(2026:HHC:49132)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. : 272 of 2022
Reserved on : 15.09.2026
Date of decision: 06.11.2026
Uploaded on : 06.11.2026

Susheel Kumar **...Appellant.**

Versus

State of H.P. **...Respondent.**

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
The Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting?[1] Yes

For the appellant : **Mr. Vinod Kumar Thakur, Advocate.**

For the respondent: **Mr. Gautam Sood, Deputy Advocate General.**

Bhupesh Sharma, Judge

Appellant (hereinafter referred to as the 'accused') calls in question the legality of the conviction recorded in terms of Sections 363 and 376(2) of the Indian Penal Code (for short 'IPC') and Section 4 of the Protection of

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[1] *Whether the reporters of the local papers may be allowed to see the Judgment? Yes*

Children from Sexual Offences (for short 'POCSO') Act, 2012, passed by learned Special Judge, Fast Track Special Court (POCSO) Mandi, District Mandi, H.P., in Sessions Trial No. 64 of 2018, titled as 'State of Himachal Pradesh Vs. Susheel Kumar', vide judgment of conviction and order of sentence dated 11.07.2022. The accused has been sentenced as under:-

Offence	**Imprisonment**		**Fine**	**In default**
Under Section 363 IPC	SI for five years		Rs. 5,000/-	To further undergo SI for three months
Under Section 376(2) IPC	RI for ten years		Rs. 10,000/-	To further undergo RI for six months
Under Section 4 of POCSO Act	SI for ten years		Rs. 10,000/-	To further undergo SI for six months.

2. The accused was sent to face trial for the commission of the offences punishable under Sections 363 and 376(2) of the IPC and Section 4 of the POCSO Act, 2012, by the SHO Police Station Sadar Mandi, District Mandi, H.P., in case FIR No. 37/2018, dated 06.02.2018.

3. The accused was charged and he faced trial for the commission of the offences punishable under Sections 363 and 376(2) of the IPC and Section 4 of the POCSO Act, 2012 and after conclusion of the trial he stood convicted and sentenced vide judgment dated 11.07.2022, passed in Sessions Trial No. 64 of 2018, titled as 'State of H.P. Vs. Susheel Kumar'.

4. The case of the prosecution, as set out against the accused, in brief is as under:-

4(a) On 05.02.2018, during the day time at Mandi, the accused kidnapped the Victim Child/Prosecutrix 'K' minor aged 17 years and 11 months (date of birth 05.06.2000) from lawful guardianship of her parents and thereafter subjected her to forcible sexual intercourse (penetrative sexual assault) during the night at Hotel Shubham, Kullu Road, Sauli-Khad Mandi, District Mandi, H.P.

4(b). On 05.02.2018, the Victim Child/Prosecutrix 'K' went missing during the day time and the Complainant 'SD' being her mother filed a complaint at about 11:00 PM. On the basis of the facts contained therein, a case FIR No. 37/2018,

dated 06.02.2018, under Section 363 of the IPC was registered against an unknown person at Police Station Sadar Mandi, District Mandi, H.P.

4 (c). On 06.02.2018, at about 6:30 AM, the Victim Child/Prosecutrix 'K' returned home and disclosed the incident to her mother that she was enticed by the accused to accompany him from Seri-Bazaar Mandi to Hotel Shubham Sauli-Khad, where they stayed in a Room Number 203 for the night, during which she was subjected to forcible sexual intercourse without her consent. On the basis of the facts disclosed by the Victim Child/Prosecutrix 'K', Section 376 of the IPC and Section 4 of the POCSO Act, 2012, was added in FIR No. 37 of 2018 and thereafter the Victim Child/Prosecutrix 'K' was sent for medical examination to Zonal Hospital, Mandi. Thereafter, the investigation commenced and the police got the spots identified from the Victim Child/Prosecutrix 'K' at Seri Bazar and Hotel Shubham, Sauli-Khad, Mandi. The police, during the course of investigation, recovered torn shirt and shirt piece of the Victim Child/Prosecutrix 'K' from Room No. 203 of Hotel Shubham, which were taken into possession. The police also

recovered double bedsheet, which was spread on the bed during the night when the offence was committed against Victim Child/Prosecutrix 'K'. The police also took into possession CCTV footage and the relevant record i.e., visitors' register from the Hotel. The accused was arrested on 06.02.2018, at about 9:00 PM at Women Police Station, Mandi, in accordance with law and thereafter, he was sent for medical examination.

5. On 08.02.2018, the Victim Child/Prosecutrix 'K' got her statement recorded under Section 164 of Cr.P.C. before the learned Judicial Magistrate First Class, Court No. IV, Mandi, District Mandi (H.P).

