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

**CRA-D-819-2019 (O&M)
Reserved on :- 05.12.2023
Date of Decision : 13.12.2023**

Soma

....Appellant

VERSUS

State of Haryana

....Respondent

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

Present: Ms. Geeta Singhwal, Advocate for the appellant.

Mr. P.P.Chahar, DAG Haryana.

SUDEEPTI SHARMA, J.

1. The present appeal is filed against the conviction of the appellant vide impugned judgment/order dated 16.07.2019/18.07.2019 whereby the appellant has been convicted and sentenced under Section 365 of the Indian Penal Code, 1860 (IPC) and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Under Section 365 IPC, he has been sentenced to undergo rigorous imprisonment of 05 years and a fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for 03 months. He has further been sentenced under Section 06 of the POCSO Act, to undergo rigorous imprisonment of 12 years and a fine of Rs.15,000/- and in default of payment of fine to further undergo rigorous imprisonment of 08 months. Both the sentences were ordered to run concurrently.

2. The brief facts of the case are that on 23.6.2016 ASI Roshan Lal along with other police officials was present at Farayan Chowk Railway crossing

Narwana in connection with patrolling and excise checking duty, where Ram Niwas son of Balwant, r/o Gandhi Nagar Dhani Ward No.14, Narwana, met him and moved a complaint to the effect that he is resident of above said address. On that day i.e. 22.6.2016 his daughter/victim aged 8 years wearing orange coloured suit salwar, was sent for taking clothes from neighbour. When she did not return they went to see her. On enquiry, they came to know from the boys of their neighbourhood that their neighbourer Soma son of Jagdish took away his daughter. They searched her on their own level, but could not find any clue. He thus prayed for taking legal action against the accused Soma and requested for searching his daughter.

3. On the basis of above complaint, the present case under Section 365 of IPC was got registered. Investigation was conducted and the victim was recovered. Her statement was recorded. During investigation, victim was got medico-legally examined from Civil Hospital, Jind. Section 6 of the POCSO Act and Section 3 of SC and ST Act were added. Statement of victim under Section 164 Cr.P.C. was got recorded. Accused was arrested on 26.6.2016, who was also got medico- legally examined from Civil Hospital, Narwana. Accused suffered disclosure statement to the effect that on 22.6.2016 he committed rape upon the victim in the bushes near Rajbaha.

4. After the completion of investigation, challan against the accused Soma was presented in the court of the learned Illaqa Magistrate who after supplying the copy of challan to the accused committed the case to the Sessions Court vide order dated 8.8.2016 and thereafter the case was assigned to the Court of learned Addl. Sessions Judge, Jind. On 31.8.2016 charge for the commission of offences under section 365 of IPC and Section 6 of the POCSO Act was

framed against the accused Soma, to which, he pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined 23 witnesses. The statement of the accused under Section 313 Cr.P.C was recorded, to which he pleaded not guilty and claimed trial. No defence evidence was led.

6. 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 Section 365 IPC and Section 6 of the POCSO Act, and accordingly convicted and sentenced him to undergo rigorous imprisonment as stated supra.

7. 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.

8. As per the submissions made by the learned counsel for the appellant, the legal validity of the impugned judgment of conviction and sentence is mainly challenged on the ground of the medical evidence on record as can be seen from Ex.P/A, FSL report. She argues that since semen was not detected at the time of examination of victim, therefore, it clearly proves that there is no act of penetrative sexual assault committed by the accused against the victim. She further contends that trial Court did not appreciate the medical evidence on record properly and arrived at erroneous conclusion that there is penetrative sexual assault committed by the accused against the victim, therefore, she submits that the impugned judgment of conviction and order of sentence of the Court below is not sustainable under law and thereby prayed to allow the appeal,

set aside the impugned judgment of conviction and order of sentence, and acquit the accused.

9. Per contra, learned State counsel contends that simply because the semen was not detected it cannot be said without all certainty that there was no penetration. Further that since the victim was profusely bleeding, there is every possibility of semen to be washed out. Therefore, he contends that the accused has rightly been convicted and the impugned judgment of the Court below is perfectly sustainable under law and it does not suffer from any legal infirmity, therefore he supported the judgment of Court below and prayed for dismissal of the present appeal.

