

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-1620-DB-2015 (O&M)
Date of decision:4.2.2022

Sunil and another

....Appellants

V/s.

State of Haryana

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by Ms. Sharmila Sharma, Advocate
for the appellants.

Mr. Ankur Mittal, Addl.A.G., Haryana with
Mr. Saurabh Mago, A.A.G., Haryana.

KARAMJIT SINGH, J.

The appellants-accused have come up in appeal against the judgment and order dated 09.09.2015 whereby the learned Judge, Special Court, Fatehabad convicted and sentenced both the appellants namely Sunil @ Bharta and Anil both aged 20 years and 18 ½ years respectively, in criminal case having FIR No.25 dated 19.1.2015 under Sections 363, 366(A), 376-D, 506 Indian Penal Code (for short 'IPC') and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act'), as under:-

Offence	Sentence
U/S 376-D IPC	To undergo RI for a period of 20 years and to pay fine of ₹20,000/-. In default of payment of fine, further undergo RI for 2 years.
U/S 363 IPC read with Section 34 IPC	To undergo RI for a period of 2 years and to pay fine of ₹2,000/-. In default of payment of fine, further undergo RI for 1 month.
U/S 366 IPC read with Section 34 IPC	To undergo RI for a period of 3 years and to pay fine of ₹3,000/-. In default of payment of fine, further undergo RI for 3 months.
U/S 506 IPC read with Section 34 IPC	To undergo RI for a period of 6 months.

The case set up by the prosecution was that on a complaint dated 19.1.2015 (Ex.P34) made by Kuldeep Singh son of Kana Ram resident of village Kirdhan, FIR was initially registered under Sections 363, 366-A IPC read with Section 34 IPC. In his complaint, Kuldeep Singh alleged that his daughter (prosecutrix) was 16 years old and on 19.01.2015 at about 4:30 a.m. she left home to answer the call of nature and Sunil @ Bharta and Anil both sons of Ram Niwas resident of village Shekhupur Daroli enticed her and took her away on a motorcycle. After registration of the FIR, prosecutrix was recovered by the police on 20.01.2015 and her statement under Section 164 Cr.P.C. was recorded by the concerned learned Judicial Magistrate. She was taken to Community Health Centre, Bhattu Kalan for medical examination but she refused for the same in presence of her parents. She was handed over to her parents by the police. Appellants Sunil and Anil were arrested on the same day i.e. 20.1.2015 and were medically examined. While in police custody both of them suffered

separate disclosure statements Ex.P15 and Ex.P16, respectively and appellant Anil got recovered motorcycle bearing registration No. HR-22H-1432 which was taken into police possession vide separate memo Ex.P14. Both the appellants also demarcated the place of occurrence.

On 21.01.2015, statement of prosecutrix under Section 161 Cr.P.C. was recorded, in which she stated that both the appellants committed rape with her against her wishes and accordingly offences under Sections 376-D, 506 IPC and Sections 4 and 6 of POCSO Act were added. The police prepared the rough site plan of the place of occurrence on the demarcation of the prosecutrix. The medical examination of the prosecutrix was also conducted in Community Health Centre, Bhattu Kalan on 21.1.2015 and sealed parcels handed over by the doctor were taken into possession by the police. The prosecutrix was handed over to her parents. Case property was deposited with MHC and later on it was sent to Forensic Science Laboratory, Madhuban. The date of birth certificate of prosecutrix was collected from Balaji High School, Bhattu Mandi. On completion of investigation, challan was presented against both the appellants in the Court of Illaqa Magistrate.

On committal, the learned Judge, Special Court, framed charge against both the appellants for offences punishable under Sections 363, 366, 376-D, 506 IPC read with Section 34 IPC; and Section 6 of the POCSO Act. The appellants did not plead guilty and claimed trial.

To prove its case against the appellants, the prosecution examined in all 12 witnesses and the Public Prosecutor also tendered report of FSL Ex.P40 and closed the prosecution evidence.