6. The police after conducting the detailed investigation found involvement of the accused in the commission of the offences punishable under Sections 363 and 376(2) of the IPC and Section 4 of the POCSO Act, 2012 and accordingly he was challaned for the commission of said offences and was put up for trial before learned Special Judge, Fast Track Special Court (POCSO), Mandi District, Mandi, H.P..

7. The prosecution in order to prove and substantiate the allegations and accusations against the accused examined 16 witnesses. The principal prosecution witnesses examined before the learned Trial Court include the Complainant 'SD', who is mother of the Victim Child/Prosecutrix 'K' as PW-1, her father 'HR' as PW-2, her cousin Jyoti as PW-3, the Manager of Hotel Shubham Rahul as PW-5, Receptionist at Shubham Hotel Yogesh as PW-6 and Dr. Tanvi Soni, Medical Officer as PW-7. The Victim Child/Prosecutrix 'K' stepped into the witness box as PW-15. Apart from this, the Investigating Officers, Inspector Ati Devi examined as PW-14 and SI Pawan Kumar as PW-16. The other witnesses examined by the prosecution are formal in nature which were associated at the various stages of investigation and constitute the link evidence.

8. The prosecution, apart from examining aforesaid witnesses, also heavily relied upon the documentary evidence, which was collected during the course of investigation. The material documents, which needs reference are the recovery and seizure memos of the torn shirt (Exhibit PB-1 & shirt piece Exhibit PB-2), vide memo Exhibit PW1/B.

Recovery of bedsheet (Exhibit PA-1), vide seizure memo Exhibit PW1/C. Copy of guest register of Hotel Shubham (Exhibit PW5/C). MLC of the Victim Child/Prosecutrix 'K' (Exhibit P-2/PW7) and final opinion (Exhibit P-4/PW7). Copy of FIR No. 37 of 2018, dated 06.02.2018, under Section 363 of the IPC at Police Station Sadar Mandi (Exhibit P-1/PW9). Statement of the Victim Child/Prosecutrix 'K' under Section 164 of Cr.PC (Exhibit P-1/PW15), RFSL Report No. 219, RFSL Bio (28)18(Exhibit P-3/PW7).

9. The substratum of the prosecution case was put to the accused in his statement recorded under Section 313 of the Cr.PC on 13.06.2022. The accused has denied and disputed the entire prosecution case by raising the defence of denial simplicitor and false implication at the behest of the complainant, victim child and other witnesses.

10. Learned Trial Court after considering the material and evidence on record and after hearing learned counsel for the parties found the complicity of the accused in the alleged incident. Accordingly, he was convicted for the offences punishable under Section 363 & 376(2) of the IPC

and Section 4 of POCSO Act, 2012, vide impugned judgment of conviction and order of sentence dated 11.07.2022.

11. Feeling aggrieved and dissatisfied with the judgment of conviction and order of sentence dated 11.07.2022, passed by learned Trial Court in Sessions Trial No.64 of 2018, titled 'State of Himachal Pradesh vs. Susheel Kumar', the accused filed the instant appeal before this Court on following grounds:-

- That the impugned judgment of sentence and conviction passed by the Ld. Special Judge fast track Special court (POCSO) Mandi H.P is against the law and facts on record, which is liable to be set aside.

- That Ld. Trial Court below has wrongly, erroneously misread and misconstrued the evidence on record and as such arrived at wrong conclusion and has over looked the fact that the prosecution has not been able to established the guilt the appellant beyond reasonable doubt.

- That the prosecution story is full of contradiction and there is no cogent reliable and conclusive evidence led by the prosecution to prove the aforesaid act by the appellant. Therefore, he is entitled be acquitted.

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- That the Ld. Court below has miserably failed to appreciate that it is for the prosecution to prove the age of the prosecutrix to attract the provision of POCSO Act. Where as in the present case the certificate so produced in the evidence being the photocopy has not been proved in accordance with the compliance of Indian Evidence Act and therefore fore can not looked in to.

- That the learned trial court below has further erred in sentencing the present appellant on the bases of Exhibit PW/B which has not even procured from the legal and competent authority and also the same could not be correlated with the victim as the name of the mother in the said certificate is shown as Dhirja where as the name of the mother is sunita therefore there is no link between the two and the conviction on the basis of the same can not be sustained.

- That the learned trial court below has further failed to appreciate the fact that there are material contradictions in the prosecution story and the conviction of the basis of the said witnesses is not sustainable in the eyes of law.

