



2026:AHC:190373

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 5731 of 2021

Sunil

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s) : Mohammad Haadi Zaidi, Rajesh Kumar Srivastava, Virendra Kumar Srivastava, Zia Naz Zaidi
Counsel for Respondent(s) : G.A., Manoj Kumar Mishra

A.F.R.

Judgement Reserved on 21.08.2026

Judgement Delivered on 11.09.2026

Court No. - 38

HON'BLE ACHAL SACHDEV, J.

1. None appeared on behalf of the opposite party no.2/first informant even in revised call.

2. Heard Ms. Zia Naz Zaidi, learned counsel for the appellant and Shri Mohammad Shoaib Khan, learned A.G.A. for the State-respondent.

3. The instant appeal is directed against the judgment and order dated 07.10.2021 passed by the Special Judge (POCSO Act)/Additional Sessions Judge, Court No.29, Agra in Special Trial No.636/2019 (State of U.P. vs. Sunil) arising out of Case Crime No.1278/2018 registered at Police Station Tajganj, District Agra, under Sections 363, 366 and 376 of the Indian Penal Code and Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012. By that judgment the appellant, Sunil, was convicted and sentenced in 363, 366 and 376 of the Indian Penal Code as recorded therein and charges had earlier been framed against him on

27.07.2020.

4. The prosecution's case, as unfolded in the FIR lodged by PW-1 Narendra Singh, the grandfather of the victim, is that at about 01:00 a.m. in the early hours of 19.11.2018 the victim (PW-3), then said to be about 14 years old, was taken away from her house by the appellant Sunil and one unidentified companion in a vehicle. On learning of this, PW-1 raised an alarm and informed the police on the emergency helpline. Villagers assembled and the vehicle was pursued by the villagers and the police together. The appellant and the victim were apprehended near the road by the Rohta Canal at Baheta (Bajheta) that same morning, the companion having fled. Both were brought to the police station, where the FIR (Case Crime No.1278/2018) came to be registered later that day at 10:22 a.m.

5. The victim was medically examined on same day at 03:45 p.m. only a few hours after her recovery that morning by Dr. Neelam Rani (PW-7). The history she gave the doctor was that she had been sleeping at about 01:00 a.m. with her grandmother and two sisters when two persons i.e. the appellant and one unidentified companion entered through an open structure, lifted her and took her away and while she shouted, her mouth was pressed whereupon she lost consciousness and when she regained consciousness near some trees beside the canal. Asked specifically whether she had been sexually assaulted, she said she did not know whether rape had been committed. On examination, she bore no external injury including to the urethral meatus, vestibule or perineum; her hymen was old, torn and healed; swabs and samples were taken and the opinion recorded at that stage was that there were no signs suggestive of sexual violence and the Forensic Science Laboratory report being awaited.

6. The appellant in his statement recorded under Section 313 Cr.P.C.

stated that he was merely the driver of the vehicle in question, the same vehicle used to ferry the victim and her siblings to school and that he had been falsely implicated after a dispute over Rs.6,000/- said to be due to him as vehicle-rental charges.

POINTS FOR DETERMINATION

7. On the material on record, the following points arise for determination in this appeal, each considered independently since proof of one does not without more, establish another:-

(i) Whether the prosecution has established that the victim was below eighteen years of age on the date of the occurrence;

(ii) Whether the prosecution has established that the appellant took the victim out of the keeping of her lawful guardian, so as to attract Section 363 IPC;

(iii) Whether the further, independent ingredient of Section 366 IPC, kidnapping or abduction with the statutory intent, stands separately established;

(iv) Whether the prosecution has established that the appellant committed penetrative sexual assault upon the victim, so as to sustain the conviction under Section 376 IPC and Sections 3/4 of the POCSO Act;

(v) Whether the appellant's explanation, that he was merely the driver of the vehicle and was falsely implicated on account of a monetary dispute, is sufficient to raise a reasonable doubt when tested against the objective circumstances of the recovery;

(vi) Whether the trial court adverted to and properly appreciated the discrepancies, if any, between the victim's statement to the examining doctor, her statement under Section 164 Cr.P.C. and her deposition

at trial, before convicting the appellant under Section 376 IPC and Sections 3/4 of the POCSO Act; and

(vii) What effect, if any, a finding that the victim was a consenting party would have on the charges under Sections 363 and 366 IPC, and under Section 376 IPC and Sections 3/4 of the POCSO Act, respectively.

APPRECIATION OF THE EVIDENCE OF THE VICTIM, PW-1, PW-2, PW-4, PW-5 AND PW-8

8. The prosecution's case concerning the victim's removal from her house, her recovery near the Rohta Canal at Baheta (Bajheta), the appellant's apprehension and the earliest disclosure of the sexual assault rests substantially on the testimony of the victim (PW-3), her close relatives and the Investigating Officer. Those relatives are PW-1 Narendra Singh, her grandfather (the victim being his Natini or granddaughter) and PW-1's nephews PW-2 Madan, PW-4 Dharmendra Singh and PW-5 Pravendra Singh, each of whom refers to the victim as his niece. The Investigating Officer is PW-8 Pradeep Kaushik. Their evidence is examined below, both individually and cumulatively and set against the contemporaneous documentary and medical material.

9. The victim in her statement recorded under Section 164 Cr.P.C. stated that "दिनांक 18.11.2018 को रात के एक बजे मैं सो रही थी..." ["On 18.11.2018, at about one o'clock at night, I was sleeping..."]. In her deposition before the trial court, however, she stated that "घटना दिनांक 19.11.2018 की है, घटना रात के एक बजे की है..." ["The occurrence is of 19.11.2018, the occurrence is of one o'clock at night..."]. There is thus a discrepancy of a full calendar day as to the date of occurrence. This matters because the FIR was registered on 19.11.2018 at 10:22 a.m., alleging the occurrence at about 1:00 a.m. the same date; the

discrepancy cannot be brushed aside as inconsequential since it goes to the very date on which the prosecution's entire chain of events is anchored.

10. There is a corresponding discrepancy as to the victim's own date of birth. In her statement recorded under Section 164 Cr.P.C. she gives it as "जन्म तिथि 02.11.2005 है" ["date of birth is 02.11.2005"], whereas in her deposition she states that "मेरी जन्म तिथि 15.03.2005 है" ["my date of birth is 15.03.2005"]. Both dates, if accepted, would place her below 18 years on the date of occurrence and to that extent neither assists the appellant but the discrepancy itself means that the victim's own oral assertions cannot substitute for documentary proof of age particularly where the prosecution invokes the POCSO Act. PW-1's oral estimate that she was "14 years" fares no better, in cross-examination he admits there is no birth certificate with him that he does not remember the school in which she was first admitted, the class in which she was admitted or the age recorded at admission and the victim herself states that she does not remember the year of her first admission to school or the age recorded then. No documentary proof of her age, neither school admission records nor a birth certificate, has been proved by the prosecution at all. The finding of minority accordingly rests entirely on these variable oral assertions and the Medical Board's approximate X-ray assessment, rather than on the best evidence that would ordinarily be expected and that appears to have been readily available.

11. The victim's deposition gives a considerably more detailed account of the manner of her removal than her statement recorded under Section 164 Cr.P.C., she states that she was sleeping between her sisters Sapna and Shivani in a dark room; that two persons lifted her, one holding her hand and the other her legs, the latter subsequently releasing her legs while the appellant continued to hold

her, she was taken to the rear wall placed upon it and pulled down on the other side, crying out at that stage; the vehicle stood about 10-15 feet away, she was placed on its rear seat; the second person drove while the appellant sat with her and held her and her mouth was pressed or closed inside the vehicle so that she could not raise an alarm. She further describes the rear wall as about four feet high with a broken portion through which a person could pass, an open space with no house behind it and the vehicle parked only 3-4 feet from that point. This part of her account was capable of objective verification from a site plan of the house and a spot inspection but the investigation never drew up any such plan; the height and condition of the wall, the space behind it and the distance at which the vehicle is said to have been parked accordingly remain matters resting solely on her own word, an avoidable omission on the investigation's part rather than a gap that arose only for want of proof at trial. A separate site plan, marked as Exhibit Ka-9, was filed in original in respect of the place of recovery but no witness was examined to prove it and that document in any event relates to a different location and does not touch this part of her account. At the same time, her admission that she had never told the appellant which room she slept in and that she does not know how he came to be at that room is an unexplained circumstance bearing on the prosecution's implicit suggestion of a planned or targeted removal in the mid of the night.

12. The most significant feature of the victim's cross-examination is her categorical statement that "जब मैं चिल्लाई तब मेरे घर पर से कोई नहीं आया था।" ["When I screamed, no one came from my house."] She adds that her sisters Sapna and Shivani were sleeping in the same dark room and did not notice she was being taken away even as she was placed on the wall. This has to be set against her statement recorded under Section 164 Cr.P.C., where she said that when she was being taken

away she cried and her family members heard her voice, following which her uncles followed the vehicle: "जब सुनील मुझे उठाकर ले जा रहा था तो मैं चिल्लाई थी... मेरे घरवालों ने ये सब आवाज सुनी थी..." ["When Sunil was lifting and taking me away, I cried out... all my family members heard that voice..."]. The contradiction is not incidental. It goes to the very genesis of the pursuit on which the prosecution relies upon the victim's cry, the family becoming aware, the alarm being raised, villagers assembling, the police being informed and the pursuit beginning. Where that chain is relied upon as an important corroborative circumstance for the alleged abduction and recovery, a victim who says in the same breath that nobody came when she cried undermines its very first link.

13. The victim states that her sisters Sapna (about 15 years) and Shivani (about 12 years) were sleeping with her in a room with a single door, her brothers Rishabh and Aryan were sleeping with their mother in another room, her father was in Delhi at the time and her grandparents were sleeping in the verandah. PW-2, however, states that Rishabh was also sleeping in the same room as the victim, Sapna and Shivani. This matters because the prosecution's case depends on the victim's cries being heard and acted upon by persons sleeping in or near that room; the actual sleeping arrangement and the fact that her father was not even in the house, bears on how naturally the asserted immediate family reaction fits the rest of the account, without rendering the prosecution case physically impossible. Sapna and Shivani, who were sleeping in the very same room and would accordingly be the persons best placed to say whether any disturbance occurred there that night, were never questioned by the Investigating Officer at all and their names do not appear even in the list of witnesses in the charge-sheet, so this is not a case of two named witnesses who were merely left unexamined at

trial; the investigation never proposed to rely on them in the first place, though they were on the victim's own account, readily identifiable and available. Two immediate family members sleeping beside the victim, who could easily have shed light on whether any disturbance occurred in that room that night, were thus kept out of the case from its very inception. This is precisely the kind of omission of Section 114, illustration (g), of the Evidence Act speaks to: that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it. The rule requires a party to bring forward the best available evidence on a point within its control and the prosecution's failure to do so here, in respect of the two witnesses closest to the occurrence itself, entitles this Court to draw an adverse inference against the reliability of its account of the alarm and the family's immediate response (**Mohan Lal Shamlal Soni v. Union of India, AIR 1991 SC 1346**).

