



2025:KER:75636

CRL.A NO. 2389 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 13TH DAY OF OCTOBER 2025 / 21ST ASWINA, 1947

CRL.A NO. 2389 OF 2024

CRIME NO.359/CB/TVM/2019 OF CRIME BRANCH, THIRUVANANTHAPURAM,

AGAINST THE JUDGMENT DATED 30.11.2024 IN SC NO.261 OF 2020 OF
ADDITIONAL SESSIONS JUDGE FOR THE TRIAL OF CASES RELATING TO
ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN &
CHILDREN), THIRUVANANTHAPURAM

APPELLANT:

SHINOJ
AGED 41 YEARS
S/O REVINDRAN, T.C.14/338, 'PANCHAMI', VARUVILA,
NEAR PUTHENKADA JUNCTION, THIRUPURAM VILLAGE,
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM., PIN -
695502

BY ADVS.

SHRI.SREEJITH S. NAIR
SRI.V.S.THOSHIN
SRI.SATHEESH MOHANAN
SMT.MAHIMA
SRI.AKHIL SUSEENDRAN
SHRI.SEKHAR G. THAMPI
SHRI.ABHISHEK NAIR M.R.
SHRI.SASTHAMANGALAM S. AJITHKUMAR (SR.)

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031

SMT. SEENA.C. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 12.12.2024
AND HAVING BEEN FINALLY HEARD ON 18.08.2025, THE COURT ON
13.10.2025 DELIVERED THE FOLLOWING:

**‘C.R’****JUDGMENT**

This appeal is filed challenging the conviction and sentence imposed on the appellant in S.C.No.261/2020 on the file of the Additional Sessions Judge for the Trial of Cases relating to Atrocities and Sexual Violence against Women and Children, Thiruvananthapuram (hereinafter referred to as ‘the trial court’). S.C.No.261/2020 arises out of Crime No.359/CB/TVM/2019 of Crime Branch, Thiruvananthapuram unit which was registered alleging commission of offences under Sections 376(2)(k), 376(2)(l), 376(2)(n), 376 of the Indian Penal Code (hereinafter referred to as ‘the IPC’) and Sections 4 r/w 3(a), 6 r/w 5(j)(i), 6 r/w 5(l), 6 r/w 5(k), 6 r/w 5(p), 10 r/w 9(j)(i), 10 r/w 9(l), 10 r/w 9(p), 12 r/w 11(ii), 12 r/w 11(iii) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as ‘the POCSO Act’).

The brief facts:-

2. The appellant (hereinafter referred to as the accused) is a physiotherapist by profession. During the period relevant for the purposes of this case, he was employed as a physiotherapist at the KIMS Hospital, Thiruvananthapuram (initially), and thereafter, he established his independent practice and set up a centre with the name ‘TIMS’ near



Ayurveda College Junction in Thiruvananthapuram. The victim in this case (PW1) was, at that time, a child suffering from certain mental and physical disabilities. In order to address certain physical disabilities of the victim, she was required to undergo physiotherapy. Her parents were referred to the accused, who agreed to offer his services. The victim was treated by the accused at her residence for the period between 2011 and 2019. According to the prosecution, the accused had sexually abused and exploited the victim from August 2014 till about March 2019.

3. The prosecution examined PWs 1 to 15 and marked Exts. P1 to P36 documents to establish its case against the accused. DWs 1 to 4 were examined for the defence, and Exts. D1, D1(a), D2, D2(a), D2(b), D2(c), D2(d), D2(e), D2(f), D3, and D4 documents were marked for the defence.

4. On an appreciation of the evidence adduced in the case, the trial court concluded that the prosecution has succeeded in establishing that the accused committed offences punishable under Sections 4 r/w 3(a), 6 r/w 5(j)(i), 6 r/w 5(k), 6 r/w 5(l), 6 r/w 5(p), 10 r/w 9(j)(i), 10 r/w 9(l), 10 r/w 9(p), 12 r/w 11(ii), and 12 r/w 11(iii) of the POCSO Act and under Sections 376(2)(k), 376(2)(l), and 376(2)(n) of the IPC. The accused was found not guilty of the offence punishable under Section 376C of the IPC. The trial court sentenced the accused to rigorous imprisonment for ten years and to pay a fine of Rs.2,00,000/- (Two lakhs only) for the offence



punishable under Section 6 r/w 5(j) (i) of POCSO Act; to rigorous imprisonment for ten years and to pay a fine of Rs.2,00,000/- (Two lakhs only) for the offence punishable under Section 6 r/w 5(k) of the POCSO Act; to rigorous imprisonment for ten years and to pay a fine of Rs.2,00,000/- (Two lakhs only) for the offence punishable under Section 6 r/w 5(l) of the POCSO Act; to rigorous imprisonment for ten years and to pay a fine of Rs.2,00,000/- (Two lakhs only) for the offence punishable under Section 6 r/w 5(p) of the POCSO Act; to rigorous imprisonment for two years and to pay a fine of Rs.25,000/- (Twenty five thousand only) for the offence punishable under Section 12 r/w 11(ii) of the POCSO Act; to rigorous imprisonment for two years and to pay a fine of Rs.25,000/- (Twenty five thousand only) for the offence punishable under Section 12 r/w 11(iii) of the POCSO Act. The trial court did not impose any punishment for the offences under Sections 4 r/w 3, 8 r/w 7, 10 r/w 9(j)(i), 9(l), and 9(p) of the POCSO Act and Sections 376(2)(k), 376(2)(l), and 376(2)(n) of the IPC in view of the provisions contained in Section 42 of the POCSO Act. The substantive sentence of imprisonment was directed to run concurrently. In the event of failure to pay the fine amounts, a default sentence was also imposed by the trial court. The court permitted the set-off for the period from 25.05.2019 to 17.07.2019 against the substantive sentence of imprisonment. It is further directed