- That the learned trial court further failed to appreciate the fact that the recovery as alleged has not been proved in accordance with law. The complainant who is the mother of victim has been associated in the recovery and the seal impressions after appending to

the sealed parcels have been kept with the claimant only.

- That the Ld. Trial court further erred not appreciating the fact that there is no link evidence in the entire prosecution story which may be concluded that the case property/sample remained un-tempered.

- That the entire judgment of sentence and the conviction passed by the Ld. Trial Court is based on surmises and conjectures because each and every aspect of the case i.e. recovery procedure, collection birth certificate, creates doubt therefore, accused appellant is entitled for acquittal.

- That the statement of the official witnesses as well as independent witnesses examined are explicitly contrary to each other on material points.

- That the Ld. Trial court has further erred in not taking into consideration the fact that the entire story so created by the prosecution is absolutely false and fabricated. Therefore the sentence and conviction cannot be sustained in the eyes of law and hence the accused/appellant may be acquitted.

- That the instant appeal has been filed within prescribed period of limitation.

12. We have heard Mr. Vinod Kumar Thakur, learned counsel for the accused and Mr. Gautam Sood, learned Deputy Advocate General for the respondent-State, and have also carefully gone through the records.

13. Learned counsel for the accused argued that the learned Trial Court has failed to appreciate the oral as well as documentary evidence led by the prosecution. The prosecution miserably failed to establish that the Victim Child/Prosecutrix 'K' was minor at the time of the alleged incident. Therefore, the act and conduct of the accused, if any, does not fall within the purview of Section 363 of IPC and Section 4 of the POCSO Act. There is no evidence on record suggesting the involvement of the accused. It is also argued that the electronic evidence used by the prosecution lack evidentiary value for want of certification under Section 65B of the Evidence Act. Further, he has was submitted that the statement of the Victim Child/Prosecutrix) 'K' (PW-15) does not inspire confidence and is liable to be discredited. The medical evidence used by the prosecution also does not support the factum of sexual assault having taken place with the Victim Child/Prosecutrix 'K'. Learned counsel for the

accused with these submissions sought acquittal of the accused by setting aside the judgment of conviction and order of sentence dated 11.07.2022, passed by the learned Trial Court.

14. Learned Deputy Advocate General for the respondent-State submitted that the prosecution proved the birth certificate of the Victim Child/Prosecutrix 'K' as Exhibit PW4/B and as per the said document, her recorded date of birth is 05.06.2000, therefore, on the date of occurrence, she was 17 years and 8 months old. The Victim Child/Prosecutrix 'K' was enticed out of the keeping of lawful guardianship of her parents under false pretexts and was taken to a Hotel for the night, where she was subjected to forcible sexual intercourse (penetrative sexual assault). Furthermore, the medical and forensic evidence support and corroborate the ocular evidence and on the basis of aforesaid evidence, learned Trial Court has rightly convicted the accused. The judgment of conviction and order of sentence dated 11.07.2022, passed by the learned Trial Court does not suffer from any infirmity or perversity, therefore, the same is liable to be affirmed and the appeal is to be dismissed.

15. We have given considerable thought to the submissions made at the bar and also gone through the records carefully.

16. At the very outset, this Court is compelled to dwell into the issue regarding the age of the Victim Child/Prosecutrix 'K' at the time of the alleged incident. Since the issue regarding the age of the Victim Child/Prosecutrix 'K' has been specifically disputed by the defence making reference to the judgments of Hon'ble Supreme Court in **Jarnail Singh v. State of Haryana (2013) 7 SCC 263, Rishipal Singh Solanki v. State of U.P. and Others (2022) 8 SCC 602, P. Yuvaprakash v. State, Represented by Inspector of Police (2023) INSC 676** and the judgments of Co-ordinate Bench of this High Court in **Criminal Appeal No. 193 of 2022** titled as **Sewak Ram @ Sanjeev Vs. State of Himachal Pradesh (neutral citation No. 2025:HHC:2110)** and **Criminal Appeal No. 246 of 2021,** titled as **'V' Vs. State of H.P. (Neutral Citation No. 2024: HHC:13464).**