14. Considered cumulatively, the manner in which the victim describes her removal is itself a circumstance calling for explanation. An alarm said, on the version of PW-1 and PW-2, to have been loud enough to wake the household, bring the family out and rouse a crowd of 100-150 villagers is on the victim's own admission, unheard by her sisters sleeping beside her in the very same room, by her grandparents sleeping in the verandah or by her brothers in the adjoining room. A minor girl, surrounded within the house by her siblings and grandparents on her own account is said to have been lifted from her bed, carried to a rear wall and passed over a broken portion of it, crying out as she went, without a single family member stirring; it is only once she is already outside, on the prosecution's own case, that the alarm is in fact raised and the pursuit begun. This improbability is compounded, rather than resolved, by the fact that the investigation never made a site plan of the house at all; the Court

has no contemporaneous documentary basis on which to assess the distances involved, the layout of the rooms, or the plausibility of the account and is left to weigh an inherently improbable sequence of events against oral testimony alone without the elementary safeguard that the investigation could readily have supplied and did not.

15. The victim's account of her own state of consciousness is not straightforward. She states: "गाड़ी में मेरा मुँह पर हैंकी रुमाल रख दिया था उसके बाद मैं बेहोशी हालत में हो गई थी..." ["In the vehicle, a handkerchief was placed over my mouth, after which I fell unconscious..."], but later states: "जब कपड़े उतार रहा था तब मैं हल्की-हल्की होश में आ गई थी..." ["When [he] was removing [my] clothes, I regained slight consciousness..."]. This is not by itself a ground to reject her testimony but the sequence, unconscious and then partially conscious during the assault itself needs to be tested against the medical evidence, the means by which she says she was rendered unconscious and the investigation.

16. The contradiction on this point is sharper than a mere variation in degree. At one point she is recorded as stating that she regained consciousness only when she found herself on the canal embankment i.e., after the assault was already over and she had been left there, which would mean she has no independent memory of the assault itself. This is irreconcilable with her cross-examination account of regaining consciousness while still in the vehicle and while the rape was in progress, an account in which she goes on to describe the circumstances of the assault in considerable and vivid detail. A witness cannot simultaneously have no memory of an event and a vivid, detailed memory of it; one or the other account must give way and neither the investigation nor the trial court's judgment resolves which. This unexplained inconsistency on the central factual question of whether she has any recollection of the assault at all goes well beyond peripheral variation and bears directly on the weight her

account of the assault can bear.

17. The victim admits: "मैं घड़ी नहीं पहनती हूँ और मेरे कमरे में भी घड़ी नहीं है।" ["I do not wear a watch and there is no clock in my room either."] She further states that she does not know what time she left Baheta (Bajheta) with her uncle and that she learned of the "about one o'clock" timing only later, from the villagers. The "01:00 a.m." figure is, however, well documented elsewhere on the record, it is given in the statements of PW-1 and PW-2 and is recorded in the tahrir itself as the time of occurrence. What the victim's admission shows is only that the figure does not rest on her own perception of time; she was not, on her own account, in a position to fix it herself, having no watch and no clock in her room and it must accordingly be weighed as PW-1's and PW-2's own estimate tested on its own footing, rather than as a fact independently corroborated from more than one source.

18. The victim states that she returned home at about 04:00 a.m. with her uncle Madan (PW-2) on a motorcycle, accompanied by one Chotu and that other villagers Hariom, Murari, Dharmendra, Ravin, Chotu, Rajesh and others were also present. She states that she was conscious at that time and was wearing leggings and a kurti and had no visible injury on her body. She also states that where her uncle found her at Baheta (Bajheta) there were several shops but they were closed and no one was present at that time a detail difficult to reconcile with PW-2's assertion that 100-150 villagers had assembled and pursued the vehicle. As to the second person, the victim consistently states that his face was covered and she could not identify him; she also states that it was this second person who was driving while the appellant sat with her in the rear, a detail requiring reconciliation with the prosecution's own case that the appellant was the regular driver of the school vehicle and requiring the investigation to show what efforts, if any, were made to identify that second

person.

19. The victim gives a specific account of the assault. The vehicle was stopped; her clothes (including her suit/leggings, inner-wear and undergarment) were removed; the appellant committed rape upon her for about seven or eight minutes; she was frightened and resisted and he then returned her clothes, which she put on herself. She states that she suffered no injury, no pain and that her clothes were not bloodstained, a position PW-2 corroborates to the extent of saying he saw no blood near the bushes, the vehicle or on her clothes. At one stage she describes the assault as having occurred "गाड़ी रोककर और चलती गाड़ी में" ["both with the vehicle stopped and in the moving vehicle"], a formulation later refined into the more specific stopped-vehicle account. Absence of injury or blood does not by itself disprove sexual assault, nor is physical injury an indispensable consequence of rape but where the victim gives so specific an account, the medical evidence must be examined squarely against it. The interval between the alleged assault and the examination, the findings on genital examination, whether semen or other forensic material was detected, whether her clothes were seized and forensically examined, the history recorded by the doctor and whether the medical findings are consistent, inconsistent, or neutral in relation to this particular account.

20. Set side by side, the victim's statement recorded under Section 164 Cr.P.C. and her deposition at trial depart from one another at several points. The date of occurrence itself shifts from 18.11.2018 under Section 164 Cr.P.C. statement to 19.11.2018 at trial, as does her own date of birth given as 02.11.2005 in the former and 15.03.2005 in the latter. On the cry or alarm, the statement recorded under Section 164 Cr.P.C., has her family hearing her cries and her uncles following the vehicle, while at trial she states that her sisters

did not notice and that no one came from the house. The manner of her exit from the house changes from being lifted and taken away to being taken out over the broken rear wall. Her account of returning home likewise shifts from her uncles reaching the jungle near the canal in statement recorded under Section 164 Cr.P.C., to Uncle Madan and others bringing her from Baheta (Bajheta) at about 4:00 a.m. at trial, where she also specifies for the first time that she was conscious and bore no visible injury, a condition left unspecified earlier. The source of the "1 o'clock" time also shifts from being stated as fact to being attributed to what she was told afterward by villagers since she had no watch of her own and while the statement recorded under Section 164 Cr.P.C. speaks of two persons having taken her away, her trial evidence is that the second person's face was covered and he could not be identified.

21. None of these discrepancies is, by itself, necessarily fatal to the prosecution case; variations in the recollection of time and peripheral detail are not unusual in evidence concerning a night-time occurrence and the testimony of a victim of sexual assault is not to be discarded merely because every surrounding circumstance is not narrated with precision. The real question, addressed further below, is whether these discrepancies, considered cumulatively and together with the evidence of PW-1 and PW-2, affect the core of the prosecution narrative or remain peripheral to it.

22. PW-1 is not, on his own account, a witness to the alleged sexual assault; his evidentiary role is that of an alleged immediate rescue and pursuit witness and thereafter a witness to the victim's alleged immediate disclosure. He states that at about 01:00 a.m. he came to know that the appellant was taking his granddaughter away in an Eco vehicle that he raised an alarm and called the police on the 100 number that villagers gathered, that police arrived and that the

villagers and police together pursued the vehicle and apprehended the appellant and the victim near the Rohta Canal at Baheta (Bajheta), the other person fleeing. This account is not corroborated by the victim's own evidence; she states that, "गाड़ी में बैठते हुए किसी ने देखा या नहीं देखा, मैं नहीं बता सकती।" ("Whether anyone saw me being put into the vehicle or not, I cannot say.") and that no one came from the house when she cried. If the victim herself does not support the genesis PW-1 describes, his account requires independent corroboration, since he is projected not merely as a witness to a subsequent fact but as the person whose own perception is said to have set the pursuit in motion.

23. PW-1's evidence on the apprehension of the appellant is itself not consistent, at one point he says, the villagers caught the appellant and at another that the police apprehended him and at yet another that it was the police vehicles which arrived that caught him. Since the immediate apprehension of the appellant near the place of recovery is one of the strongest circumstances relied upon by the prosecution as corroboration, this inconsistency requires resolution from the arrest memo, the General Diary entries and the testimony of the police personnel concerned, rather than being left to the shifting oral account of a family witness.

24. PW-1 also gives a chronology of the immediate aftermath materially different from the victim's own account. He states that his house was about 2½ kilometers from the Rohta Canal, that they reached it in about five minutes, that they left home at about 1:30 a.m., that they reached the police station at about 4-5 a.m., that the report was written at about 5-6 a.m. and that he and the victim returned home only at about 9-10 a.m. The victim, by contrast, states that she returned home at about 04:00 a.m. and was taken to the police station only at about 10:00 a.m. i.e. her return home preceded

the visit to the police station, the reverse of PW-1's sequence. This is a material difference in the chronology of the immediate aftermath and it becomes still more significant in relation to the FIR. The record shows registration of the FIR at 10:22 a.m. on 19.11.2018, while PW-1 states that the report was written at about 5-6 a.m. This time of 5-6 a.m. finds no support either in the case diary or the chik register, both of which are silent on it and record only the time of 10:22 a.m. of registration of the FIR; the 5-6 a.m. figure accordingly rests solely on the oral estimate of PW-1 and PW-2, unverifiable against any documentary entry and stands as an unexplained discrepancy rather than a mere approximation, particularly since prompt lodging of the FIR is itself relied upon as a circumstance supporting the prosecution's case.