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

11. The prosecution examined the victim as PW-8, who deposed as under :-

“ *Deposition sheet of a witness for prosecution.*

Nisha daughter of Ram Niwas aged 8 years student of Gandhi

Nagar, Dhani Narwana. Taken before me (Vijay Singh, Addl.

Sessions Judge, Jind), on the 2 day of May, 2017. Without Oath.

(Camera proceedings).

(The accused was asked to sit at such a place from where he is not directly visible to the witness).

Q. 1: What is your name?.

Ans: My name is Nisha

Q.2: What is your age?.

Ans:- My age is 8 years.

Q.3:- What is name of your father and mother?.

Ans:- Name of my father is Ram Niwas and mother's name is Smt. Pinki.

Q.4:- Whether speaking of truth is better or lie?.

Ans:- To speak of truth is better. No person should speak lie.

Q. 5:- Do you go to school and what is the name of your school?.

Ans:- The name of my school is Govt. Primary School, Dhani, Narwana and read in 5th class.

In view of the certain questions and answers referred above to the witness as per court observations the witness is competent to adduce her evidence.

Stated that on 22.6.2016 when I was coming back from a tailor when accused present in court who is neighbourer of my house gave me some sedative due to which I became unconscious. When I regained consciousness I found myself. in Village Siwani. I told to a passer-bye about the incident then he rescued me from accused. I informed telephone number to him who got talk with my father. My father came and took me at my home. Accused had also committed wrong act with me and gave a danda on my private part (Pishab Kane Wali Jageh). Accused had committed wrong act with me. The witness has indicated putting his hand on her private part. My statement was recorded before the Magistrate which is Ex PK which bears my signatures at point-A. Xxxxxxxx by Sh. Sushil Kumar Gupta Adv. Id. Defence counsel for accused.

I do not know the name of the tailor where my mother had sent me. I went to the shop of tailor at about 4.00 p.m. The time took about 5/6 minutes to reach the shop of tailor from my house. The

shop of tailor is situated near the houses of other persons. I was coming from the shop of tailor at about 4.30 p.m. Soma met me in a street but there was no house of any other person. I had also recorded in my statement under section 164 Cr. P.C. that accused had made me jumped over a wall. (Confronted with statement Ex.PK wherein it is not so recorded). I had also stated before the Magistrate that accused had also given me an injection to made me unconscious. (Confronted with statement Ex.PK wherein it is not so recorded). When I regained consciousness in Siwani it was about 6.00 O'clock. I do not know the name of the person who met me in village Siwani.. I do not know the name of the lady where accused had taken me. The name of Buggiwala was Ram Niwas. The telephone number which I told to the person was 9991580186. Police had not recorded my statement. No person in police uniform met me in Siwani. I reached at my home but I do not remember the time. At the time of recording my statement before the Magistrate my mother along with one more police official were remained out side the court. It is incorrect to suggest that I have made statement under section 164 Cr. P.C. under the pressure of my mother. It is also incorrect to suggest that my statement under section 164 Cr. P.C. is a tutored one. I had also stated before The Magistrate while recording my statement that accused had given me a danda type blow on my private part. (Confronted with statement Ex.PK wherein it is not so recorded). I had also stated in my statement before the Magistrate that accused had also committed wrong act with me.

(Confronted with statement Ex.PK wherein it is not so recorded). I was produced before the Magistrate on next day of the incident. I do not know the name of the wife of accused. It is wrong to suggest that I was not kidnapped by accused or it is also incorrect to suggest that accused had not committed any wrong act with me. It is incorrect to suggest that I deposed in court as tutored by my mother. It is wrong to suggest that I have deposed falsely.”

12. Further, Ram Niwas complainant/father of the victim was examined as PW-1, who desposed as under:-

“ Stated that my caste is Dhanak. On 22.6.2016 my daughter Nisha aged about 8 years who was wearing orange colour suit had gone to in our neighbour to bring cloth. But she did not return home for a long time. We searched her. Some children of the street had told us that Soma son of Jagdish caste Luhar has taken my daughter Nisha. We searched them, but when they did not found, I went to police station and moved one application Ex.PB which bears my signatures. It was signed by me after admitting it as correct.

