



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

JUDGMENT RESERVED ON 05.02.2024

JUDGMENT DELIVERED ON 09.04.2024

CRA No. 1188 of 2022

- Lalchand Rohra S/o Shri Jhethamal Rohra Aged About 40 Years R/o Surya Vihar, Phase - 2, Yadunandan Nagar Tifra, Police Station - Sirgitti, District : Bilaspur, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station - Sirgitti, District : Bilaspur, Chhattisgarh

---- Respondent

For Appellant

: Ms. Mamta Jaiswal, Advocate

For Respondent /State

: Mr. Sangharsh Pandey, Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Arvind Kumar Verma, Judge

CAV JUDGMENT

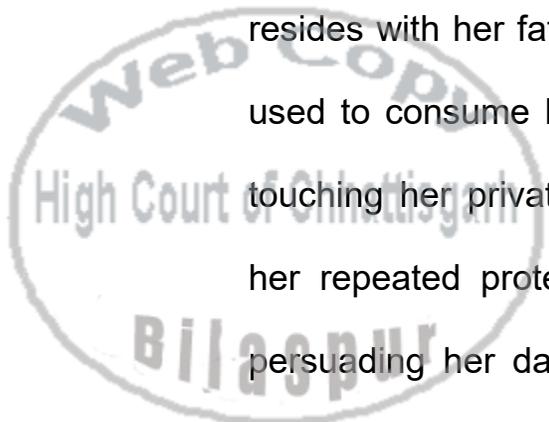
Per Arvind Kumar Verma, J.

This appeal is directed against the impugned judgment of conviction and order of sentence dated 23.06.2022 passed by the learned First FTSC (POCSO) Additional Sessions Judge, Bilaspur in Special Sessions Case No. 15/2021 whereby the appellant has been held guilty for commission of the offence under Section and sentenced as described below :



Conviction	Sentence
Under Section 324 IPC	Undergo RI for one year with fine of Rs. 300/- in default of payment of fine to further undergo RI for three months
Under Section 5(L) (M) (N) /06 of the Protection of Children from Sexual Offences Act, 2012.	Undergo imprisonment for life with fine of Rs. 500/- in default of payment of fine to further undergo RI for 4 years.
Both the sentences were ordered to run concurrently	

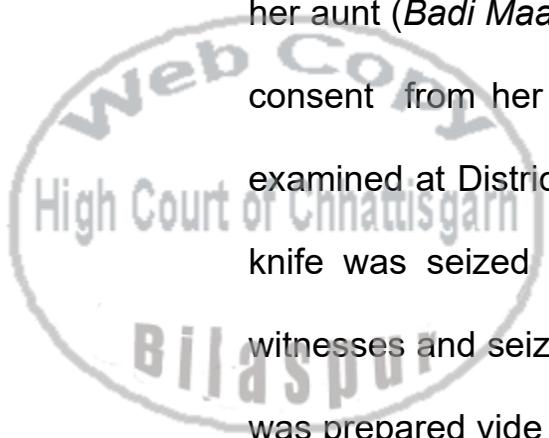
2. Prosecution case in brief is that the complainant, a resident of Sirgitti, Bilaspur lodged the FIR alleged that she works as a maid and resides in Sirgitti, District Bilaspur. It is further alleged that the victim resides with her father/appellant and his wife has died. The appellant used to consume liquor and thereafter ravish her minor daughter by touching her private part and also sexually exploited her even after her repeated protests. On 28.01.2021, at about 1.00 pm. he was persuading her daughter for the heinous crime and the victim was trying to run away from there but he caught her tightly which was seen by the people of the nearby vicinity. Thereafter, the appellant left the victim and went to consume liquor. The victim came out in fear and then the women of the neighborhood including the complainant have asked her to inform whether her father was committing *maar peeth* with her and then on the same day at about 11.00 p.m., again the appellant tried to ravish his daughter and then she came to her and narrated about it to the complainant and the women of the neighborhood that her father was doing the diabolical act and it was not committed once but he subjected his own minor daughter to repeated acts of rape since three years after getting intoxicated. It is





further alleged that the victim was sent to the house of her aunt (*Badi Maa*) and the next morning, she was again left in the house of the appellant by her aunt (*Badi Maa*), the victim was annoyed and thereafter the Lady Protection Team was informed about the incident and on the oral testimony of the victim against the appellant, Crime No. 59./2021 was registered under Sections 376(2)(F), 376(2)(n), and 323 IPC and Section 6 of the POCSO and FIR Ex.P-15 was registered against the appellant.

