HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal (DB) No. 184/2020
CNR: RJHC020343012020 | URN: CRLAD / 302U / 2020

Bharat S/o Motilal, aged about 30 Years, R/o Bhanwarkua, Police Station Karahal Distt. Sheopur (M.P.) at present Dhaturiya, Police Station Shahabad, Distt. Baran Raj. (at present confined at Central Jail, Kota)

----Accused/Appellant

Versus

State of Rajasthan through P.P.

----Respondent

For Appellant(s)	:	Mr. Mukesh Sharma with Mr. Manoj Prajapat
For Respondent(s)	:	Mr. Amit Kumar Punia, PP

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL

Judgment

16/11/2026

(Per Hon’ble MAHENDAR KUMAR GOYAL, J.)

By way of this criminal appeal, the accused-appellant (for brevity, ‘the appellant’) has assailed the legality and validity of the judgment dated 20.02.2020 passed by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 and The Commissions for Protection of Child Rights Act, 2005 No.1, Baran (for brevity, ‘learned trial court’) in Sessions Case No.41/2018 (CIS No.334/2018) whereby the appellant has been convicted and sentenced as under:

1. **Section 363 IPC:** Three years’ rigorous imprisonment and fine of Rs.10,000/-; in default

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whereof, six months' additional simple imprisonment.

2. Section 354-A IPC: Three years' rigorous imprisonment and fine of Rs.10,000/-; in default whereof, six months' additional simple imprisonment.

3. Section 376(2)(i) IPC: Life imprisonment till remainder of natural life and fine of Rs.60,000/-.

All the sentences were directed to run concurrently.

The relevant facts, in a nutshell, are that Shri Suresh (PW3) submitted a written report (Ex.P3) at Police Station Shahbad on 08.01.2016 stating therein that he was a resident of village Sakrampur, Police Station Karahal and for last about 8 months, was employed as an agricultural labourer on Shri Ghanshyam Kirad's land. It was averred that on the agricultural field of Shri Prabhu Lal Jatav situated in the vicinity, Shri Bharat Sahariya was working as a labourer. It was alleged that in the previous evening at about 5:00 pm, Bharat Sahariya visited his 'tapri' (a makeshift hut) and took away his six years' old daughter "P" on the pretext of providing food. When she did not return till night, she was searched for but could not be found. It was averred that she returned in the morning at about 8:00 am and on being asked, she informed that the appellant had forcibly taken her to the jungle and ravished her. Based thereupon, an FIR No.3 dated 08.01.2016 was registered for the offences under Sections 363/376 IPC and Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the Act of 2012'). After

investigation, a charge-sheet under Sections 363, 376, 354A IPC and Sections 3/4, 5(j)/6 and 5(d)/6 of the Act of 2012 was filed against the appellant, whereunder charges were also framed against him. The appellant pleaded not guilty and claimed trial. After trial, he was convicted and sentenced, as stated hereinabove.

Assailing the impugned judgment, Shri Mukesh Sharma, learned counsel for the appellant, inviting the attention of this Court to the cross-examination of the juvenile 'P' (PW2), would contend that she had alleged therein, only of an attempt to commit rape and not of rape. He submitted that when she was recalled in the witness box on an application filed by the learned Special Public Prosecutor under Section 313 Cr.P.C., she did not support the prosecution case and denied having been subjected to rape or of outraging her modesty. Shri Sharma further contended that the father (PW3) and the mother (PW4) of the juvenile turned hostile and did not support the prosecution case. Learned counsel argued that in the Forensic Science Laboratory report dated 10.04.2017, no conclusion regarding semen grouping was given. He, therefore, prayed that the appeal be allowed, the impugned judgment dated 20.02.2020 be quashed and set aside and the appellant be acquitted of the charges framed against him.

Per contra, Shri Amit Punia, learned Public Prosecutor, opposing the submissions, contended that the judgment dated 20.02.2020 is well-reasoned, based on sound legal principles as well as cogent evidence available on record and, therefore, warrants no interference by this Court in the instant appeal. He, therefore, prayed for dismissal of the appeal.

Heard. Considered.

As per the impugned judgment, the appellant has been found, inter alia, guilty of subjecting a minor girl aged about 6 years to penetrative sexual assault.

