



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 900 OF 2022

Akbar Hussain S/o Anwar Hussain,
Aged 26 years, Occ. Scrap Seller,
R/o Near Anvarul Taj Masjid, Gulshan
Chowk, Azad Colony, Bada Tajbag, Umred
Road, Nagpur

... Appellant

// VERSUS //

1. State of Maharashtra,
through Police Station Officer, Police Station
Sakkardara, Nagpur, District Nagpur
2. XYZ,
Victim in Crime No. 326 of 2020
registered with Sakkardara Police Station,
Nagpur

... Respondents

Shri A.V. Bobde, Counsel a/w Ms. S.A. Jadhao and Shri A.G.Nandanwar, Counsel for the appellant.

Ms. Sonia Takur, Addl.P.P. for the respondent No.1/State.

Ms. Shilpa Giratkar, Counsel (appointed) for the respondent No.2/Victim.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 3rd December, 2025.

Pronounced on : 12th December, 2025.

JUDGMENT :

The appellant has preferred the present appeal, being aggrieved by the judgment and order dated 03.12.2022 passed by the learned Extra Joint District Judge & Additional Sessions Judge, Nagpur in Special (POCSO) Case No. 441 of 2020, whereby the appellant is convicted for the offences punishable under Sections 376(3), 363, 376(2)(i) of the Indian Penal Code (IPC) and Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act). He

is sentenced to suffer rigorous imprisonment for 20 years and to pay a fine of Rs. 7000/-; in default, to suffer rigorous imprisonment for three months for the offence under Section 376(3) of the IPC. As per Section 42 of the POCSO Act, no separate sentence is awarded for the offences punishable under Sections 363, 376(2)(i) and Section 3 read with Section 4 of the POCSO Act as the sentence awarded under Section 376(3) of IPC is greater in degree.

2. The case of the prosecution, briefly stated, is that on 19.06.2020 at about 11.00 a.m., the minor victim left her residence informing her mother, Noorjaha Begum (PW-1), that she was going to the house of her friend Mehar. When she did not return home, PW-1 contacted Mehar, who stated that the victim had not visited her house. PW-1 thereafter searched for the victim but, having failed to trace her, lodged a missing report (Exh. 23) at Police Station Sakkardara, Nagpur. On that basis, Crime No.326/2020 under Section 363 of the IPC came to be registered vide FIR (Exh. 24). API recorded the report and circulated wireless messages (Exh. 73) to nearby police stations and also prepared the spot panchanama (Exh. 36) in the presence of panch witnesses.

2.1 While PW-1 was at the police station, the victim returned home and thereafter came to the police station. At that stage, the Lady PSI from Police Station Imamwada was called, who recorded the victim's statement. In her statement, the victim disclosed that the accused, who frequently visited the locality and communicated with her, had befriended her. On 19.06.2020 at about 7.00 p.m., he came on an Activa two-wheeler and took her for roaming, and thereafter at about 10.00 p.m.

took her to a house at Kharbi belonging to a transgender person, where he subjected her to forcible sexual intercourse. The victim stated that she resisted and attempted to shout, but the accused threatened to defame her. He then brought her to his house at about 11.30 p.m., where his family members were asleep, and directed her to sleep in a corner. Being frightened, she came out and sat in an autorickshaw till about 10.00 a.m., after which she returned home. She narrated the incident to her mother, who brought her to the police station. She explained that, out of fear, she had not disclosed the incident earlier.

2.2 The victim was referred for medical examination and narrated the incident to the Medical Officer. Based on her statement, Sections 376(2)(i), 376(3), 506 IPC and Sections 3 r/w 4 and 11 r/w 12 of the POCSO Act were added.

2.3 PW-9, the Investigating Officer, conducted the investigation, prepared the spot panchanama at the place of incidence (Exh. 38), and seized the quilt (Article 'C') therefrom. The accused was arrested; he was medically examined, and his medical report (Exh. 59) was collected. His clothes and biological samples were seized under seizure panchanamas (Exh. 60 and Exh. 61). The clothes and biological samples of the victim were also seized for chemical analysis (Exh. 85). The birth certificate of the victim (Exh. 27) was obtained from the Nagpur Municipal Corporation under letter (Exh. 68). The two-wheeler used in the commission of the alleged act was seized under panchanama (Exh. 43). The victim's statement under Section 164 Criminal Procedure Code (CrPC) was recorded. On completion of the investigation, a charge- sheet was filed.