3. During investigation, on 29.01.2021, statement of the victim and her aunt (*Badi Maa*) was recorded vide Ex.P-11 and P-22. After taking consent from her aunt (*Badi Maa*) vide Ex.P-21 she was medically examined at District Hospital, Bilaspur and the report is Ex.P-12. One knife was seized from the possession of the appellant before the witnesses and seizure memo was prepared vide Ex.P-7. Arrest memo was prepared vide Ex.P-16 and appellant was arrested after informing the family members vide Ex.P-17. Memo Ex.P-19 was prepared and the victim was sent in the custody of Child Welfare Committee, Bilaspur. On 30.01.2021, spot map was prepared by Tahsildar vide Ex.P-13. Statement of the victim under Section 164 Cr.P.C. was recorded vide Ex.P-18. Notice was sent to the Headmaster of RNM Public School, Tifra for providing the school admission and discharge register and seized vide Ex.P-4 and Ex.P-2 and P-3 by which the computerized hard copy, admission form and birth certificate Article A-1 were seized and supurdnama was made vide Ex.P-5. After completion of investigation, charge sheet was filed against the



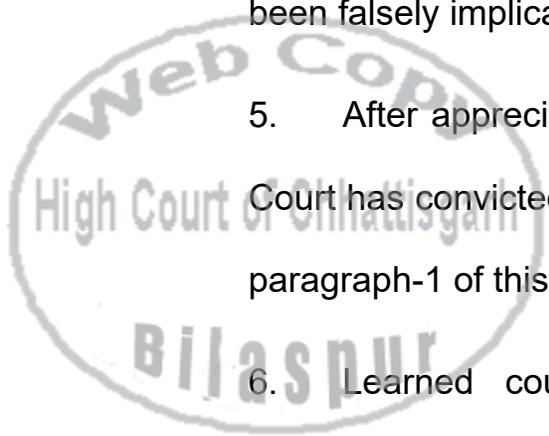


appellant under sections 376(2)(f)(n), 376(a)(b) and section 5(L)(M) (N)/6 of the Protection of Children from Sexual Offences Act and Section 324 of the IPC and thereafter committed the case to the Additional Sessions Judge/First FTSC(POCSO), Bilaspur for trial and hearing and disposal in accordance with law.

4. In order to establish the charge against the appellant, the prosecution has examined 14 witnesses. Statement of the appellant was also recorded under Section 313 Cr.P.C., in which he denied the charge levelled against him and stated that he is innocent and has been falsely implicated in the case.

5. After appreciation of evidence available on record, learned trial Court has convicted the appellant and sentenced him as mentioned in paragraph-1 of this appeal. Hence this appeal by the appellant.

6. Learned counsel for the appellant has argued that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. It is submitted that the doctor who has medically examined the victim has not found any internal or external injury on the person of the victim. It is further submitted that the learned trial court has erred in convicting the appellant, in as much as the appellant has been falsely implicated in the case. It has been argued that the MLC report Ex.P-12, the doctor has not found any fresh external injury on the private parts of the victim with regard to the sexual assault. The prosecution has therefore, failed to prove that the accused had sexually assaulted his daughter. He further submits that except victim, there is no credible evidence in support of her





statement and the medical evidence also does not corroborate, therefore, only on the basis of deposition of victim holding the appellant guilty by the learned trial Court is not sustainable and the alleged offence of the IPC and the POCSO Act are not made out against the appellant, hence, he is entitled for acquittal.

7. Per contra, learned State counsel submits that the victim was minor and there is no reason to disbelieve her testimony since there was no reason for her to falsely implicate her father. He further submits that the law enunciated with regard to the conviction of the accused for the offence as mentioned above on the basis of the sole testimony of the victim is a well settled proposition in view of the various decisions of the Hon'ble Supreme Court. Lastly, he submits that the clear creditworthy and unshattered testimony of the victim/prosecutrix is sufficient to establish the case of the prosecution and the same is reliable.

