

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 489 of 2023

and

CRLA No.483 of 2023

(In the matter of applications under Section 415(2) of Bharatiya
Nagarik Suraksha Sanhita, 2023 corresponding to Section 374(2) of
Criminal Procedure Code, 1973).

.... *Appellant (s)*

-versus-

State of Odisha

....

Respondent (s)

Advocates appeared in the case through Hybrid Mode:

For Appellant (s) : *Mr. Dipti Ranjan Swain, Adv.*
Mr. S.S. Ray (2), Adv.

For Respondent (s) : *Ms. Gayatri Patra, ASC*

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-08.04.2026

DATE OF JUDGMENT:-25.06.2026

Dr. Sanjeeb K Panigrahi, J.

1. Since both the CRLAs arise out of the same factual background and involve the same issue, those were heard together and are being disposed of by this common judgment.
2. In both the above-mentioned Criminal Appeals, the Appellants seek a direction from this Court to set aside the judgment of conviction and sentence passed by the learned Special Judge, Bolangir, challenging



the POCSO conviction, the finding of minority, and the reliance placed on the prosecutrix's testimony.

I. FACTUAL MATRIX OF THE CASE:

3. The brief facts of the case are as follows:

- (i) On the night of 03.04.2016, when the parents of the victim were away from village Salebarat, accused . visited her house in the evening on the pretext of purchasing a hen and paid Rs. 200/- for it. Later that night between 9 and 10 PM, both accused returned on the same pretext, and upon the victim opening the door, Abhilash caught hold of her, gagged her mouth, pulled and dragged her, and both accused together lifted and carried her to Gidhghar Pahada, a hillock near the village.
- (ii) The victim was kept confined at GidhgharPahada from the night of 03.04.2016 until the morning of 05.04.2016, spanning two nights and one day. During this period, both accused allegedly tied her, denied her food throughout, and repeatedly committed rape on her. On the morning of 05.04.2016, the accused brought her down from the Pahada and abandoned her near her house, whereafter she disclosed the entire incident to gathered villagers and subsequently to her parents, police, and the Magistrate.
- (iii) The father of the victim, Dambarudhar Sahu (PW-1), lodged an FIR on 04.04.2016 at Sindhekela PS stating that his minor daughter had gone missing from the house and that gold ornaments worth about one and a half bhari were also missing.



He suspected kidnapping by someone who had seduced her. The police registered PS Case No. 71/2016 under Section 363 IPC, and after investigation, submitted chargesheet on 05.07.2016 under Sections 363, 366, 376(D) IPC and Section 6 of the POCSO Act. The Special Court framed charges on 08.03.2017 under Sections 363, 366, 376(D), 376(2)(n) IPC and Sections 6 and 10 of the POCSO Act.

- (iv) The prosecution examined 18 witnesses in total. PW-2 is the victim and sole eyewitness. PW-1 and PW-3 are her father and mother who deposed about receiving telephonic news of her disappearance and what the victim disclosed upon her return. PW-4 and PW-5 are co-villagers who heard the account from the victim herself when she was abandoned near her house. PW-7 and PW-12 are medical officers who examined the two accused respectively, found them potent and fit for sexual consummation, but found no current signs of recent sexual intercourse, attributing the absence to regular bathing over the intervening two-day period. PW-13 is the medical officer who examined the victim on 05.04.2016 and found recent signs of sexual intercourse, rupture of hymen, fresh tear in hymenal opening, multiple abrasions on the right wrist and inner thighs, and clothes soiled with mud and whitish discharge; she assessed the victim's age as between 14 and 18 years.
- (v) PW-16 and PW-17 are the current and former Headmasters of Govt. PUPS Salebarat respectively, who produced and proved



the school admission register (Ext-13) showing the victim's date of birth as 17.12.1999, which would make her 16 years, 3 months and 17 days old on the date of occurrence. PW-18 is the investigating officer who proved the seizure of the admission register and other material documents. The defence examined no witnesses and took the plea of complete denial and false implication on account of prior enmity over a village pond construction dispute.