On the same day he received a telephonic call from Village Siwani Bullan. We reached there along with police and found my daughter Nisha there. A photograph Ex. PC (objected to) is of my daughter Nisha. She was handed over by me to the police. The photo copy of my caste certificate is Ex.PD(objected to). Photo copy of birth certificate of Nisha is Ex.PE(objected to). My statement was recorded by the police. Accused Soma is present in the court today.

Xxxxxxxxxxx by Sh. S.K. Gupta, Adv. Ld. defence counsel (free legal aid counsel).

Complaint Ex.PB was got typed from a typist sitting out side the gate of the Police Post. It took about ten minutes for reaching to police station from our house. I had moved applicxation Ex.PB in the night of 22.6.2016. I had visited the police station 5-6 times i.e. on 22.6.2016. 23.6.2016. 24.6.2016 and 26.6.2016. The police had not recorded my statement except complaint Ex.PB. It is correct that the original of caste certificate and birth certificate are not present on the judicial file. It is incorrect to suggest that police had obtained my signatures on blank papers. It is further incorrect to suggest that I have mentioned the name of accused Soma falsely. It is further incorrect to suggest that no occurrence took place as stated by me in my examination in chief. Some one asked my telephone number from my daughter Nisha and he made a telephonic call to me. His name is Ram Niwas who is Jat by caste. It is incorrect to suggest that I am deposing falsely.”

13. Pinki, mother of victim was examined by the prosecution as PW-2, whoe deposed as under:-

“ Stated that I have five daughters and one son. I had married my four daughters. On 22.6.2016 I had sent my daughter Nisha in the neighbour to bring the cloth. My daughter Nisha is aged about 8 years. She was wearing suit salwar of light orange colour. We waited for her a sufficient time and thereafter we searched her in our neighbour. We came to know that Soma Luhar had kidnapped

my daughter Nisha. I handed over to the police one photograph of my daughter Nisha, photo copy of birth certificate and photo copy of caste certificate which were taken into possession by the police vide recovery memo Ex.PF which was thumb marked by me. Police recorded my statement under section 161 Cr. P.C. The photo copy of scheduled caste certificate is Ex. PD and photo copy of birth certificate of Nisha is Ex.PE. Accused Soma is present in the court today.

Xxxxxxxxxxxxx by Sh. Sushil Gupta Adv. (free legal aid counsel).

My statement was recorded by the police in the police station after two days of recovery of my daughter. I had not moved any complaint to the police. However, I accompanied to my husband to the police station to move the complaint but police did not record my statement on that day. My thumb impression was obtained by the police on my statement. Thereafter I and my husband never went to the police station. It is correct that the photo copies of caste certificate and birth certificate are present on the judicial file. I do not remember from where the photo Ex.PC was got prepared. I simply thumb marked recovery memo Ex.PF but I do not know till today what was written on it. Volunteered as I am illiterate. It is incorrect to suggest that nothing was handed over by me to the police or that the police obtained my thumb impressions on some blank papers. It is further incorrect to suggest that I have involved accused Soma falsely in this case. It is further incorrect to suggest that no occurrence took place

as stated by me in my examination in chief. It is further incorrect to suggest that I have deposed falsely.”

14. Dr. Kusum Naagar was examined as PW-16, who medico legally examined the victim and tendered into evidence her affidavit Ex.P/20, which reads as under:-

“I Dr. KusumNaagar, MO. Gh. Jind do hereby solemnly affirm under oath as

1. That on dated 23-6-16 at 1.40 pm I was posted at Gh. Jind and I medicolegally examined. BABY NISHA@ DURGA DIO. RAMNIWAS, 7 yrs female, caste-DHANAK STUDENT. VILL-NARWANA. Accompanied with MOTHER, PINKI MOI. --OHSM on lower part of chin (linear mark). With MLR NO. KN/5/2016. She came with A/H/O sexual assault. She was brought by mukesh asi belt no. 915.

2. G/E= P.t is conscious and responsive and well oriented to place and person.

3. She has come with A/H/O sexual assault (as told by her mother)By SOMA S/O JAGDISH R/O NARWANA. NISHA herself is telling being hit by danda type thing on her private part.

4. No external mark of injury all over the body. No h/o bath & not washed the private parts after the assault. Clothes have been changed after the assault she is crying a lot while examination.

