

CRA-D-669-2022

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRA-D-669-2022 (O&M)  
Reserved on :- 11.12.2023  
Pronounced on :-20.12.2023**

Salim

....Appellant

VERSUS

State of Haryana

....Respondent

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Rajesh Goyal, Advocate for the appellant.

Mr. P.P.Chahar, DAG Haryana.

**SUDEEPTI SHARMA, J.**

1. The present appeal is filed against the judgment of conviction and order of sentence dated 06.07.2022 and 07.07.2022, respectively passed by the learned Additional Sessions Judge/Fast Track Court (POCSO), Panipat, vide which learned trial Court has convicted the appellant under Section 6 of the Protection of Children From Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act') with rigorous imprisonment for 20 years and a fine to the tune of Rs.25,000/- and in default of payment of fine to further undergo rigorous imprisonment for 01 year; under Section 363 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') to undergo rigorous imprisonment for 03 years and a fine of Rs.15,000/- and in default of payment of fine to further undergo rigorous imprisonment for 06 months; under Section 366 IPC to undergo rigorous imprisonment for 03 years and a fine of Rs.15,000/- and in default of payment of

fine to further undergo rigorous imprisonment for 06 months and under Section 376(2) IPC to undergo rigorous imprisonment for 20 years and a fine of Rs.25,000/- and in default of payment of fine to further undergo rigorous imprisonment for 01 year. All the sentences were ordered to run concurrently.

2. The brief facts of the case are that on 04.01.2018, complainant came present in the Police Station and presented a written complaint to the effect that on 03.01.2018 Salim son of Majid enticed and kidnapped his daughter victim "A" (real name withheld) aged about 12 years. He requested to take legal action against Salim and to trace his daughter. He also gave description of his daughter as wheatish colour, round face, injury mark on forehead, height 4 ft. 6 inches and was wearing salwar suit and chappal (footwear). On the basis of complaint, FIR was registered for offences punishable under Sections 363, 366A of the IPC and matter was investigated. The statement of the victim was got recorded under Section 164 of the Cr.P.C. and she was got medico-legally examined. During investigation, Section 4 of the POCSO Act was inserted in the case.

3. On finding a prima facie case against the accused in respect of commission of offences punishable under Section 6 of the POCSO Act and Sections 363, 366, 376(2) of the IPC, charge was framed against the appellant/accused under these sections to which accused pleaded not guilty and claimed trial.

4. The statement of the accused under Section 313 Cr.P.C was recorded, wherein the appellant/accused claimed himself to be innocent and pleaded that he had been falsely implicated in the present case. No evidence in

defence was led by the accused. Thereafter, defence evidence was closed by the accused.

5. At the culmination of the trial, after hearing both the prosecution and the accused and after appreciating the evidence on record the learned Court below found the accused guilty for the offences punishable under Sections 363, 366, 376(2) IPC and Section 6 of the POCSO Act, and accordingly convicted and sentenced him to undergo rigorous imprisonment as stated supra.

6. Aggrieved thereby the instant criminal appeal has been preferred by the appellant questioning the legality and validity of the impugned judgment of conviction and order of sentence.

#### **CONTENTIONS OF LEARNED COUNSEL FOR THE APPELLANT**

7. Learned counsel for the appellant contends :-

- i) That the Trial Court ignored the material discrepancies on record in the testimony of star witnesses, which goes to the root of the matter and makes the whole prosecution case doubtful;
- ii) That the victim failed to support the case of the prosecution in her statement under Section 164 Cr.P.C and stated that she had gone with the accused 'as per her own wish';
- iii) That in the FSL report human semen was not detected on any of the exhibits except on the pant of the accused;
- iv) That the age of the victim was not proved with certainty and was opined as between 18-20 years, as per ossification test;
- v) That even if the Court comes to the conclusion that identity of the accused is established, it was a case of consent and age of the

victim is to be considered major and the accused must get the benefit of margin of two years.

8. Therefore, he prays that the judgment of conviction and order of sentence passed by the learned Trial Court, Panipat, is based upon the material irregularities and hence liable to be set aside.

### **CONTENTIONS OF LEARNED STATE COUNSEL**

9. Per contra, Mr. P.P.Chahar, DAG Haryana, contends as under:-

- i) That kidnapping the minor victim from the custody of her lawful guardians without their consent/permission has been duly proved;
- ii) That with respect to non-detection of semen, it is pertinent to submit that the offence was committed on 03.01.2018 and also twice, two months prior as per the statement of victim (PW-1) and on 09.01.2018, she was medico legally examined, so the absence of semen on exhibits is due to the reason that in the meantime she could have taken bath and washed her clothes;
- iii) That as per the latest proposition of law if the statement of victim on oath is consistent, it is sufficient to convict the accused;
- iv) Further, the age of the victim was determined by Board of Doctors on 18.11.2021, which was duly proved by PW-15 (Dr. Narayan Dass) and certificate of Board was duly

exhibited as P/AD, mentioning the age of victim between 18-20 years; AND

- v) That the date of offence as stated by victim is 03.01.2018 and as per her statement the incident took place two months prior, so by deducting this period of four years and 18 days [i.e. 03.11.2017, (date, when the crime was committed first time) to 18.11.2021, (date of examination of victim)], the age of victim comes to less than 14 to 16. If plus-minus two years formula be applied, then also she would be less than 18 years. Then, she would be 17 years, 11 months and 12 days. The victim was minor at the time of committing of crime and consent of the victim is immaterial as she stated in her statement made under Section 164 Cr.P.C.