that, if the fine amount is paid or realised, a sum of Rs. 8,00,000/- (Eight lakhs only) shall be released to the victim as compensation under Section 357(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C').

Submissions of counsel:

5. Sri. Sasthamangalam S. Ajith Kumar, learned senior counsel, instructed by Sri. Sreejith S. Nair, appears for the appellant. He contends in the main that this is a case where there is no evidence that the accused had sexually abused the victim during the period of her minority. It is submitted that even if this court were to believe the case of sexual abuse, a holistic view of the evidence tendered for the prosecution as also the evidence tendered for the defence, including messages and videos sent to the accused after the case was registered and after the accused was released from detention as an under-trial prisoner, will indicate that the relationship, if at all, between the accused and the victim was a consensual relationship and that too after the victim attained the age of majority. It is submitted that since the victim had denied sending any messages etc. to the accused after he was released on bail at the pre-trial stage and since it had thereafter been proved to the contrary, the victim's testimony is wholly unreliable and in the absence of corroboration, no conviction can be sustained based on her sole testimony. It is submitted



that the victim is not a 'sterling' witness. It is submitted that Ext.P5 is the report of a Medical Board consisting of doctors serving the Government, in different disciplines, including psychiatry, constituted to assess the disability of the victim in the year 2016. It is submitted that, if the case of the prosecution that sexual abuse had commenced from August 2014 is correct, the Medical Board would have made some observations. It is submitted that the victim had not revealed any instances of sexual abuse to the members of the Medical Board, and this fact is crucial to determine whether the case of the prosecution that the victim was sexually abused from August 2014 is correct or not. It is submitted that a reading of the statement given by the victim under Section 164 of the Cr.P.C. before the Magistrate (Ext.P3) indicates that though the victim had initially stated that she had been abused from August 2014, she later confirmed that the abuse was from December 2018 to March 2019. It is submitted that if the dates mentioned in the latter part of Ext.P3 were to be taken into consideration, the alleged abuse is only after the date on which the victim had attained the age of majority, in which case, the question of consent becomes relevant.

6. The learned senior counsel would urge that the alleged case of sexual abuse was revealed initially by the victim to PW2, a psychologist attached to the KIMS Hospital, Thiruvananthapuram. It is submitted



that PW2 had reported the matter to her senior, Dr. Jameela Warriar, who was examined as PW3. It is submitted that the accused, who had initially been working in the KIMS Hospital, had left the services of the KIMS Hospital and had started his independent practice, as a result of which several patients who were earlier being treated at the KIMS Hospital had stopped going to the KIMS Hospital and had started attending physiotherapy sessions at the establishment started by the accused, and there was every reason for those associated with the KIMS Hospital to raise baseless allegations against the accused. It is submitted that the conduct of the victim after the accused was released on bail at the pre-trial stage indicates beyond doubt that the relationship between the victim and the accused could be consensual and only after the victim had attained the age of majority. It is submitted that the evidence of DW2 indicates that, considering the medical condition of the victim, she may have conditions such as psychosis, epilepsy, anxiety and depression. It is submitted that there is a possibility that the victim was having hallucinations and was making statements about sexual abuse from August 2014 only on account of such hallucinations. It is submitted that the defence has established that the evidence tendered for the prosecution was inconclusive and there is nothing to indicate that the accused had committed the alleged offences.



7. It is submitted that, though the principle of reverse burden of proof is applicable at a trial for commission of offences under the POCSO Act, the question of requiring the accused to adduce evidence to show that an offence had not been committed will arise only if the foundational facts are established by the prosecution. It is submitted that in the facts of the present case, the prosecution has miserably failed in establishing the foundational facts for a successful prosecution under the provisions of the POCSO Act, and therefore, the principle of reverse burden cannot apply in this case. It is submitted that if the relationship between the accused and the victim was consensual and after the victim had attained the age of majority, none of the offences under the IPC are attracted. It is submitted that unless there is clear evidence, this Court should not convict the accused for the offences alleged against him.