In brief the evidence led by the prosecution is as follows:-

The prosecutrix while appearing in the witness box as PW-5 stated that on 19.1.2015 at about 4/4:15 a.m. she went outside her house to answer the call of nature, where appellant Sunil met her in the street next to the toilet. He was accompanied by Anil who threatened to kill her and told her to sit on the bike which was driven by Sunil. On this she sat on the motorcycle and the appellants took her to their house in village Shekhupur Daroli. She tried to raise cries but the appellants threatened to kill her, if she called anyone. Then Sunil took her inside the room while Anil was standing outside. Sunil committed rape with her against her wishes and consent and then he went outside the room while Anil came inside. Anil also committed rape with her against her wishes and consent. Then Anil took her and Sunil on a motorcycle and dropped them at railway station. Then Sunil took her to Sangria (Rajasthan) in a train, where they remained sitting at the railway station and on the next day i.e. 20.1.2015 both of them came back to Bhattu Kalan. She further deposed that when both of them were sitting at railway station Bhattu Kalan, police accompanied by her parents reached there. On seeing them, Sunil ran away from there. The police took her into custody. On 20.1.2015, she did not make any statement to the police as on that day, she was not in senses. The prosecutrix further stated that then she was produced in the Court and Magistrate recorded her statement volunteered that the said statement was made by her on the asking of the police and she was also under fear due to threats given by the accused persons. She further stated that on 21.1.2015, she got recorded her statement to the police and was also medically examined. She also demarcated the place of occurrence and identified site plan Ex.P7 of the place of occurrence which was prepared by the police on the basis of her

demarcation. In her cross-examination she was confronted by the defence counsel with her statements Ex.D1, Ex.D2, Ex.D3. Ex.D1 is statement of the prosecutrix dated 20.1.2015 recorded by ASI Damod Rani (PW-6) in presence of legal aid counsel Ms. Urmila Devi, Advocate. Ex.D2 is the statement of prosecutrix dated 20.1.2015 recorded by the aforesaid police official under Section 161 Cr.P.C.. Ex.D3/Ex.D9 is the statement of the prosecutrix dated 20.1.2015 recorded by DW-1 Ms. Sumitra Kadian, the then JMIC, Fatehabad under Section 164 Cr.P.C. The prosecutrix was confronted with the contents of aforesaid statements, wherein she has nowhere stated regarding the alleged incident of rape as has been narrated by her in her examination-in-chief.

The father of the prosecutrix while appearing as PW-11 deposed that prosecutrix aged about 16 years went outside the house for toilet on 19.1.2015 at about 4:30 a.m.. Thereafter she did not return and they searched her but they failed to locate the prosecutrix. Lateron he came to know that the prosecutrix was enticed by both the appellants and they took her away on a motorcycle. He lodged complaint Ex.P34 with the police with regard to aforesaid incident. On 20.1.2015, he accompanied the police party headed by PW-6 and they went to railway station Bhattu Kalan, where prosecutrix was found present. On seeing the police officials, Sunil fled away from there. Prosecutrix was taken into custody by the police.

PW-9 Dr. Meenu Baniwal, Medical Officer, CHC, Bhattu Kalan deposed that on 21.1.2015, she medico legally examined prosecutrix aged about 16 years and the concerned MLR is Ex.P23. She also proved her affidavit Ex.PW-9/A.

PW-10 Dr. Vivek Sahu, Medical Officer, PHC Pilimandori,

who conducted medical examination of both the appellants proved their MLRs Ex.P28 and Ex.P29 respectively.

PW-6, ASI Damod Rani, Investigating Officer of this case stated that on 20.1.2015, the prosecutrix was recovered from Railway Station Bhattu Kalan and she recorded her statement under Section 161 Cr.P.C. Then the prosecutrix was brought to the Court where she moved application Ex.P8 and then the statement of prosecutrix under Section 164 Cr.P.C. was recorded by the learned Magistrate and she obtained its copy. Then she moved application Ex.P10 for medical examination of the prosecutrix, but the prosecutrix refused to get herself medically examined and then she was handed over to her parents vide memo Ex.P11. She also proved arrest memos of Sunil and Anil Ex.P12 and Ex.P13 respectively and recovery memo Ex.P14 regarding recovery of motorcycle No.HR-22H-1432. She also deposed that on 21.1.2015, prosecutrix was medically examined. She also proved rough site plan Ex.P-7 of the place of occurrence and disclosure statements Ex.P15 and Ex.P16 suffered by Sunil and Anil respectively. She further stated that on completion of medical examination of prosecutrix, the concerned doctor handed over sealed parcels, which were taken into possession by the police vide Ex.P17. She also proved demarcation memos Ex.P20 and Ex.P-21 and memo Ex.P-22 regarding handing over of the prosecutrix to her parents.