17. Exhibit PW4/B is the birth certificate of the Victim Child/Prosecutrix 'K' issued under Section 12/17 of

the Registration of Births and Deaths Act, 1969 and Rule 8 of the Himachal Pradesh Registration of Births and Deaths Rules, 2003. The aforesaid document has been proved on record by Amar Singh, Chowkidar, posted in Nagar Parishad, Mandi. As per the aforesaid document, the recorded date of birth of the Victim Child/Prosecutrix 'K' is 05.06.2000. Therefore, having considered the entry of the date of birth in the birth certificate (Exhibit PW4/B), the age of the Victim Child/Prosecutrix 'K' on the date of incident i.e 05.06.2018 was 17 years and 8 months. As per the statement of the complainant, 'SD', (mother-PW-1), the age of her daughter was 17 years and 11 months at the relevant time. Similarly, the Victim Child/Prosecutrix 'K' in her statement as PW-15 disclosed her date of birth as 05.06.2000, which is in consonance with the date reflected in the birth certificate (Exhibit PW4/B). However, considering the ratio of laws laid down by the Hon'ble Supreme Court in ***Jarnail Singh* case (supra), *Rishipal Singh Solanki* case (supra)** and ***P. Yuvaprakash* case (supra)** and the judgments of the Co-ordinate Bench in ***Sewak Ram* @ *Sanjeev* case (supra) and 'V' case (supra),** the document i.e. birth certificate

Exhibit PW4/B, cannot be considered to ascertain the date of birth of the Victim Child/Prosecutrix 'K' as 05.06.2000. Therefore, there is no authentic and legal document proving that she was a minor i.e. below the age of 18 years at the time of the alleged incident. Therefore, we are constrained to hold that the prosecution has failed to establish that the Victim Child/Prosecutrix 'K' was minor at the time of the alleged incident for lack of evidence as required under the law.

18. Section 2(d) of the Protection of Children from Sexual Offences Act, 2012, defines '*Child'* for the purpose of said Act. As per the aforesaid provisions, '*Child'* means any person below the age of 18 years. Therefore, the provisions of Protection of Children from Sexual Offences Act, 2012, are applicable only if the offence is committed against a minor, as defined in Section 2(d) of the Act.

19. In the present case, the prosecution has failed to prove that the Victim Child/ Prosecutrix 'K' was minor on the date of the alleged occurrence i.e 05.02.2018, therefore, the provisions of the POCSO Act are not applicable against the accused even if it is proved that he committed forcible sexual

intercourse with the Victim Child/Prosecutrix 'K' on the intervening night of 05.02.2018 and 06.02.2018 at Hotel Shubham, Kullu Road, Sauli-Khad Mandi, HP.

20. Similarly, Section 363 of the IPC defines the punishment for the offence of kidnapping, as defined under Section 361 of the IPC. So far as kidnapping a minor girl from lawful guardianship is concerned, the ingredients are: (i) that the girl was under 18 years of age; ii). such minor was in the keeping of a lawful guardianship, and iii) the accused took or induced such person to leave out of such keeping and such taking was done without the consent of the lawful guardian. In view of the words, "under 16 years of age, if a male, or under 18 years of age, if a female", occurring in Section 361 of the IPC, the question of proof of age assumes great significance.The prosecution is bound to prove that the age of the victim girl was below 18 years. In the present case, as discussed hereinabove, the prosecution has failed to prove the age of the victim girl below 18 years, hence, the provisions under Section 361 of the IPC, punishable under Section 363 of the IPC, are also not applicable.

21. Having considered the said provisions of law, the act of omission and involvement of the accused does not fall within the ambit and purview of Section 366 of the IPC and Section 4 of the POCSO Act. Therefore, the conviction of the accused recorded under the said provisions cannot sustain and is liable to be set aside.

22. As per the prosecution allegations, the accused subjected the Victim Child/Prosecutrix 'K' to forcible sexual intercourse on the intervening night of 05.02.2018 and 06.02.2018 at Hotel Shubham, Kullu Road, Sauli-Khad Mandi, HP.

23. In order to prove the aforesaid fact, the prosecution heavily relied upon the statement of the complainant 'SD', (Victim Child/Prosecutrix 'K' mother), examined as PW1, her father HR examined as PW2, her cousin Jyoti examined as PW3 and the Victim Child/ Prosecutrix 'K' examined as PW-15. Apart from this, reliance is also placed upon the medical and forensic evidence i.e. MLC of the Victim Child/ Prosecutrix 'K' (Exhibit P2/PW-7), final opinion (Exhibit P-4/PW7) and evidence of Dr. Tanvi

Soni examined as PW-7. RFSL Report No. 219, RFSL Bio (28)18 (Exhibit P2/PW7) is also relied upon.

24. In order to ascertain whether the Victim Child/ Prosecutrix 'K' (PW15) was subjected to forcible sexual intercourse by the accused on the night intervening in Room No. 203 of Hotel Shubham, Kullu Road, Sauli-Khad Mandi, HP, we have carefully and meticulously gone through the evidence relied upon by the learned Trial Court as referred herein above.

