CGHC010294092016 2026:CGHC:46836-DB

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SAIFAN KHAN Digitally signed by SAIFAN KHAN

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on : 26.10.2026

Judgment Pronounced on : 05.11.2026

Judgment Uploaded (Full) on : 05.11.2026

[Arising out of a common judgment of conviction and order of sentence dated 23.07.2016, passed in Spl. Cr. Case No.1146/2015 (State of Chhattisgarh v. Asheesh Sachdev and 05 others) by the 7th Addl. Sessions Judge (FTC), Raipur (CG)]

CRA No. 1132 of 2016

Gulshan Wadhwani S/o Late Shri Pradeep Wadhwani Aged About 23 Years R/o Gali No. 2, Telibandha, District Raipur, Chhattisgarh

--- **Appellant**
(On Bail)

Versus

State of Chhattisgarh Through The Police Station Ganj, District Raipur, Chhattisgarh

--- **Respondent**

Cause-title taken from Case Information System (CIS)

For Appellant : Mr. Deverashi Thakur, Advocate
For Respondent : Mr. Sumit Singh, Deputy Advocate General

WITH

CRA No. 1148 of 2016

Asheesh Suchdev S/o Ghurmukh Suchdev Aged About 22 Years R/o Talibhandha, Street No. 08, Police Station Talibandha, Raipur, District Raipur, Chhattisgarh

---**Appellant**

(On Bail)

Versus

State of Chhattisgarh, through District Magistrate Raipur, Chhattisgarh.

--- **Respondent**

Cause-title taken from Case Information System (CIS)

For Appellant : Mr. Maneesh Sharma, Advocate
For Respondent : Mr. Sumit Singh, Deputy Advocate General

WITH

CRA No. 1373 of 2016

1 - Shahina Begum W/o Raheem Khan @ Faheem Khan Aged About 32 Years R/o Santoshi Nagar, Chaurasia Colony, Police Station Tikrapara, Raipur, District Raipur Chhattisgarh , Chhattisgarh

2 - Md. Raheem Raja @ Faheem Khan S/o Md. Salim Raza Aged About 34 Years R/o Santoshi Nagar, Chaurasia Colony, Police Station Tikrapara, Raipur, District Raipur Chhattisgarh

---**Appellants**

(On Bail)

Versus

State of Chhattisgarh Through District Magistrate Raipur Chhattisgarh

--- **Respondent**

Cause-title taken from Case Information System (CIS)

For Appellants : Mr. Kartik Kathmia, Advocate on behalf of
Mr. Kshitij Sharma, Advocate
For Respondent : Mr. Sumit Singh, Deputy Advocate General

WITH

CRA No. 285 of 2017

Ravindra Vishwas @ Sushil S/o Sitanshu Vishwas, Aged About 29 Years R/o Village Jaipul, Police Station Kharda, District 24, Uttar Pargna, West Bental, Present R/o Chaurasia Colony, Santoshi Nagar, Police Station Tikrapara, District Raipur, Chhattisgarh

---**Appellant**

(On Bail)

Versus

State of Chhattisgarh Through Police Station Ganj, District Raipur, Chhattisgarh

--- **Respondent**

Cause-title taken from Case Information System (CIS)

For Appellant : Mr. Vimlesh Bajpai, Advocate
For Respondent : Mr. Sumit Singh, Deputy Advocate General

WITH

CRA No. 1196 of 2016

Santosh Kesarwani S/o Shri Sidar Singh Keserwani Aged About 53 Years Occupation- Manager Prince Lodge, Raigarh R/o In Front of Nagarpalika Chowk, Sarangarh Civil and Revenue District, Raigarh, Chhattisgarh

---**Appellant**
(On Bail)

Versus

State of Chhattisgarh Through Police Station Ganj Raipur, Civil And Revenue District Raipur, Chhattisgarh

--- **Respondent**

Cause-title taken from Case Information System (CIS)

For Appellant : Mohd. Waquar Rizvi, Advocate
For Respondent : Mr. Sumit Singh, Deputy Advocate General

Division Bench
Hon'ble Mr. Justice Parth Prateem Sahu
Hon'ble Mrs. Justice Sushma Sawant

CAV Judgment

Sushma Sawant, J

(1) Regard being had to the similitude of the questions of fact and law involved and being arising out of a common impugned judgment dated 23.07.2016, on the joint request of learned counsel for the parties, all these appeals were clubbed together, heard together

and being disposed of by this common judgment. However, for the sake of clarity, facts are taken from **CRA-1132-2016** as a leading case.