8. We have heard learned counsel for the parties, considered their rival submissions made hereinabove and examined the material on record, documents and perused the entire evidence.

9. The issue that arises for consideration in the present appeal is - whether the testimony of the victim/prosecutrix deserves acceptance and whether the prosecution has established the case of the appellant beyond reasonable doubt.

10. It is pertinent to observe that the question whether conviction of the accused can be based on the sole testimony of the victim in cases of sexual assault/rape is no longer *res integra*. The Hon'ble Supreme



Court has dealt with the issue in a catena of judgments and has held that the sole testimony of the prosecutrix if found reliable can be the sole ground for convicting the accused and that the creditworthy testimony of the victim in cases of such nature deserves acceptance.

11. Insofar as, age of the victim on the date of the commission of the offence is concerned, she was admittedly 11 years old at the time of the unsavory incident. Shagufta Yasmin (PW-5) is the Assistant Head Mistress of the RNM Public School, Tifra, Yadunandan Nagar where the victim/prosecutrix was studying. She has deposed that she has brought the school admission and discharge register. In the said register, the date of birth of the prosecutrix is mentioned as 21.10.2010 at Sl. No. 855 and that she was admitted in KG-1 in the year 15.04.2015. In the admission form Ex.P-3(c), the declaration by parent/guardian was signed by the accused/appellant and the age of the victim has been entered as 21.10.2010. The prosecution has resultantly proved that the victim was a minor at the time of alleged sexual assault and that victim was less than 12 years of age, when she was sexually assaulted by the accused.

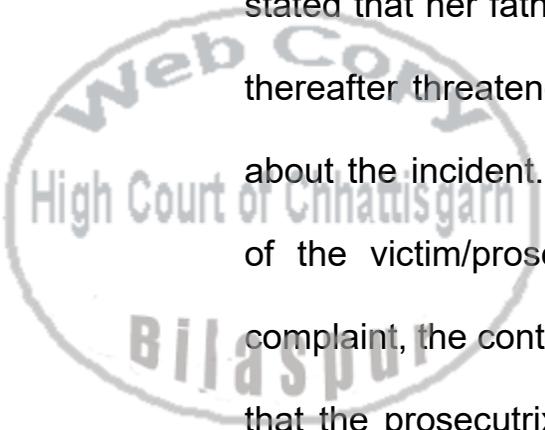
12. Further, upon perusal of the testimony made by the victim, in her statement under Section 164 Cr.P.C it is observed that she has clearly stated that her father used to ravish her with his devilish act. In her deposition before the court too, she has been consistent and stated that her father used to touch and insert his finger into her vagina. There is, therefore, no reason to disbelieve the testimony of victim which is consistent and reliable and has a ring of truth in it. The



victim was only 11 years old when she was examined and the subtle variation that exists is understandable in the testimony of a 11 year old child, who is grappling to comprehend the complexity and enormity of what has actually happened with her.

13. From perusal of the testimony made by the prosecutrix which has remained unshattered in cross-examination unequivocally reveals that the commission of the offence by the appellant is described in clear and unambiguous words and her testimony has remained consistent during cross examination. The prosecutrix has clearly stated that her father-the appellant had committed rape upon her and thereafter threatened her with dire consequences if she told anyone about the incident. Further, upon a plain appraisal of the testimonies of the victim/prosecutrix and the neighbour who had lodged the complaint, the contention raised on behalf of the appellant to the effect that the prosecutrix is a tutored witness, cannot be accepted and is *dehors* any merit. The appellant has failed to controvert the testimony of the prosecutrix, which has remained unchallenged despite being subjected to thorough cross examination. Now if we peruse the statements of the witnesses, it would be clear that the offence as alleged against the appellant establishes that the appellant has committed the offence.

