourse by a man with a woman.*
- (2) *The sexual intercourse must be under circumstances falling under any of the six clauses in the Section.*

58. It may be fruitful to notice the decisions of the Hon'ble Supreme Court as well as the Hon'ble High Court of H.P. which are applicable to the facts and circumstances of the present case.

59. The Supreme Court in **S. Varadarajan Vs. State of Madras, AIR 1965 SC 942**, has held that where a minor girl was kept at his relative house and when girl has insisted on marrying the accused and the accused has not given threat or inducement, in that condition, the guardianship of father was treated to be continued 23 and in such circumstances even taking or enticing away a minor out of the keeping of lawful guardian is an essential ingredient of the offence of kidnapping. However, in the facts and

circumstances, the fact of accompanying a minor girl with accused at her own desire to be the wife of accused in which the desire of accompanying him wherever he went is of course implicit. In such circumstances, no inference can be drawn that the accused is guilty of taking away the girl out of keeping of her father as the victim girl had willingly accompanied the accused and law does not cast upon him the duty of taking her back to her father's house or even of telling her not to accompanying him. (b) Supreme Court in **Ram Murti Vs. State of Haryana, AIR 1970 SC 1029**, has observed that in case under Sections 366 and 376, age of prosecutrix is though important, however, when the victim says that she was compelled, threatened or otherwise induced to go with accused who had alleged to have raped her without her consent, in such circumstances, statement of victim in order to base conviction of accused must be corroborated with some material particulars from independent source.

60. The Hon'ble Supreme Court had the occasion to consider the provisions of Section 366, IPC in **Thakorlal D. Vadgama Vs. The State of Gujarat, AIR 1973 Supreme**

Court 2313. While referring to the provisions of Section 361, IPC, it was observed that: -

“If the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence of kidnapping. But if the guilty party has laid a foundation by inducement, allurement or threat, etc. and if this can be considered to have influenced the minor or weighed with her in leaving her guardian's custody or keeping and going to the guilty party then prima facie it would be difficult for him to plead innocence on the ground that the minor had voluntarily come to him....”

61. A reference can be made to the decision of Hon'ble High Court of H.P. in **Baldeo vs. State of U.P., 1993 CRI. L.J. 1915.** The observations made in Para – 16 of the judgment are relevant, which are being reproduced below:-

*“16. So far as the taking away of the prosecutrix out of the keeping of the lawful guardian is concerned, the age of the girl has to be determined first. According to the prosecution version, she was aged about 13 or 14 years at the time of incident, but on the basis of the X ray reports, the Doctor has found her to be 16 or 17 years old because the Doctor found Epiphysis around elbow joints fused and around the lower ends of radius and ulna not fused. I may point out here that, according to Modi Medical Jurisprudence on Toxicology, distal end of ulna is fused at the age of 19 (18-19) years. If the lower end of radius and ulna were not found fused by the Doctor, it means that she was less than 19 years of age. The learned counsel for the appellant relied upon two Supreme Court decisions reported in **AIR 1982 SC 1297: (1982 Cri.LJ 1777)** and **AIR 1989 SC 1329** and on the basis of those decisions he argued that one can take judicial notice of the fact that the margin of age as ascertained by Radiologist may be*

*two years either side and in this manner, it cannot be said that the girl was minor at the time of incident and even if it is assumed so, she had attained the age of discretion and was on the verge of attaining majority as has been held in the case of **Warad Rajan V. State of Madras, reported in AIR 1965 SC page 942: (1965 (2) Cri LJ 33).***”

62. A reference can be made to the decision of Hon'ble Supreme Court in **Shyam and another Vs. State of Maharashtra, AIR 1995 Supreme Court 2169**, wherein it was observed as under:-

“While testing the applicability of Section 366, abduction of girl who had not attained the age of 18 years of age, the Supreme Court has observed that when the victim/prosecutrix did not put up struggle or raised alarm while being taken away by accused, in such situation, the victim /prosecutrix appearing to be willing party to go with accused on her own, in such a situation, culpability of accused not established and conviction is set aside in reference to Section 366 of IPC.”

63. A reference can also be made to the decision of Hon'ble 25 High Court of H.P. in **Trilok Chand vs. State of H.P. 1996(1) Sim. L.C. 187**, wherein it was observed that the Victim /Prosecutrix being more than 16 years of age but less than 17 years of age, consented to sexual intercourse on her by accused as she was in love with accused and eloped with him undisputedly and without any sign or evidence of influence or coercion on the part of accused. Victim /prosecutrix has left her house voluntarily to elope with

accused in night hours without raising any hue and cry in a planned manner of elopement. In such a situation despite being less than 17 years of age and despite sexually assaulted by accused, the accused could be acquitted for the charge under Section 366 of IPC.