(2) Invoking criminal appellate jurisdiction of this Court enshrined under Section 374(2) of CrPC, total 06 accused/appellants, namely, **Asheesh Sachdev (A-1), Gulshan Wadhwani (A-2), Shahina Begum (A-3), Santosh Kesarwani (A-4), Mohd. Raheem Raja @ Faheem Khan (A-5) and Ravindra Vishwas @ Sushil (A-6)** have preferred these **05 criminal appeals** calling in question the legality, validity and correctness of a common impugned judgment of conviction and order of sentence dated **23.07.2016**, passed in **Spl. Cr. Case No.1146/2015 (State of Chhattisgarh v. Asheesh Sachdev and 05 others)** by the 7th Addl. Sessions Judge (FTC), Raipur (CG), whereby they have been convicted and sentenced as under:

As regards- Appellants/Accused- Asheesh Sachdev (A-1) and Gulshan Wadhwani (A-2):

Conviction	Sentence
U/s. 363 of IPC r/w S. 34 of IPC	Rigorous imprisonment for 05 years with fine of Rs.5,000/- each and, in default of payment of fine, additional rigorous imprisonment for 06 months each.
U/s. 342 of IPC r/w S. 34 of IPC	Rigorous imprisonment for 01 year with fine of Rs.500/- each and, in default of payment of fine, additional rigorous imprisonment for 03 months each.
U/s. 506 (Part-II) of IPC r/w S. 34 of IPC	Rigorous imprisonment for 02 years with fine of Rs.500/- each and, in default of payment of fine, additional rigorous imprisonment for 03 months each.

U/s. 376D of IPC	Imprisonment for life (till natural death) with fine of Rs.5,000/- each and, in default of payment of fine, additional rigorous imprisonment for 01 year each.
U/s. 06 of the POCSO Act, 2012	Rigorous imprisonment for 10 year with fine of Rs.500/- each and, in default of payment of fine, additional rigorous imprisonment for 06 months each.

[All the sentences are directed to run concurrently]

As regards- Appellants/Accused- Shahina Begum (A-3), Mohd. Raheem Raja @ Faheem Khan (A-5) and Ravindra Vishwas @ Sushil (A-6):

Conviction	Sentence
U/s. 342 of IPC r/w S. 34 of IPC	Rigorous imprisonment for 01 year with fine of Rs.500/- each and, in default of payment of fine, additional rigorous imprisonment for 03 months each.
U/s. 370A(1) of IPC r/w S. 34 of IPC	Rigorous imprisonment for 07 years with fine of Rs.5,000/- each and, in default of payment of fine, additional rigorous imprisonment for 06 months each.
U/s. 372 of IPC r/w S. 34 of IPC	Rigorous imprisonment for 07 years with fine of Rs.5,000/- each and, in default of payment of fine, additional rigorous imprisonment for 06 months each.
U/s. 06 r/w S. 17 of the POCSO Act, 2012	Rigorous imprisonment for 10 year with fine of Rs.5,000/- each and, in default of payment of fine, additional rigorous imprisonment for 06 months each.

[All the sentences are directed to run concurrently]

As regards- Appellant/Accused- Santosh Kesarwani (A-4):

Conviction	Sentence
U/s. 342 of IPC r/w S. 34 of IPC	Rigorous imprisonment for 01 year with fine of Rs.500/- and, in default of payment of fine, additional rigorous imprisonment for 03 months.
U/s. 370A(1) of IPC r/w S. 34 of IPC	Rigorous imprisonment for 07 years with fine of Rs.5,000/- and, in default of

	payment of fine, additional rigorous imprisonment for 06 months.
U/s. 373 of IPC	Rigorous imprisonment for 07 years with fine of Rs.50,000/- each and, in default of payment of fine, additional rigorous imprisonment for 02 years.
U/s. 06 r/w S. 17 of the POCSO Act, 2012	Rigorous imprisonment for 10 year with fine of Rs.5,000/- and, in default of payment of fine, additional rigorous imprisonment for 06 months.

[All the sentences are directed to run concurrently]

-:Factual Matrix:-

-:Case of the prosecution:-

Note-*Since the present case relates to an offence under the POCSO Act, in order to protect the identity of the victim, she is being referred to as* ***Victim (P.W.-1)****, her mother as* ***VM (P.W.-2)****, and her father as* ***VF (P.W.-3)*** *throughout this judgment.*

(3) The case of the prosecution, in brief, is that on 26.07.2015, when the **minor victim (P.W.-1)** suddenly went missing, her mother, **VM(P.W.-2)** lodged a report at Police Station Mungeli and, on the basis of the said report, the police registered Missing Person Report **No. 15/15** and commenced an inquiry. Thereafter, on 27.07.2015, upon suspicion that the minor victim had been abducted, **Crime No. 130/15 was registered under Section 363 of the IPC,** and wheels of investigation started running.

(4) During the course of investigation, the minor victim was traced in the course of the search for her. After her **recovery on 01.08.2015**, she was interrogated and her statement was recorded. The police investigation revealed that, as the minor

victim did not perform daily household work, her mother had scolded her. Consequently, at about 2:00 p.m. on 26.07.2015, she left without informing anyone and went to the house of her maternal aunt, Mowa. After staying there for some time, she left in the evening to return to her home at Paras Nagar. On the way, she stopped near a garden for a short while and, at that juncture, at about 9:00–10:00 p.m. 02 boys, who disclosed their names as Asheesh and Gulshan **(the accused no.1 and 2)**, and who stated that they resided in Telibandha, approached her on a motorcycle and asked her: **"Where are you going? We will drop you."** On their insistence, the minor victim sat on the motorcycle with them. Instead of taking her to her house, the two accused persons began taking her elsewhere. When she asked where they were taking her, they threatened her with dire consequences and threatened to kill her if she did not remain silent.