14. Victim (PW-2) in her statement has deposed that her father-appellant used to consume liquor and thereafter ravished her which was not liked by her. She has further deposed that when she was going to the Child Protection home, her aunt (*Badi Maa*) was





pressurizing her that if she will not give the statement in favour of the appellant, then they will consume poison and die. She has deposed that on one occasion her father threatened her to kill on the point of knife but she did not disclose it to anyone. She has stated that she disclosed about the devilish act and touching her private parts by the appellant to the neighbours. She has deposed that her aunt (*Badi Maa*) has threatened her to give statement in favour of the appellant. In cross-examination, she has deposed that the relation with her maternal grandmother and her father-appellant were not good as they had suspicion that he had killed their daughter i.e. mother of the victim.

15. Smt. Yashoda Soni (PW-1) has stated that she is the neighbour of the victim who was 11 years old. She has deposed that mother of victim died at the time of delivery and she has deposed that the appellant used to commit *maar peeth* with the victim and on the relevant day in the month of January at about 1.00-2.00 pm. the appellant was committing *maar peeth* with her and at that time, women of the neighbourhood peeped from the window and saw that the appellant was holding the hand of the victim and she was trying to escape. After two hours of the incident, victim came out and informed that her father used to threaten her by showing knife from which she got injured. Thereafter on the same day, at about 11.00 p.m, the report was lodged at the police station. In cross-examination of this witness, she remained firm. Similar statement has been made by Smt. Sangita Sharma (PW-3), Smt. Prameela Yadav (PW-4), Neha



Pandey (PW-4) and Meena Gouraha (PW-9) are the neighbours of the victim/prosecutrix. Dr. Kamla Patnaik (PW-11) is the medical officer who has medically examined the prosecutrix and gave the report Ex.P-12. She has opined that there was no internal or external injury found on the body of the victim of sexual assault. Aunt (*Badi Maa*) of the victim/prosecutrix (PW-14) has deposed that the victim is her niece and at the time of incident, she was aged about 9 years. She has deposed that on the date of incident ie. 27-28 January 2021, his neighbours informed her by telephonic call that the appellant is committing *maar peeth* with the victim and to take her from there and then the victim came to her house. Thereafter, after taking consent, the police took her to CIMS Hospital Bilaspur.

16. Now coming to the medical evidence adduced; the medical opinion contained in the MLC report Ex.P-12, dated 29.01.2021, it was opined that "no fresh external injury marks present; hymen was intact". The position of law on the question, whether absence of injuries found on the person of the prosecutrix, in a case of rape, would result in a finding of acquittal, is well settled. Dealing with this issue in a case of a child rape, and relying on earlier decisions of the Apex Court, while upholding the conviction under Section 376 IPC, made the following observations:

"38. ...In the case of Ranjit Hazarika Vs. State of Assam, reported in (1998) 8 SCC 635, the opinion of the doctor was that no rape appeared to have committed because of the absence of rupture of hymen and injuries on the private part of the prosecutrix, the Apex Court took a view that



the medical opinion cannot throw overboard an otherwise cogent and trustworthy evidence of the prosecutrix.”

17. The Hon'ble Supreme Court, in **State of Rajasthan Vs. Om Prakash**, reported in **(2002) 5 SCC 745**, dealt with a similar question in the case of a child rape, while upholding the conviction of the appellant therein and reversing the decision of the High Court in that behalf, relied upon earlier decisions and made the following observations:

"13. The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim is a well-settled proposition. In *State of Punjab Vs. Gurmit Singh* [(1996) 2 SCC384], referring to *State of Maharashtra v. Chandra Prakash Kewalchand Jain* [(1990) 1 SCC 550] this Court held that 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 person's 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. It has also been observed in the said decision by Dr Justice A.S. Anand (as His Lordship then was), speaking for the Court that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. 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





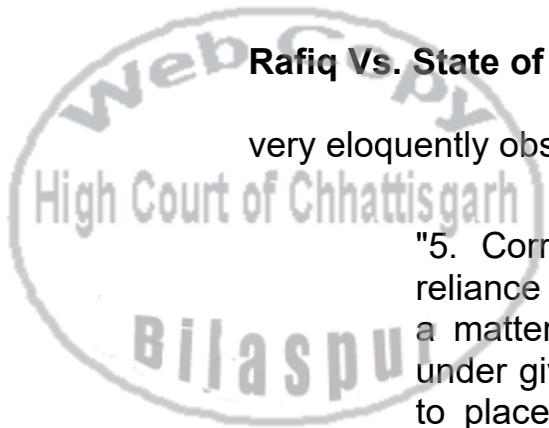
injury.