10. We have heard learned counsel for the parties and gone through the impugned judgment and lower Court records very carefully.

11. Reproduction of evidences of star witnesses/reproduction of documentary proof for proper adjudication/appreciation of the present appeal is as under:-

***Witness No.1  
For prosecution***

***The information & deposition of Salmi daughter of Rafik, aged 13 years. Household, resident of village Raslapur, P.S. Bapoli, District Panipat, taken before me (Shashi Bala Chauhan), ASJ/SJ, Panipat on this 17<sup>th</sup> day of May, 2018 who saith on oath.***

**Camera Proceedings**

*On 03.01.2018, I had gone to the canal to throw the garbage where accused Salim and one another person met me. Both were on the motorcycle and accused Salim asked me to sit on his motorcycle as he has stated to me that he would take me on a trip. Thereafter accused make me sit on the motorcycle. Motorcycle was driven by that another person and accused Salim and I were pillion rider. They took me on their motorcycle but in the way I told them that I was willing to go to my house but accused Salim told me that he would take me to Delhi. Thereafter, accused and said another person took me to railway station, Panipat but I do not know name of aforesaid another person. From Panipat Railway Station, accused Salim get boarded me in a train. I travelled for 2/3 days in the said train alongwith accused Salim, who took me to Calcutta. In Calcutta, accused Salim took me to the house of his aunt (mousi), where accused Salim committed rape upon me. The aunt of accused Salim scolded him and thereafter accused took me to Panipat where police met us. In my house also accused committed rape upon me twice two months prior to 03.01.2018. Accused used to threatened me to kill me in case I would disclose anything to my parents. Police produced me before the Magistrate at Samalkha where my statement was recorded. However, I had not disclose all the facts to the Magistrate at that time, as accused had threatened me that he would kill me and my family members, in case I would disclose anything about him (a: this stage a sealed envelope opened and statement*

*under Section 164 Cr.P.C. taken out and shown to the witness). My statement under Section 164 Cr.P.C, is Ex. P1 which bears my signature.*

*Police also produced me before the Medical Officer at Government Hospital, Panipat where my medical examination was conducted. MLR Ex.P2 bears my signature at point 'A'. I have also given my statement before the Advocate which is Ex.P3 and bears my signature. However, at that time also I was under the threat of accused. My father had given the Adhar Card Ex.P4 to the police which I have seen today. Accused Salim is present in the court today. XXX by Shri Vidur, Advocate for the accused.*

*My elder brother is one year elder to me who is married. Gonna of my sister in law has not effected till now. I cannot tell how much time ago my elder brother get married. We are six brothers and sisters. I am second child of my parents. I know about the death of brother of accused Salim. I do not know in which manner the death of brother of accused Salim was caused. I cannot tell about the age of my parents. Marriage of my parents solemnized about six years ago. I am illiterate. I am unemployed. My father is a tractor driver. My father used to drive tractor as driver of some another person. I cannot tell the source of livelihood of my family. I do not know whether the brother of Salim was expired in accident or not. I also do not know whether Salim was having claim amount of Rupees 6 Lacs or not. I know Salim got accident but I do not know*

*the date month and year of his accident. The accused Salim was able to walk after the accident on the day of alleged occurrence.*

*I do not remember the exact date of making my statement before Magistrate after the occurrence. Before making the statement Ex.P1 before Magistrate, I was under pressure of parents of accused Salim on the point that if she made statement against their son then they would kill me and my family. I did not tell to the Magistrate regarding giving threatening by the parents of Salim at the time of recording my statement. Police recorded my statement in police station but I do not remember the date and time of recording my statement. I do not know who was the police official who recorded my statement first time. I was accompanied by my parents at the time of recording the statement in police station. My parents were not present when police recorded my statement. I do not know my date of birth. It is correct that a dispute was taken place between my parents and parents of accused regarding the beaten of girl of Salim by my brother. It is incorrect to suggest that I never appeared before the doctor regarding my age. It is incorrect to suggest that accused Salim never took me at any place at any point of time. It is incorrect to suggest that accused Salim never committed rape upon me. It is incorrect to suggest that I involved the accused in false case due to previous enmity.”*

RO&AC

Sd/-  
(Shashi Bala Chauhan)  
ASJ/FTC, Panipat. 17.05.2018

**Translation of Ex.P1**

**Statement u/s 164 Cr.P.C.**

**Case FIR No:001**

**Dated : 04/01/18**

**U/s : 363/366-A**

**P.S : Bapoli**

***Statement of Salmi daughter of Rafiq, resident of Raslapur, aged 13 years, profession student.***

*Question: Do you know that you came in the court to record the statement?*

*Answer: Yes.*

*Question: Do you know that which is date today?*

*Answer: Yes. It is nine date, today.*

*Question: What do you want to state?*

*Answer: Stated that on 3/1/18 at about 2:00 O'clock, I went to canal on my wish, where Salim was waiting me. We went to Calcutta by train from there. I and Salim came back yesterday night. Now I want to reside with my mother and father. Salim committed wrong act with me at my house two months prior at my own wish.*