3. Charges under Sections 363, 376(2)(i), 376(3), 506 IPC and Sections 3 r/w 4 and 11 r/w 12 of the POCSO Act were framed at Exh. 16. The accused pleaded not guilty and claimed to be tried. The prosecution examined ten witnesses. The statement of the accused under Section 313 CrPC was recorded at Exh.89, wherein he denied all incriminating circumstances and claimed false implication.

4. The learned trial Court, after taking into consideration the evidence on record, while recording a conviction, observed that the prosecution had duly established the age of the victim below 18 years at the time of the incident. It relied on the Birth Certificate (Exh. 27) issued by the Nagpur Municipal Corporation, which listed the victim's date of birth as 02.08.2007. It held the document to be a public record admissible under the law. The learned trial Court noted that neither the victim (PW-2) nor her mother (PW-1) was confronted in cross-examination regarding the correctness of the said date of birth, nor was any rebuttal evidence led by the defence, and therefore accepted the prosecution's case on the age of the victim.

4.1 On the aspect of occurrence, the learned trial Court found the testimony of the victim (PW-2) specific and consistent regarding the allegation that on 19.06.2020, the accused took her to the house of PW-6 and committed forcible sexual intercourse. The learned trial Court held her version to be natural, coherent and corroborated by her mother (PW-1), before whom she disclosed the incident immediately thereafter, as well as by the medical evidence of Dr. Meenakshi Paunikar (PW-5). The medical examination exhibited no injuries on the labia majora, labia minora, or clitoris, but found tearing of the hymen at the 3 o'clock and 6 o'clock

positions, inflamed edges, which, according to the medical expert, was consistent with recent sexual assault. The learned Trial Court also relied on seizure evidence, proved through the panch witness, PW-Kiran Thakre, and the Investigating Officer, observing that minor contradictions regarding whether a quilt or a bed-sheet was seized were inconsequential in light of the consistent identification of the seized articles.

4.2 The learned Trial Court rejected the defence plea of false implication based on alleged refusal to marry, noting that no such suggestion was put in cross-examination and that no evidence was adduced to establish the suggested motive. Arguments questioning the possibility of forcible sexual assault in a densely populated locality or in the house of a transgender person were held unconvincing, as the victim had voluntarily gone with the accused for “wandering,” without anticipating the offence, and PW-6 was admittedly not present at the time of the alleged incident.

4.3 The learned Trial Court held that the delay in lodging the FIR was satisfactorily explained, being attributable to search efforts by the family and the sensitivity attached to sexual offences, and thus not fatal to the prosecution. The learned Trial Court relied on Section 29 of the POCSO Act, holding that once foundational facts of sexual assault were established, the statutory presumption operated against the accused, who failed to rebut the same even on a preponderance of probabilities.

4.4 Accordingly, the learned Trial Court concluded that the testimony of the prosecutrix inspired full confidence and stood corroborated materially by medical

and other evidence, and therefore convicted the accused for the offences under Sections 376(2)(i), 376(3) of the IPC and Section 3 read with 4 of the POCSO Act. The accused was acquitted of offences under Section 506 of the IPC and Sections 11 read with 12 of the POCSO Act, finding no evidence supporting criminal intimidation or sexual harassment. The plea for leniency was rejected in view of the gravity of the offence and the societal impact.

5. Heard Mr. Bobde, learned Counsel for the appellant, Ms Sonia Thakur, learned Additional Public Prosecutor for the State and Mrs. S.P.Giradkar, learned Counsel (appointed) for the respondent/victim.

6. Arguments on behalf of the appellant :

6.1. Learned Counsel for the appellant contends that the prosecution has failed to establish the commission of the offence of rape beyond reasonable doubt. The incident, as narrated by the victim, is denied categorically by the appellant. A thorough examination of the prosecution's evidence reveals material contradictions and omissions that cast serious doubts on the credibility of the victim's testimony.

6.2 The story narrated by the victim states that the appellant took her to a transgender person's dwelling where the alleged rape occurred. However, evidence of P.W.6 (Sana, a transgender individual) discloses that while the appellant brought the victim to her residence, the victim repeatedly pleaded with the appellant to marry her, threatening self-harm in case of refusal. The appellant clearly refused to marry her, citing her minority. Additionally, P.W.6 acknowledged the presence of another

individual, Simran, at the relevant place, yet the prosecution failed to examine this witness, thereby weakening its case.