25. PW-4 Dharmendra Singh is the informant's nephew, PW-1 being his *Tau* (paternal uncle) and states that the victim is the daughter of his cousin and accordingly refers to her as his niece. In examination-in-chief, he corroborates PW-1 and PW-2 in material particulars and he states that he reached at the spot on hearing the commotion raised by PW-1 Narendra Singh and on reaching learned that the accused Sunil had taken away the victim; that someone had dialed on 100-number and the local police arrived; that he, along with others and the police pursued the accused and caught hold of him at the Rohta Canal, whereafter the accused, together with the girl, was brought to the police station, where a written report was lodged and that he had himself scribed the tahrir on the dictation of Narendra Singh on the basis of which the criminal case against the accused came to be registered. To that extent, his evidence corroborates PW-1 and PW-2 on the genesis of the pursuit and the apprehension at the Rohta Canal and establishes that he, not PW-1, was in fact the scribe of Exhibit Ka-1. In cross-examination, however, this account is

materially qualified. PW-4 admits that he did not see the victim being taken away with his own eyes and that the victim told him nothing. He states that he brought the victim back to the village after her recovery but does not remember when the FIR was registered since he had by then returned home that they reached the police station at about 4:40-5:00 o'clock and that many people were present, both at the police station and at the place of occurrence. He further states that Pravendra (PW-5), Narendra (PW-1), Madan (PW-2) and many other people had reached the spot and that it was the informant, PW-1, who took the victim to the police station, not PW-4 himself, consistent with his admission that he does not remember when the FIR was registered. He puts the time at which appellant Sunil was caught at about 3-4 o'clock, a materially later time than PW-2's estimate of about 01:40 a.m., adding a further, unreconciled variation to the timing of the apprehension. He states that he did not know the appellant Sunil prior to the incident. On the manner of apprehension, he states that on reaching the place, he saw appellant Sunil running towards the vehicle and the second unidentified person ran towards the fields and could not be caught despite being pursued and that he himself caught Sunil and that the victim was found lying in an empty field in the jungle, a description of the place of recovery that does not correspond either to the victim's own account of being brought home from Baheta (Bajheta), where there were shops, though closed, or to PW-1's and PW-2's own mutually inconsistent descriptions of where she was found, nor, for that matter, to the site plan of the place of recovery Exhibit Ka-9, which depicts the embankment of the Rohta Canal and shows no jungle at all. PW-4's evidence accordingly falls into two distinct parts. As to the genesis of the pursuit and the apprehension at the Rohta Canal, his account lends the prosecution some corroboration and he is, on his own showing, an eyewitness to that part of the sequence in a way neither PW-1 nor PW-2 is shown

to be but that corroboration comes from a witness who is himself the informant's nephew and by his own account, the victim's niece through his cousin, an interested family witness in the same category as PW-1 and PW-2, not an independent villager and it adds another, materially different, account of the precise place and condition in which the victim was found. As to the manner of the victim's actual removal from the house and the alleged assault, he candidly admits he saw nothing and was told nothing by the victim; on those questions his evidence adds nothing beyond what PW-1 and PW-2 have themselves already stated.

26. PW-5 Pravendra Singh is likewise a witness of fact and in examination-in-chief broadly corroborates the prosecution case and the evidence of PW-1 and PW-4. He states that he is a further nephew of the informant, the informant being his *Tau* and states that the victim is the daughter of his cousin and accordingly refers to her as his niece; that he reached the informant's house after hearing the commotion, where he learned that the victim had been taken away by two persons; that he reached the spot at about 1 o'clock, where he met Narendra, Madan, Murarilal and many others; that he too joined the pursuit along with Madan; that the victim was recovered from near the Rohta Canal and the accused Sunil was caught, the police having also reached by then and that the police thereafter took the victim and the accused to the police station in their vehicle, in which he himself was also sitting, alongwith one other person in addition to the accused. In cross-examination, he further describes the victim as having been found near Baghera village, in the jungle, in a field, with Sunil in her proximity and states that the appellant was caught by the villagers with police assistance. Like PW-4, PW-5 is accordingly a family witness, a further nephew of PW-1 who, on his own account, is the victim's niece through his cousin, not an independent villager,

whose evidence goes only to the pursuit and recovery and not to the manner of the victim's removal from the house or to the alleged assault, on neither of which he claims personal knowledge. His account of the place of recovery broadly coincides with PW-4's description but differs from the victim's own account of being brought home from Baheta (Bajheta), where there were shops and from the varying descriptions given by PW-1 and PW-2, adding a further, if partly overlapping, version to that already unsettled question, a version that, like PW-4's, sits uneasily with the site plan of the place of recovery, which depicts the canal embankment and shows no jungle at all.

27. It is further stated that the chik register entries themselves are correct and that the tahrir was reproduced from the statement of PW-3, the victim, rather than independently narrated by PW-1 as informant. If so, the register entries recording the FIR's registration are not themselves in question but the written report does not stand as PW-1's own spontaneous, first-hand account of the occurrence in the manner a first information report ordinarily would; its evidentiary character and what that means for the weight it can bear as an early, contemporaneous account, require to be assessed with that feature in mind. PW-4, the scribe who reduced it to writing, confirms in his own testimony that he wrote the tahrir at PW-1's dictation but his deposition does not fix the time at which he did so, the gap between PW-1's estimate of preparation at about 5-6 a.m. and the FIR's recorded registration at 10:22 a.m. accordingly remains unresolved.

28. PW-2 is himself a nephew of PW-1, PW-1 being his paternal uncle and is in the idiom common to such family usage, described as the younger brother of the victim's father, himself PW-1's son and accordingly refers to the victim as his niece. He initially gives a version that appears to provide substantial corroboration that the

appellant took the victim away in Eco vehicle No.UP 80 EC 1820; that PW-1, his uncle, saw her being taken and raised an alarm; that the family and villagers came out and pursued the vehicle; that the police were informed; that the appellant and the victim were found near the Rohta Canal at Baheta (Bajheta); that the second person escaped and that the victim told him the appellant had removed her clothes and raped her. In cross-examination, however, PW-2 admits that he did not see the appellant taking the victim away, did not see her being put into the vehicle and did not witness the alleged assault and when asked how she was taken away, "बहला-फुसलाकर" ["by inducement/enticement"], he states plainly "मैंने नहीं देखा।" ["I did not see [it]."] His assertion of inducement is accordingly hearsay unless independently founded and it does not sit well with the victim's own account of being forcibly lifted from sleep, held by her hand and legs and taken over the rear wall, an account of force, not inducement.

29. PW-2's account of the genesis of the pursuit is similarly at odds with the victim's evidence. He states that the victim first cried "बचाओ-बचाओ" ["save me, save me"], that her grandfather raised an alarm, that more than 100-150 villagers assembled, that a call was then made to the police and that the police arrived about half an hour later. This is difficult to reconcile with the victim's categorical statement that no one came from the house when she cried. The assertion that 100-150 villagers gathered is itself capable of independent verification, if true, at least some of those persons ought to be identifiable and available to depose as to what they saw. The great bulk of these villagers cannot be identified or named at all, PW-1 and PW-2 have themselves named certain individual villagers as having been present and two of those named persons, PW-4 Dharmendra Singh and PW-5 Pravendra Singh, have in fact been examined, each lending some corroboration to the fact of the pursuit and apprehension at the Rohta

Canal. Both, however, are themselves nephews of PW-1 who describe the victim as their niece through a cousin, so their evidence remains that of interested family witnesses rather than independent villagers and the great bulk of the 100-150 persons PW-2 describes remains unidentified and unexamined. The assertion of a large, spontaneous village gathering accordingly still rests, in substance, on PW-1, PW-2, PW-4 and PW-5's own word, none of them independent of the family.

30. PW-2 states that police arrived in two or three vehicles, including a Bolero and motorcycles, about half an hour after the call; that the appellant was apprehended by the police, though at another point he had said the villagers caught him; that he does not know the name of the apprehending officer and that the apprehension took place at about 01:40 a.m. If that time is accepted, the chronology becomes occurrence at about 01:00 a.m., apprehension at about 1:40 a.m., the victim remaining at or near the canal and her return home only at about 04:00 a.m. This sequence needs to be reconciled with the victim's own account that the appellant left her near the canal and fled and that she was thereafter found by her relatives and requires testing against the arrest memo, the police diary, call records and the testimony of the police personnel. The witnesses are similarly inconsistent as to the precise place and condition in which the victim was found. PW-1 describes her, at different points, as near the other, unapprehended, person and as standing near the police; PW-2 describes her variously as near the bushes, near the vehicle and near the appellant. These variations may all describe different moments of the same sequence and the Court cannot assume that reconciliation without a recovery memo, a seizure memo or other documentary material establishing the sequence. A site plan of the place of recovery was filed in original and marked as Exhibit Ka-9 and could,

in principle, have fixed the relative positions the witnesses describe but no witness was examined to prove it, so it cannot presently be treated as proved evidence; on its face, moreover, the document shows the embankment of the Rohta Canal with no jungle depicted and no marking of the specific spot at which the victim is said to have been lying, so that even the unproved document does not straightforwardly support any of the witnesses' accounts. PW-8's own testimony does not otherwise supply a clearer picture. These variations accordingly remain unreconciled on the record as it stands.

31. As to the alleged immediate disclosure of the assault, PW-2 states that the victim told him the appellant had removed her clothes and raped her and that she told the police the same. His evidence on the latter point is qualified in a manner that matters, he admits that the victim did not make her statement to the police in his presence and that no signature was obtained in his presence, so his assertion that she told the police about the rape is not founded on his own hearing of that statement. More significantly, when confronted with his own statement under Section 161 Cr.P.C., PW-2 could not explain why it does not record either that the police apprehended the appellant, or that the victim had disclosed the sexual assault to him immediately. His answers were, "पुलिस के आने के बाद, पुलिस वाले पकड़ने की बात नहीं लिखी है, तो मैं कोई वजह नहीं बता सकता हूँ।" ["It is not recorded that after the police arrived, the police caught [him]; I cannot give any reason for that."] and "अगर दरोगा जी ने बयान में नहीं लिखा है, वजह नहीं बता सकता।" ["If the Sub-Inspector did not record it in the statement, I cannot say why."] He further states that his statement under Section 161 Cr.P.C. was recorded 15 to 20 days after the occurrence, at his home: "उसका बयान घटना के पंद्रह-बीस दिन के बाद पुलिस ने लिया था... घर पर लिया था।"

32. A delay of 15 to 20 days in recording a witness's statement is not, without more, a ground to reject his testimony but PW-2 is relied upon

specifically as a witness to the immediate aftermath and the prosecution specifically seeks corroboration from the immediate apprehension of the appellant and the immediate disclosure of the assault; the omission of exactly those two facts from his earliest statement, coupled with his inability to explain the omission, is not a peripheral matter. Read together with his admission that he did not witness the manner of removal at all, at least three distinct aspects of his evidence emerge as unsupported by his own personal knowledge or by his own earlier statement: the manner of removal, the immediate apprehension of the appellant by the police and the victim's immediate disclosure of the assault to him. These correspond to three of the principal corroborative links the prosecution seeks to establish.

33. The delay in recording PW-2's statement assumes further significance because he was not a witness who came to notice only later; on his own account he was among those who joined the pursuit that same night and was present when the appellant and the victim were found near the Rohta Canal. He was accordingly available for examination by the Investigating Officer within hours of the occurrence, not merely available in some general sense weeks afterward. Where a witness who was, or could have been, examined at or shortly after the scene of occurrence is in fact examined only 15 to 20 days later and no explanation for that gap appears either from his own evidence or from that of the Investigating Officer, the delay itself becomes a suspicious circumstance rather than a mere formality. In **Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371**, the Supreme Court held that although delay in recording a witness's statement does not necessarily discredit it, where the witness was or could have been available for examination when the Investigating Officer visited the scene of occurrence or soon

thereafter and the delay nevertheless occurred, it casts doubt upon the prosecution case. That doubt is compounded, not dispelled, by the fact that the two omissions from PW-2's statement go precisely to the immediate apprehension of the appellant and the victim's immediate disclosure of the assault, the very facts a prompt statement, taken while his recollection was fresh and before any occasion for reflection or discussion with other witnesses, could have been expected to record.