*Question: Do you want to give other statement.*

*Answer : No.*

**RO&AC**  
**Sd/- in Hindi Salmi**

**Sd/- in English**  
**(Avinash Yadav)**  
**Judicial Magistrate Ist Class**  
**Samlkha**

**Translation of Ex.P.21**

**CERTIFICATE**

*The statement has been taken in my presence & hearing & was read over to person making it & was admitted by her to be correct & contains a free true answers of statement made to her.*

*Sd/- in English  
(Avinash Yadav)  
Judicial Magistrate Ist Class  
Samlkha*

**Translation of Ex.P3**

**Case FIR No:001  
Dated : 04/01/18  
U/s : 363/366-A  
P.S : Bapoli**

**Salmi D/o Rafiq R/o Raslapur, age 13 years.**

*Stated that on 3/1/18 at about 2'o clock I went to canal on my wish, where Salim was waiting me. We went to Calcutta by train from there. I and Salim came back yesterday night. Now I want to reside with my mother and father. Salim committed wrong act with me at his house two months earlier and threatened me to kill.*

*Sd/-  
HC Sunita*

*Sd/- in Hindi  
Salmi*

*Attested by  
Pinki Sharma, Advocate  
(Legal Aid Counsel)*

**Deposition sheet of a witness examined on oath**

*Witness No.14  
Of the Prosecution*

***The information and deposition of  
Dr.Pooja (PW-14) posted at  
G.H.Panipat.***

*Taken before me (Sumit Garg),  
Additional Sessions Judge, Panipat  
This 9<sup>th</sup> day of February, 2021  
Who deposes on oath as follows:-*

***Through Video-conferencing  
I can read write and understand English Language.***

*On 09.01.2018, I was posted as such. On that date, HC Sunita, P.S. Bapoli produced the victim girl before me for medico-legal examination I prepared my medico-legal report Ex. P2 after examination of the victim which bears my signature I also handed over the sealed parcel containing two vaginal slides and two swabs alongwith sample seals of "PM" and requisition letter.*

*(At this stage, a sealed parcel opened and the contents of the same shown to the witness)*

*I have seen the two vaginal slides Ex. MO 3 and Ex. MO 4, swabs Ex. MOS and Ex. MO 6 and sample seal of "PM" which are the same which handed-over by me to HC Sunita after medico-legal examination of victim.*

*Xxxxxxxx Cross-examination by Sh. Ramesh Khanchi counsel for the accused.*

*Nil. Opportunity given*

*Recorded at my dictation*

*Sumit Garg,  
ASJ-Cum-Fast Track Court (POCSO)  
Panipat, 09.02.2021.*

***Witness No. 6  
For prosecution***

***The information & deposition  
of Rafiq son of Sabudeen,  
aged 45 years, Labourer,  
resident of Raslapur, District  
Panipat, taken before me  
(Shashi Bala Chauhan  
ASJ/FTC, Panipat) on this  
30<sup>th</sup> day of April, 2019, who  
saith on oath***

**Camera Proceedings**

*Salmi is my daughter who is aged about 14 years. On 03.01.2018, my daughter Salmi had gone at the canal throw the garbage but she did not return back to our house. I searched for my daughter at nearby places and in the houses of my relatives but she was not found anywhere.*

*Accused Salim present in court today, was residing in front of my house. Accused Salim was also missing from his house. So, my suspicion was on accused Salim that he had kidnapped my daughter Salmi. On the next day i.e. 04.01.2018 when my daughter Salmi and accused Salim were not found, I moved the application Ex.P11 in Police Station Bapoli for registration of the FIR against the accused. Application Ex.P11 bears my signature at point A.*

*On 08.01.2018, I gave the Aadhar Card Ex.P4 of my daughter Salmi to the police and the recovery memo Ex.P12 bears my signature.*

*On 09.01.2018, I reached at bus stand, Panipat on the telephonic information of the police from where my daughter Salmi was recovered. Accused Salim was also arrested by the police. I identified my daughter Salmi and recovery/identification memo Ex.P7 bears my signature.*

*XXXX by Shri R.M. Chalia, Legal Aid Counsel for the accused.*

*Police obtained my signature on blank papers at point B on Ex. P7. Again stated I am illiterate. Police obtained my signature on written documents.*

*Further cross examination deferred due to lunch break and the witness is directed to appear at 01:30 pm sharp.*

*(Shashi Bala Chauhan),  
ASJ/FTC, Panipat. 30.04.2019*

***Witness No. 6  
For prosecution***

***The information & deposition  
of Rafiq son of Sabudeen,  
aged 45 years, Labourer,  
resident of Raslapur, District  
Panipat, taken before me  
(Shashi Bala Chauhan  
ASJ/FTC, Panipat) on this  
30<sup>th</sup> day of April, 2019, who  
saith on oath***