PW-12, ASI Bhim Singh proved complaint Ex.P34 dated 19.1.2015, which was presented before him by the complainant on the basis of which he recorded FIR Ex.P36. He also corroborated the statement of PW-6 ASI Damod Rani regarding recovery of the prosecutrix and arrest of both the appellants. PW-7 HC Rajesh Kumar corroborated the statement of

PW-6 ASI Damod Rani, regarding disclosure statements suffered by the appellants. PW-8 P/SI Mukesh presented challan against both the appellants in the Court concerned, on completion of investigation.

PW-1 EASI Karambir Singh tendered his affidavit Ex.P-1, while PW-2 HC Ramesh Kumar tendered his affidavit Ex.P-2 with regard to deposit of case property. PW-4 Balwant Singh Draftsman proved the scaled site plan as Ex.P-6 of the place of occurrence which was prepared by him. PW-3 Raje Ram, Secretary, Balaji High School, Bhattu Mandi produced the original school record and proved documents Ex.P-3 and Ex.P-5, as per which, the date of birth of the prosecutrix is 1.1.1999.

Both the appellants were examined under Section 313 Cr.P.C. and entire incriminating evidence was put to them. However they denied the same and pleaded innocence. Both the appellants took specific plea that actually prosecutrix eloped with some third person and they were falsely implicated as Shekhar, cousin of the prosecutrix was having dispute with them.

Appellants examined Ms. Sumitra Kadian, JMIC as DW-1 who proved statement of prosecutrix Ex.D9 which was recorded by her under Section 164 Cr.P.C. on the basis of police request dated 20.1.2015. She also proved order Ex.D8, which was passed by her before recording aforesaid statement of the prosecutrix. She also proved certificate Ex.D10 and order Ex.D11, which bears her signatures. The defence counsel also produced copy of birth certificate of Pappu Ex.D-7.

After appraisal of the evidence and material on record, the learned Judge, Special Court, convicted and sentenced both the appellants as stated in the opening paragraph of this judgment.

Being aggrieved and dissatisfied with the impugned judgment and order, the appellants have preferred present appeal.

The counsel for the appellants contended that both the appellants who are real brothers, were falsely implicated in this case at the instance of the prosecutrix and her father. The counsel for the appellants further contended that the case of the prosecution is that on 19.1.2015 at about 4:30 a.m., when the prosecutrix went outside her house to answer the call of nature, both the appellants enticed and took her away on a motorcycle, to their house, where both the appellants committed rape on her and on the next day i.e. 20.1.2015, police recovered the prosecutrix from railway station Bhattu Kalan and on seeing the police officials, appellant Sunil fled away from there. The counsel for the appellant further contended that the aforesaid story put forth by the prosecution is totally false. It is further contended that no such incident as alleged by the prosecutrix has ever taken place as is evident from documents Ex.D1, Ex.D2 and Ex.D3/Ex.D9. The counsel for the appellants while referring to aforesaid documents, contended that Ex.D1 is statement of the prosecutrix dated 20.1.2015 recorded by PW-6 in presence of legal aid counsel Urmila Devi Advocate, Ex.D2 is statement dated 20.1.2015 of the prosecutrix recorded by PW-6 under Section 161 Cr.P.C. and Ex.D3/Ex.D9 is statement of prosecutrix dated 20.1.2015 recorded under Section 164 Cr.P.C. by the DW-1 Ms.Sumitra Kadian, Judicial Magistrate Ist Class. After going through the contents of all the said three statements, the counsel for the appellants contended that in all the said three different statements, the prosecutrix nowhere stated that the appellants committed rape with her. Rather she consistently stated in the aforesaid three statements dated

20.1.2015 that on 19.1.2015 at about 4:30 a.m. she went to house of appellant Sunil and then Sunil's brother left them at railway station Bhattu Kalan from where she and Sunil went to Sangaria and she clarified that she left the home of her own free will and appellant Sunil had not committed any wrong act with her. The counsel for appellants further argued that it has also come into evidence that on 20.1.2015 the prosecutrix refused to get herself medically examined. The counsel further argued that after the recording of aforesaid statements, on 20.1.2015 the prosecutrix went to her house along with her parents, where she was pressurized by her parents to make statement against Sunil and his brother. The counsel for the appellants further contended that due to the same reason the prosecutrix being under pressure of her parents, got recorded her statement Ex.D5 against both the appellants before PW-6. In the said statement the prosecutrix alleged that she was raped by both the appellants who took her to their house in wee hours on 19.1.2015. It is further contended that statement Ex.D5 is totally false, as one day prior to recording of the same, she clearly stated before the concerned learned Magistrate that no wrong act was committed with her by anyone.