8. Smt. Seena C., the learned Public Prosecutor, submits that there is no merit whatsoever in the contentions raised by the learned counsel for the accused. It is submitted that the evidence of the victim (PW1) and PWs 2 and 3 (Dr. Praseetha and Dr. Jameela Warriar) read together will indicate that the victim has been consistent in her stand that she was sexually abused for the period from August 2014 to March 2019. It is submitted that the theory of a false case having been foisted on the accused on account of professional rivalry cannot be accepted, as there is



no material to suggest so. It is submitted that it is the duty of every person who becomes acquainted with the fact of commission of an offence under the POCSO Act to immediately report the matter to the Police, and this is all that has been done by Dr. Praseetha (PW2) and Dr. Jameela Warriar (PW3). It is submitted that in the latter part of the statement given under Section 164 Cr.P.C before the Magistrate, the victim is speaking of certain specific sexual acts, and the dates mentioned towards the concluding part of the statement only refer to such specific sexual acts and do not in any manner contradict her evidence in the box. It is submitted that even if there is any minor embellishment in the dates mentioned in the statement recorded under Section 164 of the Cr.P.C, the same cannot be a ground to acquit the accused. It is submitted that PW1 is a sterling witness, and that all the witnesses for the prosecution have spoken in one voice. It is submitted that the evidence tendered establishes the case beyond all reasonable doubt and therefore, the accused is not entitled to an acquittal.

9. Both sides have also taken me through the oral evidence tendered by the witnesses for the prosecution, as well as the witnesses for the defence. They have also referred to the Exhibits marked in evidence to the extent necessary.

***Findings of the Court:-***

10. On a consideration of the submissions made across the bar and after perusing the records, I conclude that this appeal must be dismissed, confirming the conviction and sentence imposed on the accused. The reasons for such a conclusion are given below.

11. The victim was examined in the case as PW1. Given the health condition of PW1, a *voir dire* test was conducted. The formal questions put to PW1 were answered rationally, and therefore, the trial court concluded that the witness was competent to testify. The victim deposed that her date of birth is 28.08.1998. The attested copy of the Secondary School Leaving Certificate (SSLC certificate) of the victim was marked as Ext.P1. The prosecution has succeeded in proving the date of birth of the victim to be 28.08.1998 in the manner contemplated by the law. To be fair to the learned Senior Counsel for the accused, it must be recorded that he has not attempted to argue that the date of birth of the victim has not been proved in accordance with the law. The victim deposed that the accused, her physiotherapist since May 2011, had been treating her at her residence. She deposed that from August 2014, while she was studying in the 8th standard and was around 16 years old, the accused started sexually abusing her by displaying pornographic videos on his phone and asking her to do the same. She deposed that multiple



times during the years 2014 to 2019, the accused had asked her to remove her clothes and stand behind the door of the room where the physiotherapy sessions were undertaken, and had inserted his penis into her vagina. The victim deposed that she would usually give a missed call to the accused whenever her mother went out to purchase groceries, etc., as instructed by the accused and whenever the victim's mother was not in the house, the accused would make the victim lie down on the cot and would commit penetrative sexual assault, including oral sex. It is stated that the accused used to help the victim to stand, jump and walk when her mother was in the house. The victim deposed that in 2018, the accused called the victim on a video call, asked her to remove her clothes and to perform sexual acts, and even exposed his genitals to her. The victim further testified that the accused repeatedly assaulted her sexually. It is stated that the victim's brother scolded the victim and seized her phone due to her continuous chatting with the accused. During that time, she was taking sessions for remedial therapy at KIMS Hospital under Dr. Praseeda (PW2). She disclosed her dire situation to Dr. Praseeda when the doctor enquired about her excessive use of the mobile phone. Dr. Praseeda then inquired about the matter in detail, and the victim narrated the entire story of sexual abuse by the accused. Dr. Praseeda informed Dr. Jameela (PW3), the Head of the Department,



and both of them asked the victim about the incidents, and they later conveyed the details to the victim's mother. A complaint was filed. The victim identified the accused in the dock. She further testified that she had also reported the incident to the doctor who medically examined her. She further testified that fear prevented her from disclosing these facts to her mother. In cross-examination, the victim reiterated that she had been sexually assaulted since the age of 16 and that she felt ashamed while watching the pornographic videos. The victim stated that there were occasions when the accused played pornographic videos while her mother was sitting in the hall. She admitted that she had never told her mother about the incidents because she feared it would upset her, and she acknowledged that her relationship with the doctor was unhealthy. She deposed that soon after she turned 16, she used to give missed calls to the accused. During the year 2018, the accused started video calls with her. The victim deposed that she never messaged the accused after the complaint was filed. She rejected multiple suggestions made by the defence counsel regarding WhatsApp messages sent to the accused using her mother's mobile phone, but expressed her willingness to send further messages. The victim confirmed her mother's mobile number. She further deposed that during physiotherapy sessions, whenever assistance was required, the victim's mother helped the accused. The victim



confirmed that Elizabeth and Susmitha (stated to be colleagues of the accused) were not present with the accused at any time. The victim also admits that she attended the marriage of the accused.