**Camera Proceedings**

*Recalled for further cross examination after lunch break.*

*XXXX by Shri R.M. Chalia, Legal Aid Counsel for the accused.*

*I am having ration card also as a age proof of my daughter. I am not having any birth certificate or School certificate of my daughter. Police handed over my daughter to me on the next day of the recovery of my daughter at about 05:30 pm. I do not remember the date of handling over my daughter to me. My daughter is unmarried till today. I did not get conduct any ossification test of my daughter from*

*Government Hospital to ascertain her age. It is incorrect to suggest that a quarrel took place between my son and daughter of Salim about five days prior to the registration of the present FIR.*

*I am having five sons and two daughters. My eldest son is married and remaining are unmarried. Age of my eldest son is 20 years. Salmi is my second child. My youngest child is my son who is aged about 2 years. My previous wife had died about 18 years ago. My eldest son and Salmi were born from my previous wife. Salmi was about 1 years at the time of death of my previous wife. I do not know the exact date of birth of my daughter Salmi. It is incorrect to suggest that I have falsely implicated the accused to take the revenge as the quarrel took place between children. It is incorrect to suggest that at the time of alleged incident there was fracture in the leg of accused. It is correct that brother of accused had died in a accident and his family members received Rupees 12 Lac as compensation in lieu of that accident. It is incorrect to suggest that I demanded Rupees 5 Lac in the police station from family members of accused to settle the present case. It is incorrect to suggest that I have deposed falsely.*

RO&AC

(Shashi Bala Chauhan)  
ASJ/FTC, Panipat 30.04.2019

**Translation of Exhibit P-7**

*P.S: Bapoli*

*District Panipat*

*Through State :- Rafiq s/o Sabudeen, R/o Raslapur, PPT*

*Versus :-                    x        x        x        x        x        x*

*FIR No.01, dated 4-1-18, U/s 363, 366 IPC, P.S. BPL, PPT*

**Recovery and Identification memo of girl Salmi**

*During investigation girl Salmi D'o Rafiq resident of Raslapur was arrested from Bus Stand, G. T. Road Panipat and taken in police possession vide memo. Girl's father identified his daughter Salmi and put their signature as witness.*

*Girl : Salmi daughter of Rafiq  
Resident of Raslapur  
Sd/- in Hindi*

*Witness:- Rafiq son of Sabudeen  
Resident of Raslapur PPT  
Sd/- in Hindi*

*Witness HC Ashok Kumar 93  
P.S.Bapoli PPT  
Sd/- in English*

*Sd/- ASI  
P.S.Bapoli, Panipat  
9-1-2018*

**Translation of Exhibit P-8**

*P.S: Bapoli*

*District Panipat*

*Through State :- Rafiq s/o Sabudeen, R/o Raslapur, PPT*

*Versus :- Salim S/o Abdul Majid, R/o Raslapur, District Panipat.*

*FIR No.01, dated 4-1-18, U/s 363, 366 IPC, and 4 POCSO Act, P.S.  
Bapoli, Panipat.*

**Disclosure statement of accused Salim**

*In the presence of witnesses, aforesaid accused Salim son of Abdul Majid, while in custody, without any fear, greed and with pleasure got recorded his disclosure statement that" on dated 3-1-2018, I took girl Salmi D/o Rafiq from village Raslapur after enticing that I took Calcutta. I committed rape upon her in my house approximately two months earlier, that place where I committed rape upon Salmi" in my house, I can demarcate that room. Disclosure statement of accused wrote down on which accused and witnesses put their signatures as witnesses.*

*Witness HC Ashok Kumar 93  
P.S.Bapoli PPT  
Sd/- in English*

*Accused : Salim aforesaid  
Sd/- in Hindi*

*Sd/- ASI  
P.S.Bapoli, Panipat  
Dated : 9-1-2018*

**Translation of Exhibit P-9**

*P.S: Bapoli*

*District Panipat*

*Through State :- Rafiq s/o Sabudeen, R/o Raslapur, PPT*

*Versus :- Salim S/o Abdul Majid, R/o Raslapur, District Panipat.*

*FIR No.01, dated 4-1-18, U/s 363, 366 IPC, and 4 POCSO Act, P.S.*

*BPL.*

**Demarcation memo**

*In the presence of following witnesses, aforesaid accused Salim S/o Abdul Majid, R/o Raslapur, District Panipat, according to his disclosure statement, walking ahead, after entering in his house and indicating, stated that I committed rape upon Salmi D/o Rafiq two months earlier which is exactly same as per rough site plan. Rough site plan has already been prepared. Demarcation memo prepared which is signed by the accused and witnesses.*

*Witness HC Ashok Kumar 93  
P.S.Bapoli PPT  
Signed in English*

*Accused : Salim aforesaid  
Sd/- in Hindi  
Salim*

*Sd/- ASI  
P.S.Bapoli, Panipat  
Dated : 9-1-2018*

***Witness No.8  
For prosecution***

***The information & deposition of SI Satpal  
No.902/PPT, CIA-II, Kaithal, taken  
before me (Shashi Bala Chauhan  
ASJ/FTC, Panipat) on this 28<sup>th</sup> day of  
May, 2019 who saith on oath.***