34. PW-2 cannot be treated as an eyewitness to the actual removal of the victim from her room, for he candidly admits that he did not see the manner in which the victim was allegedly induced or taken away. His assertion that the victim was taken away by inducement is thus not founded upon his personal knowledge. His assertion regarding the police having apprehended the accused at the spot and his assertion that the victim had immediately disclosed the sexual assault to him do not find corresponding mention in his statement recorded under Section 161 Cr.P.C. and he is unable to furnish any explanation for these omissions. These omissions become material because they relate not to peripheral circumstances but to the alleged immediate apprehension of the accused and the earliest disclosure of the alleged sexual assault. Their significance is heightened by the victim's own testimony that when she raised an alarm while being taken out of the room, no one from her house came to her rescue. The prosecution evidence regarding how the family came to know of the occurrence and commenced the pursuit is not consistent internally.

35. PW-2's testimony is accordingly not liable to be discarded in its entirety but nor can it be treated as independent corroboration of the core occurrence. It divides into what he could plausibly know at first hand, that he is the victim's uncle, that he went to the spot if that is

independently established, that he saw the victim and the appellant if the appellant was in fact apprehended there, that he saw the vehicle and that he took the victim to the police station if that is proved and what he could not, how the appellant induced or took the victim away, how the assault occurred, what happened inside the vehicle and who removed her clothes. For all of the latter, his evidence is derived from what the victim told him and cannot serve as independent corroboration of it. The same is true, to a lesser degree, of PW-1, whose evidence on the genesis of the pursuit, its timing, the apprehension of the appellant and the victim's subsequent movements likewise requires corroboration from the objective record rather than acceptance at face value.

36. One circumstance favours the prosecution, the victim states she already knew the appellant as the driver of her school vehicle and PW-1 says the same, so the case does not depend on a first-time identification of a stranger in darkness. PW-2 gives the vehicle's specific registration number as UP 80 EC 1820 and the victim describes it consistently as a black Eco. This is potentially valuable corroboration but its value depends entirely on the prosecution establishing the complete chain, ownership and registration of the vehicle, the appellant's role as its driver, his possession of it at the relevant time, its actual recovery or seizure at or near the place of occurrence, the precise time, place and condition of that seizure and whether any forensic material was recovered from it. No vehicle seizure memo was in fact prepared by the police and no record of the vehicle's ownership exists on the file either the vehicle's connection to the appellant and to the place of recovery is accordingly not supported by any document of any kind. Absent from that chain, the vehicle number remains an assertion rather than a proved fact and it does not without more explain why on the victim's own account, it

was the unidentified second person who was driving that night while the appellant sat with her in the rear. The site plan of the place of recovery might have assisted in fixing the vehicle's position at the time of recovery had it been proved but no witness was examined to prove it and in any event it would not by itself have supplied proof of ownership, seizure or the appellant's possession of the vehicle.

37. On a cumulative view, neither PW-1 nor PW-2 can be treated as an eyewitness to the actual removal of the victim or to the alleged assault; PW-2 admits as much in terms and PW-1's role is confined to the alleged pursuit, recovery and subsequent disclosure. Taken together, the variations bear heavily on how much weight their evidence and the victim's own evidence can carry. The victim says no one came when she cried, whereas PW-1 and PW-2 say her cries alerted the family and triggered the alarm and pursuit. The victim says, she cannot say whether anyone saw her being put into the vehicle, whereas the prosecution witnesses' initial accounts suggest the family saw her being taken. PW-2 says the appellant took her away by inducement but admits he did not see how. The apprehension of the appellant is attributed, at different points, to the villagers and to the police by both PW-1 and PW-2. The victim's precise location and condition at recovery are described inconsistently, near the bushes, near the vehicle, near the second person, near the police. The victim says she reached home at about 04:00 a.m., whereas PW-1 places her return only at about 9-10 a.m., after the police-station proceedings, the two accounts reversing the order of return-home and police-station visit. PW-1 says the report was written at about 5-6 a.m., while the record shows FIR registration at 10:22 a.m. The sleeping arrangement of the children is not consistently stated between the victim and PW-2. PW-2's assertion that the victim disclosed the assault to the police is not founded on a

statement made in his presence and his court account of the police apprehending the appellant and of the victim's immediate disclosure to him finds no support in his own statement recorded under Section 161 Cr.P.C. for which he offers no explanation.

38. These discrepancies should not be weighed mechanically or in isolation; variations in the recollection of time and of peripheral detail are unremarkable in evidence of a night-time occurrence and a victim of sexual assault is not to be disbelieved merely for want of mathematical precision in every surrounding detail. The real question is whether the contradictions and omissions affect the core of the prosecution narrative and whether the remaining evidence furnishes reliable independent corroboration of that core. The chain of prosecution must establish runs from forcible removal, through the victim's alarm, the family becoming aware, villagers assembling, the 100-number call, police arrival, pursuit, recovery of the victim, apprehension of the appellant, immediate disclosure of the assault, medical examination and on to seizure of the vehicle and further investigation. Each link calls for independent examination. Had the contemporaneous police record, the General Diary, the 100-number call log, the arrest memo, the vehicle seizure memo, a site plan, and the testimony of the police personnel, established this sequence, the discrepancies in the evidence of PW-1 and PW-2 might not have materially affected the prosecution case. That corroboration, however, proves illusory on examination. A *supurdaginama*, the memo by which one police party formally hands an accused into the custody of another, recording the dial-100 police's handover of the appellant to the local police station, has been exhibited as Ka-2, but it was proved only through PW-2 himself, and neither PW-8 nor any other police witness nor any police paper verifies it, so it cannot supply corroboration of PW-2's account independent of PW-2's own

word. No General Diary entry recording the same event exists on the record at all and neither site plan, of the house of abduction, nor of the place of recovery, was proved through the examination of any witness. The oral evidence of PW-1 and PW-2 cannot, in that state of the record, be treated as independently corroborated on the fact, manner, time or place of the apprehension, or on the genesis of the pursuit said to have led to it. The alleged immediate pursuit and apprehension of the appellant, projected by the prosecution as one of its strongest corroborative circumstances, must accordingly be tested against that contemporaneous record, and not merely against the shifting oral descriptions of the victim's relatives; the same applies to the alleged immediate disclosure of the assault.

39. Whether that contemporaneous police record in fact supports the prosecution's chronology is addressed next, in the light of the evidence of the Investigating Officer, PW-8 Pradeep Kaushik, who investigated the case and filed the charge-sheet against the appellant. In his examination-in-chief, he describes the investigation chronologically through the entries or parchas made in the case diary, Parcha No.1 on 19.11.2018 by which he received the SHO's order regarding the case against the appellant and one other person and by which copies of the chik FIR, the report and the recovery memo were obtained and examined and the case diary written up, the statements of the FIR-writer, the complainant, referred to by this witness as Narendra and the accused Sunil being recorded; Seizure Parcha No.1A by which the victim's statement was recorded in the presence of a female Sub-Inspector and copies of her medical examination and the custody memo were entered in the case diary; Parcha No.2 on 22.11.2018 by which a copy of the age-determination report was obtained; Parcha No.3 on 28.11.2018 by which slides and clothing were sent to the Forensic Science Laboratory; Parcha No.4, on

06.12.2018, by which the victim's statement under Section 164 Cr.P.C. was recorded and a further statement of the complainant taken, and Sections 376 IPC and 3/4 of the POCSO Act were added to the case and Parcha No.5 on 11.12.2018 concerning the appellant's remand on the amended charge, the trial court's order thereon, and the Special Judge (POCSO)'s clarification regarding the amendment of the sections applied against the appellant.

40. This chronology is internally consistent throughout. The parcha recording the victim's statement under Section 164 Cr.P.C. and the addition of Sections 376 IPC and 3/4 of the POCSO Act dated 06.12.2018 is Parcha No.4; the remand-related entry, Parcha No.5 is dated 11.12.2018, following the FIR (19.11.2018) and Parcha No.4 (06.12.2018) in proper sequence. No difficulty in the parcha chronology remains.

41. PW-8's cross-examination discloses a materially different picture of his own role than his examination-in-chief might suggest. He admits that when the case was registered he was not posted at the police station itself but at Chowki Ekla, an outpost 3-4 kilometres away and that he was not present at the police station when the FIR was written. He received information of the case on 19.11.2018 but does not recall the time. The arrest memo of the appellant was not prepared in his presence or he does not recall that it was. No article or property, other than the accused persons themselves, was recovered; besides the appellant, the victim was found in the hands of the complainant. He thereafter recorded the complainant's statement and then the appellant's. He does not recall whether the appellant had any injury on his body. He was asked about the identity of the appellant's companion but could not say. The appellant's police-custody remand was not taken. Of particular significance to the sexual-assault charges, PW-8 states that the victim, in the statement

she made to him, did not mention that she had been sexually assaulted, a further and materially earlier, account in which she is not recorded as alleging rape, corroborating on this point her contemporaneous statement to the doctor, and standing in the same relation to her later statement recorded under Section 164 Cr.P.C. and trial deposition as that earlier account does. Most significantly, he confirms that it was the dial-100 police and not the police station's own personnel, who went to the spot and that he does not recall the dial-100 dispatch's serial number, the occurrence having become old.

42. PW-8 further agrees, as a matter of ordinary procedure; that when the dial-100 police apprehend an accused at the spot and hand him over to the police station and a case is registered; that handover is reflected in a General Diary entry. On verification against the record, however, there is no such General Diary entry at all, not merely that one has not been produced before the Court but that none exists on the record recording the dial-100 police's attendance at the spot, the apprehension of the appellant, or the handover to the police station. A *supurdaginama* purporting to record that handover has been marked as Exhibit Ka-2 but it was proved not through PW-8 or any other police witness, and not through any police paper, but through PW-2 Madan, the same family witness whose account of the apprehension is itself internally inconsistent. Neither PW-8 nor any police record verifies Exhibit Ka-2 or speaks to its execution at all. It is a matter for comment that the General Diary entry by which the accused Sunil is said to have been handed over to the police station by the dial-100 police, after having been found with the victim on the night she was taken from her house, does not exist on the record. In that state of proof, the document cannot supply the independent, police-side corroboration its subject matter would ordinarily call for and the General Diary entry, which PW-8 accepts would ordinarily

also exist, remains unexplained; it could easily have been placed on the record by producing the relevant General Diary extract or by examining the dial-100 police personnel who attended the scene.