12. PW2 (Dr. Praseeda) was working as a Remedial Tutor/Psychologist and PW3 (Dr. Jameela Warriar) was working as a Consultant Psychologist at KIMS Hospital, Thiruvananthapuram. Dr. Praseeda was giving remedial education classes twice a week to the victim and had known the victim since 26.11.2018. She deposed that on 22.04.2019, the victim's mother specifically had shared with her an incident where the victim's brother had taken away the phone being used by the victim due to excessive use of the phone, and consequently, the victim became distressed and attempted to commit suicide by cutting her veins. The victim's mother asked Dr. Praseeda to find out why the victim was always glued to the phone. Dr. Praseeda enquired about it and spoke to the victim in detail about her mother's concern. Then, the victim disclosed the entire story of sexual abuse at the hands of the accused. Dr. Praseeda learnt that the victim had deleted the messages sent to the accused, as instructed by the accused, and was threatened not to disclose the incident. Dr. Praseeda asked the victim's mother to return the next day, during which time she had also informed Dr. Jameela, the Head of the Department. The following day, Dr. Praseeda and Dr. Jameela



shared the information obtained from the victim with the victim's mother. Later that day, the doctors spoke with the victim, met with her parents and one of her brothers, and subsequently, Dr. Jameela filed a complaint after discussing the matter with the management of KIMS Hospital. During cross-examination, PW2 deposed that if it had been an incident of sexual abuse that took place suddenly, it would have been easier to make out; however, since the abuse had been over a period of time, it was not identified during earlier sessions. She added that after being questioned about the incident, the victim became depressed and came to realise that she had done something wrong. Dr. Jameela Warriar (PW3) deposed that she had known the victim since 2013. She deposed that the victim underwent various treatments in KIMS Hospital till 2015, and thereafter shifted her treatment to TIMS (the institute of the accused) and later continued her sessions with psychologists at KIMS Hospital in the year 2018. She deposed regarding the incidents that happened on 22.04.2019, in detail. PW3 then conducted an assessment using the interview method to determine whether the victim's statements were influenced by delusion, hallucination or disorientation. She examined the victim's statements and concluded that they were not the product of delusion, hallucination or disorientation, but were grounded in reality. Later, with the permission of the management of KIMS



Hospital, she made a complaint to the Director General of Police (DGP) (Ext P6). PWs 2 and 3 were also of the opinion that the incidents of sexual abuse described by the victim were not products of any delusion.

13. PWs 5 & 6 are the parents of the victim. The mother of the victim (PW 5) testified that the victim had disabilities affecting her ability to speak and walk. The date of birth of the victim was stated to be 28.08.1998. She also deposed regarding the treatments given to the victim in various hospitals, including PRS Hospital, NIMHANS (Bangalore), KIMS Hospital (Thiruvananthapuram), and TIMS (the institute of the accused). She further testified that the victim's father met the accused through his friend. Subsequently, the accused had served as the victim's physiotherapist since 2011. It was deposed that the accused used to treat the victim six days a week, and at his convenience, conducted physiotherapy sessions in the master bedroom of the house where PW5 and PW6 were residing, along with the victim. She further testified that the victim initially used a Nokia make phone. Later, in 2018, the victim began using her father's old Samsung make phone, which was subsequently lost. From December 2018 onwards, the victim used a brand-new Redmi make mobile phone. She further deposed that because the victim was using her mobile phone excessively, her brother confiscated the mobile phone, causing substantial distress to the victim,



resulting in a violent outburst. She then informed the victim's remedial tutor, Dr. Praseeda, and requested her to inquire about the reason behind the victim's excessive phone usage. She testified that Dr. Praseeda asked her to come the next day. The next day, she came to know from Dr. Praseeda and Dr. Jameela Warriar about the sexual abuse inflicted upon her daughter by her physiotherapist (the accused). She further deposed that while the victim was attending her classes at KIMS, she informed her husband and younger son. Later that day, she checked the victim's phone and found messages sent by the accused and the victim. When PW5 confronted the victim, she (the victim) informed her that in 2014, the accused had shown her a pornographic video and asked her to do the same. She testified that the accused had repeatedly inserted his genitals into the victim's private parts and her mouth. She deposed that she only learnt of these facts when the doctors (PW2 and PW3) informed her. She further deposed that the victim later understood what she did was wrong after Dr. Praseetha explained it to her. She also testified that the victim's mental state worsened following this, and they stayed away for a while to support her recovery. Subsequently, PW5, along with her husband (PW6) and PW3, made a complaint to the DGP. She also identified the accused in the dock. In cross-examination, she testified that the accused used to come to their house to treat the victim when no one else was



present. She answered a suggestion stating that it didn't concern her that a young doctor treated her daughter in her absence, because the victim regarded the accused as an elder brother. She deposed that she and her husband fully trusted the accused and never imagined that he would betray that trust. The victim's mother also testified that neither she nor the victim contacted the accused after he was released on bail. She further confirmed that the phone number suggested by the defence counsel was her number. PW5 also denied the defence counsel's suggestion regarding the messages, videos, and voice notes sent from her phone. PW5 also rejected the defence counsel's suggestion that Elizabeth and Susmitha (stated to be colleagues of the accused) had always assisted the accused during physiotherapy sessions for the victim. PW6 (father of the victim) testified that the victim revealed the entire incident only during her 20th remedial session with Dr. Praseetha and at the prompting of Dr. Praseetha. PW6 deposed that he has been told that the victim has a condition called cerebral palsy, and does not know if a person with this condition can have delusions, hallucinations and disorientation. Further, he testified that the victim did not have any prior incidents of delusions, hallucinations or disorientation.