**Camera Proceedings**

*I can read, write and understand English. On 04.01.2018, I was posted as ASI in Police Station Bapoli. On that day, Rafiq complainant moved the application Ex.P11 before me on which I had registered the FIR Ex.P13 and made the endorsement Ex.P14 which bears my signature. Special reports of this case was sent through constable Sandeep to Id. Area Magistrate and Higher Police Officers.*

*On 08.01.2018, complainant produced the Aadhar Card Ex.P4 of her daughter prosecutrix Salmi which was taken into police possession vide memo Ex. P12 attested by complainant Rafiq.*

*On 09.01.2018, I along with HC Ashok Kumar reached at bus stand, Panipat as I had received the secret information about the prosecutrix and the accused Salim. I telephonically called complainant Rafiq at bus stand, Panipat. Accused Salim present in court today and prosecutrix Salmi were found from the gate of bus stand, G.T. Road, Panipat and prosecutrix was identified by her father Rafiq. I prepared the recovery/identification memo Ex.P7 which is attested by complainant and HC Ashok Kumar and also signed by the prosecutrix.*

*I arrested accused Salim at the spot. I called L/HC Sunita being the lady police official and prosecutrix was taken by L/HC Sunita for her statement under Section 164 Cr.P.C. and her medical*

*examination. After the medical examination of prosecutrix, the concerned doctor handed over one sealed parcel containing swabs and slides of the prosecutrix alongwith sample seal and other relevant papers which were taken into police possession by LHC Sunita vide memo Ex.P15, attested by me. Case file was received by me from LHC Sunita.*

*On the same day, I along with prosecutrix reached at the place of occurrence and on the demarcation of prosecutrix, I prepared the rough site plan Ex. P16 and prosecutrix was handed over to her parents vide memo Ex.P17.*

*On the same day i.e. 09.01.2018, I interrogated the accused Salim who voluntarily suffered the disclosure statement Ex.P8 and in pursuance thereof demarcated the place of occurrence vide memo Ex.P9 which are signed by the accused and attested by HC Ashok.*

*On the same day, vide application Ex.P18, I produced the accused before the Medical Officer, G.H. Panipat and after his medico legal examination, the concerned doctor handed over to me one sealed parcel containing pant of accused, sealed vial containing blood sample of accused along with sample seal and copy of MLR which were taken into police possession vide memo Ex. P10. Case property was deposited in the malkhana.*

*On 10.01.2018, accused was produced before ld. Area Magistrate.*

*On 13.01.2018, I called EHC Jagbir Singh draftsman at the place of occurrence who prepared the scaled site plan Ex.P5 on the demarcation of prosecutrix.*

*Case property was sent to FSL Madhuban and during my investigation I recorded statmennt under Section 161 Cr.P.C. of relevant witnesses at relevant point of time. After completion of investigation, challan under Section 173 Cr.P.C. was prepared and forwarded by Inspector/SHO Subhash Singh which bears his signature as well as my signature. I identify the signature of*

*Inspector/SHO Subhash Singh as I have worked with him and seen him while signing and writing official documents. I am well conversant with his signatures.*

*XXXX by Shri R.M. Chalia, Legal Aid Counsel for the accused.*

*It is correct that I have not taken in possession birth certificate or School certificate regarding the age proof of the prosecutrix Salmi. Both the accused and prosecutrix were recovered at same time and same place. HC Ashok No.93 is with me at the time of recovery of prosecutrix and accused Salim. Ex.P7 was written at 09:00 am on 09.01.2018. It is correct that there is overwriting at point A on date 09.01.2018 firstly it was written 08.01.2018 and then 09.01.2018 on Ex.P7. I do not know prosecutrix Salmi was born from the first wife or second wife of Rafiq. I do not know mother of Salmi had expired before 18 years ago. It is correct that during medical examination of prosecutrix, Medical Officer referred the prosecutrix to orthopedic surgeon or dental surgeon for the age verification of the prosecutrix. It is correct that I have not submitted any report regarding the age proof of the prosecutrix. I tried to join public witness in my investigation but they shows their inability to join in the investigation. It is incorrect to suggest that whole the proceeding was conducted by me while sitting in police station. It is incorrect to suggest that my investigation is tainted. It is incorrect to suggest that I am deposing falsely being police official.*

*RO&AC*

*(Shashi Bala Chauhan)  
ASJ/FTC, Panipat 28.05.2019*

***Witness No.11  
For Prosecution***

***The information & deposition of  
Dr. Pawan Machal, Medical Officer,  
G.H.Panipat, taken before me (Shashi  
Bala Chauhan, ASJ/FTC, Panipat) on  
this 05<sup>th</sup> day of August, 2019 who saith on  
oath.***