(5) It is also the case of the prosecution that accused **Asheesh and Gulshan (accused no.1 and 2)**took the minor victim to Hotel Ranjit, situated on Station Road, Raipur, and seated her at the reception counter. They represented to the hotel manager that she was their sister and, on that pretext, obtained Room No. 109, where they checked her in. Thereafter, both accused persons, by inducing and deceiving the minor victim, committed rape upon her alternately. It is also the case of the prosecution that the two accused persons kept the minor victim at the said hotel from the

morning of 27.07.2015 until the morning of 28.07.2015 and that both of them continued to commit rape upon her during that period. Thereafter, on 28.07.2015, accused **Asheesh (accused no.1)**, on the pretext of arranging better employment for the minor victim elsewhere, took her to the house of accused **Shahina Khan(accused no.3)**, who was residing at Santoshi Nagar, Tikrapara, and who was allegedly engaged in prostitution.

(6) The prosecution case further alleges that **accused Shahina Begum (accused no.3)**, after keeping the minor victim at her house for approximately three to four hours, took her, along with her husband **Md.Raheem Raza (accused no.5)** and **accused Ravindra Vishwas (accused no.6)**, in a white-coloured car to Sarangarh, District Raigarh. They handed the minor victim over to **Santosh Kesharwani (accused no.4)**, the operator of a Prince lodge, and left her there. Accused Shahina and Ravindra Vishwas received money from the lodge operator in consideration of handing over the minor victim. During this period, accused Santosh Kesharwani, the operator of Prince Lodge, kept the minor victim in Room No. 6 of the lodge for two days and, after procuring money from other persons, subjected her to rape and caused her to be sexually exploited by others. Thereafter, on 31.07.2015, accused Santosh Kesharwani purchased a ticket to Raipur and made the minor victim board a bus. When she reached Raipur on 01.08.2015, her relative/brother saw her and took her to his house.

(7) Upon the police receiving complete information regarding the incident from the minor victim, the offences under **Sections 376, 372, 342, 506 and 34 of the Indian Penal Code** were added to the case, and the investigation proceeded accordingly.

(8) During the investigation, the police examined the manager of Hotel Ranjit and recorded his statement. Upon obtaining the mobile telephone numbers of accused Asheesh and Gulshan, the police arrested them, interrogated them, and subsequently arrested the other accused persons. Further, the police recorded the memorandum statements of the accused persons and recovered their mobile phones. With the consent of the minor victim's parents, the victim was subjected to a medical examination, including a genital examination. Her statement was also recorded before the competent Judicial Magistrate under Section 164 of the Code of Criminal Procedure, 1973. The relevant hotel and lodge registers were seized, and a spot map was prepared. The victim's birth certificate **Article-B** was seized to establish her age. Statements of witnesses were recorded, and accused Ashish and Gulshan were also subjected to medical examination. The involvement of the other persons allegedly connected with the offence, including the driver of the car, was investigated. However, as the investigation did not yield sufficient material against them, the investigation was completed against the present accused persons, and incorporating the charges under the relevant provisions of the POCSO Act,the charge-sheet was

filed before the competent Court for trial.

(9) Thereafter, following charges were framed against the accused appellants as under:

A. Against accused Asheesh Sachdev (A-1) and Gulshan (A-2): Sections 363/34, 342/34, 506 Part II/34 & 376D {wrongly mentioned 376(d)} of the Indian Penal Code as also under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

B. Against accused Raheem Khan alias Fahim Khan (A-5), Ravindra Vishwas alias Sushil (A-6), and Shahina Begum (A-3): Section 342/34, 370A(1)/34, 372/34 of IPC and under Section 6/17 of the POCSO Act, 2012.

C. Against accused Santosh Kesharwani (A-4): Section 342/34, 370A(1)/34, & 373 of IPC and also under Section 6/17 of the POCSO Act, 2012

(10) Upon the charges being read over and explained to the accused persons, they denied the charges, pleaded not guilty, and claimed to be tried and during their examination under Section 313 of the Code of Criminal Procedure, 1973, the accused persons asserted their innocence and stated that they wished to adduce no evidence in their defence.

-:Proceedings before the trial Court:-

(11) The prosecution in order to prove its case examined as many as 10 witnesses vide **PW-01 to PW-10** and exhibited **49 documents**

vide **Ex.P/01 to Ex.P/49** apart from **Article-A & B-C**, whereas the appellants/accused in support of their defence neither examined any witness nor exhibited any document.

(12) The learned trial Court after appreciating the oral and documentary evidence available on record, proceeded to convict and sentenced the accused/appellants as mentioned in the opening Paragraph No.02 of this judgment, against which these 05 appeals have been preferred by the appellants-accused questioning the impugned judgment of conviction and order of sentence.

-:Proceedings before the Appellate Court:-

(13) We have heard learned counsel for the parties, considered their rival submissions noted hereinbelow, and perused the record with utmost circumspection.

-:Submissions on Behalf of the Accused/Appellants:-

(14) **Asheesh Sachdev (A-1) in CRA-1148-2016** -Mr. Maneesh Sharma, learned counsel appearing for accused/appellant would submit that the prosecution has failed to prove that the victim was below 18 years of age at the relevant time. It is further argued that the FIR was lodged against unknown persons and no test identification parade was conducted to establish the identity of the appellant. Moreover, the prosecution witnesses made materially contradictory statements in their examination-in-chief and cross-examination, rendering their testimony unreliable.

Learned counsel, therefore, submits that the conviction is based on improper appreciation of evidence and is liable to be set aside.