43. PW-6 is a formal witness, who proves the Chik FIR Exhibit Ka-4 and the General Diary entry recording the registration of the case Exhibit Ka-5. He states that the informant came to the thana along with the vehicle bearing registration No.UP 80 EC 1820 on 19.11.2018 and that the GD entry records the time of institution of the case as 10:22 hours vide GD No.32 dated 19.11.2018. In cross-examination, he states that he informed the SHO before registration of the FIR; that the Investigating Officer was not present at the time and that he did not speak to the Investigating Officer; and that, as a matter of ordinary practice, whenever an arrest is made by the dial-100 police, an entry to that effect is made in the General Diary. On this point, critically, he confirms that there is in fact no entry in the General Diary as to when the accused was handed over at the police station, direct police-witness confirmation, from the officer who himself proves the GD, of the very omission noted above, and considerably more probative of that omission than PW-8's mere acceptance that such an entry would ordinarily exist. PW-6 further states that when the accused was handed over, he was bleeding from his right ear and complained of pain all over his body, a detail bearing on the appellant's own physical condition at the point of handover that does not otherwise appear in the evidence of the other witnesses, and that this Court does not further characterize or draw inferences from, beyond noting its presence on the record. He states finally that the victim was not brought to the police station in his presence and that he does not know when she was brought, so that his evidence like PW-8's, leaves the timing and manner of the victim's arrival at the police station without police-witness support from either

of the two police witnesses examined.

44. This calls for a finding weighted against the prosecution, not a calibrated middle ground. Exhibit Ka-2, the *supurdaginama*, has been marked and exhibited but only through PW-2's own testimony; it is not verified by PW-8 or any other police witness and no police paper corroborates it. A document recording an inter-police handover ought, in the ordinary course, to be proved through the police officers who prepared or witnessed it, not merely produced and identified by a family witness whose own account of the apprehension is itself internally inconsistent. In that state of proof, Exhibit Ka-2 does not supply corroboration of PW-2's evidence independent of PW-2 himself; he is both the source of the account and the person vouching for the one document said to support it, so the two cannot corroborate one another. Together with the absence of the General Diary entry that would ordinarily also record the same event, an absence for which the Investigating Officer offers no explanation, the objective record lends materially less support to the prosecution's account of an immediate, corroborated apprehension than Exhibit Ka-2's mere presence on the file might at first suggest. This reinforces the assessment of PW-1's and PW-2's evidence above: the fact, manner, time and place of the apprehension remain to be tested against the General Diary, the 100-number call log, the testimony of the police personnel actually concerned, and the other material listed below, none of which is presently on the record.

45. Something similar in result, though different in kind, applies to the site plans, on which two distinct points require to be kept separate. The victim's detailed description of the house from which she was taken, the height and broken condition of the rear wall, the open space behind it and the distance at which the vehicle was parked, was in principle capable of independent verification through a site

plan of that house and a spot inspection. No such site plan exists and none ever did. PW-8 and his investigation simply never drew one up, so the document is not merely unproved but was never there to be proved in the first place. That is a lapse in the investigation itself and quite different from a document that exists but was left unproved at trial. The place of recovery stands on a different footing. A document purporting to be the site plan of the place of recovery of the victim and detention of the appellant was in fact prepared and filed in original and marked as Exhibit Ka-9 and could in principle have fixed the inconsistent descriptions given by PW-1 and PW-2 of exactly where the victim was found. No witness was, however, examined to prove it and it accordingly cannot presently be treated as proved evidence, a distinct defect from the abduction-house plan's non-existence, since here a document exists but was never proved, whereas there none was ever made at all. It may be noted, without treating the document as proved evidence for that purpose, that Exhibit Ka-9 as filed depicts the place of recovery on the embankment of the Rohta canal, it neither marks the specific spot at which the victim is said to have been lying nor shows any jungle at all. On its face, therefore, the document sits uneasily even with the account of PW-4 and PW-5, who describe the victim as having been found lying in an empty field in the jungle, a tension that exists quite apart from the document's want of proof through any witness. The place-of-recovery discrepancies therefore remain, like the General Diary gap and the never-prepared site plan of the house of abduction, unresolved on the record as it stands, and are, if anything, compounded rather than resolved by the unproved document's own content.

46. The decisive assessment, in the end must rest on whether the victim's own substantive testimony standing on its own, is of such

consistency and reliability as to safely sustain a conviction or whether the discrepancies within her own successive accounts taken together with the qualifications and omissions in the evidence of PW-1 and PW-2, the absence of a proved General Diary entry, the absence of any site plan of the house from which she is said to have been abducted and a site plan of the place of recovery that was filed in original but never proved through the examination of any witness, together with the absence or inadequacy of other independent documentary corroboration, create a reasonable doubt in the prosecution case.

47. The evidence on age is not uniform. PW-1 puts the victim's age at about 14 years, without documentary support. The victim's own two formal statements give two different dates of birth, 02.11.2005 under Section 164 Cr.P.C. and 15.03.2005 in her deposition and the Medical Board on X-ray examination assesses her age at about 16 years. All three, if taken at face value, place her below 18 years on the date of occurrence, so none of them assists the appellant's contention that she was major but their mutual inconsistency means that none can be treated as reliable proof of her precise age. PW-1 admits there is no birth certificate with him and he does not recall her school admission particulars and the victim herself does not recall the age recorded at her own admission. No documentary proof of age, school admission records or a birth certificate, was in fact proved by the prosecution at all; this is not a mere omission capable of later cure but a settled feature of the record and the finding of minority must accordingly rest entirely on these variable oral figures and the Medical Board's approximate assessment, without the benefit of the best evidence that would ordinarily be expected. Subject to that qualification, minority as such appears reasonably established on the present material, since the two dates of birth given by the victim

herself and the Medical Board's X-ray assessment all converge on an age below 18 even though no single precise date of birth is established; the appellant's contention that the victim was major does not appear sustainable, though the absence of any documentary proof of age is itself a feature the final judgment should not pass over.

48. The evidence of PW-1, PW-2, PW-4, PW-5 and PW-8 has been examined in full above and only the conclusions bearing directly on Sections 363 and 366 IPC are summarised here. None of the four is an eyewitness to the actual removal of the victim from the house or to the alleged assault; their evidentiary role is confined to the alleged pursuit, recovery and immediate disclosure and PW-4 and PW-5, though offering some corroboration on the pursuit and apprehension, are themselves the informant's nephews who describe the victim as their niece through a cousin, rather than independent witnesses. That evidence is internally inconsistent on points going to the core of the prosecution's immediate-recovery theory; whether the victim's cries in fact alerted the family, which she herself denies, who actually apprehended the appellant and when, the precise place and condition in which she was found and the chronology of her return home relative to the police-station proceedings. PW-2's evidence additionally suffers from his candid admission that he did not witness the manner of removal and from two omissions in his statement recorded under Section 161 Cr.P.C., the police's apprehension of the appellant and the victim's immediate disclosure to him, for which he offers no explanation. The vehicle said to connect the appellant to the occurrence is now identified with a specific registration number by PW-2, an improvement on PW-1's inability to recall it but its corroborative value still depends on the prosecution proving the full ownership, possession and seizure chain, a chain i.e. in fact entirely absent, no seizure memo or ownership record of any kind being on

the file. It is also relevant that the victim named the appellant Sunil specifically in her earliest account, given to the doctor within hours of her recovery, as one of the two persons involved, consistently with her later statement recorded under Section 164 Cr.P.C. his identification accordingly does not rest solely on her later statements or on PW-1's and PW-2's evidence of prior acquaintance but is corroborated by a contemporaneous identification made at the first opportunity as well.

49. The FIR's timing remains an unexplained discrepancy rather than a resolved one. The occurrence is placed at about 01:00 a.m. on 19.11.2018 and the FIR was registered at 10:22 a.m. the same day, while PW-1 and PW-2 state the written report was prepared at about 5-6 a.m. Neither the case diary nor the chik register makes any mention of that time; both are silent on it and record only the 10:22 a.m. registration, so the interval cannot be explained from the documentary record and rests entirely on the oral estimate of PW-1 and PW-2. Nor has it yet been established whether the victim was recovered from the appellant's direct physical custody or was merely found in or near the vehicle, a distinction material both to Sections 363/366 and to the defence version that the appellant was only the driver and one that requires resolution from the arrest memo and the Investigating Officer's evidence rather than the oral and inconsistent accounts of PW-1 and PW-2 on this point.

50. The victim was examined on 19.11.2018 at 03:45 p.m., the same day as the occurrence and her recovery that morning, only a few hours later. Her statement to the doctor is therefore not merely the earliest formal account on record, preceding both her statement under Section 164 Cr.P.C. and her deposition at trial but was recorded before there was any apparent opportunity for tutoring or embellishment, which is what gives this history its considerable

evidentiary weight, in both directions. She told the doctor that two persons entered, lifted her, that she shouted, that her mouth was pressed and that she became unconscious until she found herself near the canal; on being specifically asked about sexual assault, she stated that she did not know whether rape had been committed. In this account, she named the appellant Sunil specifically as one of the two persons who entered and lifted her, the other remaining unidentified, consistent with her later statement recorded under Section 164 Cr.P.C. already quoted above. His identification therefore does not first appear only in that later, formal statement; it is already present in the earliest, contemporaneous account given to the doctor. Physical examination disclosed no external injury and no injury to the urethral meatus, vestibule or perineum; the hymen was old, torn and healed rather than freshly injured and the primary medical opinion recorded no signs suggestive of sexual violence. The victim's seized clothing was sent for forensic examination on 28.11.2018 but the resulting FSL report was not proved in evidence at all; the prosecution's forensic case accordingly rests on no more than the primary medical opinion just noted. PW-7's cross-examination elicited nothing further beyond what is set out in this paragraph, nothing on the interval before examination, the genital-examination findings, or the detection of semen or other forensic material.

51. On the question of removal, this history substantially corroborates the broad account given elsewhere, two persons, being lifted, shouting, the mouth being pressed, unconsciousness, and regaining consciousness near the canal, and thereby furnishes independent circumstantial support for Sections 363/366, quite apart from what PW-1 can prove. That support extends to the identity of the appellant as well as to the fact and manner of the removal, since the victim named Sunil specifically even in this, her earliest account,

consistently with her later Section 164 Cr.P.C. statement naming him in the same terms as one of the two persons who entered the house, the other remaining unidentified. The identification of Sunil accordingly does not rest on her later statements alone, or merely on PW-1's and PW-2's evidence that she already knew him as the school-vehicle driver, it is corroborated by a contemporaneous identification made at the first opportunity as well.