*5. L/e-- Hymen ruptured at multiple sites -7 o clock, 11 o clock, 2 o clock position. **Fresh blood oozing out from hymenal injury.***

Congestion, laceration & abrasion present over hymen. Injury on

forchette & lower part of vagina. 1 vaginal swab & 1 hymenal swab taken & sent for chemical Examination. Pubic hairs not developed.

Handed over to police-

1. A packet with 4 seals (MS) containing salwar & suit printed floral which is blood stained.

2. A sample seal (MS)

3. 1 vial containing 1 vaginal swabs & 1 hymenal swab with 1 seal (MS)

*4. A copy of MLR KN/5/2016 dt 23/6/2016 5. An envelope with 4 seals (MS) containing copy of MLR, sample seal, forwarding letter
POSSIBILITY OF INTERCOURSE IS THERE BUT FINAL
OPINION TO BE GIVEN AFTER FSL REPORT.*

I have seen the copy of MLR NO. KN/5/2016 in the court file which is in my hand and bears my signature, the original of which I have brought in the court today.”

And further proved a copy of MLR of victim as Ex.P/21, which also reads as under:-

“H/o Sexual Assault as told by her mother (Pinki) by Soma S/o Jagdish R/o Narwana. Nisha herself is telling being hit by some danda type thing on her private part (peshap karne ki jagah par) as told by her. No external mark of injury overbody. No H/o Bath & not washed the private parts after assault. Clothes have been changed after assault. Pt is crying a lot while examination.

L/E – hymen reuptured at multiple sites 7’ o clock, 11’ o clock, 2’ o clock position. Fresh blood oozing out from hymenal injury.

Congestion, lacerations & abrasions present on hyman. Injury on forchette & lower part of vagina. One hymenal swab and one vaginal swab taken. Pubic hairs not developed. Swabs sent for chemical examination.

Handed over to police-

1. A packet with 4 seals (MS) containing salwar & suit printed floral which is blood stained.

2. A sample seal (MS)

3. One vial containing hymenal & vaginal swab with 1 seal (MS)

4. A copy of MLR KN/05/16 dt 23/6/16

5. An envelope with 4 seals (MS) containing copy of MLR, sample seal, forwarding letter.

Opinion:- Possibility of intercourse is there but final opinion to be given after FSL Report.

15. She further deposed that as per FSL report Ex.P/A **the blood was detected on the salwar, shirt, hymenal and vaginal swab and injuries present on the victims genital are suggestive of offence of rape committed with the victim.** Ex.P/A is reproduced as under:-

“REGIONAL FORENSIC SCIENCE LABORATORY, HARYANA
SUNARIA, ROHTAK

REPORT/OPINION RFSL (II) No. 16/SU/B-633 Dated 7/10/16

Bio No.-24/16/SU/Jind

To

*Asstt. Superintendent of Police,
Narwana*

Your forwarding memo. No. 1046-N Dated 29.06.2016 regarding Five (5) sealed parcel (s) in connection with FIR No. 135 Dated 23.06.2016 Under Section 365 IPC, 6 POCSO Act and 3 SC/ST Act. Police Station City Narwana stated by you to have been dispatched vide RC.Ne. 198 Dated 12.07.2016 through Ct. Kuldeep/205 and received in this division on 12.07.2016.

Description of parcel (s) and condition of seal (s)

Five sealed parcel(s). The seals were intact and tallied with the specimen seal as per Forwarding Authority's letter.

Description of article (s) contained in parcel(s)

<i>Parcel No</i>	<i>No. & Seal Impression</i>	<i>Description of Parcel(s)</i>
<i>I</i>	<i>4-MS</i>	<i>Sealed cloth parcel containing Exhibit-1a and 1b stated to be of Nisha @ Durga</i> <i>Exhibit-1a</i> <i>One dirty pink based small sized salwar having brown & green floral print.</i> <i>Exhibit-1b</i> <i>One dirty pink based small sized lady's shirt having brown & green floral print.</i>
<i>II</i>	<i>1-MS</i>	<i>Sealed airtight glass vial containing Exhibit-2 stated to be of Nisha @ Durga.</i> <i>Exhibit-2</i> <i>Two cotton wool swabs on sticks described as hymenal & vaginal swabs.</i>
<i>III</i>	<i>S-HB</i>	<i>Sealed cloth parcel containing Exhibit-3a to 3d stated to be of Soma.</i> <i>Exhibit-3a One dirty brown colored underwear.</i> <i>Exhibit-3b One dirty blue colored pyjama.</i> <i>Exhibit-3c One dirty blue colored kurta.</i>