14. PW7 (Dr. Christy) deposed that at the relevant time, she was working as a Jr. Consultant at the Women & Child Hospital, Thycaud,



Thiruvananthapuram. She testified that she had examined the victim and issued Ext.P2, medical certificate. She deposed that the victim herself narrated the history of sexual assault committed by the accused. Upon examination, she found that both of the victim's legs were weak. In cross-examination, she has deposed that she was not aware that the victim had cerebral palsy and had never seen Ext.P5, the disability certificate. She also deposed that if she had known the victim was suffering from cerebral palsy, she might have referred her for a psychiatric examination to assess her memory and emotional state. Furthermore, she testified that the victim's hymen was torn, but clarified that a torn hymen alone does not conclusively indicate penile penetration; it could also result from masturbation or finger penetration.

15. PW9 (Dr. Manoj) deposed that at the relevant time, he was working as Asst. Surgeon at the General Hospital, Thiruvananthapuram, and issued Ext.P11 Potency Certificate. He examined the accused on 25.05.2019 and issued Ext.P11, suggesting the accused is capable of performing sexual acts.

16. PW11 (Dr. Arun A. John) was a member of the Medical Board that examined the victim in 2016, and issued Ext.P5 disability certificate. He testified that he was one member of a team comprising five specialists for determining the victim's disability. The Board assessed the victim to



have 50% locomotor disability and 74% permanent disability. In cross-examination, he testified that he could not say whether the victim was suffering from cerebral palsy, nor could he confirm whether the victim had any cognitive impairment. He further deposed that he was not aware whether children with such conditions experience mental delusions or orientation and clarified that such assessments can only be made by a psychiatrist. He also deposed that he was not aware that the victim had been sexually abused.

17. PW15 (Deepa A.S) was at the relevant time the Assistant Director, State Forensic Science Laboratory, Thiruvananthapuram. She prepared Ext.P36 report which shows that two mobile phones were examined {Q1 (Redmi Phone) - Q1sim (idea) & Q2 (Samsung) - Q2sim1 (BSNL) - Q2sim2 (Jio)}. She deposed that Q1 and Q2 were subjected to forensic mobile phone analysis using the universal forensic mobile phone data extraction device (UFED). On examination, obscene image files were present in the phone memory of Q1 and Q2. The soft copy of the same was enclosed along with the report (as Annexure 1 Pendrive). The pendrive was marked as MO1.

18. DW1 (Dr. Susmitha) deposed that she was acquainted with the accused while working at TIMS (the institute of the accused), where they worked together from 2016. She further deposed that she accompanied



the accused to the victim's house for physiotherapy treatments, as the victim was unable to move. She also deposed that she knows Dr. Elizabeth, who worked at TIMS before her. It was testified that during the treatment sessions, she and the victim's mother assisted the accused. In cross-examination, she testified that she could not recall the exact days and times she visited the victim's house. She further testified that she was highly inspired by the accused's efficiency in providing treatment. She added that the accused genuinely helped her in building her career. She expressed her utmost respect and admiration for the accused. She also testified that the victim's family considered the accused as part of their extended family. DW2 (Dr. R. Jayakumar) is a clinical psychologist. He testified that the victim's medical condition is such that she can be prone to epilepsy, psychosis, anxiety and depression. He opined that psychosis in such individuals may lead to delusions and hallucinations. He also deposed that due to their gullibility and limited ability to assess risk, such children may give false statements under the influence of others. Additionally, he testified that such children should be treated by a multidisciplinary team, including a psychiatrist, psychologist, psychiatric social worker and occupational therapist. During cross-examination, he testified that he had never treated the victim and was not aware of the victim's mental condition, and the



situation may vary from individual to individual. DW3 (Balu) is a person who was working with the victim's father at Federal Bank. He deposed that the victim's father was a senior officer in the same bank. He deposed that he had introduced the accused to the victim's father. He further deposed that he had requested the accused for a female assistant to support the treatment of the victim. He also deposed that on one occasion, he saw the accused and a female assistant at the victim's residence. During cross-examination, he testified that he frequently contacted the accused and also testified that he was aware of the facts of the case.

19. The accused examined himself as DW4. He deposed that he has been working as a physiotherapist since 2008. He further deposed that he became acquainted with the victim in 2010 while he was employed at KIMS Hospital. He deposed that DW3 (Balu) introduced him to the victim's father, and due to the victim's medical condition, he agreed to conduct physiotherapy sessions at the victim's residence. He also deposed that the victim's father encouraged him to provide treatment at their home, as the victim was bedridden. He testified that he brought certain equipment to the victim's house for treatment and also required manual assistance, which he deemed necessary. He further deposed that he began treating the victim six days a week starting in