A perusal of the impugned judgment reflects that after appreciating the report of the medical board which was proved by Dr. Rikesh Meena (PW1), Dr. Omprakash Malav (PW9) and Dr. Hemraj Nagar (PW10), age of the juvenile was determined to be 5-6 years which has not been disputed and denied before us by the learned counsel for the appellant. On that premise, it is not in dispute that the juvenile fell within the definition of 'child' on the date of commission of the alleged offences.

Now the question before us is as to whether the prosecution was able to establish, beyond reasonable doubt, that the appellant subjected the juvenile to penetrative sexual assault.

The juvenile 'P' appeared in the witness box as PW2. A perusal of her court deposition reflects that she was subjected to normal questioning to assess whether she was competent to depose before the Court. In her examination-in-chief recorded on 23.03.2017, in answer to the question put to her, she specifically stated that the appellant, who was her *mausa* (husband of her mother's sister), took her to the jungle, undressed her, outraged her modesty, bit her cheeks and subjected her to penetrative sexual assault. In her cross-examination, she was suggested by the defence that the appellant, except touching her vagina, did nothing else. She was further asked as to whether she bled from the vagina which was answered in affirmative. She specifically denied a suggestion that the appellant did not take her away and

that she had lodged a false case on asking of her parents. However, an application filed by the learned Special Public Prosecutor under Section 311 Cr.P.C. to recall her in the witness box to exhibit her 164 Cr.P.C. statement, was allowed by the learned trial court vide order dated 07.12.2019 pursuant whereof, she again appeared in the witness box on 11.12.2019. This time, during her cross-examination, accepting a suggestion that the appellant was her *mausa*, she further admitted that he did not subject her to rape or outrage her modesty. She also accepted a suggestion that the report was lodged on account of a dispute between the appellant and her father as also that her earlier statement was false which was made on asking of her father. Much emphasis has been laid down by the learned counsel for the appellant on this cross-examination to discredit her earlier testimony. However, we find no merit in the same. In her deposition dated 23.03.2017, she had levelled specific allegation against the appellant of taking her to the forest, biting her cheeks, of undressing her and of subjecting her to penetrative sexual assault, and her statement could not be shattered during her cross-examination; rather, it was suggested by the defence that except touching her vagina, the appellant did nothing else. Further, in her Section 164 Cr.P.C. statement recorded on 11.01.2016 (Ex.P21), i.e., on 3rd/4th day of the incident, she had levelled specific allegation against the appellant of ravishing her. Not only that, the allegation also stood medically and scientifically corroborated. Her medical examination report dated 08.01.2016 (Ex.P1) noted biting marks on her cheeks with red clotted blood and swelling which corroborated the specific allegation levelled by

PW2 in her examination-in-chief. A scratch injury measuring 10x3 cm was also found on the lumbar region of back. Slight redness was noticed in her vulva. Ex.P1 was proved by Dr. Rikesh Meena (PW1), Dr. Omprakash Malav (PW9) and Dr. Hemraj Nagar (PW10) and nothing could be elucidated during their cross-examination which could cast a doubt on the prosecution case. Furthermore, the FSL report dated 15.12.2016 (Ex.P19) demonstrates that the human semen was detected in Exhibit No.2, i.e., *salwar* of the juvenile worn by her at the time of incident and seized on 08.01.2016 vide memo Ex.P5. The chain of the custody of the article has not been disputed before us.

In the aforesaid factual context, we are not convinced that cross-examination of the juvenile (PW2) dated 11.12.2019 discredits her testimony dated 23.03.2017.

In almost similar circumstances, in **Selvamani vs. The State Rep. By The Inspector Of Police: 2024 INSC 393**, their Lordships, while dismissing the appeal preferred by the appellant against his conviction, were pleased to hold as under:

> "**8.** No doubt that the prosecutrix and her mother and aunt in their cross-examination, which was recorded three and a half months after the recording of the examination-in-chief, have turned around and not supported the prosecution case.
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> **9.** A 3-Judge Bench of this Court in the case of Khujji @ Surendra Tiwari v. State of Madhya Pradesh: 1991 INSC 153: (1991) 3 SCC 627, relying on the judgments of this Court in the cases of Bhagwan Singh v. State of Haryana: 1975 INSC 306: (1976) 1 SCC

389, Sri Rabindra Kuamr Dey v. State of Orissa: (1976) 4 SCC 233: 1976 INSC 204, Syad Akbar v. State of Karnataka: 1979 INSC 126: (1980) 1 SCC 30, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."