- Exhibit-3d One dirty white colored parna.*
- IV 1-HB *Sealed airtight glass vial containing Exhibit-4 stated to be of Soma.*
- Exhibit-4** A very few strands of hairs described as pubic hairs.*
- V 1-HB *Sealed airtight glass vial containing Exhibit-5 stated to be of Soma.*
- Exhibit-5** One cotton wool swab on stick described as penile swab.*

LABORATORY EXAMINATION

Laboratory examinations were carried out to detect the presence of Semen/Blood/Hair by performing Morphological, Chemical Tests & Microscopy. Based upon these examinations, the results obtained are given below:-

- 1. Blood was detected on exhibit-1a (Salwar), exhibit-1b (Lady's shirt), exhibit-2 (Hymenal and vaginal swab), and exhibit-3a (underwear). However blood could not be detected on rest of the exhibits mentioned above.*
- 2. Semen could not be detected on any of the exhibits mentioned above.*
- 3. Hairs could not be recovered from exhibit-1a (Salwar) and exhibit-1b (Lady's shirt).*

Note: 1. After examinations, the exhibit(s) along with its/their original wrapper (s) has/have been sealed with the seal of SSO/MD/BIO. RFSL, Sunaria, RTK.

2. The result relates only to the items tested above.

3. For further comparison the case may be sent to DNA division FSL (H). Madhuban.”

16. Dr. Himanshu was examined as PW-20, who medico legally examined and gave an opinion that there was nothing suggestive that Soma/accused is incapable of performing sexual intercourse.

17. Prosecution examined Mukesh Kumar as PW-17, who brought the original record i.e. the Birth Register of Municipal Committee, Narwana and proved a copy of his original register as Ex.P/22, in which date of birth of victim is mentioned as 22.09.2008. Ex.P/E is the date of birth certificate of the victim wherein the date of birth is mentioned as 22.09.2008. The same is reproduced as under :-

“***Date of Birth Certificate***”

No 2990

Haryana Government Health Department

Issued under section 12/17 of the Registration of Birth and Death Registration Act 1969. This is to certify that the below mentioned information is taken from the original record which is registered in register of Municipal committee Narwana, District Jind, state Haryana.

Name: Nisha

Sex : Female

Date of birth 22.09.08

Registration No. 1638

Date of birth (In words): Twenty second September two thousand eight

Place of birth: Narwana

Registration Date: 10-10-08

Father's Name: Ramniwas

Mother's Name: Pinki

Parent's permanent address :

Gandhi Nagar, Narwana

Date 15-10-08

Sd/-
(In English)
Registrar

*Birth & Death
Sign of issuing author''*

18. After going through the above mentioned depositions and medical record of the present case, we conclude as under:-

- i) Birth certificate of victim Ex.P/E has been proved on record, which was handed over by PW-1 i.e father of the victim, in which date of birth of victim is written as 22.09.2008. PW-17, Mukesh Kumar MTS, Municipal Committee, Narwana also brought the original record i.e. Birth Register of Municipal Committee, Narwana. He proved the copy of his original register as Ex.P/22, in which date of birth of victim is also mentioned as 22.09.2008. It reveals that prosecutrix was born to Ram Niwas and Pinki on 22.09.2008. No dispute was raised qua age of the victim or qua the birth certificate Ex.P/E. Birth certificate is relevant evidence to prove the date of birth of child, therefore, it can be concluded that the victim was born on 22.09.2008 and at the time of incidence on 22.06.2016, she was 07 years and 9 months of age and, thus, was minor.
- ii) The victim, a little girl of less than 8 years of age, minced no word in detailing about most horrific incidence of her life as she specifically deposed as PW-8 that on 22.06.2016 when she was coming back from a tailor, the accused gave her some sedative due to which she became unconscious. When she regained conscious she found herself in village Siwani. She also deposed that accused committed wrong act with her and gave a danda on her private part. She deposed that

the accused had committed wrong act with her. The victim was subjected to lengthy cross-examination, but could not be shattered at any point of time on behalf of defence as per her cross-examination supra. As per record, statement of victim under Section 164 Cr.P.C is almost the same.