The counsel for the appellants further argued that it is there in the evidence that the prosecutrix and appellant-Sunil were having friendship and they used to talk with each other. The counsel for the appellants further contended that the prosecutrix made false statement while appearing in the witness box under the pressure of her parents. It is further contended that while appearing in the witness box the prosecutrix deposed that firstly she was raped by both the appellants in their house and then she and Sunil were dropped at railway station by Anil and then she travelled with Sunil in a

train and they reached Sangaria (Rajasthan) where they remained sitting at the railway station and returned to Bhattu Kalan on 20.01.2015. The counsel for the appellants contended that aforesaid behaviour/conduct of the prosecutrix also falsifies the case of the prosecution as it is highly improbable that the prosecutrix who was allegedly gang raped by the appellants, remained silent while sitting at the railway station and travelling in the train with appellant-Sunil and did not raise alarm to attract the passengers who were available there at the railway station or in the train.

The counsel for the appellants further contended that as per the medico legal report, no injury was found on the private parts of the prosecutrix. This fact also suggests that no such incident as alleged by the prosecutrix, had ever taken place and in case something is proved to have happened, it was only with the consent of the prosecutrix.

The counsel for the appellants further argued that prosecution has failed to prove that the prosecutrix was less than 18 years of age at the time of the alleged occurrence. It is contended that the parents of the prosecutrix manipulated her school record. That this fact stands proved from the perusal of the testimony of PW-3, who was examined to prove documents Ex.P3 and Ex.P5 relating to date of birth of the prosecutrix. The counsel further contended that as per the said record, prosecutrix was born on 1.1.1999, which fact is totally untrue. In this regard the counsel for the appellants referred to birth certificate Ex.D7 stated to be that of Pappu, real brother of the prosecutrix, as per which Pappu was born on 17.4.1998. Thus making it clear that prosecutrix was above 18 years of age at the time of alleged incident. The counsel for the appellant further argued that prosecutrix being major and it being consensual act, no offence is made out

against the appellants in the present case.

In support of her contentions the counsel for the appellants referred to judgment dated 17.9.2021 of Calcutta High Court in **CRA No.458 of 2018 (IA No.CRAN 2 of 2020)** titled as **Ranjit Rajbanshi vs. The State of West Bengal and others** wherein the appeal was accepted and the accused was acquitted of offences punishable under Sections 376(1) of IPC and Section 4 of POCSO Act. The counsel for the appellants also placed reliance on judgment dated 26.4.2019 rendered by Madras High Court in **CRA No.490 of 2018** titled **Sabari @ Sabarinathan @ Sabarivasan vs. The Inspector of Police, Belukurichi Police Station, Namakkal District and Others** wherein also the appeal was accepted and the accused was acquitted of the offences punishable under Section 363 IPC and Section 5(1) read with Section 6 of POCSO Act.

The State counsel while refuting the contentions raised by the counsel for the appellants, submitted that there is ample evidence available on the record to prove that the prosecutrix was born on 1.1.1999. The State counsel in this regard referred to testimony of PW-3 who proved documents Ex.P3 and Ex.P5 relating to date of birth of the prosecutrix. It is further contended that the prosecutrix was just 16 years of age at the time of occurrence which took place on 19.1.2015. The State counsel further argued that from the perusal of the testimony of the prosecutrix, it stands proved that she was taken away in the wee hours of 19.1.2015 when she came out of her house to answer the call of nature and was taken to their house by the appellants, where she was raped, turn-by-turn, by both the appellants. It is further contended that while appearing in the witness box, the prosecutrix identified both the appellants to be the same persons who

committed rape with her. The State counsel further argued that the reliance placed by the counsel for the appellants on statements Ex.D1, Ex.D2 and Ex.D3/Ex.D9 to prove the innocence of the appellants is totally misplaced, as the said statements could not be considered as substantive evidence. The State counsel further contended that even otherwise it stands proved that at the time of recording of the aforesaid statements on 20.1.2015, the prosecutrix who was just 16 years of age and was ravished by two young men just one day back, was under great shock and stress and as such was not in a position to disclose the true facts before the police or the learned Magistrate, as honour of her family was at stake. It is further contended that due to the same reason, she refused to get herself medically examined on 20.1.2015.