(15) **Gulshan Wadhwani (A-2) in CRA-1132-2016 -**Mr. Deverashi Thakur, learned counsel appearing for accused/appellant- would submit that ,the report was lodged against unknown persons and that no test identification parade was conducted to establish the identity of the accused. It is further argued that the prosecution has failed to establish that the victim was below 18 years of age at the relevant time. The alleged recovery of victim , having been made from an open bus stand accessible to the public, does not, by itself, establish the accused's involvement in the offence. It is also contended that the testimony of the victim is inconsistent, as their statements in examination-in-chief are at variance with those made in cross-examination, thereby rendering the prosecution case unreliable.

(16) Furthermore, the medical evidence does not corroborate the prosecution's case. In these circumstances, learned counsel submits that the prosecution has failed to prove the charge against the accused Gulshan Wadhwani beyond reasonable doubt and that the conviction recorded by the learned Trial Court is unsustainable in law.

(17) **Shahina Baigum (A-3) and Mohd. Raheem Raja @ Faheem Khan (A-5) in CRA-1373-2016-** Mr. Kartik Kathmia, learned counsel appearing for accused/appellants- would submit

that,there is no evidence on record connecting them with the alleged offence. Although mobile phones were seized from them, no SDR or CDR has been collected or produced to establish their involvement in the alleged crime. It is argued that the mere seizure of mobile phones, in the absence of any other incriminating evidence, cannot form the basis for recording their conviction. Further, no neighbour or other independent witness was examined to corroborate the prosecution's case. Learned counsel, therefore, submits that the conviction of accused/appellants Nos. 3 and 5 has been recorded without any legally admissible evidence or sufficient basis and is, therefore, unsustainable in law.

(18) **Santosh Kesarwani (A-4) in CRA-1196-2016 -**Mohd. Waquar Rizvi, learned counsel appearing for accused/appellant-would submits that, apart from the memorandum of co-accused No. 3 Shaheen Begum , no incriminating evidence has been collected or brought on record against him. It is argued that the memorandum statement of the co-accused is not admissible in evidence against the appellant. Therefore, in the absence of any legally admissible evidence connecting the appellant with the alleged offence, the learned Trial Court has erred in recording his conviction, which is unsustainable in law.

(19) **Ravindra Vishwas @ Sushil (A-6) in CRA-285-2017 -**Mr. Vimlesh Bajpai, learned counsel appearing for accused/appellant-would submit that,apart from the memorandum of the co-

accused no.-3 Shaheen Begum, there is no other evidence available on record to connect the accused with the alleged offence. It is further contended that the statement contained in the memorandum, in the form in which it has been recorded, is not admissible in evidence. Therefore, the learned Trial Court has committed an error in convicting the accused in the absence of legally admissible evidence to establish the charge against him.

-:Submissions on Behalf of the State/Prosecution:-

(20) *Per-contra*, Mr. Sumit Singh, learned Dy Advocate General appearing for the respondent-State would submit that the prosecution has been able to prove the offences beyond reasonable doubt by leading evidence of clinching nature. It is further submitted on behalf of the respondent-State that in view of statement of the victim, wherein she has clearly narrated the incident and implicated appellants herein to be the author of the crime in question coupled with other evidence available on record, the trial Court has rightly convicted the appellants for the offences mentioned herein-above. Hence, all the appeals are liable to be dismissed.

-:Analysis and findings of the Appellate Court: -

Age of the victim (PW-01):

(21) It would be appropriate to first consider the question as to **whether the prosecution has proved beyond reasonable doubt that the victim was below 18 years of age on the**

date of the alleged incident?.

(22) In this regard, the statements of the **Victim (P.W.-1)**, her mother **VM(P.W.-2)** and her father **VF(P.W.-3)** are material. The father of the victim has not stated anything regarding her age. Her mother has stated that the victim was 17 years old; however, she has not disclosed her date of birth. The victim , on the other hand, has stated her date of birth as **12-08-2000.**

(23) In support of the alleged date of birth of the victim, the prosecution has produced a birth certificate as **Article B**, issued by the Department of Planning, Economics and Statistics, Government of Chhattisgarh. However, the said certificate was issued approximately **six years after the alleged date of birth**. The document is silent as to the basis on which the date of birth was recorded and the source from which such information was obtained. No record from the hospital where the victim was allegedly born has been produced to corroborate the date of birth mentioned therein.

(24) Further, neither has the author of **Article B** been examined before the Court, nor has any evidence been adduced from the concerned office to establish its issuance and authenticity. Although it has also emerged from the evidence that the victim attended school, no relevant record regarding her date of birth has been obtained from the school concerned.

(25) In this regard, the law laid down by the Hon'ble Supreme Court in

P. Yuvaprakash v. State Rep. by Inspector of Police, 2023 SCC OnLine SC 846, decided on **18.07.2023,** is relevant. The Supreme Court held that the determination of the age of a victim in proceedings under the POCSO Act must be undertaken in accordance with the procedure prescribed under **Section 94** of the **Juvenile Justice (Care and Protection of Children) Act, 2015**.