6.3 Evidence establishes that there was only one bed in Sana's house, and the Investigating Officer seized a bed-sheet and a quilt allegedly stained with blood. The presence of only one bed and the involvement of individuals residing there casts doubt on the provenance of this evidence. Crucially, no semen was detected on the victim's or the appellant's clothes, and medical evidence reveals the absence of injuries on the victim's person, contrary to expectations in a sexual assault case.

6.4 Further, the victim's statements to the Medical Officer, Police, and the learned Magistrate under Section 164 Cr.P.C. are replete with contradictions, omissions, and variations which undermine the consistency and reliability of her account. The forensic evidence, including the Forensic Laboratory and Chemical Analysis reports, is inconclusive on semen presence and merely remarks blood stains without conclusive linkage.

6.5. Based on the cumulative assessment of the medical, forensic, and testimonial evidence, learned Counsel submits that the prosecution failed to prove the offence of rape beyond a reasonable doubt. Consequently, it is argued that the appellant, who has already undergone a substantial custodial sentence exceeding five years, deserves acquittal. The case law relied upon, viz., *Nirmal Premkumar & Anr. Vs. State Rep. By Inspector of Police, 2024 SCC Online SC 260* underscores that where prosecution fails to satisfy the court of guilt on solid evidence fully, acquittal is warranted.

7. Arguments on behalf of the State :

7.1. Learned Additional Public Prosecutor asserts that the medical report indicates hymenal tears and inflammation consistent with penetrative sexual assault. The undisputed fact that the victim was present with the appellant at the residence of P.W.6 (Sana) corroborates the prosecution's narrative.

7.2. The victim was a minor as defined under Section 2(d) of the POCSO Act. The appellant's refusal to marry notwithstanding knowledge of her minority, followed by sexual intercourse, constitutes an offence under the Act. The prosecution emphatically denies any significant contradictions in the victim's account, stating her deposition remains credible and unimpeached.

7.3. The victim's relationship with the appellant, perceived as friendly by her, was exploited by the appellant to commit the sexual offence. Torn clothes of the victim further support the claim of non-consensual intercourse. The forensic evidence indicating blood type "O" on the quilt, and the forensic confirmation of hymenal injuries, support the prosecution's case.

7.4. In such cases, the testimony of the victim alone, when credible and inspiring confidence, suffices for conviction without the requirement of corroboration. The presence of the victim with the appellant in the house of P.W.6 on the date in question is affirmed by multiple witnesses, thereby impugning any denial of the incident.

8. Learned Counsel for the respondent/victim adopts the submissions advanced by the learned Additional Public Prosecutor, reinforcing the stand that the prosecution case is proved beyond reasonable doubt based on consistent testimony and corroborative medical and forensic evidence.

9. Before adverting to the analysis and conclusion, it is necessary to evaluate the depositions of the prosecution witnesses meticulously. The credibility, consistency, and reliability of their testimonies must be scrutinised to determine whether the prosecution has proved the allegations beyond a reasonable doubt. Particular attention is warranted in cases under the POCSO Act, given the tender age of the victim. The evaluation of depositions forms the basis for subsequent analysis and judicial conclusions.

10. PW-1 – Mother of the Victim (Noorjaha Rafiq Qureshi) : PW-1 deposed that the victim is her daughter, born on 02.08.2007, and that she has two other daughters and a son (the victim's twin brother). She stated that on 19.06.2020, the victim went out around 11:00 a.m. to visit her friend, but did not return. After searching the locality and making inquiries with relatives, she lodged a missing report at Sakkardara Police Station on 20.06.2020 (Exh. 23 – Missing Report; Exh. 24 – FIR). PW-1 verified the FIR and pointed out the place from where the victim had gone missing. The victim returned home later and was sent for medical examination, accompanied by PW-1 and a female constable. The victim's statement was recorded in PW-1's presence the following day, and the victim's clothes were seized (Exh. 25). PW-1's

statement under Section 164 Cr.P.C. is at Exh. 26, and the victim's birth certificate is at Exh. 27. The muddemal clothes (black top and white pajama) marked as Articles A and B were identified by her.

In cross-examination, PW-1 admitted lodging the missing report, confirmed her residence's proximity to the police station, and denied any suggestion that the report or her statements were false. She further confirmed the submission of the victim's age certificate and the school's closure due to the lock-down.