52. On the question of rape, however, the position is materially different, and more favourable to the appellant than a simply negative medical report would be. It is well settled that the absence of injury does not by itself disprove rape and that medical evidence is ordinarily corroborative rather than indispensable, a reliable victim's testimony being capable of sustaining a conviction on its own. This, however, is not a case of merely negative findings: the victim's own contemporaneous statement, given at the earliest medical opportunity, does not allege rape at all, she expressly stated that she did not know whether it had occurred. This is not an isolated feature of the medical history alone: PW-8, the Investigating Officer, states that the victim, in the statement she made to him, likewise did not mention that she had been sexually assaulted, so that two independent witnesses to two separate, and both early, accounts, the doctor and the Investigating Officer, concur that the victim's earliest versions did not include an allegation of rape. Read with the absence of external, urethral, vestibular or perineal injury, the old and healed state of the hymen, and the opinion of no signs of sexual violence, the medical evidence furnishes no corroboration of recent sexual assault. The old, healed hymen, by itself, proves nothing as to intercourse on the date of occurrence or as to who might have been responsible. If PW-3 subsequently gives a categorical allegation of rape at trial, the discrepancy between that allegation and this

contemporaneous history is a circumstance the judgment must confront and explain, and not one that can be passed over. The absence of any proved FSL report compounds this difficulty: whatever forensic material was collected from the victim's clothing and sent for examination on 28.11.2018 has not been brought before the Court in the form of a proved report, so no scientific corroboration, one way or the other, is presently available to test her account.

53. The victim's account did not remain static across the record, and the divergence is not confined to the question of rape. What she told the doctor on 19.11.2018, that she did not know whether rape had been committed, is corroborated by her statement to the Investigating Officer, PW-8, on the same day, in which she likewise did not mention having been sexually assaulted; both are stated to differ from what she subsequently stated under Section 164 Cr.P.C. before the Magistrate on 01.12.2018, and her deposition before the trial court is stated to differ again from all three. The divergence extends well beyond that single point: the date of occurrence itself, 18.11.2018 in her Section 164 Cr.P.C. statement against 19.11.2018 at trial; her own date of birth, 02.11.2005 against 15.03.2005; whether her cries brought her family to her aid, yes under Section 164 Cr.P.C., "no one came from the house" at trial. These accounts, to the doctor, to the Investigating Officer, to the Magistrate, and at trial, require to be set out and compared side by side, stage by stage, rather than the trial testimony being read in isolation from what preceded it.

54. A reading of the trial court's judgment itself shows that these discrepancies, going as they do to the date of occurrence, the genesis of the alleged pursuit, and the occurrence of the sexual assault itself, and not to peripheral detail, were not noticed or dealt with at all. A failure to advert to material inconsistencies of this order in the successive statements of the prosecutrix is not something this

Court, sitting in appeal, can pass over. The trial court's finding cannot, in these circumstances, be treated as one reached after a proper appreciation of the evidence, and this omission is itself a ground calling for this Court to reappraise the evidence afresh, on the kidnapping charges as much as on the sexual offence charges, independent of what the ultimate view on the victim's credibility should be.

55. These discrepancies do not stand in isolation, and considered together they raise a further and distinct possibility that the prosecution's case does not adequately meet. The informant, PW-1, himself places the point of recovery at about 2½ kilometres from the house, yet describes reaching it within about five minutes of the alarm being raised, a span difficult to reconcile with a spontaneous, on-foot pursuit by an assembling crowd of villagers over that distance, and one the investigation has done nothing to verify, no site plan or recovery memo being available to fix either the distance or the time actually taken. To this must be added the direct conflict between the victim's account of having no memory of the assault at all and her vivid, detailed account of it given in cross-examination; the unexplained interval between the occurrence, about 1:00 a.m., the report said to have been written at about 5-6 a.m., and the FIR's actual registration at 10:22 a.m., an interval of several hours that neither the case diary nor the chik register accounts for; and the further, unexplained delay of fifteen to twenty days before PW-2's own statement under Section 161 Cr.P.C. came to be recorded at all, notwithstanding that he was available for examination within hours of the occurrence. Taken cumulatively, an implausible recovery chronology, a victim who cannot consistently say whether she remembers the assault or not, an unexplained delay of several hours before the FIR came to be registered, and a further unexplained

delay of over a fortnight before a key witness's own statement was recorded together raise a real possibility that the victim's account, however vivid at trial, was the product of deliberation and consultation in the intervening period rather than of unaided recollection. As the Supreme Court observed in **Thulia Kali v. State of Tamil Nadu, (1972) 3 SCC 393**, delay in lodging the first information report quite often results in embellishment, which is a creature of afterthought, since the report loses the advantage of spontaneity and the danger creeps in of the introduction of a coloured version, an exaggerated account, or a concocted story as a result of deliberation and consultation, and delay of this kind must be satisfactorily explained if it is not to count against the prosecution. No such explanation has been offered here. This Court does not record a finding that tutoring did in fact occur, which is not a matter capable of proof one way or the other on this record; it records only that the possibility cannot be excluded, and that this further undermines the reliability of the victim's testimony as the foundation for any of the charges, including the least demanding of them.

56. Stepping back, the investigation in this case was, on the record as a whole, a clumsy one: no General Diary entry recording the handover of the appellant to the local police station; a *supurdaginama* proved only through an interested family witness and never verified by the Investigating Officer or any police paper; a site plan of the house of abduction never even prepared, so that no question of proving it could arise, and a site plan of the place of recovery that was prepared but never proved through the examination of any witness; no vehicle, seizure memo and no record of the vehicle's ownership; no documentary proof of the victim's age though school records could readily have been summoned; an FSL report never brought on record despite the relevant samples and clothing having

been sent for examination as early as 28.11.2018; a scribe of the tahrir who sheds no light on when it was written; and an unexplained fortnight's delay before the statement of a key witness, available from the outset, came to be recorded at all. Each of these omissions was, on this record, avoidable. That the trial court, confronted with this entire catalogue of investigative laches, and with the material discrepancies in the victim's own successive statements addressed above, which it did not even notice, nevertheless proceeded straight to a finding of conviction speaks to something more than inadvertence. It suggests an eagerness to arrive at a finding of guilt that was not matched by an equal readiness to test the prosecution's case against its own, readily apparent gaps, precisely the imbalance that the guarantee of a fair trial exists to prevent, a guarantee this Court has recognized as requiring even-handedness as between the prosecution and the defence, and not merely as between the prosecution and society (**Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158**). This is not to say that a defective or negligent investigation by itself entitles an accused to acquittal; it does not and the remaining evidence must always be weighed on its own merits. But a trial court that overlooks laches of this order and magnitude, together with the discrepancies in the principal witnesses' own accounts, cannot be said to have subjected the prosecution's case to the scrutiny a criminal trial demands, and its resulting finding of conviction is entitled to correspondingly diminished weight on this appeal.

57. The decisive question on the sexual offence charges is whether PW-3 herself gave a clear, consistent and credible account before the trial court that the appellant had sexual intercourse with her, and whether that account was tested in cross-examination against the history recorded in Exhibit Ka-6 and against her Section 164 Cr.P.C.

statement. A discrepancy between an early statement of "I do not know" and a later categorical allegation does not, by itself, discredit the later testimony, but it is a material circumstance which the prosecution must satisfactorily explain, and which the trial court does not appear to have engaged with at all. If PW-3's testimony is clear, consistent and inspires confidence, and the discrepancies noted above are satisfactorily explained on a fresh appraisal by this Court, the settled principle that the sole testimony of the prosecutrix can sustain a conviction without medical corroboration would apply, and the medical evidence would not, by itself, justify acquittal. If, on the other hand, her testimony discloses material contradictions or improvements on the occurrence of rape which remain unexplained, the contemporaneous medical history becomes a powerful circumstance creating reasonable doubt, and the benefit of that doubt would go to the appellant on this point, independently of the findings on the kidnapping charges.

58. It bears added emphasis that the FSL report, the one piece of scientific evidence capable of independently confirming or dispelling the allegation of penetrative assault, the relevant samples and clothing having been sent for examination as early as 28.11.2018, has not been proved in evidence at all. Its absence does not affirmatively disprove the allegation, but it does mean that the prosecution has not brought before the Court forensic corroboration that was, in principle, available to it, and the case on this charge must accordingly be decided on the victim's testimony and the medical history alone.

59. The finding of minority does not fill this gap. The question whether the victim was below 18 years of age is distinct from the question whether penetrative sexual assault occurred, and the former may be accepted while the latter is not established, without any

inconsistency.

60. If the victim's minority is accepted and the prosecution's account of an immediate pursuit and apprehension is made good, the case would run from a minor girl removed from her house to the appellant being found transporting her to an immediate pursuit to the appellant and the victim being apprehended together, a case considerably stronger than one resting merely on a missing minor later found in the accused's company. That premise, however, cannot be accepted merely on the oral say-so of PW-1 and PW-2: the victim's own evidence that no one came from the house when she cried undercuts the very genesis of the pursuit as they describe it, and the accounts of who apprehended the appellant, when, and in what condition the victim was found are themselves inconsistent. The objective record affords no escape from this difficulty: the vehicle evidence, the *supurdaginama*, the General Diary, and both site plans all fail, for the reasons already set out, to furnish independent corroboration. This charge would accordingly have to be assessed on the victim's own testimony alone, tested against the discrepancies already noted, rather than on the assumption of an immediate, corroborated apprehension.

61. This raises squarely the question whether a conviction can be sustained on the footing that the victim, whether lured or forcibly taken, was in any event found together with the appellant, even though the *supurdaginama* and the General Diary entry recording that recovery remain unproved, or are otherwise beset with discrepancy. The principle itself is sound, recovery of a missing minor in the company of the accused is capable, in the right case, of sustaining a conviction without any document at all, on credible oral testimony alone, and can shift the burden under Section 106 of the Evidence Act onto the accused to explain facts especially within his knowledge.

But that principle has two settled qualifications, both fatal to its application here. First, the circumstance relied upon must itself be fully and firmly established, not merely probable; it cannot be left in doubt and still support an inference of guilt (**Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**). The last-seen, or found-together, line of authority makes the same point, the circumstance does not by itself compel an inference of guilt and there must be something more connecting the accused with reasonable certainty (**Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715**). Here it is not merely the *supurdaginama* and the General Diary that are missing; the oral account of the very fact of recovery is itself irreconcilable, four witnesses give four different times of apprehension, at least three different descriptions of where and how the victim was found, and the one document that could have fixed the spot, Exhibit Ka-9, depicts a location inconsistent with all of them. This is accordingly not a case of strong, consistent oral proof lacking only its documentary corroboration, it is a case in which the fact, time, place and manner of the recovery are themselves contested and unresolved. Second, Section 106 shifts the burden to explain only once the prosecution has discharged its own primary burden of establishing the foundational facts; it does not operate to fill a gap in the prosecution's own case (**Shambu Nath Mehra v. State of Ajmer , 1956 CRILJ 794 , reaffirmed in Anees v. State Govt. of NCT of Delhi, 2024 SCC OnLine SC 757**). Since the very fact of the finding remains in dispute on the prosecution's own witnesses, there is no established primary fact for the appellant to be put to explain. Even taken at its highest, a firmly-established found-together circumstance would support, at most, Section 363/366 IPC; it says nothing of itself about whether a penetrative sexual assault in fact occurred, a separate and independently-required element already found doubtful on the medical and testimonial evidence. The conviction cannot,

therefore, be sustained on the footing that the victim was in any event found with the appellant.