14. In *State of H.P. Vs. Gian Chand*[(2001) 6 SCC] Justice Lahoti speaking for the Bench observed that the court has first to assess the trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted on though there may be other witnesses available who could have been examined but were not examined."

18. Justice Krishna Iyer, whilst documenting his observations on absence of injuries on the victim, as well as, importance of corroborative evidence in rape cases, in his celebrated judgment in **Rafiq Vs. State of Uttar Pradesh reported as (1980) 4 SCC 262** has very eloquently observed as follows:

"5. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances. Indeed, from place to place, from age to age, from varying lifestyles and behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of precedential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of the aggressor or the aggressed.

6. When rapists are revelling in their promiscuous pursuits and half of humankind -- womankind -- is protesting against its hapless lot, when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative testimony, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as





probable."

19. The Apex court in **B.C.Deva Vs. State of Karnataka reported in (2007) 12 SCC 122**, in spite of the fact that no injuries were found on the person of the prosecutrix, yet finding her version to be reliable and trustworthy, the Apex Court upheld the conviction of the accused. The Court observed that:

"18. The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though the report of the gynecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted."

20. Thus, it is needless to state that, corroboration of the testimony of the prosecutrix, is not an essential requirement in a case of rape, and the same is not a *sine qua non* to bring home the guilt of the accused. The testimony of the prosecutrix, if well founded & trustworthy, is by itself sufficient to convict the accused.

21. Further, let it not be forgotten that this is a case of rape on a girl child, only 11 years old at the time of commission of the offence, by her own father. Nothing can be more heinous than a crime committed on the person of a child by her father, the one who is duty-bound to provide her unflinching protection from all harm.

22. It is trite to state that it is necessary for the Courts to have a



sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong. A special safeguard has been provided for children in Article 39 of the Constitution of India which, *inter alia*, stipulates that the State shall, in particular, direct its policy towards securing that the tender age of the children is not abused and that children are given environment opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment. [Ref: State of Rajasthan Vs. Om Prakash (supra)].

23. In a solemn verdict, a special court in New Delhi sentenced a man to a life imprisonment sentence for raping and impregnating his minor daughter. The court deemed this act as a '*diabolical crime*' that warranted no leniency. Even otherwise, the diabolical act was not committed once but he subjected his own minor daughter to repeated acts of rape. The prosecution meticulously laid out the charges against the man, invoking the stringent provisions of the Protection of Children from Sexual Offences (POCSO) Act, 2012 for aggravated penetrative sexual assault. Additionally, he was also charged under the penal laws for rape, reflecting the severity and gravity of his actions.

24. In the case of **Alakh Alok Srivastava Vs. Union of India & Ors. (2018) 17 SCC 291**, in para 14 and 20, it is observed as under:

“14. At the very outset, it has to be stated with authority that the PocsO Act is a gender neutral



legislation. This Act has been divided into various chapters and parts therein. Chapter II of the Act titled “Sexual Offences Against Children” is segregated into five parts. Part A of the said Chapter contains two sections, namely, Section 3 and Section 4. Section 3 defines the offence of “Penetrative Sexual Assault” whereas Section 4 lays down the punishment for the said offence. Likewise, Part B of the said Chapter titled “Aggravated Penetrative Sexual Assault and Punishment therefor” contains two sections, namely, Section 5 and Section 6. The various subsections of Section 5 copiously deal with various situations, circumstances and categories of persons where the offence of penetrative sexual assault would take the character of the offence of aggravated penetrative sexual assault. Section 5(k), in particular, while laying emphasis on the mental stability of a child stipulates that where an offender commits penetrative sexual assault on a child, by taking advantage of the child's mental or physical disability, it shall amount to an offence of aggravated penetrative sexual assault.”

“20. Speaking about the child, a three Judge Bench in M.C. Mehta v. State of T.N. (1996) 6 SCC 756 “1. ... “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.”