***Evidence of witness recorded through Video Conferencing***

*On 09.01.2018, I was posted as such at General Hospital, Panipat. On that day, vide application Ex.P18, accused Salim son of Majid, resident of village Sallapur. Panipat was produced by the police upon which I medico legally examined him and prepared MLR. I have brought the original MLR register and the correct carbon copy of the same is Ex.P25 which bears my signature. There was nothing to suggest that above said accused was not capable to perform sexual intercourse. At the time of his examination, I converted the pant of the accused into a sealed parcel and handed over the same to the police along with sample seal and related documents.*

*(At this stage, sealed parcel no.2 received from FSL Madhuban produced and opened in the court, out of which one pant and parcel cloth taken out and shown to the witness). Pant of accused is Ex.MO.1 and parcel cloth is Ex.MO.2 which bear my signatures.*

*XXXXXXXXXX by Shri Sushil Deswal, proxy counsel for Shri Ram Mehar Chalia. Legal aid Counsel for the accused.*

*Nil (opportunity given)*

*RO&AC.*

*Signature of the witness  
Cannot be obtained as the witness  
has given evidence through video  
conferencing in presence of accused  
and his counsel.*

*(Shashi Balal Chauhan)  
ASJ/FTC, Panipat. 05.08.2019*

**Dental Examination**

*Oral examination of teeth (this is done by clinical examination by noting tooth condition the sequence of eruption)*

- *Temporary teeth      7654321      /      1234567*
- *Permanent teeth      7654321      /      1234567*
- *Space for third molar      No third molar erupted.*
- *Radiological examination of dentition (by AP, oblique tangential view of jaw with open mouth or an orthopantomogram if facilities are available)*

*Lateral   Oblique      Mandible 30 Right*

*Left*

- *State of crown and root development stage of molars (2<sup>nd</sup> and 3<sup>rd</sup>)*

*2<sup>nd</sup> Molar      -      Root complete.*

*3<sup>rd</sup> Molar      -      Crown complete*

*2/3<sup>rd</sup> root complete*

***Opinion***

*After performing Dental examination, I am of considered opinion that age of this person between 18 and 20 years.*

*Dental Surgeon  
Name and Designation  
Place of posting*

**Wintess No.15  
Of the Prosecution**

**The information and deposition of  
Dr. Narayan Dabas, Medical Officer, GH  
Panipat.**

*Taken before me (Sumit Garg), ASI/Fast  
Track Court (POCSO), Panipat this 20<sup>th</sup>  
day of December 2021, who deposes on  
oath as follows:-*

**(Through Video Conferencing)**

*Stated that on 18.11.2021 an application Ex.PAA was  
moved by the Investigating Officer L/SI Meenakshi for constituting  
the board for conducting Ossification test of victim in this case, upon  
which a Board was constituted consisting of Dr. Harish Juneja and  
myself. We advised conducting skeletal x-rays of the victim vide  
advise Ex. PAB. After the x-ray, I gave report Ex. PAC. Dr. Harish  
Juneja had advised dental analysis of the victim and had conducted  
the same. He gave the Dental analysis report Ex.PAD under his  
signature which I identified having worked with him. As per the x-  
ray report as well as dental analysis report, the board has opined  
the age of the victim to be between to 18 to 20 years.*

*XXXXXX by Shri Ramesh Khanchi, Advocate for accused.*

*Nil, opportunity Given.*

**RO&AC**

*Recorded at my dictation*

*Sumit Garg,  
ASJ/Fast Track Court (POCSO)  
Panipat. 20.12.2021.*

***Statement of accused Salim son of Majid, age \_\_\_\_ years, R/o Village Raslapur, Bhapoli, Panipat, under Section 313 Cr.P.C***

***W/o***

***It has come in evidence against you :-***

*Q1. That 03.01.2018, in the area of Village Raslapur, P.S.Bapoli, Panipat falling within the territorial jurisdiction of P.S. Bapoli, Panipat, you abducted/kidnapped, the victim minor daughter of complainant and you committed rape with her two months before her abduction. Complainant had made a complaint Ex. P11 against you regarding the offence committed by you in P.S.Bapoli upon which FIR Ex. P13 had been registered and endorsement Ex. P14 was made on the complaint. What you have to say about it?*

*Ans: It is incorrect, complaint and FIR are false.*

*Q:2. That during investigation on dated 09.01.2018, victim girl was recovered vide memo Ex. P7 and on the demarcation of victim girl rough site plan of place of occurrence Ex. P 16 was prepared. Statement under section 164 Cr.P.C Ex. P1 was got recorded, counseling was got conducted from Legal Aid Counsel vide memo Ex. P3 and thereafter, medico-legal examination of the victim Ex. P2 was got conducted and after medical examination two slides Ex. MO3 and Ex. MO4, two swabs Ex. MO5 and Ex. MO6 were taken and handed over to Investigating Officer/ vide memo Ex. P15 for sending the same to FSL. Thereafter, victim was handed over to their guardians vide memo Ex. P17. What you have to say about it?*

*Ans: It is incorrect.*

*Q:3 On dated 09.01.2018 you were apprehended by the police and during investigation you suffered your disclosure statement Ex. P8*