62. That assessment does not survive scrutiny even on the victim's own testimony taken alone. PW-1's account places the point of recovery about 2½ kilometres from the house while describing a pursuit completed within some five minutes, a chronology the investigation made no attempt to verify; the victim's own evidence is internally divided between having no memory of the assault at all and a vivid, detailed recollection of it and neither the interval of several hours between the occurrence and the FIR's actual registration nor the fortnight's delay before PW-2's own statement came to be recorded has been explained. This combination raises a real possibility of deliberation and tutoring that the prosecution has done nothing to dispel. Even as the least demanding of the four charges, Section 363 IPC cannot presently be said to be established beyond reasonable doubt, not because any one gap is by itself fatal, but because the cumulative and unexplained discrepancies leave the charge without the cogent foundation a conviction requires.

63. A conviction under Section 366 IPC cannot simply follow from proof of Section 363 IPC. The prosecution must separately establish the additional statutory ingredient, kidnapping or abduction with the intent contemplated by Section 366 IPC, such as intent that the victim be compelled to marry or be forced or seduced into illicit intercourse. If the prosecution's theory is abduction for sexual exploitation and the evidence of sexual assault itself becomes doubtful, the requisite intent must still be established through admissible and reliable evidence of the surrounding circumstances; it cannot be inferred merely because Section 363 IPC is made out, nor can an unproved allegation of rape be used to supply the element of intent.

64. The appellant's explanation that he was merely the driver of the vehicle, and was falsely implicated over a dispute concerning Rs.6,000/- in outstanding vehicle-rental charges is not by itself sufficient to raise a reasonable doubt it must be tested against the objective circumstances of the recovery. If the appellant was admittedly driving the vehicle and was apprehended together with the victim at the canal shortly after she disappeared, the explanation becomes considerably less persuasive. If, on the other hand, the prosecution is unable to establish that the victim was actually found in the appellant's vehicle or that he participated in taking her away, the explanation gains substantial force, which is precisely why the question of whether recovery was from his physical custody or merely in or near the vehicle assumes importance.

65. On the charge under Section 363 IPC, the present evidentiary position is that it is not sustained on the record as it stands. Its principal support, the alleged immediate pursuit and apprehension, rests solely on the oral evidence of PW-1 and PW-2 itself internally inconsistent and contradicted in part by the victim no independent documentary corroboration exists, there being no General Diary entry, no police verified handover memo, no proved site plan of either location and no vehicle seizure memo or ownership record, age itself rests on oral and medical estimates rather than documentary proof and none of these gaps has been explained by the prosecution or addressed by the trial court.

66. On the charge under Section 366 IPC, the position is likewise that it is not sustained. This charge requires independent proof of the statutory intent for kidnapping or abduction over and above Section 363 IPC, and since the foundational facts relied upon for Section 363 are themselves not established beyond reasonable doubt, the additional intent required for Section 366 is equally unproved.

67. On the charge under Section 376 IPC, the position is again that it is not sustained. The contemporaneous medical history is silent on rape, the physical and pathological examination discloses no corroborative finding, the FSL report was never proved despite the seized clothing having been sent for examination on 28.11.2018, and the victim's own successive accounts diverge on matters going to the core of the occurrence, divergences the trial court did not address and the prosecution has not explained.

68. On the charge under Sections 3/4 of the POCSO Act, the position is not sustained, for the same reasons as Section 376 IPC. Minority is reasonably established on convergent oral and medical estimates, but minority alone does not supply the proof of penetrative sexual assault that these provisions additionally require.

69. The absence of any injury on the victim's person, the absence of blood staining on her clothes, her own admission that no one from the house responded to her cries, and the doubt surrounding the medical and testimonial evidence of sexual assault bear on whether the victim may, in fact, have been a consenting party rather than a person forcibly removed and assaulted. It is necessary to be precise about what effect, if any, such a finding would have in law, since consent operates differently for the two sets of charges. As to Sections 363 and 366 IPC, if the victim is found to have been a minor on the date of occurrence her own consent to accompanying the appellant is not consent in the eyes of law for the purposes of Section 361 IPC as the section makes the guardian's consent not the minor's, the relevant enquiry and a minor's willingness to go with the accused does not by itself take the case out of Section 363 IPC. What the law does require, independently of the victim's consent, is proof that the accused played an active part in the taking or enticing of the minor out of lawful guardianship and mere passive accompaniment by a

willing minor without some inducement, blandishment or active persuasion originating with the accused, does not amount to taking within the meaning of the section. (**S. Varadarajan v. State of Madras, AIR 1965 SC 942**). The question, therefore, is not whether the victim consented, but whether the prosecution has proved an active role on the part of the appellant in taking away the victim out of the custody of her lawful guardian? As to Section 376 IPC and Sections 3/4 of the POCSO Act, if the victim is a minor, her consent, even if it existed in fact, is wholly immaterial in law, since a minor is treated in law as incapable of giving valid consent to a sexual act and the offence under the POCSO Act is made out, if the other ingredients are proved, regardless of any consent the minor may in fact have given. The finding of reasonable doubt accordingly, does not and could not rest on any suggestion that the victim consented; it rests instead on the prosecution's failure to establish beyond reasonable doubt, that any penetrative sexual act took place at all. In short, even on the hypothesis most favourable to the appellant, that the victim did in fact accompany him willingly, that hypothesis does not itself supply a defence to either charge; the appellant's entitlement to the benefit of the doubt recorded in this judgment rests squarely on the evidentiary gaps and contradictions already identified, not on any finding, express or implied, regarding the victim's consent.

70. As per the evidence adduced by prosecution, the charges do not admit of a single composite answer and must be assessed separately. As to Section 363 IPC, the case is potentially credible but its principal support, an immediate pursuit and apprehension rests substantially on the oral evidence of PW-1 and PW-2, which is itself internally inconsistent and contradicted in part by the victim's own testimony that no one came from the house when she cried. A

supurdaginama recording the dial-100 police's handover of the appellant to the local police station has been exhibited as Ka-2, but it has been proved only through PW-2 without verification by PW-8 or any other police witness or police paper, so it cannot supply corroboration of the prosecution's account independent of PW-2 himself; and the General Diary entry that would ordinarily also record the same event, which PW-8 confirms is the ordinary procedure does not exist on the record and its absence remains unexplained. Neither of the two site plans supplies any further corroboration: the investigation never drew up any site plan of the house of abduction at all, while the only site plan actually prepared and filed, Exhibit Ka-9, the site plan of the place of recovery of the victim and detention of the appellant was for its part never proved through the examination of any independent witness though available throughout from pursuing the accused to recovery of the victim to lodging of the FIR. No vehicle seizure memo was ever prepared by the police and no record of the vehicle's ownership exists on the file either, so the vehicle evidence rests entirely on the oral say-so of PW-2 and the victim without any documentary support of any kind. Whether this charge is ultimately sustainable therefore depends on the victim's own testimony alone, tested against the discrepancies already noted rather than on the family witnesses' accounts, Exhibit Ka-2 either unproved site plan or any document establishing the vehicle's ownership. As to Section 366 IPC, the statutory intent requires separate consideration and cannot simply follow a finding on Section 363 IPC. As to Section 376 IPC and Sections 3/4 of the POCSO Act, the prosecution faces a substantial difficulty: the contemporaneous medical history is silent on rape and expressly records that the victim did not know whether it had occurred, the physical and pathological examination discloses no sign of recent sexual violence, no FSL report was ever proved to supply scientific corroboration one way or the other despite the

relevant samples and clothing having been sent for examination on 28.11.2018, and the victim's own successive accounts to the doctor under Section 164 Cr.P.C., and at trial diverge on matters going to the core of the occurrence, a divergence the trial court does not appear to have addressed. For a conviction on this count to stand, the victim's own testimony, tested against all of the foregoing, would have to be sufficiently cogent and trustworthy to explain away these circumstances; for the reasons that follow, it does not do so, and no other material on the record explains them either. Although the prosecution has succeeded in establishing at least *prima facie*, that the victim was a minor. However, the evidence regarding the alleged sexual assault requires independent scrutiny. The contemporaneous medical history does not disclose rape, the victim herself stated that she did not know whether rape had been committed. The physical examination disclosed no external or genital injury, the hymen was old, torn and healed, and the pathological examination disclosed no finding suggestive of sexual violence. In the absence of other reliable evidence establishing penetrative sexual assault, the prosecution cannot derive proof of rape merely from the minority of the victim or her alleged kidnapping.

71. On perusal of victim's entire testimony, this Court finds that it does not explain and the prosecution has at no stage explained the discrepancy between her account and the contemporaneous medical history or the discrepancies within her own successive statements to the doctor, to the Investigating Officer under Section 164 Cr.P.C., and at trial. Her testimony discloses material contradictions extending beyond the fact of rape and the very genesis of the alleged pursuit, none of which the trial court noticed or addressed. On this finding, the appellant is entitled to the benefit of doubt on the charges under Section 376 IPC and Sections 3/4 of the POCSO Act.

72. The finding on Section 363 IPC stands on no firmer footing. No General Diary entry exists to independently corroborate the immediate handover of the appellant to the local police station; the *supurdaginama* exhibited as Ka-2 is proved only through PW-2, the victim's own uncle and verified by neither the Investigating Officer nor any police paper, the investigation never drew up any site plan of the house of abduction, a lapse of its own making rather than a mere failure of proof notwithstanding that the victim's own account of her removal over a broken rear wall, in the dark without waking her sisters sleeping beside her or her grandparents in the verandah, plainly called for such a plan to have been made; the site plan of the place of recovery though prepared and filed in original, was for its part never proved through any independent witness, and, on its face, depicts only the embankment of the Rohta canal with no jungle shown and no marking of the spot at which the victim is said to have lain sitting uneasily even with PW-4's and PW-5's own accounts of recovery from an empty field in the jungle, no vehicle seizure memo was ever prepared by the police at all and no record of the vehicle's ownership exists on the file either; and the interval between PW-1's account of the report being written at about 5-6 a.m. and the FIR's registration at 10:22 a.m. finds no support in either the case diary or the chik register. None of these gaps has been explained by the prosecution at any stage, and the trial court's judgment does not address any of them. The charge accordingly rests in the end on the oral testimony of PW-1 and PW-2 alone, testimony that is itself materially inconsistent both internally and against the victim's own account, without the documentary corroboration that was readily available and plainly called for and without any explanation for its absence. Even confining the inquiry to Section 363 IPC alone, the least demanding of the four charges and the only one that could conceivably survive if the sexual offence counts were to fall, the same

defect recurs and is if anything reinforced: PW-1's own account places the point of recovery some 2½ kilometres from the house while describing a pursuit completed within about five minutes, a chronology the investigation made no attempt to verify; the victim's own evidence is internally divided between having no memory of the assault at all and a vivid, detailed recollection of it; and the gap of several hours between the occurrence the report said to have been written at about 5-6 a.m., and the FIR's actual registration at 10:22 a.m. remains unexplained on the documentary record. This combination, an unverified recovery chronology, an internally divided account of memory and an unexplained delay of the kind addressed in **Thulia Kali v. State of Tamil Nadu, (1972) 3 SCC 393**, raises a real possibility of deliberation and tutoring in the intervening period, a possibility the prosecution has done nothing to dispel. Section 363 IPC accordingly fails for the same reason as the other charges: not because any single gap is by itself fatal, but because the cumulative, unexplained discrepancies leave the Court unable to hold that the prosecution has proved its case beyond reasonable doubt.