II. SUBMISSIONS ON BEHALF OF THE APPELLANTS:

4. The learned counsel for the Appellants respectfully and earnestly made the following submissions in support of his contentions:
 - (i) The appellants challenged the applicability of the POCSO Act primarily by attacking the evidentiary value of the school admission register. They argued that PW-17, the Headmaster who produced the register, expressly admitted in cross-examination that he could not state the basis on which the date of birth entry of 17.12.1999 was made, since he was not working at the school at that time. Placing reliance on the Supreme Court's decision in *Birka Shiva v. State of Telangana*¹, the appellants contended that a school admission register whose entries cannot be traced to any primary source document cannot be treated as conclusive proof of the victim's age.
 - (ii) The appellants contended that the trial court committed a fundamental legal error by invoking Section 34 of the POCSO

¹ (2024) SCC OnLine SC 3758



Act for determining the age of the victim, pointing out that the said provision governs age determination of the accused in conflict with law, not the victim. Applying it to the victim, they argued, was a wholly misconceived approach that rendered the entire POCSO conviction jurisdictionally infirm. They further relied on PW-13's medical opinion placing the victim's age between 14 and 18 years to argue that she could equally have been a major on the date of occurrence, taking her outside the definition of "child" under Section 2(1)(d) of the POCSO Act.

- (iii) On the question of voluntariness, the appellants relied on the contents of the FIR itself, arguing that PW-1's own written report stated that the victim had "gone somewhere" and that gold ornaments were found missing from the house, which they submitted was consistent with the victim having left voluntarily, possibly in elopement. They further pointed to the medical officer PW-13's finding that the victim was "habituated to sexual intercourse" as evidence that she was not a stranger to intercourse and had willingly accompanied the accused, thereby negating the foundational ingredient of force or enticement required under Section 363 IPC.
- (iv) On the identification and specific involvement of appellant Pramod Bariha, the appellants argued that the prosecutrix's own deposition did not mention his name in the initial and critical portions of her account describing the abduction and the assault. His name surfaced only in the concluding portion of her



narrative, specifically at the point of being "lifted," which the appellants submitted raised a strong doubt that his implication was an afterthought and possibly motivated by the pre-existing village enmity between the families.

- (v) On the general credibility of the prosecution case, the appellants argued that no independent eyewitness saw either the abduction or the confinement despite the occurrence taking place in a village setting and the Pahada being only approximately 2 km away. They highlighted that PW-4 and PW-5 were purely hearsay witnesses having heard the account from the victim herself after her return, and that Baidi Sahu, who allegedly witnessed the original hen purchase, was never examined by the prosecution, constituting a deliberate withholding of an available witness. The appellants also pointed to the complete absence of any village meeting after the incident, which they argued would normally follow such a grave event in a village community and whose absence indicated the story was fabricated at a later stage.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT (STATE):

5. The learned counsel for the State respectfully and earnestly made the following submissions in support of his contentions:
- (i) The State defended the school admission register as a public document maintained in regular course, produced from proper custody, and duly proved through multiple witnesses including



PW-16, PW-17, and PW-18. It submitted that under the Juvenile Justice Act framework made applicable through Section 34 of the POCSO Act, such a document carries a statutory rebuttable presumption of correctness as to the recorded date of birth. The State crucially pointed out that despite cross-examining PW-1, PW-2, and PW-18 at length, the defence never put a specific suggestion to any of them that the date of birth entry in the register was incorrect, fabricated, or entered on a wrong basis, which amounts in law to acceptance of that entry by the defence, leaving the presumption unrebutted.

- (ii) The State strongly defended the prosecutrix's testimony as the foundational pillar of the prosecution case, relying on the settled position in *State of H.P. v. Raghubir Singh*² and *State v. Gurmit Singh*³ that a conviction can be based solely on the testimony of the prosecutrix if it is consistent, credible, and withstands cross-examination. The State submitted that PW-2's account remained consistent across her statement to police, her Section 164 Cr.P.C. statement before the Magistrate, and her deposition before the trial court, and that her veracity was not materially shaken in cross-examination. It also relied on *State of Orissa v. Thakara Besra*⁴ to emphasise that non-examination of certain witnesses is not a fatal infirmity when those witnesses did not witness the commission of the offence itself.