*in the presence of witness and in pursuance thereof demarcated the place of occurrence vide memo Ex. P9. On the same day, your medico-legal report Ex. P25 was prepared after medico-legal examination vide application Ex. P18 and on 13.01.2018 scaled site plan Ex. P5 was got prepared. What you have to say about it?*

*Ans: It is incorrect.*

*Q:4 That why the report under section 173 Cr.P.C is against you and the witnesses have deposed against you before the Court?*

*Ans. This is a false case. I have been falsely implicated in the present case. The witnesses have deposed falsely. However, I do not know why witnesses falsely deposed against me. The report under section 173 Cr.P.C is based on false and concocted story and statements.*

*Q5. Do you want to say anything else?*

*Ans. I am innocent. I have nothing to do with the present occurrence. I have been falsely implicated in the present case by the police.*

*Q6. Do you want to lead any evidence in your defence?*

*Ans. Yes*

*RO&AC*

*(Sumit Garg)  
ASJ Fast Track Court  
Panipat. 26.02.2021*

12. On careful analysis of the prosecution evidence and documents on record of the present case, the moot question which squarely falls for our consideration pertains to the correct and appropriate sections of Penal Code under

which the appellant is required to be convicted according to the offences he had committed. In order to arrive at the correct conclusion, we deem it appropriate to examine the basic ingredients of all the Sections under which the accused is convicted :-

- i) **The accused in the present case is convicted under Sections 363 and 366 IPC.**

*a) Section 361 IPC reads as under:-*

**361 Kidnapping from lawful guardianship.**—Whoever takes or entices any minor under 1[sixteen] years of age if a male, or under 2[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. *Explanation.*—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

**b) Section 363 IPC is punishment for kidnaping or abducting.**

**c) Section 366 IPC is Kidnapping, abducting or inducing woman to compel her marriage, etc.**

**d) The ingredients of Section 366 IPC are as under:-**

1. Kidnapping or abducting any woman.
2. Such kidnapping or abducting must be
  - (a) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or

(b) in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.

The second part of the section requires two things;-

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

- ii) As per copy of Aadhar Card, date of birth of victim is 01.01.2005. Therefore, age of victim as per the statement of witnesses and documentary records as mentioned supra, at the time of occurrence was about 13 years and 10 months
- iii) The complaint was initially filed with allegation that on 03.01.2018, the accused kidnapped the victim girl. The victim PW-1 in her statement deposed that accused asked her to sit on his motor-cycle on the pretext of taking her to trip. Then the appellant/accused took her to Railway Station, Panipat from where he took her to Calcutta and in the house of his aunt (*mausi*) he committed rape upon her. She further deposed that the accused committed rape upon her twice, two months prior to 03.01.2018 also. She further deposed that the appellant/accused used to threaten her to kill in case she discloses anything to her parents. The same deposition is

made by her in her statement recorded under Section 164 Cr.P.C and before Ms. Pinky Sharma, the legal aid counsel.

- iv) The recovery verification memo of victim Ex.P-7 and disclosure statement of the appellant/accused prove the case of the State.
- v) A perusal of statement of PW-6 i.e. father of victim shows that the victim was 14 years of age at the time of deposition made by him i.e. on 30.04.2019.
- vi) The deposition of father of the victim PW-6 shows that the appellant/accused had kidnapped the girl, who was below 16 years of age from the lawful guardianship of her parents and took her to another city.
- vii) As per statement of PW-15, Dr. Narayan Dabas, who deposed regarding ossification report of victim, which was conducted on 20.11.2021, the age of victim was opined between 18 to 20 years.
- viii) In view of the above as we have seen the original record produced before us, we are of the considered opinion that the victim was less than 16 years of age on the date of incidence.
- ix) A bare perusal of all the documents on record and depositions/evidences show that the victim in the present case was minor at the time of commission of the offence and was taken out of the lawful guardianship of her parents and was raped.

- x) The deposition made by PW-8 in his statement also proves that the victim was kidnapped and raped.
- xi) **As per discussion made above, we conclude that the appellant/accused has committed the offence of kidnapping and has rightly been convicted under Sections 363 and 366 IPC. Kidnapping of the victim was proved by the deposition of victim (PW-1) as well as her father (PW-6) and SI Satpal. No. 902/PPT, CIA-II, Kaithal (PW-8).**
- xii) **The accused in the present is also convicted under Section 376(2) IPC.**

xiii) **Section 375 IPC defines rape and reads as under:-**

**375. Rape.**—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions :—

**(First)** — Against her will.

**(Secondly)** — Without her consent.

**(Thirdly)** — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

**(Fourthly)** — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

**(Fifthly)** — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

**(Sixthly)** — With or without her consent, when she is under sixteen years of age.

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

xiv) A persual of description **sixthly** mentioned above in Section 375 IPC shows that consent of the women, who is under 18 years of age, does not condone the offence under Section 375 IPC. In the present case as per the deposition of the victim she was raped by the appellant/accused.

xv) In the case of *Satish Kumar Jayanti Lal Dabgar Vs. State of Gujarat [(2015) 7 SCC 389]*, the Hon'ble Supreme Court has held as under :-