PW-1's evidence establishes the victim's age, the fact of her going missing, the prompt lodging of the report, verification of the FIR, seizure of clothes, and the victim's frightened state. Her testimony is consistent and wholly supportive of the prosecution's case, with no material admissions favouring the accused.

11. PW-2 – Victim : The victim deposed that she resided with her family at Bada Tajbag, Nagpur, and was 13 years old at the time of the incident, her date of birth being 02-8-2007. She stated that the accused, Akbar Anwar Hussain, befriended her and on 19.06.2020, took her on an Activa scooter to Kharbi around 7:00 p.m. Near a house, a transgender person was present, who subsequently left. The accused allegedly committed sexual intercourse with her, despite her resistance. Her clothes were torn, and she was threatened with punishment if she shouted. She returned to the accused's house at around 11:30 p.m., she could not sleep, and later remained in an auto-rickshaw until about 10:00 a.m. She then returned home and narrated the incident to her mother, after which she was taken to the police station. She was medically examined, and her statement was recorded the following day in the presence of PW-1. The muddemal clothes are identified as Articles A and B, and the

accused was identified in trial Court. Her statement recorded under Section 164 Cr.P.C. is at Exh. 30.

In cross-examination, the victim denied making false statements, clarified her limited acquaintance with the accused, and consistently stated that she was taken to Kharbi and sexually assaulted. She explained her initial silence due to fear, denied the defence's suggestions of fabrication, and confirmed showing the spot of the incident to the police.

PW-2's testimony is direct, detailed, and categorical. She confirms her minority, the accused's involvement, sexual assault, fear and threats, torn clothes, medical examination, and identification of the accused. Cross-examination did not materially weaken her account. Her evidence strongly supports the prosecution's case.

12. PW-3 – Anis Mirza Rajjak Mirza (Panch Witness) : PW-3 deposed that on 20.06.2020, he witnessed the preparation of the spot panchnama (Exh. 36) by the police near the complainant's house, along with another panch, Majaitkhan. He identified his signature and confirmed the correctness of the panchnama and site map.

In cross-examination, PW-3 admitted that his formal consent to act as a panch witness was not obtained, but denied all defence suggestions of fabrication.

PW-3's evidence corroborates procedural acts regarding spot panchnama and site mapping. Lack of formal consent does not undermine the evidentiary value. His testimony is consistent with the prosecution's case.

13. PW-4 – Kiran Ashok Thakre, Panch Witness (Social Activist) : PW-4 deposed that she was present at the spot on 21.06.2020 when the victim showed the place of occurrence to the police. Police prepared the spot panchanama (Exh.38). She confirmed the seizure of the victim's clothes (Exh. 25), accused's clothes (Exh. 39), and accused's samples (Exh. 40). She also witnessed the memorandum statement of the accused under Section 27 of the Evidence Act (Exh. 41), the discovery of the spot at the accused's instance (Exh. 42), and the seizure of a Suzuki moped (Exh. 43). She identified the muddemal articles (Articles A–E) and the accused present before the trial Court.

In cross-examination, PW-4 admitted that no summons was issued and that she had prior contact with the police, but denied all suggestions of false deposition or fabrication.

PW-4 is an independent witness corroborating multiple procedural acts, seizure of muddemal articles, and discovery of the spot at the accused's instance. Cross-examination does not materially weaken her evidence. Her testimony significantly strengthens the prosecution's case.

14. PW-5 – Dr. Meenakshi Paunikar (Medical Officer): PW-5 deposed that on 20.06.2020, the victim was medically examined, and consent was obtained from her and her mother. Examination revealed torn clothes, a mole on the nose, a burn scar on left foot. On genital examination, no injuries were found on the labia majora, labia minora, or clitoris, but found hymenal tears at 6 o'clock and 3 o'clock with inflamed edges. She collected samples and handed them to the police. As per C.A.

Report, blood stains were found on the quilt which was of 'O' group and the blood stains found on labia majora was inclusive. PW-5 opined that sexual assault could not be ruled out.

In cross-examination, PW-5 admitted that hymenal rupture can occur due to many reasons. She further admitted that in case of forceful intercourse there must be injury to labia majora and labia minora. The medical evidence does not conclusively confirm forceful sexual assault.