(26) The statutory provision prescribes a sequence of documentary evidence, beginning with the date-of-birth certificate issued by the school or the matriculation or equivalent certificate issued by the concerned examination board, followed, in the absence thereof, by a birth certificate issued by a corporation, municipal authority or panchayat. Only in the absence of the prescribed documents is age to be determined by an ossification test or another prescribed medical age-determination test. The Court further held that a school transfer certificate or an extract from an admission register cannot, by itself, be treated as a document falling within the category specified under Section 94(2)(i), and reiterated that the burden of establishing the victim's age rests upon the prosecution.

(27) In the light of the aforesaid legal position, it was incumbent upon the prosecution to establish the age of the victim by legally admissible and reliable evidence in accordance with the prescribed procedure. In the present case, despite the fact that the victim had attended school, no date-of-birth certificate issued by

the school or matriculation or equivalent certificate issued by the concerned examination board has been produced. In the absence of such evidence, the prosecution has relied upon **Article B**; however, neither the source of the information recorded therein nor the basis for recording the date of birth has been established. No supporting hospital record or verification from the issuing office has been brought on record.

(28) In these circumstances, the date of birth mentioned in **Article B** cannot be accepted as conclusively established merely because the document has been produced in evidence.

(29) Furthermore, the **Victim (P.W.-1)** stated in her examination-in-chief that she had passed Class XI in the year 2015, which was also the year of the alleged incident. This circumstance raises a doubt regarding her claimed age, as the fact that she had completed Class XI by that time *prima facie* appears inconsistent with her being only 15 years old. In the absence of reliable documentary evidence from the school or examination board independently establishing her date of birth, her age, as claimed by the prosecution, does not stand satisfactorily established.

(30) It is also significant that the mother of the victim **(P.W.-2)**, during her testimony, expressed ignorance as to who had obtained or procured **Article B**. Thus, even the mother's testimony does not establish the source or basis of the date of birth recorded in the said certificate. Consequently, the oral

statements regarding the age of the victim, when considered alongside Article B, whose underlying basis and authenticity have not been established by reliable evidence, do not inspire sufficient confidence to hold that the victim was below 18 years of age on the date of the alleged incident.

(31) The prosecution has failed to establish this essential foundational fact beyond reasonable doubt. Accordingly, above question regarding age of victim is answered in the negative. The prosecution has failed to prove beyond reasonable doubt that the victim was a child within the meaning of the POCSO Act on the date of the alleged incident.

Medical and Forensic Evidence:

(32) Upon examination of the medical and scientific evidence, it appears that neither the victim nor her mother refused to undergo the medical examination. Investigating Officer **K.R. Sinha (P.W.-9)** has also stated that the victim was referred to the doctor for medical examination vide **Ex.P.-37**. **Dr. Santoshi Nagre (P.W.-10)** examined the victim and prepared the MLC report **Ex.P.-37**. The said report records that no external injury was found on the victim's body, her hymen was old ruptured, and no definite opinion regarding recent sexual intercourse could be given. The MLC report **Ex.P.-37** has been duly proved by the testimony of **Dr. Santoshi Nagre (P.W.-10)**, which has remained unrebutted.

(33) Further, Investigating Officer **K.R. Sinha (P.W.-9)** has stated that the victim's underwear, seized vide seizure memo **Ex.P.-2**, was examined by **Dr. Santoshi Nagre (P.W.-10)** and was thereafter sent for forensic chemical examination. The procedure adopted for seizure and examination of the said article has not been challenged by any of the accused. The FSL report, exhibited as **Ex.P.-49,** is available on record and records that no human spermatozoa were detected.

(34) Thus, neither the MLC report **Ex.P.-37** nor the FSL report **Ex.P.-49** provides any evidence of recent sexual intercourse with the victim. In these circumstances, it would be appropriate to proceed to examine the other evidence available on record to assess whether the prosecution has otherwise established its case against the accused.

Testimony of the victim (PW-01) and other prosecution witnesses: -

(35) Leaving aside the evidence relating to the age of the victim, medical evidence and forensic evidence, for a proper and effective appreciation of the prosecution evidence, it is necessary to examine the sequence of events as alleged by the prosecution and the manner in which the respective accused persons are alleged to have become involved in the occurrence. Accordingly, the prosecution case is being marshalled chronologically, indicating the sequence of events, the involvement attributed to each accused, and the relevant witnesses through whom the respective

events and allegations are sought to be established, as under:

S. No.	Sequence of Events	Accused Involved
1.	On **26-07-2015** the victim went missing from her home without informing anyone. In this regard, a missing person report No. **15/2015** was lodged at Police Station **-Ganj ,Raipur**, and a crime was registered under **Section 363** of the **IPC** vide Crime No. **130/2015**.	-
2.	While returning home at night, the victim met two boys at the **Mowa Bazar , Raipur**. They offered to take her home but, instead, took her on a motorcycle to a Hotel **"Ranjit"** . They accommodated her in a room and allegedly committed rape upon her one after the other.	**Accused No.-1** Asheesh Sachdev **Accused No.-2** Gulshan Wadhwani
3.	On the following day, the two boys took the victim from the Hotel **"Ranjit"**to the house of a woman in **Santoshi Nagar Chaurasiya Colony, Raipur**. Thereafter, the woman, her husband, and another person took the victim in a car to **Sarangarh** on the pretext of arranging employment for her	**Accused No.-3** Shahina Begum **Accused No.-5** Mohamad. Raheem Raja **Accused No.-6** Ravindra Vishwas
4.	At **Sarangarh,** the victim was left with a person who owned a hotel. He kept her in a room and, on the first day, sent three persons into the room one after another, and on the following	**Accused No.-4** Santosh Kesharwani

	day, sent four persons into the room. All seven persons allegedly committed rape upon her.	
5.	Thereafter, the person at **Sarangarh** put the victim on a bus to Raipur. Her brother met her there and took her home. Upon the incident coming to the notice of the police, further investigation was carried out in accordance with law.	