Further, referring to the earlier judgments in the cases of **C. Muniappan and Others vs. State of Tamil Nadu: (2010) 9 SCC 567, Vinod Kumar vs. State of Punjab: (2015) 3 SCC 220** and **Rajesh Yadav and Another vs. State of Uttar Pradesh: (2022) 12 SCC 200**, it was held as under:

"**13.** In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief."

In the instant case also, we find that in the written report (Ex.P3) submitted immediately after the incident, it was specifically alleged that the appellant had subjected the juvenile to rape. The juvenile, in her Section 164 Cr.P.C. statement (Ex.P21) which was recorded by the learned Judicial Magistrate, Kishangarh after satisfying himself as to competence of the witness to depose, reiterated the allegation and in her court deposition too recorded on 23.03.2017, she had levelled specific allegation against the appellant of taking her to the jungle and subjecting her to penetrative sexual assault. The allegations, as already noticed, were medically and scientifically corroborated. In these circumstances, even if she did not support the prosecution case in her cross-examination dated 11.12.2019 when she was recalled on an application filed under Section 311 Cr.P.C., we find no reason to disbelieve and discard her earlier testimony. Moreover, it is worth noticing here that indisputably, the appellant happens to be uncle (*mausa*) of the juvenile and after recording her statement on 23.03.2017, she was recalled in the witness box on 11.12.2019, i.e., after more than two years and eight months from her first deposition giving an ample opportunity to the defence to win her over.

Insofar as submissions raised by the learned counsel for the appellant are concerned, we find no merit in the same. Though, in a question put to her, the juvenile (PW2) answered that the appellant attempted to penetrate her vagina with his penis but, if her entire testimony is read holistically, no doubt is left that she, as a matter of fact, was subjected to rape/penetrative sexual

assault as defined under Section 375 IPC as also under Section 3 of the Act of 2012.

Further, since we have found the testimony of the juvenile to be wholly reliable and creditworthy, even if her parents as PW3 and PW4 have turned hostile, it does not cast any doubt on the prosecution story. Furthermore, the FSL report dated 10.04.2017, to the effect that the control samples were returned without examination since no conclusion regarding semen grouping could be drawn on garments of victim and accused, does not come to the rescue of the appellant as we have noticed that the testimony of the juvenile is wholly reliable and creditworthy and moreover, in the FSL report dated 15.12.2016 (Ex.P19), human semen was detected on the *salwar* of the juvenile and the appellant did not offer any explanation when suggested this incriminating piece of evidence during his examination under Section 313 Cr.P.C.

Section 29 of the Act of 2012 reads as under:

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

Thus, the statutory provisions contained in Section 29 raise a presumption as to complicity of an accused in the offences under Sections 3, 5, 7 and 9 of the Act of 2012 unless the contrary is proved. However, it is a well-reasoned principle that such

presumption arises only if the prosecution is able to prove the foundational facts necessary to constitute an offence under the aforesaid sections of the Act of 2012. As discussed hereinabove, the prosecution was able to prove that the appellant took away the juvenile, a minor girl aged about 5-6 years, from the lawful guardianship of her parents, not only outraged her modesty but also subjected her to penetrative sexual assault. Thus, a presumption arose as to guilt of the appellant under Section 29 of the Act of 2012 but the defence neither led any evidence to rebut the aforesaid presumption nor the accused offered any explanation in his plea recorded under Section 313 Cr.P.C.

In the conspectus of aforesaid analysis, we find no error in the impugned judgment of conviction passed by the learned trial court.

Heard the learned counsels on the sentence.

Learned counsel for the appellant contended that as per his arrest memo (Ex.P9), the appellant was aged about 28 years, his jail conduct is reported to be satisfactory and he has a family to support and, therefore, the sentence awarded under Section 376(2)(i) IPC to life imprisonment till remainder of natural life may suitably be modified to a limited period sentence.