The State counsel further submitted that on the very next day i.e. 21.1.2015, the prosecutrix divulged the truth and got recorded her statement Ex.D5 before PW-6 and she also offered herself for medical examination, which revealed that she was subjected to penetrative sexual assault. The State counsel further contended that even if the alleged act is presumed to be consensual one, the same is punishable under Section 5 read with Section 6 of POCSO Act, as at the relevant time the prosecutrix was minor being aged about 16 years. The State counsel while concluding his arguments submitted that the appeal deserves to be dismissed being devoid of merits.

We have considered the submissions made by the counsel for the parties.

In the instant case no official from the office of concerned Registrar (Births and Deaths) was examined by the appellants to prove the

authenticity of birth certificate Ex.D7. So the trial Court rightly discarded birth certificate Ex.D7 stated to be that of the real brother of the prosecutrix.

The trial Court has properly dealt with the testimony of PW-3 and documents Ex.P3 and Ex.P5 which were produced and proved by the official of the concerned school where the prosecutrix remained studying. As per both the said documents, the date of birth of prosecutrix was recorded as 1.1.1999 in her school record. The occurrence in question had taken place on 19.1.2015. In these circumstances, the trial Court rightly held that the prosecutrix was less than 18 years of age at the time of the occurrence.

The prosecutrix while appearing in the witness box as PW-5 stated that after the incident of gang rape, she and Sunil were dropped at railway station by Anil and from there Sunil took her to Sangaria (Rajasthan) in a train, where they remained sitting at the railway station and on the next day, they returned to Bhattu Kalan and when they were sitting inside railway station Bhattu Kalan, the police accompanied by her parents came there, on which Sunil ran away and she was apprehended by the police. No doubt aforesaid evidence given in the Court under oath has great sanctity, but statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. could be and rightly used by the defence counsel for the purpose of contradiction. In her statements Ex.D1, Ex.D2 and Ex.D3/Ex.D9 dated 20.1.2015, the prosecutrix stated that she of her own went along with appellant-Sunil to Sangaria (Rajasthan) in a train. In the light of the abovementioned three statements dated 20.1.2015, which were got recorded by the prosecutrix before different authorities, it could be easily made out that the prosecutrix was already knowing or was having friendship with

appellant-Sunil, with whom she went to Sangaria in a train and while travelling she did not raise any alarm to attract the passengers who were present at the railway station or inside the railway compartment. In case, she was gang raped by the appellants on 19.1.2015, then she would not have kept silent while sitting at the railway station or while travelling in the train from Bhattu Kalan to Sangaria where she stayed overnight with appellant-Sunil on the railway platform. The aforesaid conduct of the prosecutrix creates doubt regarding the allegations of rape levelled by the prosecutrix against appellant Anil, who is real brother of Sunil. Even in her statements Ex.D1 and Ex.D2 recorded by PW-6 and statement Ex.D3/Ex.D9 recorded by DW-1 Ms. Sumitra Kadian, JMIC, the prosecutrix had nowhere stated that appellant-Anil committed rape upon her. The prosecutrix levelled allegations of rape against appellant-Anil only on 21.1.2015 after she stayed overnight with her parents. Thus one can easily comprehend that the prosecutrix was pressurized by her parents to level false allegation of rape against appellant-Anil. All these facts and circumstances are sufficient to demonstrate that appellant-Anil has been falsely implicated in the present case by the prosecutrix under the pressure of her parents. So we are of the view that the prosecution has failed to prove its case beyond shadow of doubt against appellant-Anil. Accordingly, conviction and sentence of appellant-Anil under Sections 363, 366, 506 read with Section 34 IPC and under Section 376-D IPC are liable to be set aside.

The prosecutrix while appearing in the witness box admitted that she along with appellant-Sunil travelled to Sangaria in a train. Further in her statements Ex.D1, Ex.D2 and Ex.D3/Ex.D9, prosecutrix admitted that she went with appellant-Sunil to Sangaria by train. Thus making it patently

clear that both of them were having friendship and were close to each other even prior to the occurrence in question. It already stands proved that at the time of occurrence the prosecutrix was less than 18 years of age. As per testimony of PW-9 coupled with MLR Ex.P23, it is evident that the prosecutrix was medico legally examined on 21.1.2015 in CHC Bhattu Kalan and the said MLR suggests penetrative sexual assault as hymen was found missing. It is also evident that at the time of her medico legal examination, the appellant disclosed to the concerned doctor about the incident of gang rape. The evidence of PW-10 coupled with MLR Ex.P28 shows that appellant-Sunil was capable of performing sexual intercourse and no mark of injury was found on his private parts or his body. Further, human semen was detected on dirty brown underwear, dirty blue '*Salwar*' of prosecutrix and dirty maroon underwear of appellant-Sunil, as per report of FSL Ex.P40. The circumstances discussed above makes it clear that on 19.1.2015 appellant-Sunil committed sexual intercourse with the prosecutrix who at that time was less than 18 years of age. Even if the circumstances suggest that it was a consensual act, the same will not exonerate appellant-Sunil, as the consent of a minor-prosecutrix is immaterial, she being below 17 years of age at the time of the occurrence.