²(1993) 2 SCC 622

³(1996) 2 SCC 384

⁴(2002) 9 SCC 86



- (iii) On the absence of physical signs on the accused, the State relied on the categorical depositions of PW-7 and PW-12, both qualified medical officers, who explained that the accused were examined two days after the alleged incident and had bathed regularly in the intervening period. Both doctors stated clearly that such bathing is sufficient to eliminate biological traces and symptoms of recent intercourse, and that this was precisely the reason no such signs were found on examination. The State argued that this expert medical explanation was unchallenged by any contrary scientific opinion from the defence, and therefore no inference favourable to the accused could be drawn from the absence of these markers.
- (iv) On the charge of gang rape under Section 376(D) IPC, the State relied on *Ashok v. State*⁵ to submit that it is not necessary to prove a completed act of rape by each individual accused separately. It is sufficient to establish that the accused acted in concert with a common intention to commit the offence, and each member of the group becomes liable for the act as if done by him alone. The State submitted that the prosecutrix's account of both accused participating jointly from the initial abduction through the entire period of confinement and assault established this common intention clearly and beyond reasonable doubt.
- (v) On the plea of false implication, the State submitted that no woman, particularly a minor girl, would voluntarily expose

⁵(2003) 2 SCC 143.



herself to the shame, trauma, and hostile cross-examination inherent in a rape trial merely to settle a score over a village pond dispute. It further submitted that the medical evidence of PW-13, including fresh hymenal tear, multiple abrasions, and soiled clothing examined only hours after the victim's return, constituted objective and independent corroboration that was wholly inconsistent with a narrative of voluntary elopement and consensual intercourse.

IV. ANALYSIS OF THE JUDGMENT OF THE LOWER COURT:

6. The Learned Trial Court made the following observations:

- (i) On age determination, the trial court adopted a doctrinally correct layered approach. It noted the oral evidence of PW-1 placing the victim at about 16 years 3 months and the medical estimate of PW-13 as contextual background, but ultimately anchored its finding on the school admission register (Ext-13) recording the date of birth as 17.12.1999. Applying the JJ Act framework via Section 34 of the POCSO Act and following the Supreme Court's direction in *Jarnail Singh v. State of Haryana*⁶, the court placed the burden of rebuttal on the defence. Since the defence failed to challenge the specific entry through any of the available prosecution witnesses during cross-examination, the court treated the entry as unrebutted. The defence's reliance on Birka Shiva was effectively distinguished on facts, since that case involved an active challenge to the basis of entry, whereas here

⁶ (2013) 7 SCC 263



no such challenge was ever put to any witness, making the present case clearly distinguishable on that ground.

- (ii) On the prosecution's argument that Section 34 was being applied to the victim rather than the accused, the trial court's reasoning, while somewhat compressed, was substantively sound. The court used Section 34 as a procedural gateway to import the JJ Act's age-determination hierarchy, which places school records at the top, and applied that hierarchy to resolve the question of the victim's age. The criticism that Section 34 applies only to accused persons is a legitimate textual argument, but the court's pragmatic borrowing of the procedure for the victim's age determination in the absence of a specific statutory provision for the same under the POCSO Act reflects a purposive interpretation aimed at protecting the child victim, which higher courts have generally endorsed in the post-Jarnail Singh era.
- (iii) On the appreciation of the prosecutrix's testimony and the hearsay evidence of PW-4 and PW-5, the trial court admitted the latter under Section 6 of the Indian Evidence Act as part of the same transaction, since the victim's immediate disclosure upon being abandoned near her house constituted part of the res gestae of the entire criminal transaction. The court found PW-2's testimony consistent, natural, and corroborated on material particulars by the medical evidence of PW-13.