2011. From 2011 to 2015, he was assisted by his colleague Elizabeth, and after 2015, his colleague Susmitha began assisting him. He also testified that the victim's mother, father and the victim herself had sent him messages and videos after the crime was registered, and a copy of these materials was submitted to the court on a pen drive, which was marked as Ext.D2. The trial court granted permission to view the contents of the pen drive using a videoconferencing device in court. He further deposed that the recordings dated 12.12.2019 were made by him and were marked as Ext.D2(a). In those recordings, the victim was seen calling the accused. He deposed that the victim had contacted him to offer an unconditional apology for initiating the case and claimed that the case had been filed under the influence of authorities from KIMS Hospital. Likewise, each image and video produced by the defence was marked separately as Ext.D2(a) to D2(e). He produced his phone and the SIM card, which were marked as Ext.D3. He testified that he had submitted a complaint to the DGP, requesting that the contents of Ext.D3 be duly received and examined. He deposed that there was no specific or ulterior reason for submitting the pen drive at a later stage, after the examination of PW1, PW5 and PW6 and asserted that the defence had already produced the said mobile phone and pen drive before the examination of those witnesses. He further admitted that he had produced only those



portions of the messages which he considered relevant and supportive of his case, to present evidence that would effectively and efficiently support his position. It was suggested by the prosecution that certain other messages, which were not included, could lead to a different inference; however, this suggestion was denied. He firmly deposed that he had not altered or tampered with any dates, messages or mobile numbers contained in the evidence submitted. He further affirmed that his relationship with the victim was solely professional, limited to that of a doctor and patient. In re-examination, he deposed that his father had initiated proceedings to retrieve data from his mobile phone.

20. From the analysis of the evidence, it is evident that the victim has clearly and lucidly deposed that she was sexually abused and was subjected to penetrative sexual assault by the accused from August 2014. It is true that in Ext.P3 statement recorded under Section 164 of the Cr.P.C., the victim has recalled certain incidents of sexual abuse in February, November and December 2018, and two incidents in March 2019. However, a reading of the statement in its entirety will indicate that the dates mentioned by the victim as above relate to certain specific acts of sexual abuse by forcing the victim to undertake acts of oral sex, etc. In the initial part of the statement given by the victim, she deposed that the instances of sexual abuse by the accused started in August 2014.



She has mentioned the specific acts of sexual abuse, including penetrative sexual assault. On a reading of Ext.P3 statement given by the victim under Section 164 of the Cr.P.C, in its entirety, it is difficult to accept that there is a contradiction with the evidence tendered by her in the box as PW1. Therefore, I find it difficult to accept the argument of the learned senior counsel appearing for the accused that the testimony of PW1 does not lead to a conclusion that there were instances of sexual abuse and penetrative sexual assault, even at a time when the victim was a minor. The cross-examination of PW1 has not brought out any material which would help the case of the accused. The testimonies of PWs 2, 3, 5 and 6 corroborate the victim's account of all the events that culminated in the revelation of the allegation of sexual abuse. While acknowledging that the evidence presented by PWs 2, 3, 5 and 6 supports the evidence for PW1, I refrain from employing the word 'corroborate' in the sense that there is any direct evidence tendered by prosecution witnesses other than PW1 that the accused committed the crime for '*...it is sufficient if it is merely circumstantial evidence of his connection with the crime*' [See paragraph 22.4 of the decision of the Supreme Court in the decision in ***Rameshwar v. State of Rajasthan, 1951 SCC OnLine SC 83***, referred to and extracted below]. The medical evidence also supports the prosecution's case. Despite the vehement suggestion of the learned



senior counsel for the accused that there was some professional rivalry which led to a false complaint being registered against him at the instance of the management of the KIMS Hospital, there is no material before this court to conclude so. Further, as rightly held by the trial court, though a suggestion of professional rivalry was put up at the stage of examination of the accused under Section 313(1)(b) of the Cr.P.C., the accused has no such case when he was examined as DW4.

21. It is settled law that in a prosecution alleging commission of offences such as offences under the POCSO Act, the solitary evidence of the victim is generally deemed sufficient to hold an accused guilty, and no corroboration is generally necessary¹. In **Rameshwar** (*supra*) Vivian Bose J. elaborated on the legal principles in the following words:-

“19. In my judgment, this branch of the law is the same as in England and I am of opinion that the lucid exposition of it given by Lord Reading, the Lord Chief Justice of England, in R. v. Baskerville cannot be bettered. In that case, Baskerville had been convicted of having committed acts of gross indecency with the two boys. (There the boys were accomplices because they were freely consenting parties and there was no use of force.) The learned Chief Justice says at KB p. 663:

“There is no doubt that the uncorroborated evidence of an accomplice is admissible in law.... But it has long been a rule of practice at common law for the judge to warn the jury of

¹ On this point also see *State of H.P. v. Raghbir Singh*, (1993) 2 SCC 622, *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384, *Wahid Khan v. State of M.P.*, (2010) 2 SCC 9, *Vijay v. State of M.P.*, (2010) 8 SCC 191 and, *State of Orissa v. Thakara Besra*, (2002) 9 SCC 86



the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices, and, in the discretion of the Judge, to advise them not to convict upon such evidence; but the Judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence....

This rule of practice has become virtually equivalent to a rule of law, and since the Court of Criminal Appeal came into operation this Court has held that, in the absence of such a warning by the Judge, the conviction must be quashed.... If after the proper caution by the Judge the jury nevertheless convict the prisoner, this Court will not quash the conviction merely upon the ground that the accomplice's testimony was uncorroborated."