Learned Public Prosecutor opposed the prayer.

As per the custody certificate dated 16.11.2026 furnished by Superintendent, Central Jail, Jodhpur, by that time, the appellant had served the actual sentence of 10 years, 10 months and 08 days and the sentence of 12 years, 03 months and 04 days including remission. His jail conduct was reported to be satisfactory from the date of conviction. Further, as per the report

dated 29.07.2026 furnished by SHO Police Station Karahal, District Sheopur, Madhya Pradesh submitted by the SHO Police Station Shahbad, District Baran along with his even dated report, the appellant has no criminal antecedent. As per his report dated 16.11.2026 furnished by SHO Police Station Shahbag, District Baran, while father of the appellant has expired, mother of the appellant, his wife, two daughters and a son aged 17 years, 15 years and 12 years, respectively are residing at Village Jhirniya Police Station Karahal, District Sheopur (Madhya Pradesh). Nothing has been brought to our notice to demonstrate that the appellant does not have reformative or rehabilitative tendency.

In **Pintu Thakur @ Ravi Etc. vs. State of Chhattisgarh: 2025 INSC 797**, while referring to Section 6 of the Act of 2012, the Hon'ble Supreme Court of India held as under:

> **"8.** However, the minimum sentence Under Section 6 of the POCSO Act is twenty years. Bearing in mind the fact that the appellants herein were in their early twenties when the incident took place and the fact that now they have completed only five years of incarceration and even for completion of the minimum sentence it would mean another fifteen years, we find that the appellants are now in their mid-twenties and even if the minimum sentence is to be completed they would be in their early forties.
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> **9.** We find that the interest of justice would be served in the instant case, if we reduce the sentence imposed on them from imprisonment for life which shall mean

imprisonment for the remainder of natural life to twenty years."

In **Deepankar Tikedar vs. State of Chhattisgarh: MANU/SC/1624/2025**, the victim was a minor girl who was merely 15 to 16 years of age at the time when the offence was committed. The Hon'ble Apex Court held as under:

"**7.** It is not in dispute that the Appellant herein has been convicted Under Section 376(3) of the Indian Penal Code and Section 6 of the POCSO Act and sentenced to undergo life imprisonment till natural death. The offence is also grievous. However, considering the age of the Appellant and also that there are no antecedents and further his conduct during custody has been satisfactory, the sentence of life imprisonment till natural death can be converted to limited period. We hereby reduce the sentence awarded to the Appellant to a fixed term of 25 years actual imprisonment without remission. This court can exercise such a power in view of law laid down in Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka."

In **Suptan Marak vs. State of Tripura: 2026 LiveLaw (SC) 715**, the victim was aged 12 years and was partially and mentally retarded girl. The appellant was aged about 33 years at the time of occurrence having no antecedents. The Hon'ble Supreme Court of India held as under:

"**11.** At the same time, we feel that considering the age of the appellant and lack of antecedents, as also for the fact that there

> is no material that his conduct in jail so far is not good, the sentence for remainder of the life which is the maximum sentence which can be imposed under sub-Section (2) of Section 4, deserves to be reduced to the minimum sentence of twenty years which can also be imposed under sub-Section (2) of Section 4 of the POCSO Act."

In the backdrop of aforesaid precedential law and the factual context narrated hereinabove, we are of the considered view that if the sentence awarded to the appellant under Section 376(2)(i) IPC is modified to a sentence of 25 years without remission, it would serve the ends of justice.

Thus, the appeal is partly allowed in terms that while maintaining the conviction of the appellant recorded by the learned trial court vide impugned judgment dated 20.02.2020, the sentence awarded to him under Section 376(2)(i) is modified and altered from life imprisonment till remainder of natural life to a sentence for the period of 25 years without remission.

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellant namely **Bharat S/o Motilal** is directed to furnish a personal bond in the sum of Rs.25,000/- and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in the event of Special Leave Petition being filed against the judgement or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

Pending application(s), if any, also stands disposed of accordingly.

(BHUWAN GOYAL),J (MAHENDAR KUMAR GOYAL),J

Crt_3/D-A/1/DIKSHA