- (iv) The court applied the principle in *Bimal Suresh v. ChaluverapinakeApal*⁷ and *State v. Gurmit Singh*⁸ that conviction can rest on sole testimony of the prosecutrix when it inspires confidence, and found that her evidence not only survived cross-examination but was materially supported by independent medical and physical evidence. The court also correctly invoked *Gurucharan v. State*⁹ to hold that absence of vaginal canal injuries does not negate rape when the victim is a minor, since the lack of violent resistance by a minor does not imply consent and is fully explicable by the victim's age and helplessness.
- (v) On sentencing and the statutory framework, the court's application of Section 42 of the POCSO Act to avoid awarding double punishment for the same act under both IPC and POCSO is legally accurate and reflects correct understanding of the non-obstante clause contained therein. The court also correctly held that the 2019 amendment to Section 6 of the POCSO Act enhancing minimum punishment to 20 years could not be applied to an offence committed in April 2016, since penal amendments are presumed prospective unless made expressly or by necessary implication retrospective, which this amendment was not.

⁷AIR 2003 SUPREME COURT 818

⁸(1996) 2 SCC 384

⁹AIR 1972 SC 2661



(vi) The award of 20 years RI under Section 376(D) IPC as the greater punishment, direction for concurrent running of sentences, set-off of pre-conviction detention under Section 428 Cr.P.C., victim compensation under Section 357 Cr.P.C., and DLSA compensation of Rs. 4 lakhs together reflect a comprehensive and victim-centric sentencing order. The one significant gap in the judgment is the absence of any independent discussion or analysis on the conviction under Section 376(2)(n) IPC, which requires proof of repeated rape by the same person on the same woman. Despite framing charge under this provision, the court convicted under it without separately evaluating the evidence specific to that ingredient.

V. COURT'S REASONING AND ANALYSIS:

7. Heard Learned Counsel for the parties and perused the documents placed before this Court.
8. The factual matrix has been set out in the impugned judgment and need not be recapitulated in extenso. Suffice it to state that the appellants stand convicted by the learned Special Judge, Bolangir under Sections 363, 366, 376(D) and 376(2)(n) of the Indian Penal Code, 1860 and Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter "the POCSO Act"). They have been sentenced to undergo rigorous imprisonment for twenty years and to pay a fine of Rs. 10,000/- each under Section 376(D) IPC, with default stipulations. Sentences on remaining counts have been



directed to run concurrently. Being aggrieved, the appellants have preferred this Criminal Appeal.

9. Having heard learned counsel for the appellants and the learned Additional Government Advocate for the State and having perused the entire trial court record, I find that the following issues arise for determination:

- a) Whether the prosecution has established that the victim was a "child" within the meaning of Section 2(1)(d) of the POCSO Act on the date of the occurrence?
- b) Whether the testimony of the prosecutrix (PW-2) is credible, consistent and sufficient to sustain conviction?
- c) Whether the ingredients of the offences under Sections 363, 366 and 376(D) IPC are established beyond reasonable doubt?
- d) Whether the conviction under Section 376(2)(n) IPC is sustainable?
- e) Whether the sentence awarded by the trial court calls for any interference?

10. The foundational question is whether the victim was below 18 years of age on 03.04.2016, the date of the occurrence. The POCSO Act defines "child" under Section 2(1)(d) as any person below the age of eighteen years. The prosecution relies on three strands of evidence: (a) the oral testimony of PW-1, the father, who stated that the victim was about 16 years and 3 months old; (b) the medical opinion of PW-13, who assessed the victim's age as between 14 and 18 years; and (c) the



school admission register (Ext-13) maintained at Govt. PUPS, Salebarat recording the victim's date of birth as 17.12.1999.

11. The appellants have attacked the evidentiary value of Ext-13 primarily on the ground that PW-17, the former Headmaster who produced the register, admitted in cross-examination that he could not state the basis on which the date of birth entry was made, since he was not posted at the school at the relevant time. Reliance was placed on *Birka Shiva v. State of Telangana* (supra), to urge that a school register whose foundational basis is unknown cannot constitute reliable proof of age.
12. I have considered this submission carefully. The law on age determination of a child victim under the POCSO Act has been authoritatively laid down by the Supreme Court in *Jarnail Singh v. State of Haryana*¹⁰ wherein the Court approved the hierarchy prescribed under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, placing the school register or matriculation certificate at the top of the evidentiary hierarchy. The Rule 12(3) specifically reads as follows:

"In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;*
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*

¹⁰ (2013) 7 SCC 263



(iii) *the birth certificate given by a corporation or a municipal authority or a panchayat.*”