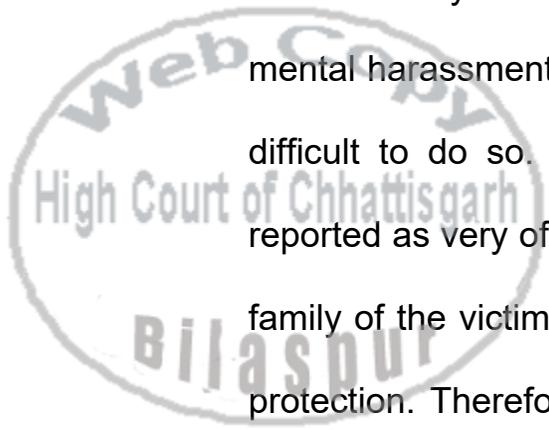
25. It has been further held that “Children are precious human resources of our country; they are the country’s future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society.”

Therefore, the children and more particularly the girl child



deserve full protection and need greater care and protection whether in the urban or rural areas. As observed and held by this Court in the case of State of **Rajasthan Vs. Om Prakash, (2002) 5 SCC 745**, children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. In the case of **Nipun Saxena v. Union of India, (2019) 2 SCC 703**, it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.

26. In the present case it is to be noted that the accused who was ravished his minor daughter who was aged about 11 years on numerous occasions for three years which demonstrates the mental state or mindset of the accused. The accused instead of showing fatherly love, affection and protection to the child against the evils of the society, rather made her the victim of lust. It is a case where trust has been betrayed and social values are impaired. Therefore, the





accused as such does not deserve any sympathy and/or any leniency.

27. Further it has laid down 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 lacunae. It was held thus:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant.”

28. In the case of **State (NCT of Delhi) v. Pankaj Chaudhary, {(2019) 11 SCC 575}**, it was observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It was further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises. In paragraph 29, it was observed



and held as under:

“29. It is now well- settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra [Vishnu v. State of Maharashtra, (2006) 1 SCC 283]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K. [State of Rajasthan v. N.K., (2000) 5 SCC 30].

29. The Supreme court in the matter of **State of UP Vs. Sonu Kushwaha (2023) 7 SCC 475** has held as under :

12. The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology “shall not be less than....”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the



mind of the victim/child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court

30. When considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version. In **State of H.P. vs. Shree Kant Shekar (2004) 8 SCC 153** the Hon^{ble} Supreme Court held as follows:

“21. 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 on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on 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.”

31. On these lines, the Hon^{ble} Supreme Court in **Shivasharanappa and Others vs. State of Karnataka, (2013) 5 SCC 705** observed as follows:

““17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible,

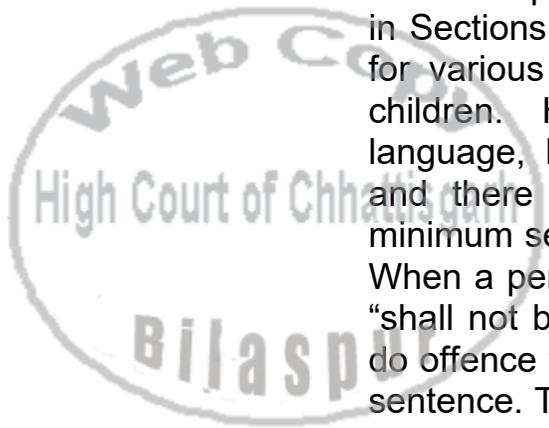


truthful and is corroborated by other evidence brought on record. Needless to say as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable.”

32. The Supreme court in the matter of **State of UP Vs. Sonu**

Kushwaha (2023) 7 SCC 475 has held as under :

12. The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology “shall not be less than...”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the victim/child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court.”