S. No.	**Sequence of Events**	**Relevant Witnesses**
1.	First Event	Victim **(P.W.-1)**,VM **(P.W.-2)**,VF **(P.W.-3)**, I.O.K.R.Sinha **(P.W.-9)**
2.	Second Event	Victim (P.W.-1),VM **(P.W.-2)**,Hotel Ranjit Employee Sameer Jagat **(P.W.-4)**,Receptionist -Yogendra Bhoi **(P.W.-5)**
3.	Third Event	In the context of the Sarangarh hotel, Chintamani Kesharwani **(P.W.-7)**, ASI. Manuulal Yadav **(P.W.-8)** and Patwwari Dhanurjai Dadsena **(P.W.-6)**
4,	Fourth Event	Victim (P.W.-1)
5.	Investigation	Investigation Officer K.R.Sinha **(P.W.-9)**

(36) The accused persons have not disputed their arrest, as reflected in the arrest memos (Ex.P-18 to Ex.P-23). Further, **accused No. 1 Asheesh Suchdev** and **accused No.2 Gulshan Wadhwani**

have not challenged their respective medical examinations proceeding **Ex.P.-38** and **Ex.P.-39.** Therefore, detailed discussion of these documents is not warranted. From these documents, it can be accepted that all the accused persons were arrested in connection with the present case and that accused No. 1 and 2 were sexually potent.

(37) Similarly, **Victim (P.W.-1)** had left her house on 26-07-2015 without informing anyone. **VM (P.W.-2)** and **VF (P.W.-3)** searched for her, whereafter **VM (P.W.-2)** lodged a report at the police station, on the basis of which a missing person report **No.15/2015** and a crime No. **130/2015** were registered. These facts have also not been disputed by the accused persons. Therefore, these aspects of the prosecution case may also be taken to have been established.

(38) Similarly, the recovery panchnama, **Ex.P-1,** prepared at the police station by Investigating Officer K.R. Sinha (P.W.-9), has also remained unchallenged. On perusal of the said document, it emerges that VM (P.W.-2) had brought the victim to the police station on 01-08-2015, stating that she had found the victim. VM (P.W.-2) has also made a similar statement before the Court. As this proceeding has not been challenged, it may be accepted, to that extent, that the victim had left her house on 26-07-2015 without informing anyone and returned to her home at Raipur on 01-08-2015. It is not a case where any known person had lured her away from her house; rather, according to the prosecution,

during this period, she came across only unknown persons.

(39) To examine what happened to the victim during these six days, the **Victim (P.W.-1)** herself is the material witness. **VM (P.W.-2)** would fall within the category of a **hearsay witness**, as she has stated only what the Victim (P.W.-1) had told her. The Investigating Officer, **K.R. Sinha (P.W.-9)**, has also proceeded with the investigation only after recording the victim's statement in the case diary.

(40) On perusal of the record, it emerges that after the recovery of the victim, as reflected in **Ex.P-1**, the Investigating Officer, **K.R. Sinha (P.W.-9),** himself made inquiries from her and thereafter produced her before the **"Child Welfare Committee"**, where her statement, **Ex.P-3**, was recorded on **02-08-2015**. On 07-08-2015, the Magistrate recorded her statement, **Ex.P-4**, under **Section 164** of the Cr.P.C. Thereafter, the course of investigation proceeded on the basis of the information furnished by the victim

(41) On 02-08-2015, the Investigating Officer, **K.R. Sinha (P.W.-9),** recorded the memorandum statement **Ex.P-10** of **Asheesh Suchdev (accused No. 1)** , wherein he stated that he, along with his friend **Gulshan Wadhwani (accused No. 2)**, had taken the victim from Pandri, Raipur, to Hotel "Ranjit", kept her in a room, and both of them committed rape upon her one after another. Thereafter, they left her with **Shahina Begum (accused No. 3)**, a woman engaged in prostitution.

(42) It is further stated that the memorandum statement **Ex.P-11** of **Shahina Begum (accused No. 3)** was also recorded vide, wherein she disclosed that she, along with her husband **Md.Raheem Raza (accused No. 5)** and another person, **Ravindar Vishwas (accused No. 6)**, was also involved in prostitution-related activities and that all three of them had left the victim with **Santosh Kesarwani (accused No. 4)** at **Sarangarh**.

(43) The Investigating Officer, **K.R. Sinha (P.W.-9)**, also stated that he recorded the memorandum statement **Ex.P-35** of **Kesarwani (accused No. 4),** wherein he disclosed that **Shahina Begum (accused No. 3)**, her husband and another person had left the victim at his place. He further stated that he had kept the victim in his "Prince" Hotel and sent three-four customers to her, who had physical relations with her.