13. Likewise, in *Shah Nawaz v. State of U.P.*¹¹, the Supreme Court held that a date of birth entry in a school register, being a document maintained in the regular course of business of the institution and produced from proper custody, carries a presumption of correctness under, unless the contrary is affirmatively established by the party challenging it.
14. The critical distinction between the present case and *Birka Shiva* (supra) lies in the manner the challenge was mounted. In that case, the defence actively challenged the basis of the entry through specific cross-examination and adduced material to demonstrate that the entry was unreliable. In the present case, the defence adopted a fundamentally different strategy. Despite prolonged cross-examination of PW-1, PW-2, PW-16 and PW-18, at no point was a specific suggestion put to any witness that the date of birth entry of 17.12.1999 in Ext-13 was incorrect, fabricated, or entered on an erroneous basis. This omission is of decisive significance.
15. In fact, *Laxmibai (Dead) Thr. L.Rs v. Bhagwantbuva (Dead) Thr. L.Rs*¹² the Supreme Court reiterated the settled rule that where a party seeks to dispute the correctness of a witness’s statement, the witness must be specifically confronted with that part of the testimony in cross-examination. In the absence of such confrontation, the credibility of the witness cannot later be impeached on that point, and the

¹¹ (2011) 13 SCC 751

¹² (2013) 4 SCC 97



unchallenged part of the evidence may be relied upon by the Court.

The Court held as follows:

"Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity."

16. In the present case, the failure of the defence to challenge the specific entry, when ample opportunity existed, leaves the statutory presumption attaching to Ext-13 wholly un rebutted.
17. As regards the appellants' objection that the trial court erroneously invoked Section 34 of the POCSO Act, which textually governs the age determination of "a person accused of any offence," I note that while the textual criticism has some force, the trial court's approach was substantively sound. The court used Section 34 as a procedural conduit to import the well-established JJ Act hierarchy for age determination. In the absence of a dedicated statutory provision under the POCSO Act for determining the age of the child victim, courts have consistently and pragmatically applied the same hierarchy. The Supreme Court's approval of this hierarchy in *Jarnail Singh* (supra)



was not confined to the accused alone but was stated as a general principle for age determination in cases involving children. I see no jurisdictional infirmity in the trial court's approach.

18. The medical opinion of PW-13 placing the victim's age "between 14 and 18 years" does not detract from this finding. It is settled law that medical opinion on age is at best an approximation and must yield to documentary evidence when available. The range of 14 to 18 years is entirely consistent with the date of birth of 17.12.1999, which would make the victim 16 years, 3 months and 17 days old on 03.04.2016. Accordingly, I hold that the prosecution has established beyond reasonable doubt that the victim was a child within the meaning of Section 2(1)(d) of the POCSO Act on the date of the occurrence. Issue (i) is answered in the affirmative.
19. Now, the Court must move to the issue of the credibility of the prosecutrix. The appellants have attacked the credibility of PW-2 on several grounds: the absence of independent eyewitnesses, the alleged delayed naming of appellant Pramod Bariha in her account, the finding of PW-13 that she was "habituated to sexual intercourse," and the non-examination of Baidi Sahu, the alleged witness to the hen purchase.
20. The law governing the evidentiary value of a prosecutrix's testimony is well settled. In *Gurmit Singh* (supra) the Supreme Court held that the testimony of a victim of sexual assault stands on the same footing as the testimony of an injured witness. The Court held as follows:



“The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl of a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. 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. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another persons’ lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form



of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

21. I have examined the testimony of PW-2 with care. Her account is detailed and specific: she describes the evening visit of Abhilash Bariha on the pretext of purchasing a hen for Rs. 200/-, the return of both accused between 9 and 10 PM, the manner in which Abhilash caught hold of her and gagged her mouth while Pramod assisted in lifting and carrying her to Gidhghar Pahada, the tying of her hands, the denial of food over two nights and one day, and the repeated commission of rape by both accused. This account remained consistent across her statement under Section 161 Cr.P.C., her Section 164 statement before the learned Magistrate, and her deposition before the trial court. During extensive cross-examination, the defence could not elicit any material contradiction or omission that would shake the foundations of her testimony.
22. The submission that appellant Pramod Bariha's name surfaced belatedly in her narrative is, upon careful reading of the deposition, not borne out. PW-2 specifically stated that both accused came together to her house between 9 and 10 PM, and that while Abhilash caught hold of her, both of them together lifted and carried her to the Pahada. The natural sequence of narration, describing the acts of each participant as they occurred, does not amount to belated implication.
23. It must be made clear that the testimony of a victim of sexual assault cannot be treated as if it were the testimony of an accomplice. The