33. In a recent judgment of the Odisha High Court, in the matter of **X Vs. State of Odisha 2023 SCC Online Ori 5409**, where the Court perused the victim's statement made under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC') wherein it was stated as to how the accused outraged her modesty and attempted to commit rape on her on different dates. Regarding the overt act committed by the accused, the Court relied on the victim's statement which was also corroborated with her mother's evidence who witnessed attempt to rape on victim. Therefore, the Court said that the ingredients of the offence under Section 354, 354-A(2) and 354-B of the IPC are attracted against the accused. It has observed that :

“even after more than seven decades of independence, unfortunately the women of this country and more particularly, the minor girls have not got true freedom from the vulture like lust of perpetrators of sex crimes. However, the crimes are not end in themselves, rather those have spiraling effects on not only the psyche of victim but also on her and her family's social repute. These factors often impede the hapless victims to come forward and report the crime”....

The Court viewed that the ingredients of the offence under Section 376(2)(n) of the IPC which deals with punishment for commission of rape repeatedly on the same woman, would not be attracted, since the victim had stated that it was only on one occasion, the accused had inserted his finger into her private part. The Court said that Section 376(2)(f) which provides punishment for a person who being a relative, guardian or teacher of, or in a position of trust or authority towards the woman, commits rape on such woman would be attracted, since the accused being the father of the victim did not hesitate to commit such preposterous and bestial act upon his minor



daughter and the victim was completely helpless as her father, who is naturally entrusted with the noble duty of caring and protecting her, could not have control over his lust and tried to quench the sexual thirst by exploiting her. Further, the Court said that this degrading act of the accused stupefies the judicial conscience of the Court as it is unthinkable to even comprehend that in a country where women are traditionally viewed as an incarnation of the God and daughters are worshipped as Devi, such heinous acts are being committed by a father. The Court also stated that “a daughter needs a father to be the standard against which she will judge all men. When the father who is the creator of the girl child and supposed to act as her protector, takes the role of the predator, it would be sheer betrayal of someone’s trust and faith and has got serious impact on humanity.” therefore, the Court said that in the matter at hand, there was no doubt that being in a position of authority and trust, the accused misused his position and sexually exploited his innocent minor daughter and raped her. Thus, the Court viewed that there was no infirmity or illegality in the impugned judgment and the accused was rightly found guilty under Sections 354, 354-A(2), 354-B, 376(2)(f)(i)(k) of the IPC and Sections 6 and 10 of the POCSO Act. The Court acquitted the accused of offence under Section 376(2)(n) of the IPC, however, the sentence awarded by the Court below remained the same. Therefore, the criminal appeal was dismissed for being devoid of merits.”

34. Reverting to the instant case, the victim was consistent in her statement and has asserted that her father-appellant on several occasions sexually exploited her even after her repeated protests. The statement of the prosecutrix has been consistent from the beginning to the end, from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. Thus, in the case in



hand, there was no doubt that being in a position of authority and trust, the accused being the father of the victim, sexually exploited his minor daughter aged about 11 years. The oral testimonies of the prosecution witnesses (PWs-1,2,3,4,8 and 9 i.e. victim and the neighbours) on the culpability of the convict got credence unerringly pointing to his guilt. On appreciating the evidence on record and coming to the conclusion that the guilt of the appellant under Sections 324 IPC and Sections 5(L)(M)(N)/6 of the POCSO has been conclusively proved.

35. In view of the foregoing discussion, in our considered view, the prosecution has established the guilt of the appellant beyond reasonable doubt. There is no contravention in the position of law and there can be no quarrel with the proposition that when the testimony of the prosecutrix is creditworthy, trustworthy, unimpeached and inspires confidence; the conviction of the appellant can be sustained based solely on it.

36. Considering the evidence of the victim, who had to bear the brunt of the depravity **POCSO Act** is a Special Act where the legislature has made stringent provisions to protect the interests of victims who are minors.

37. The prosecution presented compelling evidence to establish beyond doubt the culpability of the accused, leaving no room for ambiguity regarding his guilt. Consequently, the sentence awarded to the appellant by the Learned Trial Court also does not warrant any



interference. Therefore, the judgment and order of conviction dated 23.06.2022 is hereby upheld. The appeal accordingly, stands **dismissed**.

38. The appellant is reported to be in jail since 29.01.2021 being the date of arrest. He is directed to serve out the sentence as awarded to him by the trial court.

39. Let the trial court record and copy of this judgment be sent to the trial court forthwith for necessary information and its compliance.

Sd/-

(Arvind Kumar Verma)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

suguna