(44) The independent witness to the proceedings of recording the memorandum of statements, namely Sameer (P.W.-4), has not supported the prosecution version regarding the recording of memorandum **Ex.P.-10** and **Ex.P.-11**. Further, the independent witness to **Ex.P.-35** has not been examined by the prosecution.

(45) Even otherwise, the statements attributed to the accused persons in the aforesaid memorandum contain clear confessional assertions regarding the commission of the offence, namely, that **"both of them took the victim along with them and**

committed rape upon her"; that **"they were engaged in the business of prostitution"**; and that **"he had sent 3-4 customers, to the victim for establishing physical relations"**.

(46) Such confessional statements, being made to the police, are inadmissible in evidence in view of **Sections 25** and **26** of the **Indian Evidence Act, 1872**. Only that part of the information which distinctly relates to the fact discovered pursuant thereto can be admitted under **Section 27** of the Act.

(47) Therefore, the aforesaid confessional portions of the memorandum cannot be read in evidence against the accused persons or relied upon to establish their guilt.

(48) As regards the recovery or discovery of any fact pursuant to the aforesaid memorandum, it is evident from the record that, in respect of Hotel "Ranjit", Investigating Officer **K.R. Sinha (P.W.-9)** got the map **Ex.P.-33** prepared through the Patwari and himself prepared **Ex.P.-34**. Similarly, the map **Ex.P.-27**, and the panchnama **Ex.P.-28** of Hotel "Prince" situated at Sarangarh, were prepared by **Patwari Dhanurjai (P.W.-6)**, whereas **Ex.P.-30** was prepared by **ASI Mannulal Yadav (P.W.-8)**.

(49) Since the location and existence of the aforesaid hotels have not been disputed and none of these site plans was prepared at the instance or on the identification of the victim, these documents do

not advance the prosecution case with regard to the commission of the alleged offence, except to establish the location of the said hotels at Raipur and Sarangarh, respectively.

(50) Pursuant to the memorandum Ex.P.-10 of accused **Asheesh Suchdev (Accused No. 1)**, the Investigating Officer, **K.R. Sinha (P.W.-9)**, through **Yogendra Bhoi (P.W.-5)**, Manager of Hotel "Ranjit", seized the guest register vide seizure memo **Ex.P.-12** and subsequently returned the same to him on supurdnama vide **Ex.P.-24**. According to the statement of **Yogendra Bhoi (P.W.-5)**, during the relevant period of the alleged incident, Room No. 109 of the hotel was booked from 8:00 a.m. on 27-07-2015 to 7:45 a.m. on 28-07-2015. Two boys had arrived at the hotel at night along with a girl, they had their meals together, and thereafter the boys left. The girl ordered breakfast the following morning, had it and then left the hotel.

(51) As per the statement of **Yogendra Bhoi (P.W.-5)** and the document seized from him, the room was booked in the name of the **victim's mother**. It is quite natural that the victim herself might have carried the said document to the hotel and furnished it at the time of booking. Although the Investigating Officer, **K.R. Sinha (P.W.-9)**, has shown in seizure memo **Ex.P.-15** that the document bearing the name of the victim's mother was seized from **Asheesh Suchdev (Accused No. 1)**, the difference in the ink used in the document itself indicates that the said document appears to have been inserted subsequently. Consequently, the

alleged seizure becomes doubtful.

(52) Although the victim and the two boys who had accompanied her were not put to identification before hotel Manager **Yogendra Bhoi (P.W.-5),**nevertheless, for the sake of argument, it may be assumed that the victim had visited the hotel along with two boys, who could possibly be **Accused No. 1 and 2**, and had stayed there by furnishing the identity document of her mother. After having their meals, both the boys left the hotel. According to this witness, the girl did not make any complaint either to him or to any waiter regarding the alleged incident that had taken place there, whereas, on the following morning, she ordered breakfast and consumed it (paragraph 15 of his cross-examination).

(53) Thereafter, on the basis of the remaining facts disclosed in the memorandum of statement **Ex.P-11** of **Shahina Begum (Accused No. 3)**, recorded by Investigating Officer **K.R. Sinha (P.W.-9)**, the seizure of mobile phones has been shown as having been effected from **Shahina Begum (Accused No. 3)** vide seizure memo **Ex.P.-14**; from **Ravindra Vishwas (Accused No. 6)** vide **Ex.P.-16**; from **Gulshan Wadhwa (Accused No. 2)** vide **Ex.P.-17**; from **Santosh Kesarwani (Accused No. 4)** vide **Ex.P.-13**; and from **Asheesh Suchdev (Accused No. 1)** vide **Ex.P.-15**. Even if these seizures are accepted, in the absence of any SDR or CDR, no such inference can reasonably be drawn that these persons were in contact with one another for carrying on any illegal activity.

(54) The entire prosecution case rests upon the testimony of the Victim (P.W.-1). It is pertinent to note that the victim had herself left her house carrying her mother's identity document. It further emerges from Para-23 of her cross-examination that she had also booked the hotel room herself. Her age has not been established to be below 18 years. As per the prosecution case, she was taken from one place to another through public places, yet she neither raised any alarm nor offered any resistance at any of these places, nor did she make any complaint to anyone. Further, the medical report also does not support the alleged sequence of events in its entirety. In these circumstances, a careful and close scrutiny of the testimony of the victim becomes necessary before placing reliance upon it.