prosecutrix is not a participant in the crime; she is the person against whom the crime is alleged to have been committed. To approach her evidence with an initial presumption of suspicion only because the allegation relates to a sexual offence would be legally unsound. It is, in fact, an anomaly that such doubt is often suggested in cases of sexual offences, though no similar presumption is ordinarily applied to victims of other crimes. A victim of assault, robbery, kidnapping or attempt to murder is not treated as inherently suspect merely because he or she is the complainant. There is no reason why a different and more burdensome standard should be applied to a prosecutrix. The defence is entitled to test her evidence through cross-examination, but it cannot ask the Court to begin from a position of distrust merely because she is the victim of the offence alleged.

24. Moreover, the finding of PW-13 that the victim was "habituated to sexual intercourse" is equally unavailing to the appellants. It is firmly settled that evidence of prior sexual experience is irrelevant to the question whether the prosecutrix was raped on the date of the occurrence. Section 53A of the Indian Evidence Act and the proviso to Section 146 of the same Act, inserted by the Criminal Law (Amendment) Act, 2013, expressly prohibit drawing any inference from a victim's prior sexual experience as to her consent or credibility in a rape trial. In any event, the victim being a child of 16 years, the question of consent is entirely immaterial by virtue of Section 3 read with Section 5 of the POCSO Act.



25. This Court finds the said submission wholly untenable. It is difficult to appreciate how such an argument could have been advanced at all, in the face of the clear statutory position and the settled principles governing appreciation of evidence in sexual offences. What legal consequence can possibly follow from the observation that the prosecutrix was “habituated to sexual intercourse”? Does it disprove the occurrence alleged? Does it establish consent? Does it render the testimony of a minor victim less credible in law? The answer to each of these questions is plainly in the negative.
26. The argument seeks to shift the focus from the conduct of the appellants to the supposed past conduct of the victim, which is impermissible. A criminal trial cannot be converted into an inquiry into the character of the prosecutrix. The only relevant issue is whether the offence alleged was committed by the appellants on the date and in the manner stated by PW-2. In the present case, the prosecutrix was a minor, and therefore the plea becomes even more unsustainable. The appellants cannot be permitted to draw any advantage from such a legally irrelevant and plainly misconceived submission, and the same is rejected.
27. The submission, in substance, is a poor attempt to make a legally irrelevant circumstance do the work of evidence. It answers none of the material facts in the prosecution case. It does not disprove the taking away of the prosecutrix, it does not explain the confinement, it does not meet the allegation of sexual assault, and it certainly does not make the testimony of a sixteen-year-old child unreliable. It is, at best,



a desperate effort to grasp at a medical observation and use it to cast aspersions on the victim. Such an argument is precisely the kind of victim-blaming which the law does not permit. The appellants are on trial for their alleged conduct. The prosecutrix is not on trial for her character. This Court cannot countenance an attempt to divert attention from the accusation by placing a minor victim under moral scrutiny. The submission is therefore deprecated and rejected.

28. Regarding the non-examination of Baidi Sahu, the Supreme Court in *Thakara Besra*(supra) held that non-examination of a witness who is not an eyewitness to the commission of the offence itself does not constitute a fatal infirmity in the prosecution case. Baidi Sahu allegedly witnessed only the purchase of the hen in the evening, which is not even a disputed fact. His examination would not have added materially to the prosecution case. Similarly, PW-4 and PW-5, to whom the victim narrated the events immediately upon being abandoned near her house, were correctly admitted by the trial court as res gestae witnesses under Section 6 of the Indian Evidence Act. Their testimony constitutes the immediate and spontaneous declarations of the victim forming part of the same transaction and lends natural corroboration to her account.
29. I am satisfied that the testimony of PW-2 is consistent and trustworthy. It inspires judicial confidence and stands corroborated on material particulars by independent medical and physical evidence. Issue (ii) is answered in the affirmative.