*15) The Legislature has introduced the aforesaid provision with sound rationale and there is an important objective behind such a provision. It is considered that a minor is incapable of thinking rationally and giving any consent. For this reason, whether it is civil law or criminal law, the consent of a minor is not treated as valid consent. Here the provision is concerning a girl child who is not only minor but less than 16 years of age. A minor girl can be easily lured into giving*

*consent for such an act without understanding the implications thereof. Such a consent, therefore, is treated as not an informed consent given after understanding the pros and cons as well as consequences of the intended action. Therefore, as a necessary corollary, duty is cast on the other person in not taking advantage of the so-called consent given by a girl who is less than 16 years of age. Even when there is a consent of a girl below 16 years, the other partner in the sexual act is treated as criminal who has committed the offence of rape. The law leaves no choice to him and he cannot plead that the act was consensual. A fortiori, the so-called consent of the prosecutrix below 16 years of age cannot be treated as mitigating circumstance.*

*16) Once we put the things in right perspective in the manner stated above, we have to treat it a case where the appellant has committed rape of a minor girl which is regarded as heinous crime. Such an act of sexual assault has to be abhorred. If the consent of minor is treated as mitigating circumstance, it may lead to disastrous consequences. This view of ours gets strengthened when we keep in mind the letter and spirit behind Protection of Children from Sexual Offences Act.*

**xvi) Perusal of MLR shows that *Fourchette and Introltus: Hymen old torn, healed tags of epithelial present.***

**xvii) Even, as per the deposition made by PW-11 Dr. Pawan Machal, who medico legally examined the appellant/accused and prepared MLR, there was nothing to suggest that accused/appellant was not capable to perform sexual intercourse.**

xviii) In the judgment of *Mohd. Imran Khan Vs. State Government (NCT of Delhi)*, [(2011) 10 SCC 192], the Hon'ble Apex Court held as under:-

*22. It is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust. The prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury. Therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Evidence Act, 1872 (hereinafter called 'the Evidence Act'), nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.*

*23. The court must be alive to its responsibility and be sensitive while dealing with cases involving sexual*

*molestations. Rape is not merely a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence. (Vide: State of Maharashtra v. Chandraprakash Kewalchand Jain; State of U.P. v. Pappu and Vijay v. State of M.P.).*

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

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**26.** *Similarly, in **Wahid Khan v. State of M.P.**, it has been observed as under (SCC P13 Para 17):*

*"17. It is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked at by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracised by the society. It would indeed be difficult for her to survive in Indian society*

*which is, of course, not as forward-looking as the western countries are."*

- xix)** So far as the argument of learned counsel for the appellant regarding FSL report, in which human semen was not detected is concerned, we conclude that since the victim was not examined immediately after the commission of offence, therefore, there is every probability of the semen being washed out.
- xx)** In view of the above discussion, we conclude that accused has rightly been convicted under Section 376 (2) IPC. Since the victim was minor at the time of commission of offence, therefore, her consent is immaterial in the present case.
- xxi)** Now coming to the conviction of the appellant/accused under Section 6 of the POCSO Act. Section 6 of POCSO Act is punishment for aggravated penetrative sexual assault.
- xxii)** As per the copy of Aadhar Card (Ex.P/4) and deposition of PW-6 i.e. father of victim and PW-15 Dr. Narayan Dabas, the victim was minor at the time of commission of offence.
- xxiii)** Section 29 and 30 of the POCSO Act are presumptions regarding certain offences and of culpable mental state, which reads as under:-

**Section 29:- Presumption as to certain offences :-** *Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.*

**Section 30:- Presumption of culpable mental state:**

*(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

*(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.*

**xxiv)** A persual of Section 29 and 30 of the POCSO Act shows that there are presumptions with regard to the commission of offences as defined under Section 3,5,7 and 9 of the POCSO Act and existance of culpable state of mind of the accused, the burden to disprove lies upon the accused. Further, the appellant/accused in the present case has failed to discharge this burden.

**xxv)** The appellant/accused failed to produce any evidence to rebut the evidence of prosecution on the point as to why he took the victim

on his motor-cycle and committed rape upon her several time on different places as she was recovered from Bus Stand Panipat on 08.01.2018, which proves that the accused committed rape upon victim, who was minor at the time of commission of offence.

xxvi) Looking to the gravity of the offences, we have ourselves examined the entire evidence and documents on record. Even on closest scrutiny and marshalling of evidence, we could not persuade ourselves to take different view than that taken by the Court below as far as the conviction of the appellant is concerned. In our considered view the prosecution version is both truthful and creditable.

13. For the reasons, recorded hereinabove, we find no merit in this appeal and, thus, we dismiss the same by affirming the judgment and order, under challenge. In the present case, appellant is already in jail. He shall serve out the sentence, so awarded to him by the trial Court.

14. Let a copy of this judgment and order along with the LCR be transmitted to the Court with the direction to inform the appellant – Salim about the fate of his appeal.

15. Pending applications, if any, also stand disposed of.

**(SURESHWAR THAKUR)**  
**JUDGE**

**(SUDEEPTI SHARMA)**  
**JUDGE**

December 20, 2023  
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Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No