20. *That, in my opinion, is exactly the law in India so far as accomplices are concerned and it is certainly not any higher in the case of sexual offences. The only clarification necessary for purposes of this country is where this class of offence is sometimes tried by a Judge without the aid of a jury. In these cases it is necessary that the Judge should give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case. I am of opinion that the learned High Court Judges were wrong in thinking that they could not, as a matter of law, convict without corroboration.*

21. *There is a class of cases which considers that though corroboration should ordinarily be required in the case of a grown-up woman it is unnecessary in the case of a child of tender years. Bishram Bahorik Satnami v. Emperor is typical of that point of view. On the other hand, the Privy Council has said in Mohd. Sugul Esa Mamasan Rer Alalah v. R. that as a matter of prudence a conviction should not ordinarily be based on the uncorroborated evidence of a child witness. In my opinion, the true rule is that in every case of this type the rule about the advisability of corroboration should be present to the mind of the Judge. In a jury*



case he must tell the jury of it and in a non-jury case he must show that it is present to his mind by indicating that in his judgment. But he should also point out that corroboration can be dispensed with if, in the particular circumstances of the case before him, either the jury, or, when there is no jury, he himself is satisfied that it is safe to do so. The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge, and in jury cases, must find place in the charge, before a conviction without corroboration can be sustained. The tender years of the child, coupled with other circumstances appearing in the case, such, for example, as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury, as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.

22. I turn next to the nature and extent of the corroboration required when it is not considered safe to dispense with it. Here again, the rules are lucidly expounded by Lord Reading in Baskerville case at KB pp. 664 to 669. It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with circumstances of each case and also according to the particular circumstances of the offence charged. But to this extent the rules are clear.

22.1. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says : (Baskerville case , KB p. 664)

“... Indeed, if it were required that the accomplice should be



confirmed in every detail of the crime, his evidence would not be essential to the case, it would be merely confirmatory of other and independent testimony.”

All that is required is that there must be “some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it”.

22.2. Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or the complainant that the accused committed the crime. This does not mean that the corroboration as to identity must extend to all the circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that:

“a man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all.... It would not at all tend to show that the party accused participated in it”.

22.3. Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because it was contended that the mother in this case was not an independent source.

22.4. Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it



otherwise, “many crimes which are usually committed between accomplices in secret, such as incest, offences with females” (or unnatural offences) “could never be brought to justice”.

In *State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550* it was held:-

“16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the



above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

“It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary.”

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation.

17. We think it proper, having regard to the increase in the number of sex violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person



other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.”

In ***Phool Singh v. State of M.P., (2022) 2 SCC 74***, it was held:-

“7. At the outset, it is required to be noted that in the present case, the prosecutrix has fully supported the case of the prosecution. She has been consistent right from the very beginning. Nothing has been specifically pointed out why the sole testimony of the prosecutrix should not be believed. Even after thorough cross-examination, she has stood by what she has stated and has fully supported the case of the prosecution. We see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. The submission on behalf of the accused that no other independent witnesses have been examined and/or supported the case of the prosecution and the conviction on the basis of the sole testimony of the prosecutrix cannot be sustained is concerned, the aforesaid has no substance.”

In the facts of the present case, the evidence tendered by PW1 is clear, lucid and free from any embellishment that would require this Court to look for any corroborating evidence. However, the conviction would be wrong if the victim’s testimony is found unreliable for any reason whatsoever.

22. The question to be considered next is whether the deposition of the victim as PW1 is of a quality that would lead the Court to conclude that the same can be accepted in toto².

23. In ***Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21*** it was held:-

² On this point also see *Ganesan v. State, (2020) 10 SCC 573*



“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”



24. In ***Nirmal Premkumar v. State Rep. by Inspector of Police, 2024 SCC Online SC 260***, referring to ***Ganesan*** (*supra*), and ***Rai Sandeep*** (*supra*) it was held:-

“11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz. : (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.”

25. In ***State of Haryana v. Bhagirath, (1999) 5 SCC 96*** it was held:-

8. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression “reasonable doubt” is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.

9. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book Wharton's Criminal Evidence (at p. 31, Vol. 1 of the 12th Edn.) as follows:

“It is difficult to define the phrase ‘reasonable doubt’. However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the Webster case. He says: ‘It is not mere possible doubt, because everything relating to human affairs and depending upon moral



evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.’”

10. In the treatise *The Law of Criminal Evidence* authored by H.C. Underhill it is stated (at p. 34, Vol. 1 of the 5th Edn.) thus:

“The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt.”

11. In *Shivaji Sahabrao Bobade v. State of Maharashtra* this Court adopted the same approach to the principle of benefit of doubt and struck a note of caution that the dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence demand special emphasis in the contemporary context of escalating crime and escape. This Court further said: (SCC p. 799, para 6)

“The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt.”

12. These are reiterated by this Court in *Municipal Corpn. of Delhi v. Ram Kishan Rohtagi*.



In the facts of the present case, apart from the fact that the victim (during cross-examination) denied having sent any messages to the accused (after the crime was registered and the appellant/accused was released on bail pending trial), no part of her testimony can be termed unreliable or untrustworthy or unbelievable. The testimony of the victim has not been inconsistent with the case of the prosecution. No part of her testimony would make her a '*wholly unreliable*' witness. On the other hand, her evidence appears to be '*wholly reliable*' and on principles culled out from the decisions in **Rai Sandeep** (*supra*), **Ganesan** (*supra*) and **Nirmal Premkumar** (*supra*), I find that PW1 is a sterling witness and that her testimony can be safely relied upon.