30. Now, the Court must move to the third issue. Section 363 IPC punishes kidnapping from lawful guardianship. Under Section 361, whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, out of the keeping of the lawful guardian of such minor without the consent of such guardian, is said to kidnap such minor from lawful guardianship. The victim being a female minor of 16 years at the date of the occurrence, the statutory threshold is satisfied. The evidence of PW-2 establishes that she was taken from her house, where she was in the constructive keeping of her parents (PW-1 and PW-3), against her will and without the knowledge or consent of her parents.
31. The contention that the victim went voluntarily, based on the FIR's reference to her having "gone somewhere" and gold ornaments being missing, is without substance. The FIR was lodged by PW-1 on 04.04.2016 when the victim had not yet returned and the full facts were not known to him. It is settled law that the FIR is not an encyclopaedia of the prosecution case and that subsequent revelations do not impeach it. In *Amish Devgan v. Union of India*¹³, the Supreme Court held that FIR is not a detailed chronicle of all intricate and minute details of an offence. The relevant excerpts are produced below:

"Acronym FIR, or the First Information Report, is neither defined in the Criminal Code nor is used therein, albeit it refers to the information relating to the commission of a cognisable offence. This information, if given orally to an

¹³AIRONLINE 2020 SC 930



officer in-charge of the police station, is mandated to be reduced in writing. Information to be recorded in writing need not be necessarily by an eye-witness, and hence, cannot be rejected merely because it is hearsay. Section 154 does not mandate nor is this requirement manifest from other provisions of the Criminal Code. Further, FIR is not meant to be a detailed document containing chronicle of all intricate and minute details. In Dharma Rama Bhagare v. State of Maharashtra,¹¹⁸ it was held that an FIR is not even considered to be a substantive piece of evidence and can be only used to corroborate or contradict the informant's evidence in the court."

32. The contention regarding voluntary departure is further belied by the unshaken testimony of PW-2 that Abhilash caught hold of her, gagged her mouth, and both accused physically lifted and carried her to the Pahada. The consent of a minor is, in any event, wholly immaterial in law for the purpose of Section 361 IPC.
33. Section 366 IPC requires proof that the kidnapping or abduction was with the intent that the victim may be compelled or induced to have illicit intercourse. The sequence of events, namely the abduction of the victim at night, her confinement at a secluded hillock for two nights and one day, and the commission of repeated rape during that period, leaves no room for doubt that the taking was with the intent contemplated by Section 366. The ingredients of Section 366 IPC are fully established.
34. Turning to Section 376(D) IPC, which deals with gang rape, I note that the offence is made out where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention. The Supreme Court in *Ashok* (supra) held that it is not



necessary to prove a completed act of penetrative sexual assault by each individual accused separately. Where two or more persons act together with a common intention to commit rape, each is liable for the act done by any of them in furtherance of that common intention.

35. In the present case, PW-2's testimony establishes that both appellants came together, abducted her jointly, confined her at the Pahada, and both committed rape on her during the period of confinement. The joint participation from inception to completion of the criminal design establishes the common intention beyond reasonable doubt. The absence of physical signs of recent intercourse on the accused, as noted by PW-7 and PW-12, has been satisfactorily explained by both medical officers, who categorically stated that regular bathing over the intervening two-day period before examination was sufficient to eliminate biological traces. This expert explanation was not challenged by any contrary medical evidence from the defence side, and no adverse inference can be drawn against the prosecution on this account. The ingredients of Section 376(D) IPC are fully established.
36. The defence plea of false implication on account of village enmity over a pond construction dispute deserves to be rejected. A woman, particularly a minor, would not ordinarily subject herself to the ordeal, humiliation and hostile cross-examination inherent in a rape trial merely to settle scores with her adversary. The absence of any village meeting after the incident is of no consequence; there is no rule of evidence or common experience that mandates such a meeting as a precondition for the credibility of a complaint. The medical evidence



of PW-13, documenting fresh hymenal tear, multiple abrasions on the right wrist and inner thighs, and clothes soiled with mud and whitish discharge, examined only hours after the victim's return, constitutes powerful objective corroboration wholly inconsistent with a theory of fabrication. Issue (iii) is answered in the affirmative.