(55) Although, in the present case, the Victim has not been proved to be below 18 years of age, nevertheless, since the case was registered under the POCSO Act, it is necessary to examine the applicability of the statutory presumption under Section 29 of the Act. In this regard, the legal position is clear. In **Deepak in JC v. State Govt. of NCT of Delhi, 2026 SCC OnLine SC 1914**, the Hon'ble Supreme Court has held that the presumptions under Sections 29 and 30 of the POCSO Act are rebuttable and cannot be applied mechanically. The prosecution must first establish the foundational facts necessary to attract such presumptions, and the accused can rebut them on the standard of preponderance of probabilities. The statutory presumption does not dispense with

the requirement of proper appreciation of the entire evidence or the obligation to establish guilt beyond reasonable doubt. However, the Trial Court, while appreciating the evidence, appears to have overlooked these settled principles and recorded the conviction merely on the basis of the examination-in-chief of the victim and the facts stated in the charge-sheet, without undertaking a proper evaluation of the entire evidence on record.

(56) It is particularly noteworthy in the present case that, although the Victim supported the prosecution version in her examination-in-chief before the Court, as well as in her statements before the CWC and the Magistrate, she gave an entirely contrary version in her cross-examination. She stated that she had indeed visited the hotel, however, from the time she entered into the hotel room till the third day, no one visited her in the said hotel room (Para-26 of her cross-examination). In Para-32 of her cross-examination, she categorically stated that police personnel had tutored her, her mother and her aunt by telling them a story and they were instructed to narrate the said story in the same manner wherever required. Further, in Para-33 & 34 of her cross-examination, she reiterated that in accordance with what had been instructed to her by the police personnel she had made statements before the CWC and the Court.

(57) Thus, the victim has made inconsistent and mutually contradictory statements at different stages, making it difficult to ascertain as to when she was speaking the truth. In view of the

facts elicited in her cross-examination, the prosecution case stands substantially demolished, and the victim does not satisfy the test of a sterling witness.

(58) The Hon'ble Supreme Court, in **Rai Sandeep alias Deepu v. State (NCT of Delhi), (2012) 8 SCC 21**, has explained the test of a "sterling witness" and held that such a witness must be of high quality and calibre, whose testimony is unassailable, consistent from the initial statement till the deposition before the Court, free from material contradictions and capable of withstanding rigorous cross-examination. The testimony must also be consistent with the other supporting oral, documentary, medical and scientific evidence. These principles have also been reiterated in **Santosh Prasad alias Santosh Kumar v. State of Bihar, (2020) 3 SCC 443**.

(59) Applying the aforesaid principles to the facts of the present case, upon a cumulative assessment of the testimony of the victim, it is difficult to hold that the essential ingredients of the alleged offences have been established solely on the basis of her testimony, particularly that she was below 16 years of age, was taken away from the lawful guardianship of her parents without their consent, was wrongfully confined or subjected to sexual exploitation or abuse, or that she was a child within the meaning of the POCSO Act. Her materially contradictory statements at different stages, particularly in cross-examination, coupled with the absence of requisite corroboration from the other evidence on

record, render her testimony unreliable and do not satisfy the test of a sterling witness laid down in **Rai Sandeep alias Deepu** (supra), as followed in **Santosh Prasad** (supra). The Trial Court has, therefore, committed an error in placing reliance upon such testimony without properly appreciating its inherent inconsistencies, and it would be unsafe to sustain the conviction of the accused persons on that basis.

-:Final Conclusion :-

(60) In view of the aforesaid discussion and analysis, the impugned judgment of conviction and order of sentence dated 23.07.2016, passed by the learned trial Court, whereby: accused/appellants, namely, **Asheesh Sachdev (A-1), Gulshan Wadhwani (A-2),** have been convicted and sentenced for offences under **Sections 363/34, 342/34, 506 (Part-II)/34, 376D** [wrongly mentioned as 376(d)] **of IPC** as also under **Section 06 of the POCSO Act, 2012**; accused/appellants, namely, **Shahina Begum (A-3), Mohd. Raheem Raja @ Faheem Khan (A-5) and Ravindra Vishwas @ Sushil (A-6)** have been convicted and sentenced for offences under **Sections 342/34, 370A(1)/34** [wrongly mentioned as 370(a)(1)/34], **372/34 of IPC** as also under **Section 6/17 of the POCSO Act, 2012** and accused/appellant, namely, **Santosh Kesarwani (A-4)** has been convicted and sentenced for the offences under **Section 342/34, 370A(1)/34** [wrongly mentioned as 370(a)(1)/34], **373 of IPC** as also under **Section 6/17 of the POCSO Act,**

2012, are liable to be and are hereby set aside. All the accused/appellants herein stands acquitted of the aforesaid charges on the basis of benefit of doubt.

(61) Consequently, all 05 criminal appeals are **allowed.**

(62) Let a certified copy of this judgment along with the original record be transmitted to the concerned Trial Court for information and necessary action. If the appellants/accused are in custody, the concerned Jail Superintendent shall be informed accordingly for their release forthwith, if not required in any other case and, if, the accused/appellants are on bail, their bail bonds shall stand cancelled and the sureties be discharged.

Sd/-
(Parth Prateem Sahu)
Judge

sd/-
(Sushma Sawant)
Judge

s@if