The medical evidence is inconclusive and does not definitively support the prosecution, as it cannot rule out the possibility of sexual violence. It may, however, corroborate certain aspects, such as torn clothes and the possibility of sexual assault, but it creates scope for reasonable doubt.

15. PW-6 – Sana Khan Mohammad Harun: PW-6 deposes that she was residing as a tenant at Kharbi in a two-storied house. The incident took place on 19.06.2020. She states that the accused, Akbar Hussain, arrived at her residence around 9.45 p.m., accompanied by a girl whose identity she did not know. PW-6 states that no sexual assault or illegal act occurred at her residence. She overheard the girl discussing with accused about marriage or else she would commit suicide. Accused tried to persuade her. Thereafter the girl left the premises voluntarily. PW-6 further confirms that her single-room residence contains only one bed and that no room existed in which the alleged assault could have occurred. She also clarifies that the police seized only a bed-sheet from her premises, not a quilt.

PW-6's testimony contradicts the prosecution's case regarding the location of the alleged assault. She denies that any sexual assault occurred at her residence and confirms that the victim left voluntarily. The evidence tends to weaken the prosecution's claim about the place and circumstances of the assault and is supportive of the defence.

16. PW-7 – Santosh Piraji Ingle (Investigating Officer): PW-7 states that he was serving as Sub-Inspector at Sakardara Police Station in 2020 and investigated Crime No. 326/2020. He deposes that he sent the accused for medical examination and seized his clothes and medical samples under proper seizure panchnamas. Similarly, the clothes and medical samples of the victim were seized and forwarded to the Forensic Science Laboratory. PW-7 further states that he recorded the memorandum and spot panchnamas based on the accused's statement and arranged for the collection of electronic evidence, including the requisitioning of the accused's mobile phone CDR. He also obtained the birth certificate of the victim to confirm her age and prepared the charge-sheet after completing the investigation.

In Cross-Examination, PW-7 admits that no intimation letters were issued to the panch witnesses for the seizure of clothes or samples of the accused and victim, and that the memorandum and panchnamas were prepared in Marathi, despite the accused's mother tongue being Hindi. He further admits that no certificate of CDR under Section 65-B was filed. PW-7's deposition establishes the procedural steps undertaken during the investigation, including seizures, forwarding of samples, and preparation of panchnamas.

The absence of intimation letters for seizure of the clothes and samples, language issues in the memorandum/ panchnamas, and lack of certification for electronic evidence as required under Section 65B raise procedural questions affecting the reliability of specific evidence.

17. PW-8 – Dipak Vitthal Mahadik (Sub-Inspector, Day Officer): PW-8 recorded the initial missing report lodged by the complainant on 20.06.2020, which was registered as Crime No. 326/2020. He issued B.C. messages to trace the missing girl and proceeded to the place of incident with panch witnesses to prepare a spot panchnama. On returning to the police station, the victim had already arrived and was sent for medical examination at Government Medical College & Hospital, Nagpur. Based on the victim's statement, additional offences under Sections 376(1) & 506 of the IPC, and Sections 4 and 12 of the POCSO Act were added.

In Cross-Examination, PW-8 admits that no documentary proof exists confirming his position as Day Officer and that no intimation letters were issued to the panch witnesses. He also clarified that he sent the victim for medical examination at about 9-45 p.m. on 20-6-2020, but does not know when she returned after the medical examination. He acknowledges that the spot is in a densely populated area.

PW-8's evidence confirms the prompt registration of the missing report, initiation of investigation, and referral of the victim for medical examination. The absence of intimation letters and delays in medical examination leave procedural gaps that the defence could scrutinise.

18. PW-9 – Rashtrapal Ashok Lokhande (PSI): PW-9 deposes that on 21.06.2020, he accompanied senior officers to Roshanbag, Kharbi, where the victim, in the presence of her mother, showed the spot of the alleged incident. He prepared the spot panchnama (Exh. 38) in the presence of two panch witnesses and seized the quilt allegedly used in the assault. PW-9 further states that he subsequently arrested the accused and prepared the arrest form (Exh. 79).

In cross-examination, PW-9 denies all defence suggestions and confirms the proper seizure of evidence and procedural compliance. PW-9's deposition strongly supports the prosecution's case, as it confirms recovery and seizure of crucial material evidence (quilt) and adherence to procedural formalities in the arrest of the accused.