37. Now this Court must turn to the fourth issue, which pertains to the Conviction under Section 376(2)(n) of IPC. Section 376(2)(n) IPC, as it stood at the relevant time, prescribes enhanced punishment where a person commits rape repeatedly on the same woman. The essential ingredient of this provision is that the same accused must be shown to have committed rape on the same victim on more than one occasion. The trial court, while framing charge and recording conviction under this provision, did not undertake any independent analysis of whether the evidence established repeated acts of rape by each individual accused on the victim.
38. I have examined the evidence on this point. PW-2 stated that "both accused repeatedly committed rape on her" during the period of confinement spanning two nights and one day. This general statement, while establishing the overall course of conduct, does not particularise how many times each individual accused committed the act, at what intervals, and in what sequence. The expression "repeatedly" in the victim's account, read in the context of a joint confinement involving two accused, makes it inherently difficult to segregate individual acts attributable to each accused for the purpose of Section 376(2)(n).



39. However, this shortfall is of no practical consequence to the final result. The conviction and sentence under Section 376(D) IPC, which carries the same minimum punishment of 20 years rigorous imprisonment (post-Criminal Law Amendment Act, 2013), already stands sustained. The trial court itself awarded the substantive sentence under Section 376(D) and directed all other sentences to run concurrently. In the interest of precision, the conviction under Section 376(2)(n) IPC is set aside, without this having any bearing on the substantive sentence or any other conviction.
40. Lastly, this Court must turn to the final issue, which pertains to the requirement of the interference into the sentence of the trial court. The trial court awarded rigorous imprisonment of twenty years with a fine of Rs. 10,000/- under Section 376(D) IPC, which is the minimum prescribed sentence. The trial court applied Section 42 of the POCSO Act to avoid double punishment for the same act under both IPC and POCSO. It also correctly held that the 2019 amendment to Section 6 of the POCSO Act enhancing the minimum punishment to twenty years could not be applied retrospectively to an offence committed in April 2016. The direction for concurrent running of sentences, set-off of pre-conviction detention under Section 428 Cr.P.C., victim compensation under Section 357 Cr.P.C., and DLSA compensation of Rs. 4,00,000/- reflect a lawful and comprehensive sentencing order. I find no ground for interference with the sentence.

VI. CONCLUSION:

41. For the foregoing reasons, this Court holds as follows:



- a) The conviction of both appellants under Sections 363, 366 and 376(D) of the Indian Penal Code, 1860 and under Sections 6 and 10 of the POCSO Act, 2012 is hereby confirmed.
- b) The conviction under Section 376(2)(n) of the Indian Penal Code is set aside.
- c) The sentence of rigorous imprisonment for twenty years with fine of Rs. 10,000/- under Section 376(D) IPC, with all other sentences running concurrently, is confirmed.
- d) The direction for set-off of pre-conviction detention under Section 428 Cr.P.C., victim compensation under Section 357 Cr.P.C., and DLSA compensation of Rs. 4,00,000/- shall remain undisturbed.
- e) The default stipulations as imposed by the trial court shall continue to operate.

42. It is made clear that the setting aside of the conviction under Section 376(2)(n) IPC does not result in any alteration of the sentence imposed upon the appellants. The substantive sentence of rigorous imprisonment for twenty years with fine of Rs.10,000/- under Section 376(D) IPC, being the operative sentence, stands confirmed. Since the remaining sentences were directed to run concurrently, the modification indicated above does not reduce, vary, or otherwise affect the total sentence to be undergone by the appellants.
43. The Criminal Appeals are, accordingly, partly allowed to the extent of setting aside the conviction under Section 376(2)(n) IPC, and are **dismissed** in all other respects. The impugned judgment and order of



conviction and sentence passed by the learned Special Judge, Bolangir is confirmed subject to the modification indicated above.

44. The appellants, who are stated to be in custody, shall continue to serve the sentence as imposed.
45. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 25th June, 2026/*