64. A Division Bench of this High Court in **State of H.P. vs. Harinder Pal, 2010 (2) Him. L.R. (DB) 625** has held as under:-

“ It has been observed that if the prosecutrix is above age of consent and slightly below age of discretion (18 years) and from attendant facts and circumstances of case on an overall view of the matter, if an interference is deducible that minor prosecutrix had left protective umbrella of her natural guardian out of her free and independent volition and respondent had not taken away any active part in such exercise, it would not be safe to return a guilt to the accused, as victim/ prosecutrix, in the facts and circumstances was the willing party to go with respondent/ accused of her own sweet will had been submitting herself to all such alleged acts, in such circumstances, the victim/ prosecutrix could be treated as a willing and consented party at the relevant time and the accused cannot be held guilty of offence under Sections 363, 366 and 376 IPC.”

65. Now coming to evidence of Victim Child/Prosecutrix ‘K’ (PW4). As per the Victim Child/Prosecutrix ‘K’ (PW4), the accused compelled, induced, enticed and allured her to accompany him on the false promise of marriage, on 28.06.2015. He took her to Fagu,

Charornala, Bhunter, Dhalpur and Kullu. If her evidence is to be believed, then it is apparent that she traveled with the accused extensively during the intervening period w.e.f. 28.06.2015 till 01.07.2015 in public transport, without offering any resistance and objection. Therefore, it appears that she willfully and voluntarily accompanied the accused w.e.f. 28.06.2015 till 01.07.2015. There is nothing in her evidence to suggest that she was forced, allured enticed, coerced, induced by the accused out of lawful guardianship of her parents.

66. Needless to emphasize that she not only voluntarily eloped and accompanied the accused, but also traveled extensively throughout the intervening period to Fagu, Charornala, Bunter, Dhalpur and Kullu. It has come in her evidence that she did not try to talk to her parents during the said period, which clearly indicate her consent to accompany the accused.

67. Now advertng to the medical and forensic evidence adduced by the prosecution.

68. On 20.07.2015, the Victim Child/ Prosecutrix 'K' was sent for medical examination to Regional Hospital, Kullu,

where she was medically examined by Dr. Dechen Wangmo (PW14). As per her evidence, the Victim Child/ Prosecutrix (PW4) was brought by the police with alleged history of abduction and sexual assault on 28.06.2015 and 30.06.2015. As per her evidence, no marks of injuries were seen anywhere on her body. She also makes reference to old healed tears of hymenal tissues which were not fresh and there were no marks of injuries. As per the opinion of the medical officer, the victim was exposed of coitus, however, time could not be ascertained. Therefore, the medical examination of the Victim Child/Prosecutrix 'K' is not indicative of the fact that she had been recently subjected to forcible sexual intercourse (penetrative sexual assault). Similarly, Regional Forensic Science Laboratory's report No.1130 RFSL Bio. (176) 15 dated 29.09.2015 Ext.PX-1 and DNA report No.2445/SFSL/DNA/(337)/15 dated 19.09.2018 Ext. PX fail to support and corroborate the prosecution version that the Victim Child/Prosecutrix 'K' (PW4) was subjected to forcible sexual intercourse (penetrative sexual assault).

69. The recovery of the Khind (mattress) Ext.P-9 seized vide recovery and seizure memo Ext.PW4/A and recovery of salwar and shirt Ext.P2, seized vide seizure memo Ext.PW4/B are in consequential in view of the FSL Reports Ext.PX and Ext.PX1 and needs no evaluation.

70. Section 29 and 30 of the POCSO Act, 2012, raises presumption of certain offences. It provides that where a person is prosecuted for violating any of the provisions contained under Section 3, 5, 7 and 9 of the Act and where the Victim Child is below the age of 16 years, the Special Court shall presume that such person has committed the offence, unless contrary is proved.

71. In the present case, the age of the Victim Child / Prosecutrix 'K' (PW4) at the time of alleged offence was 16½ years. Therefore, the provisions of Section 29 of the POCSO Act are not attracted.

72. Although, Section 29 of POCSO Act creates a statutory presumption of guilt for the accused, but the Hon'ble Supreme Court has repeatedly ruled that this presumption is not absolute unless the foundational facts are established.

73. The Hon'ble Supreme Court in recent judgment **Deepak In JC vs. State (NCT of Delhi) 2026 INSC 1008** (neutral citation) has held that statutory presumption under Sections 29 and 30 of POCSO Act cannot override significant inconsistencies and material contradictions or gaps in the prosecution evidence.

74. After carefully considering all the material aspects and nature of evidence led by the prosecution, we are more than satisfied that the State has no case against the accused. Taking closer look, it can be safely held that case against the accused is not proved beyond reasonable doubt to the satisfaction of the Court, therefore, the findings recorded by the learned trial Court are based on proper appreciation of oral and documentary evidence and we find no reasons to differ with the same.

75. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023), the accused 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.

76. A copy of this judgment along with the record of the learned trial Court be sent back forthwith.

77. This appeal is, accordingly, disposed of, so also the pending miscellaneous application(s), if any.

(Vivek Singh Thakur)
Judge

30th September, 2026

(Sanjeev2)

(Bhupesh Sharma)
Judge