25. Needless to emphasize that the prosecution case heavily rests upon the sole testimony of the Victim Child/ Prosecutrix 'K', examined as PW-15, therefore, she is the material and relevant witness in order to ascertain the involvement of the accused in the said incident.

26. Before adverting to the factual matrix and material adduced in support thereof, it may be fruitful to refer to the relevant provisions of law and the ratio of the law laid down by the Hon'ble Supreme Court which may be relevant in context to the facts and circumstances of the present case.

27. The Hon'ble Supreme Court in **Mohd. Imran Khan vs. State (Govt. of NCT of Delhi),(2011)10 Supreme Court Cases 192**, has held:-

> *"15. It is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust. The prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury. Therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Indian Evidence Act, 1872 (hereinafter called Evidence Act'), nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. The court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. Rape is not merely a physical assault, rather it often distracts the whole personality of the victim.*

> *The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence. (Vide: State of Maharashtra v. Chandraprakash Kewalchand Jain, AIR 1990 SC 658; State of U.P. v. Pappu @Yunus & Anr. AIR 2005 SC 1248; and Vijay @ Chinee v. State of M.P., (2010) 8 SCC 191).*
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> *Thus, the law that emerges on the issue is to the effect that statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.*

28. In **State of Maharashtra Vs. Chandraprakash Kewalchand Jain AIR 1990 SC 658,** the Hon'ble Supreme Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under :-

> *"A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is 10 corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and*

caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

29. In **State of U.P. Vs. Pappu @ Yunus & Anr. AIR 2005 SC 1248**, the Hon'ble Supreme Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that

particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. The Hon'ble Supreme Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under :-

> *"It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which 11 would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do."*

30. In **State of Punjab Vs. Gurmit Singh & Ors. AIR 1996 SC 1393,** the Hon'ble Supreme Court held that in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant

discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Hon'ble Supreme Court observed as under :-

> *"The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.....The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self- respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases*

involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.....Seeking corroboration of her statement before 12 replying upon the same as a rule, in such cases, amounts to adding insult to injury.....Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

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The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

31. In **State of Orissa Vs. Thakara Besra & Anr. AIR 2002 SC 1963**, the Hon'ble Supreme Court held that rape is not mere a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the

very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

32. In **State of Himachal Pradesh Vs. Raghubir Singh (1993) 2 SCC 622**, the Hon'ble Supreme Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by the Hon'ble Supreme Court in **Wahid 13 Khan Vs. State of Madhya Pradesh (2010) 2 SCC 9**, placing reliance on earlier judgment in **Rameshwar Vs. State of Rajasthan AIR 1952 SC 54**.

33. The Hon'ble Supreme Court in the case of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat**

[1983(3) SCC 217] has laid down the elaborate guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the Court.

34. In **Ved Parkash versus State of Himachal Pradesh (2005(1) SLC 395)**, the Hon'ble Supreme Court while dealing with the question of value of the statement of the prosecutrix, held as under:-

> *"8. At may be pointed out at the very outset that by now it is well settled that conviction of a person accused of the commission of rape can be based on the sole testimony of the prosecutrix because she is not an accomplice but victim of the offence, hence, the injured person. Her evidence can also not be suspected for the reason that no self respecting woman would come forward to lower her dignity and self esteem by making false allegations of rape on her. Therefore, a conviction can be based on the statement of the prosecutrix when her statement is found cogent, reliable and confidence inspiring. In case for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look into other evidence which may lend assurance to her testimony.. In a case where the prosecutrix is adult and of full understanding the Court can base conviction on her evidence unless shown to be infirm or untrustworthy. In case the prosecutrix has no motive to falsely implicate the accused the Court should ordinarily have no hesitation in accepting her evidence."*

35. The Hon'ble Supreme Court in **Aman Kumar and another vs. State of Haryana, (2004)4 SCC 379** held as under:-

> *"5. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would suffice.*
>
> *7. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (See Joseph Lines IC & K 893). It is well-known in the medical world that the examination of smegma loses all importance after twenty four hours of the performance of the sexual intercourse. (See Dr. S.P. Kholi, Civil Surgeon, Ferozepur v. High Court of Punjab and Haryana thr. Registrar (1979) 1 SCC 212). In rape cases, if the gland of the male organ is covered by smegma, it negatives the possibility of recent complete penetration. If the accused is not circumcised, the existence of smegma round the corona gland is proof against penetration, since it is rubbed off during the act. The smegma accumulates if no bath is taken within twenty four hours. The rupture of hymen is by no means necessary to*