The facts and circumstances of the present case are distinguishable from that of the case law referred by the counsel for the appellants. In **Sabari's** case (supra), the prosecutrix did not support the case of the prosecution and turned hostile. In **Ranjit Rajbanshi's** case (supra), there was delay of four days in lodging the complaint and there were several previous occasions of consensual physical relations between the parties. Also, in aforecited case, after the alleged incident the parents of

the victim told the accused to marry the victim, which was not so in the present case, as no such offer was given to appellant-Sunil by the parents of the prosecutrix. Also, in the instant case appellant-Sunil nowhere admitted his friendship with the prosecutrix and rather he took plea that the prosecutrix eloped with some other boy.

During arguments the counsel for the appellant-Sunil took plea that the alleged sexual intercourse was consensual. We are of the view that said plea is of little consequence, as has already been discussed above. The defence taken by the counsel for the appellant-Sunil is not legally sustainable. Further as per the provisions of Section 29 of POCSO Act the Court shall presume that such person has committed the offence of penetrative sexual assault. In the facts and circumstances of the present case as has been already discussed above, we are of the view that appellant-Sunil has failed to rebut the aforesaid presumption by setting up probable defence. Hence the offences of kidnapping and rape of minor-prosecutrix stand proved beyond doubt against appellant-Sunil.

Insofar as the charge under Section 506 IPC is concerned, it has come on record that the prosecutrix went along with appellant-Sunil to railway station and then both of them travelled together in a train and at that time she did not raise any alarm to attract the passengers who were present there. Meaning thereby, that there was no threat to the prosecutrix from the side of appellant-Sunil. So the prosecution has failed to establish charge under Section 506 IPC against appellant-Sunil.

As has been discussed earlier, prosecution has failed to establish the guilt of appellant-Anil, the allegations of gang rape could not be sustained in the present case. So, provisions of Section 376-D IPC and

Sections 5 and 6 of POCSO Act are not applicable to the instant case.

In the backdrop of above facts and circumstances, the conviction and sentence of appellant-Sunil cannot be sustained under Section 376-D IPC. Instead offence under Section 376(1) IPC read with Section 3 of POCSO Act stands proved against him. Appellant-Sunil was rightly convicted and sentenced by the Trial Court under Sections 363 and 366 IPC.

Undoubtedly, the prosecutrix was already having friendship with appellant-Sunil even prior to occurrence in question which took place on 19.1.2015 i.e. prior to amendments of 2018 and 2019 in IPC and POCSO Act respectively. Thus, the pre-amended provisions will have to be taken into consideration. The same provides that a person who committed rape/penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than 7 years which may extend to imprisonment for life and shall also be liable for fine. In the instant case, taking into consideration all the facts including that appellant-Sunil was having no criminal history and that at the time of incident he was just 20 years old, we deem it appropriate that the sentence of 7 years would have been sufficient to serve the ends of justice.

In the result, the present appeal is allowed in part. Appellant-Anil is acquitted of all the offences for which he was tried. The conviction and sentence of appellant-Sunil under Sections 363 IPC and 366 IPC is affirmed. His conviction under Sections 506 IPC and 376-D IPC is set aside. Appellant-Sunil is instead convicted under Section 376(1) IPC read with Section 4 of POCSO Act and is sentenced to rigorous imprisonment for 7 years and to pay a fine of ₹20,000/-and in default of payment of fine to

further undergo rigorous imprisonment for 6 months.

All the sentences to run concurrently.

The period of detention already undergone by appellant-Sunil in the present case shall be set off against the term of imprisonment imposed on him as per the provisions of Section 428 of Cr.P.C.

In case, appellant-Anil is not required in any other criminal case, he be immediately released by the jail authorities.

The appeal stands disposed of in the aforesaid terms.

Pending application(s), if any, stands disposed of.

(RITU BAHRI)
JUDGE

04.02.2022

Divyanshi/Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No