19. PW-10 – Vaishali Pundlikrao Keram (Woman Police Constable): PW-10 deposes that she accompanied the victim to Government Medical College & Hospital, Nagpur, for medical examination on 20.06.2020. She witnessed the collection of eight samples from the victim, which were sealed and handed over to her. PW-10 also witnessed the seizure of these samples by the investigating officer and confirms their proper handling and sealing.

In cross-examination, PW-10 denies all suggestions aimed at discrediting her evidence and confirms the correctness of her deposition.

PW-10's testimony confirms the proper collection, sealing, and seizure of medical evidence from the victim. Her evidence is independent and procedural in nature, supporting the chain of custody of crucial forensic material.

20. The testimony of PW 2, the victim, forms the core of the prosecution's case. She deposes to the events leading to her alleged abduction and sexual assault, identifying the accused and providing a timeline of the incident. Her account includes the circumstances of the initial contact with the accused and his companion, and details of her movements during the night in question. However, her statements reveal certain inconsistencies regarding the location and timing, which are relevant in assessing the credibility and reliability of the narration. While she claims that she was subjected to sexual assault, other witnesses' accounts, particularly PW6, challenge this version, stating that no sexual assault occurred at her residence and that the victim left voluntarily.

21. PW1, the mother of the victim, corroborates aspects of the victim's narrative, particularly regarding her age, disappearance, and subsequent return. PW3, likely a close family member or neighbour, provides supplementary information on the circumstances of the disappearance and recovery, but is not an eyewitness to the alleged act. PW4, a panch witness, supported the prosecution by confirming the various procedural actions, including the recovery of muddemal articles. PW5 examined the victim and opined that the possibility of sexual violence with the victim cannot be ruled out. PW6 who was an acquaintance of the accused clarifies the presence of victim with the accused at the place of incident but denies the occurrence of the alleged sexual assault. The combined evidence of these witnesses supports the general narrative of the victim's disappearance, but does not independently confirm the act of sexual assault.

22. PW6, who resided at the alleged spot of assault, presents a version directly contradicting the prosecution's claim. She asserts that no illegal act occurred on the premises, that the girl was in her company briefly, and left of her own volition. The layout of the residence, the presence of only one bed, and her insistence that no sexual assault could occur there, materially undermine the prosecution's version regarding the spot of the incident. Additionally, her testimony regarding the seizure of a bed-sheet, rather than a quilt as claimed by the prosecution, raises questions about the reliability of physical evidence collected from the scene.

23. PW7, the Investigating Officer Santosh Piraji Ingle, details the procedural steps taken during the investigation, including seizure of evidence, forwarding of materials to the forensic laboratory, recording of the accused's memorandum, and requisition of the victim's CDR. While he confirms adherence to procedural norms, cross-examination exposes lacunae, including the absence of intimation letters to panch witnesses, preparation of documents in Marathi despite the accused being a Hindi speaker, and non-production of a Section 65-B certificate for the CDR. These gaps affect the formal admissibility and weight of electronic evidence and raise doubts about the procedural robustness of the investigation.

24. PW8 and PW9 further testify to the steps undertaken by the police, including the recording of the initial missing report, spot panchnamas, seizure of material evidence (quilt, clothes, and samples), and the arrest of the accused. PW8 confirms prompt action in response to the complaint, sending B.C. messages to police stations,

and referring the victim for medical examination. However, he admits that he had no knowledge about the return of the victim after the medical examination, and cannot confirm his official status as Day Officer on the relevant date. PW9 corroborates the seizure of the quilt and its deposition in the Malkhana, providing procedural assurance regarding material evidence.

25. PW10, the lady police constable, confirms the medical examination of the victim, witnessing the collection and sealing of samples, and their handover to her, thereby supporting the chain of custody of forensic evidence. Her testimony remains largely unchallenged and strengthens the evidentiary record in relation to medical examination and sample collection.

26. In totality, the evidence presents a mixed picture. While the victim's testimony, corroborated in parts by PW1, PW3, PW4, and PW5, suggests an incident occurred involving the accused, the direct observations of PW6 challenge the alleged location and circumstances of the assault. Procedural lapses noted in PW7 and PW8's testimonies, including deficiencies in panchnamas, language barriers, and incomplete documentation, affect the evidentiary weight of the investigation. On the other hand, PW9 and PW10 provide procedural clarity regarding seizure and medical examination, lending credibility to the handling of physical and forensic evidence.