constitute the offence of rape. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact. The actus reus is complete with penetration. It is well settled that the prosecutrix cannot be considered as accomplice and,therefore, her testimony cannot be equated with that of an accomplice in an offence of rape. In examination of genital organs, state of hymen offers the most reliable clue. While examining the hymen, certain anatomical characteristics should be remembered before assigning any significance to the findings. The shape and the texture of the hymen is variable. This variation, sometimes permits penetration without injury. This is possible because of the peculiar shape of the orifice or increased elasticity. On the other hand, sometimes the hymen may be more firm, less elastic and gets stretched and lacerated earlier. Thus a relatively less forceful penetration may not give rise to injuries ordinarily possible with a forceful attempt. The anatomical feature with regard to hymen which merits consideration is its anatomical situation. Next to hymen in positive importance, but more than that in frequency, are the injuries on labia majora. These, viz. labia majora are the first to be encountered by the male organ. They are subjected to blunt forceful blows, depending on the vigour and force used by the accused and counteracted by the victim. Further,examination of the females for marks of injuries elsewhere on the body forms a very important piece of evidence. To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of

rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Section 376 IPC."

36. The Hon'ble Supreme Court in **Tarkeshwar Sahu vs. State of Bihar (now Jharkhand, (2006)8 SCC 560**, held as under:-

"10. Under Section 375 IPC, six categories indicated above are the basic ingredients of the offence. In the facts and circumstances of this case, the prosecutrix was about 12 years of age, therefore, 15 her consent was irrelevant. The appellant had forcibly taken her to his Gumti with the intention of committing sexual intercourse with her. The important ingredient of the offence under Section 375 punishable under Section 376 IPC is penetration which is altogether missing in the instant case. No offence under Section 376 IPC can be made out unless there was penetration to some extent. In absence of penetration to any extent would not bring the offence of the appellant within the four corners of Section 375 of the Indian Penal Code. Therefore, the basic ingredients for proving a charge of rape are the accomplishment of the act with force. The other important ingredient is penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would be enough for the purpose of Sections 375 and 376 IPC. This Court had an occasion to deal with the basic ingredients of this offence in the case of State of U.P. v. Babul Nath. In this case, this Court dealt with the basic ingredients of the offence under Section 375 in the following words:- "8. It may here be noticed that Section 375 of the IPC defines rape and the Explanation to Section 375 reads as follows:

"Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."

From the Explanation reproduced above it is distinctly clear that ingredients which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To constitute the offence of rape neither Section 375 of IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains. But in the present case before us as noticed above there is more than enough evidence positively showing that there was sexual activity on the victim and she was subjected to sexual assault without which she would not have sustained injuries of the nature found on her private part by the doctor who examined her."

37. The Hon'ble Supreme Court in **Narender Kumar vs. State (NCT of Delhi), (2012)7 SCC 171** held as under:-

"29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish

and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witness have falsely implicated the accused. Prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the 16 accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide: Tukaram & Anr. v. The State of Maharashtra, AIR 1979 SC 185; and Uday v. State of Karnataka, AIR 2003 SC 1639).

30 . 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. 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."

38. The Hon'ble Supreme Court in **Munna vs. State of Madhya Pradesh, (2014) 10 SCC 254,** has reiterated the principle that testimony of prosecutrix is almost at par with

an immediate witness and can be acted upon without corroboration.

39. Reiterating its earlier view in **Mohd. Iqbal v. State of Jharkhand,(2013) 14 SCC, 481, Narender Kumar v. State (NCT of Delhi), (2012) 7SCC 171**, the Hon'ble Supreme Court in **Mukesh v. State of Chhattisgarh, (2014) 10 SC 327**, has held that sole testimony of prosecutrix is sufficient to establish commission of rape, even in the absence of any corroborative evidence.

40. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix

complaining of having been a victim of the offence of rape is not an accomplice of the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Refer: **Vimal Suresh Kamble v. Chaluverapinake Apal S.P. & Anr., AIR 2003 SC 818; and Vishnu v. State of Maharashtra, AIR 2006 SC 508).**

41. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Refer: **Suresh N. Bhusare & Ors. v. State of Maharashtra, (1999) 1 SCC 220)**.