- iii) In the present case victim though is a child witness, but is found to be trust-worthy and reliable witness who narrated the incident in detail which shows that she is competent witness and her version was true. Therefore, her testimony cannot be discarded merely on the plea that child witness is pliable witness and can be easily tutored, specially in the back-drop of the present case wherein there is nothing on record to believe that her family members would have tutored her to falsely implicate the accused in the present case. Moreover testimony of victim in the present case is further corroborated from the testimony of her father/complainant Ram Niwas examined as PW-1, Pinki (mother) examined as PW-2, Jasmer (cousin of Ram Niwas i.e. father) examined as PW-3 and Ram Niwas r/o Village Siwani who was examined as PW-4. A perusal of the evidence on record shows the commission of offence with the victim.
- iv) Coming to the medical as well as scientific evidence The victim was medico-legally examined by PW16 Dr. Kusum Naagar, who tendered into evidence her affidavit Ex. P20 and proved the copy of MLR of victim as Ex. P21. PW16 in her affidavit has mentioned that there was no external mark of injury all over the body. There

was no history of bath and washed the private parts after assault. As per doctor, the victim was crying a lot while examination. **On local examination, the doctor found the hymen ruptured at multiple sites. Fresh blood was oozing out from hymenal injury. There was congestion, laceration and abrasion over hymen and also there was injury on forchette and lower part of vagina. The doctor gave her opinion that there was possibility of intercourse. She deposed that as per FSL report the blood was detected on Salwar, shirt and hymnal and vaginal swab and injuries present on victim's genitals are suggestive of offence of rape committed with the victim.** In her cross-examination she deposed that victim told that accused assaulted on her private part with a danda type thing.

- v) Accused Soma was also medico-legally examined. Salwar and suit, vaginal swab and hymenal swab of victim and underwear, pajama, kurta, parna pubic hairs and penile swab of accused were sent to FSL for chemical examination and as per FSL report Ex.PA, blood was detected on salwar, shirt and hymenal and vaginal swab of victim and underwear of accused, but semen could not be detected on any of the exhibits. Salwar, shirt of victim and blood sample of accused Soma were sent to FSL for conducting DNA test. As per DNA report Ex.P27 there was no amplification of DNA in item No.1A and 1B, which was necessary to compare with DNA profile of item no.2 i.e. blood sample of accused. So, no opinion could be given in this case.

- vi) The victim detailed that in fact accused had committed wrong act with her and gave a danda on her private part. She specifically stated that accused had committed wrong act with her. Moreover, PW16 Dr. Kusum Naagar has specifically stated that injuries present on the victim's genital are suggestive of offence of rape committed with her. In fact actual sexual intercourse and discharge of semen has not taken place in this case but as per FSL report blood was found on the salwar, shirt and hymenal and vaginal swab of the victim. Therefore, for the mere fact that Ex. PA report of Forensic Science Laboratory revealed that no semen could be detected on belongings of victim, her version cannot be doubted.
- vii) Simply because semen was not detected, it cannot be said with all certainty that there was no penetration. All that is required to prove the offence of penetrative sexual assault defined under Section 3 of the POCSO Act is, mere penetration of penis or any object or part of the body into the vagina, mouth, urethra or anus of a child or mere insertion to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child and even if the accused manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child then also it constitutes an offence of penetrative sexual assault.
- viii) Moreover, this act of the accused also falls within purview of Section 6 of POCSO Act. Section 6 of the POCSO Act is punishment for aggravated penetrative sexual assault.

- ix) Section 3 of the POCSO Act defines penetrative sexual assault and it reads as under:-

“3-Penetrative sexual assault. – *A person is said to commit “penetrative sexual assault” if :-*

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

- x) Therefore, the accused, who has penetrated his male organ into the vagina of less than eight years old victim had committed aggravated penetrative sexual assault, which is punishable under Section 6 of Protection of Children from Sexual Offences Act.