73. It bears emphasis in reaching this conclusion, that the burden of proving the guilt of the accused beyond reasonable doubt rests at all times upon the prosecution and that this burden does not shift to the accused merely because the discrepancies noted above remain unexplained. As the Supreme Court held in **Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808**, the burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden the courts cannot record a finding of the guilt of the accused; where a reasonable doubt arises on the evidence, the benefit of it cannot be withheld from the accused. The reverse burden and presumption available to the prosecution under Section 29 of the POCSO Act do not alter this starting point that presumption is

activated only once the prosecution has first proved the foundational facts constituting the offence, it does not itself supply proof of those foundational facts, and an accused need only raise a reasonable doubt about them. The Supreme Court applied the same approach on materially comparable facts, an unexplained delay in the lodging of the FIR and material inconsistencies in the child victim's own successive statements, in **Debraj Dutta v. State of West Bengal, 2026 LiveLaw (SC) 401**, decided 07.04.2026, setting aside the conviction and restoring the trial court's acquittal, and holding that the ***presumption under Section 29 cannot rest on the strength of a child's testimony unless that testimony is first found to be fully credible and trustworthy***. On the findings recorded above, the foundational facts of the prosecution's case, the manner of the victim's removal, the continuity of the pursuit said to have led to the appellant's apprehension, and the documentary corroboration ordinarily to be expected of each, have not been established free of unexplained discrepancy, and the prosecution has accordingly not discharged the burden that lay upon it from the outset, the enquiry in other words remains whether the prosecution has proved its case, not whether the appellant has disproved it.

74. On the evidence and discrepancies discussed at length above none of which has been explained by the prosecution or addressed by the trial court, this Court holds that the conviction cannot be sustained as it stands on the record. This finding applies to the charge under Section 376 IPC and Sections 3/4 of the POCSO Act, for the reasons set out above to the charge under Section 363 IPC, for the reasons set out above and equally to the charge under Section 366 IPC, which requires independent proof of a statutory intent over and above the facts relied upon for Section 363 IPC and cannot stand once even those foundational facts are themselves

unproved beyond reasonable doubt. No documentary or other material remains outstanding on the record the evidentiary record is complete and the appeal falls to be allowed on that complete record.

75. Every acquittal does not furnish a foundation for a claim against the State. The jurisprudence on this point supports a distinction between three situations. A prosecution may fail because the evidence does not cross the threshold of proof beyond reasonable doubt that results in acquittal but does not by itself establish that the accused was falsely implicated. The prosecution may on the other hand be shown on a cumulative assessment of the entire record to be fundamentally unreliable, the evidence demonstrably false, mutually destructive, inherently improbable, or contradicted by objective material, with the investigation having materially contributed to the wrongful prosecution so as to justify what may properly be described as a clean acquittal founded on wrongful implication rather than an acquittal resting merely on the benefit of the doubt. Where such wrongful implication is coupled with substantial or prolonged deprivation of liberty attributable to State action, the question may move beyond criminal adjudication into the constitutional domain of Article 21. This Court considers it necessary to identify before parting with this appeal where the present case falls on that spectrum.

76. The Supreme Court's observations para 28 in **V. Senthil Balaji v. Deputy Director, Directorate of Enforcement, 2024 INSC 739**, supply the starting point. The Court observed that there may be cases where an accused secures a clean acquittal after very long incarceration, and that crucial years of the accused's life are in such circumstances lost, it observed that in an appropriate case this may amount to a violation of Article 21 and give rise to a claim for compensation. The Court, however, was deliberate in qualifying what it meant by a clean acquittal expressly excluding cases where

witnesses have merely turned hostile or where there is a bona fide defective investigation. The proposition is accordingly not that acquittal coupled with incarceration, without more, gives rise to compensation; it is that a clean acquittal, coupled with substantial wrongful deprivation of liberty and circumstances establishing a constitutional wrong may do so, a materially higher threshold.

77. The subsequent decision in **Kattavellai @ Devakar v. State of Tamil Nadu, 2025 INSC 845**, decided on 15.07.2025, carries the discussion further and is of particular relevance here. The Supreme Court set aside a conviction and death sentence on finding that the circumstances relied upon by the prosecution had not been conclusively established and that the chain of circumstances did not point unerringly to the guilt of the accused, after considering serious investigative deficiencies going to identification, the test identification parade, the examination of material witnesses, and the chain of custody and handling of DNA evidence. Adverting to V. Senthil Balaji, the Court noted that the case before it was itself one where the accused had obtained a clean acquittal after years of incarceration and it went on to observe on the desirability of a statutory compensation mechanism for such cases, it was however, careful not to hold that the occasion for finally and conclusively determining a constitutional claim for compensation had arrived on the facts before it. That restraint is one this Court considers it appropriate to preserve in dealing with the present appeal.

78. A finding that the investigation was defective does not without more warrant a finding that the accused was falsely implicated. The first may follow from negligence, incompetence or a mere failure to follow proper procedure; the second requires the Court to be satisfied on the entire evidentiary record that the prosecution case was itself false or fundamentally unreliable, and that the accused was wrongly

made to face a criminal trial on that basis. This distinction is consistent with the qualification in *V. Senthil Balaji* itself which excluded bona fide defective investigation from the concept of a clean acquittal. It would accordingly not be right to reason that, because the Investigating Officer failed to produce the General Diary entry or never prepared a site plan of the house of abduction, the appellant was therefore falsely implicated. The more accurate statement is that these investigative omissions assume significance because they concern objectively verifiable circumstances on which the prosecution itself relies as material links in its case; considered together with the mutually inconsistent accounts of the prosecution witnesses and the other circumstances discussed in this judgment they become relevant not merely as lapses in investigation but in assessing whether the prosecution version itself is reliable.

79. Assessed against that framework, the record in this case discloses more than an ordinary case of insufficiency of proof. The prosecution witnesses do not merely differ on peripheral matters, they are materially at odds on how the victim was removed whether anyone saw her being taken away, who raised the alarm and whether the family in fact responded to it, who pursued and apprehended the appellant, where and in what condition the victim was found, when she returned home, and when the FIR was actually lodged, divergences going to the very genesis and continuity of the prosecution's case. The objective material that could have resolved these divergences was either never brought into existence or was never proved: no General Diary entry exists to record the Dial-100 police's handover of the appellant; the *supurdaginama*, Ka-2, is proved only through an interested family witness and unverified by any police officer or paper, the site plan of the house of abduction was never even prepared, and the site plan of the place of recovery,

Ka-9, though prepared was never proved; no vehicle seizure memo or ownership record exists and the Dial-100 personnel who are said to have attended the scene and apprehended the appellant were never examined and the only named persons examined beyond PW-1 and PW-2, PW-4 and PW-5, are themselves the informant's nephews who describe the victim as their niece through a cousin so that no independent villager among those named has been examined at all. Nor, closer to the victim herself, have Sapna and Shivani, her sisters, who were sleeping in the very same room and were on her own account the persons best placed to say whether any disturbance occurred there that night, ever been questioned by the Investigating Officer or even named in the charge-sheet's list of witnesses, a further unexplained gap in the investigation and one closer to the primary occurrence than the pursuit and recovery witnesses already discussed, and one that attracts the adverse inference available under Section 114 illustration (g) of the Evidence Act for withholding the best available evidence on the point. Read together with the unexplained delays in the lodging of the FIR and in the recording of PW-2's own statement, these circumstances raise a real, if unproved, possibility that the prosecution's account was shaped by deliberation rather than by unaided recollection, and the trial court's failure to notice any of this compounds the difficulty.

80. One qualification, however, must be stated with equal candour, since the distinction between absence of corroboration and positive incompatibility matters a great deal at this point. The medical evidence in this case does not affirmatively contradict the prosecution's account of a sexual assault; it is silent and non-corroborative, the victim's own contemporaneous history being equivocal rather than exculpatory, and it stops short of demonstrating that the alleged occurrence could not have happened in the manner

asserted. Nor is there anything on the record, such as a demonstrated alibi or scientific material affirmatively excluding the appellant that independently establishes his innocence rather than merely leaving the prosecution's case unproved. The identification of the appellant, moreover, is not itself in serious doubt: the victim named him consistently from her earliest statement to PW-7 onward. On a fair and complete view of the record therefore, while the cumulative circumstances go well beyond an ordinary failure of proof and reflect materially on the reliability of the prosecution's account, this Court is not in a position in the present appeal to record the further and more serious finding that the appellant was affirmatively and demonstrably falsely implicated. That question and dependent upon it any claim to compensation under Article 21 founded on the deprivation of liberty the appellant may have suffered by reason of this prosecution is accordingly left open to be pursued, if the appellant is so advised, in appropriate proceedings, where the findings recorded in this judgment concerning the conduct of the investigation and the reliability of the prosecution's evidence would be available to be considered. Nothing in this judgment should be understood either to foreclose or to prejudge that question, this Court following in that respect the same restraint that the Supreme Court itself observed in Kattavellai.

81. This Court has consciously refrained from describing the prosecution in this case as malicious, that expression carrying a connotation of subjective bad faith that the present record does not support one way or the other and that this appeal has not required it to examine. The findings recorded above are confined to the reliability of the evidence and the adequacy of the investigation, and are expressed, accordingly, in terms of wrongful implication and an investigation falling short of the standard a fair trial requires, rather

than in terms of malice.

ORDER

82. The appeal is **allowed**. The judgment of conviction under Sections 363, 366, 376 IPC and Sections 3/4 POCSO Act and sentence under Sections 363, 366, 376 IPC dated 07.10.2021 passed by the Special Judge (POCSO Act)/Additional Sessions Judge, Court No.29, Agra, in Special Trial No.636/2019 (State of U.P. v. Sunil), arising out of Case Crime No.1278/2018, Police Station Tajganj, District Agra, is set aside. The appellant is acquitted of all the said charges.

83. The appellant is in custody in the aforesaid appeal arising out of Special Trial No.636/2019 (State of U.P. vs. Sunil) arising out of Case Crime No.1278/2018 registered at Police Station Tajganj, District Agra, under Sections 363, 366 and 376 of the Indian Penal Code and Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 after his conviction. If he is not required in any other case, he shall be released forthwith.

84. A certified copy of this judgment alongwith lower court record be sent to the court below for information and compliance, in accordance with the applicable Rules.

September 11, 2026
Zafar

(Achal Sachdev,J.)