42. In **Jai Krishna Mandal & Anr. v. State of Jharkhand, (2010)14 SCC 534**, the Hon'ble Supreme Court while dealing with the issue held:

> *"The only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality, the story projected by the prosecutrix was so improbable that it could not be believed."*

43. In **Rajoo & Ors. v. State of Madhya Pradesh, AIR 2009 SC 858**, the Hon'ble Supreme Court held that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. The Hon'ble Supreme court however, further observed:

> *".....It cannot be lost sight of that rape causes the 12 Session Trial No. Regd-CIS No.1/2014 CIS CNR No.HPSO01-0018432013 greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication..... there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."*

44. In **Tameezuddin @ Tammu v. State (NCT of Delhi), (2009) 15 SCC 566,** the Hon'ble Supreme Court held has under:

> *"It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter."*

45. The courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of witnesses which are not of a substantial character. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witness have falsely implicated the accused. Prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral

belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Refer: **Tukaram & Anr. v. The State of Maharashtra,, AIR 1979 SC 185; and Uday Vs. State of Karnataka, AIR 2003 SC 1639).**

46. The Hon'ble Supreme Court in **Rai Sandeep alias Deepu vs. State (NCT of Delhi) (2011) 8 SCC 21**, found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies; reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness'.

47. **In Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130**, the Hon'ble Supreme Court held that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an

accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunaes.

48. Similarly, the Hon'ble Supreme Court in **Nirmal Prem Kumar & Anr. vs State rep. by Inspector of Police 2024 INSC 193** (neutral citation) disbelieved the prosecution case on material contradictions apparent in the deposition of the prosecution witnesses, including the victim and acquitted the accused of the offence under Section 12 of the POCSO Act.

49. The testimony of the Victim Child/Prosecutrix 'K' examined as PW-15 is to be assessed and evaluated keeping in view the ratio laid down by the Hon'ble Supreme Court referred supra.

50. In order to test the veracity of the deposition of the Victim Child/Prosecutrix 'K' (PW-15), it may be necessary to make reference to the same. As per her evidence, on the date of incident, the accused committed wrong act with her before her marriage in Hotel Room No. 203. She came back from the Hotel in the morning at 6:30 AM. The accused had dropped her in a car and thereafter she returned on foot.

She had informed her mother about the wrong act committed by the accused. She had identified Room No. 203 in the Hotel to the police. Police had recorded her statement. Police had taken into possession one bed sheet and one shirt alongwith piece of shirt from the Hotel Room, which were taken into possession vide memo Exhibit PW1/B and Exhibit PW1/C. She was medically examined at Zonal Hospital Mandi.

51. The Complainant 'SD' is being mother of Victim Child/Prosecutrix 'K' was examined as PW-1. As per her evidence, on 05.02.2018, during the day time, her daughter visited her office at 1:30 PM after attending computer class and thereafter she went missing. On 06.02.2018, at 6:30 AM, she returned and disclosed that one boy took her from Seri Manch, Mandi to one Hotel where they stayed for the night and she was subjected to forcible sexual intercourse by a boy named Vicky @ Susheel.

52. The father 'HR' of the Victim Child/Prosecutrix 'K' was examined as PW-2. As per his testimony, on 05.02.2018 at about 6:30-6:45 PM when he returned home, his wife told that the victim girl had not returned. They

searched their daughter in Mandi town and also reported matter to the police. Next day morning at about 6:30 AM, she returned home and disclosed to her mother that accused had taken her to a Hotel room. His wife told him that their daughter had been sexually assaulted in the Hotel by the accused.

53. PW-3, Jyoti, is the cousin of the Victim Child/ Prosecutrix 'K'. As per her evidence, the Victim Child/ Prosecutrix 'K' (PW15) returned home on 06.02.2018, at 6:30 AM and disclosed that the accused took her to a Hotel at Sauli-Khad Mandi and kept her for the night and committed rape upon her.

54. The ocular evidence of the Victim Child/ Prosecutrix 'K' (PW15), her mother(PW1), her father (PW2), and her cousin (PW3) is consistent with the allegations and accusations and there are no material contradictions in their respective statements rendering their version(s), vulnerable and unacceptable.

55. Also, the aforesaid evidence finds corroboration from the document (Exhibit P1/PW15), which is the statement of the Victim Child/Prosecutrix 'K', recorded under

Section 164 of the Cr.PC by learned Judicial Magistrate First Class, Court-IV Mandi. The medical evidence i.e MLC (Exhibit P2/PW7) and the final opinion of the Medical Officer (Exhibit P4 /PW7) further support and corroborate the factum of the sexual intercourse having taken place with the Victim/ Prosecutrix 'K'.

56. PW7, Dr. Tanvi Soni, conducted the medical examination of the Victim Child/Prosecutrix 'K', at Zonal Hospital, Mandi on 06.02.2018 at 5:00 PM with following observations:-

> **"On General physical examination**:-
>
> LMP-28.01.2018
>
> Secondary sexual character: pubic hair were present, axillary hair present and breast well developed. No signs of external injuries on labia majora and labia minora. Admits two fingers easily on per vaginal examination. UPT negative.
>
> The following samples were taken, packed sealed and handed over to the police along with sample seal and forwarding letter;
>
> 1) Pubic hair
> 2) Vaginal swab 1 in number
> 3) Vaginal smear 3 in number
> 4) Clothers worn at the time of incident as broght by police
> 5) Sample of blood on FTA card."