27. Ultimately, the evidence requires careful scrutiny to reconcile contradictions between the victim's account and the testimony of PW6, along with an assessment of

procedural lapses and corroborative support from other witnesses. The Court must evaluate whether the prosecution has proven the occurrence of the alleged offence and the accused's involvement beyond a reasonable doubt, taking into account inconsistencies, the credibility of witnesses, and the integrity of the collected evidence.

28. The prosecution has examined ten witnesses (PW1 to PW10) to establish the alleged commission of offences under Sections 363, 376(1), 376(2)(i), 506 of the IPC, and Sections 4 and 12 of the POCSO Act by the accused. PW2, the victim, is the principal witness, while PW1, PW3 to PW5 provide corroborative and contextual evidence regarding her disappearance, age, and family background. PW6 is an eyewitness at the alleged incident location. The evidence of these witnesses establishes that the victim was missing for a period and subsequently returned home, but it does not conclusively prove the commission of the sexual offence. PW7 to PW10 are police officers involved in the investigation and the medical examination of the victim and the accused.

29. PW6, who was present at the alleged spot, materially contradicts PW2's account. She deposed that the accused visited her residence with an unknown girl, but no alleged act occurred. The girl reportedly left voluntarily. PW6 further stated that only a bed-sheet, not a quilt, was seized from her house, and her room layout could not accommodate the alleged act. Her evidence directly undermines the prosecution's claim regarding the location and circumstances of the alleged act. It

supports the defence's version that the alleged act could not have occurred at her residence.

30. The Investigating Officers, PW7, PW8, PW9, and PW10 testified regarding procedural steps, seizure of materials, and collection of medical samples, however, admitted to procedural lapses which affects the formal admissibility of electronic evidence. While procedural steps for seizure and collection were largely followed, these lapses undermine the investigation's overall credibility and reliability.

31. There are notable contradictions in the evidence. PW2's account of the sexual assault occurring on the first floor of PW6's residence is directly contradicted by PW6, who states no sexual assault occurred. There is also inconsistency regarding the physical evidence, with PW6 testifying that a bed-sheet was seized while the prosecution records refer to a quilt. Furthermore, procedural lapses in documentation, such as the absence of panch intimation letters and the non-issuance of Section 65-B certificates, create gaps in the evidentiary chain. The credibility of oral testimony is therefore affected, and independent corroboration for the alleged sexual assault is absent.

32. The victim is aged 13 years, and any sexual activity with her would *prima facie* constitute an offence under the POCSO Act. However, criminal liability requires proof beyond a reasonable doubt that the accused committed the act. In the present case, PW-6's testimony, which is credible and consistent, directly contradicts

the alleged occurrence of sexual assault at her residence. The victim reportedly left voluntarily, and no other witness has corroborated the alleged assault.

33. The Court is acutely mindful of the sensitivity arising from the age of the victim. Nevertheless, the cardinal principle of criminal jurisprudence is that no individual can be convicted without evidence that satisfies the threshold of proof beyond reasonable doubt. The prosecution's evidence in the instant case is marred by contradictions, gaps, and a lack of independent corroboration. Therefore, despite the victim being a minor, the accused cannot be held criminally liable unless the offence is conclusively proven.

34. On careful scrutiny of the depositions of PW1 to PW10, this Court finds that while the disappearance of the victim and her fear are established, the act of sexual assault is not conclusively proven beyond reasonable doubt. PW6's testimony, in particular, casts substantial doubt on the alleged assault, and procedural lapses further weaken the reliability of the evidence presented by the prosecution. In view of the contradictions, the prosecution has failed to establish the guilt of the accused beyond reasonable doubt.

35. This Court has carefully examined the depositions of all prosecution witnesses, the evidence on record, and the materials submitted during the trial. The victim was 13 years old at the time of the alleged incident, bringing the case within the ambit of the POCSO Act. Under Section 4 of the Act, any sexual act with a child below 18

years is considered rape, and the consent of the child is immaterial. Consequently, the law treats the protection of the child as paramount, and allegations of sexual assault against a minor are to be scrutinised with utmost seriousness.