- xi) Reading of the aforesaid Section, as discussed above, shows that ejaculation of semen is not necessary pre-requisite for the purpose of proving penetrative sexual assault. Even without ejaculation of semen, if the evidence on record shows that there is penetration of penis or any object or part of the body of the accused into the vagina of a minor girl, it

is sufficient to constitute an offence of penetrative sexual assault as defined under Section 3 of the POCSO Act.

xii) If the evidence on record is examined in the light of the aforesaid ingredients of Section 3 of the POCSO Act, the evidence on record clinchingly proves that there has been penetrative sexual assault committed by the accused against the victim girl PW-8.

xiii) When a penetrative sexual assault is committed on a child below 12 years it amounts to aggravated penetrative sexual assault under Section 5 (m) of the POCSO Act and Section 6 prescribes punishment against the person who has committed the said aggravated penetrative sexual assault.

xiv) As per evidence of PW-16 Dr. Kusum Naagar, hymen was ruptured at multiple sites. Fresh blood was oozing out from the hymenal injury. Congestion, laceration & abrasion was present over hymen. Injury on forchette & lower part of vagina suggests offence of rape committed with the victim. Therefore, the evidence of doctor is sufficient to prove that there has been an act of penetrative sexual assault committed by the accused against victim PW-8.

xv) In State of **Tamil Nadu Vs. Ravi @ Nehru [2006(3) R.C.R (criminal) 500]**, the Hon'ble Apex Court held as under:-

“14. We may also notice the opinion expressed by Modi in Medical Jurisprudence and Toxicology (Twenty First Edition) at page 369 which reads thus : "Thus to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the

labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape, is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one.

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17. It is now well-accepted principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. It is also well accepted principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence. The woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion treating her as if she were an accomplice. [See

State of Punjab v. Gurmit Singh, 1996(1) RCR (Criminal) 533 : (1996) 2 SCC 384].

18. So also in the case of *Ranjit Hazarika v. State of Assam (1998) 8 SCC 635*, this Court observed that non-rupture of hymen or absence of injury on victim's private parts does not belie the testimony of the prosecutrix.

19. The evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offender is entitled to great weight, absence of corroboration notwithstanding. [See *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983(2) RCR (Criminal) 192*].

Further, law on the rape cases was summed up as under:-

- (i) Conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration.
- (ii) Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence.
- (iii) The woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion

treating her as if she were an accomplice. 1996(1) RCR (Criminal) 533(SC) relied.

(iv) *Non-rupture of hymen or absence of injury on victim's private parts does not belie the testimony of the prosecutrix. 1998(8) SCC 635 relied.*

(v) *Evidence of a victim of sexual assault stands on par with evidence of an injured witness - Just as a witness who has sustained an injury is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offender is entitled to great weight, absence of corroboration notwithstanding. 1983(2) RCR (Criminal) 192(SC) relied.*

xvi) Hon'ble Apex Court in **Wahid Khan Vs. State of Madhya Pradesh [(2010) 2 SCC 9]** held as under:-

“21. 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 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.

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25. It has been a consistent view of this Court that even a slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial.

26. It is appropriate in this context to reproduce the opinion expressed by Modi in Medical Jurisprudence and Toxicology (Twenty Second Edition) at page 495 which reads thus :

"Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only

statement that can be made by the medical officer is to the effect whether there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one."

xvii) In **Parminder @ Ladka Pola Vs. State of Delhi [(2014) 2 SCC 592]**, their Lordships of Hon'ble Apex Court have held that *even though the doctor stated there was no sign of injury on prosecutrix and hymen was found intact but the version of prosecutrix, of rape, was adequately corroborated. In that case also, the human semen and blood was detected on the underwear of prosecutrix but no semen was detected in the vaginal swab. Their Lordships held that non-rupture of hymen is not sufficient to dislodge the theory of rape and the conviction of rape was confirmed. Further held that there was penetration which has caused bleeding in private parts of prosecutrix, as would be evident from the fact that underwear of prosecutrix was stained by blood. Their Lordships have held as under:-*

"11. Section 375, IPC, defines the offence of 'rape' and the Explanation to Section 375, IPC, states that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."

19. 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.

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

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 13, 2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No