57. Admittedly, there was no evidence of violation/ injury on any part of the body of the Victim/Prosecutrix 'K' (PW-15) at the time of her medical examination conducted by Dr. Tanvi Soni (PW-7). However, the aforesaid facts does not necessarily lead to infer that no sexual assault was committed upon the Victim/Prosecutrix 'K' (PW-15).

58. Needless to mention that injury on the private parts in cases of sexual assault (offences) depends upon various factors. It is not necessary that in every case there would be an injury caused. In **Gurbachan Singh Vs. State of Haryana (1972) 2 SCC 2661,** the Hon'ble Supreme Court held: that in absence of injury or mark of violence on the private part on the person of prosecutrix is of no consequence and it would merely suggest want of violent resistance on her part. Similarly, in **Devinder Singh Vs. State of Himachal Pradesh (2003) 11 SCC 488**, the Hon'ble Supreme Court held that the fact that no injury was found on the body of the prosecutrix only goes to show that she did not put up resistance.

59. Further, the absence of violence or stiff resistance in the present case may be as well suggest helplessness, surrendered to the inevitable due to sheer timidity. This Court cannot lose sight of the fact that the Victim/Prosecutrix 'K' (PW-15) is suffering from mild retardation. Hence, the Victim/Prosecutrix 'K' (PW-15) showing no signs of internal or external injuries cannot be construed that she was not subjected to sexual assault. The injuries on the body of victim are not always, *sine qua non* for the offence of sexual assault.

60. Learned counsel for the accused also drew attention of this Court towards the observations in the MLC wherein it is specifically mentioned that the Victim/Prosecutrix 'K' (PW-15) was habitual to sexual intercourse. The fact that the Victim/Prosecutrix 'K' (PW-15) was habitual to sexual intercourse is also testified by Dr. Tanvi Soni (PW-7). Even if it is assumed on the basis of the said evidence that the Victim/Prosecutrix 'K' (PW-15) was habitual to sexual intercourse, it is of least consequence whatsoever in view of the law laid down by the Hon'ble Supreme Court in **State of Maharashtra Vs. Madhukar**

Narayan Mardikar, AIR 1991 SC 207, **State of Punjab Vs. Gurmeet Singh and others, 1996 (2) SCC 384** and **State (NCT of Delhi) Vs. Pankaj Chaudhary, (2018) SCC OnLine SC 2256**. The law is fairly settled that right to refuse is also available even if a woman is habituated to sexual intercourse or is alleged to be of loose moral character. She retains the absolute right to refuse sexual activity at any time. Consent cannot may assumed or coerced. Even a woman of easy virtue is entitled to privacyand no one can invade her privacy as and when he likes. Attempting to discredit the victim by attacking her past conduct or character is legally barred in a sexual offence trial.

61. Having considered the oral and documentary evidence referred and discussed hereinabove, it is fairly established that the Victim/Prosecutrix 'K' (PW15) was subjected to forcible sexual intercourse by the accused in Room No. 203 of Hotel Shubham, Sauli-Khad Mandi, on the night intervening 05.02.2018 and 06.02.2018.

62. This Court, at this stage, find proper and deemed appropriate to refer to Section 114A of the Evidence Act,

which refers presumption as to absence of consent in certain prosecution for rape.

63. Section 114-A of Evidence Act, 1872 (Section 120 of Bharatiya Sakshya Adhiniyam, 2026) reads as under.

> "Presumption as to absence of consent in certain prosecutions for rape-In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

64. The law in support of aforesaid is **Naim Ahmed Vs. State (NCT of Delhi) 2023 SCC OnLine 89** and **Anurag Soni Vs. State of Chhattisgarh, 2019 (13) SCC 1**.

65. The provisions of Section 114-A of the Evidence Act are applicable having considered the facts put on record by the Victim Child/Prosecutrix 'K' in her evidence.

66. After carefully analyzing material and documentary evidence led by the prosecution, the conviction

of the accused punishable under Section 376(2) of the IPC is upheld, whereas the conviction under Section 363 of the IPC and Section 4 of the POCSO Act, 2012, is set aside.

67. Accordingly, the appeal is partly allowed.

68. This appeal is, accordingly, disposed of, so also the pending miscellaneous application(s), if any.

(Vivek Singh Thakur)
Judge

6th November, 2026
(sushma)

(Bhupesh Sharma)
Judge