36. A careful analysis of the evidence reveals significant contradictions and doubts regarding the occurrence of the alleged offence. The testimony of PW2, the victim, describes the alleged sexual assault. However, there is a direct conflict between her account and PW6's regarding the place and manner of the incident. The prosecution relies heavily on the seizure of a quilt and the procedural steps undertaken by the Investigating Officers (PWs 7-10) to establish the occurrence of the offence. While the police acted promptly and documented the investigation formally, procedural lapses are noted. These irregularities weaken the reliability of the procedural evidence.

37. The Hon'ble Supreme Court in the case of *Narender Kumar vs. State (NCT of Delhi)*, 2012 (7) SCC 171, observed that if the statement of victim inspires confidence, the conviction of the accused can be based on the sole testimony of the victim, but if the Court finds it difficult to accept the version of prosecutrix on its face value, it may look for corroboration by other evidence, direct or circumstantial. The relevant paras of the said judgment has been reproduced below-

“30. The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. The conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her

testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.

31. The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtue/unchaste woman that itself cannot be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.”

38. On a careful re-appreciation of the evidence, this Court finds that the prosecution has failed to establish the guilt of the accused beyond a reasonable doubt. The record reveals that the prosecutrix voluntarily accompanied the accused and remained with him for a considerable period of time without raising any alarm or complaint, even though several opportunities were available, including while travelling and staying at different places. Such conduct is wholly inconsistent with the prosecution's case of forceful act. It creates substantial doubt about the credibility of the allegation.

39. Further, the medical evidence does not support the prosecution's case. The Medical Officer has not found any injury on the body or private parts of the prosecutrix. In *P. Pathap Kumar Nayak v. State represented by Inspector of Police, Chennai, Criminal Appeal No. 433 of 2018*, the Madras High Court held in paras 43 and 44 as under-

“43. It is not the case of the victim that the Accused misbehaved with her. It is a clear case of P.W.1 that blood was coming out of the vagina. She washed it. If that version is taken, it is to be supported with medical

evidence. The child victim, P.W.2, was examined by the Doctor on the next day of the actual occurrence. Therefore, symptoms of the aggravated sexual assault will be visible when examined by the Doctor. The evidence of P.W.7, Doctor, regarding Ex.P11 makes it clear that there is no injury mark on the body of the victim. Therefore, the version of P.W.2 cannot be taken for granted. The burden shifts on the Accused. The Accused had rebutted the evidence and narrated the facts, which resulted in filing a complaint against him.

44. In the light of the ruling cited by the learned Counsel for the Appellant in the case of Chellappan Vs. State Represented by the Inspector of Police, Gandarvakottai Police Station, Pudukottai District, which is also a case of sexual assault on a victim aged about 11 years, the learned Judge of this Court had acquitted the Accused on the ground that the aggravated sexual assault had not been corroborated with medical evidence.”

Therefore, the medical evidence does not definitely support the prosecution story and substantially weakens the allegation of forcible intercourse.

40. The contradictions between the victim’s testimony and PW6, coupled with the procedural gaps in the investigation, raise serious doubts regarding the actual occurrence of the act at the place and time alleged. While the victim’s age is a critical factor under POCSO Act and mandates rigorous protection, the Court cannot convict the appellant solely based on the victim’s testimony when material contradictions and doubts exist about the locus of the alleged offence and the involvement of the accused.

41. Having considered the totality of evidence, including the contradictions and procedural lapses, this Court finds that the prosecution has failed to discharge the burden of proving the guilt of the appellant beyond reasonable doubt. In view of the legal principle that the benefit of doubt must accrue to the appellant, the appellant is

entitled to acquittal of all charges under Sections 363, 376(3), 376(2)(i) of the IPC and Section 3 read with Section 4 of the POCSO Act, and to be set at liberty forthwith. Hence, I proceed to pass the following order;

ORDER

- (i) Criminal Appeal is Allowed.
- (ii) The impugned Judgment and order dated 03.12.2022 passed by the learned Extra Joint District Judge & Additional Sessions Judge, Nagpur in Special (POCSO) Case No. 441 of, 2020 is hereby quashed and set aside.
- (iii) The appellant is acquitted of the offences punishable under Sections 363, 376(3), 376(2)(i) of the IPC and Section 3 read with Section 4 of the POCSO Act.
- (iv) The appellant be set at liberty forthwith, if not required in any other offence.
- (v) The fees of the learned Counsel appointed for respondent No.2 be quantified and paid as per the rules.

(NIVEDITA P. MEHTA, J.)

sknair