26. The evidence of DW1 (a female colleague of the victim) does not in any manner help the accused. The trial court has held that DW1 is an interested witness. Even if I were to discount this finding, there is nothing in the evidence of DW1 that would help to prove the case of the accused. The evidence of DW2 at best indicates that persons with a medical condition like that of the victim may experience epilepsy, psychosis, anxiety and depression, and that psychosis in such individuals may lead to delusions and hallucinations. Though he has also deposed that due to their gullibility and limited ability to assess risk, such children may give false statements under the influence of others, the fact remains



that he admitted that he had never treated the victim and was not aware of the victim's mental condition. The deposition of DW3 has to be disregarded as he has admitted during cross-examination that he frequently contacted the accused (after the case was registered) and that he was aware of the facts of the case. DW3 is clearly an interested witness. Moreover, apart from the statement that he had requested the accused to treat the victim along with a female assistant and that he had once seen the accused along with a female colleague at the house of the victim, there is nothing in the evidence of DW3 that would go in favour of the accused.

27. Nothing turns on the digital evidence produced by the accused (D2 series and D3 Mobile Phone), though it was marked in evidence and was supported by a certificate under Section 65B of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Evidence Act'). As rightly held by the trial court, the accused produced only an edited version of the conversations that he wished to rely on in the sense that he produced only selected data. The trial court has rightly held that such redacted portions of a conversation cannot be admissible in evidence even if they are supported by a certificate under Section 65B of the Evidence Act. Sections 65A³ and 65B⁴ of the Evidence Act read thus:-

³The provisions are *in pari materia* with Section 62 of Bharatiya Sakshya Adhiniyam, 2023

⁴The provisions are *in pari materia* with Section 63 of Bharatiya Sakshya Adhiniyam, 2023



“Section 65A - Special provisions as to evidence relating to electronic record.--

The contents of electronic records may be proved in accordance with the provisions of section 65B.

Section 65B - Admissibility of electronic records.--

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:--

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.



(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether--

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,--

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,--



(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.--For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

It is evident from the provisions referred to above that *any information contained in an electronic record printed on paper, stored, recorded, or copied in optical or magnetic media produced by a computer shall be deemed a document*. Consequently, all the provisions applicable to a document shall also apply to an electronic record printed on paper or stored in any other form such as pen drives, discs, magnetic tape and so on. While it may be permissible for a person relying on a document to mark specific portions of it, it is beyond cavil that a document must be produced in its entirety. It is evident from the cross-examination of the accused (DW4), that the accused had admitted to editing the conversations and producing only those portions that were beneficial to



his case before the court. Although the learned senior counsel appearing for the accused has a case that the mobile phone in question had been produced before the court as Ext.D3, and the prosecution had not taken any steps to examine whether there were any other parts of the conversation between the accused and the victim that would further the case of the prosecution, the fact remains that the accused had himself admitted to not producing or copying the entire conversation between him and the victim on Ext.D2. In ***Ambalal Sarabhai Enterprise Ltd. v. KS Infraspace LLP Ltd., (2020) 5 SCC 410***, it was held:-

*“17. The negotiations between the plaintiff and the defendant is reflected in approximately 17 e-mails exchanged between them commencing from December 2017 to 31-3-2018. The file size of the attachment to the mails has varied from 48-50-52-48-57-56 KBs indicating suggestions and corrections from time to time. The WhatsApp messages which are virtual verbal communications are matters of evidence with regard to their meaning and its contents to be proved during trial by evidence-in-chief and cross-examination. **The e-mails and WhatsApp messages will have to be read and understood cumulatively to decipher whether there was a concluded contract or not.** The use of the words “final draft” in the e-mail dated 30-3-2018 cannot be determinative by itself. The e-mail dated 26-2-2018 sent by the defendant at 11.46 a.m. had also used the same phraseology. The plaintiff was well aware from the very inception that the defendant was negotiating for sale of the lands simultaneously with two others.....” (Emphasis supplied)*

When conversations between two persons on platforms such as WhatsApp/Telegram, etc., are produced before the court and are sought



to be relied upon in evidence, the failure to produce the entire conversation between two specified dates would result in a completely different meaning being ascribed to the conversation. Therefore, I firmly believe that the case presented by the accused based on Ext.D2 does not in any manner improve the case of the defence and it also does not lead this Court to doubt the prosecution version in any manner.

28. There is another aspect of the matter. The learned senior counsel for the accused has made available for the perusal of this court a printout of the conversations between the accused and the victim. It is to be noticed that the mobile phone from which the victim was allegedly contacting the accused, while he was on bail pending trial of the case, was the mobile phone belonging to the mother of the victim. The trial court has noticed that the victim was depressed, and it was distressing for the victim that the relationship with the accused had come to an end. While PW1 does not appear to depose so before the court, she has, at the time of her cross-examination by the learned counsel for the accused, expressed her willingness to again converse with the accused. This indicates that she was not maintaining any grudge or dislike for the accused. It is also pertinent to note that the entire incident of sexual abuse by the accused came out after the brother of the victim took away her mobile phone, on finding that she was excessively using her mobile phone. The victim also



attempted to harm herself after the mobile phone was taken away from her. This fact also indicates that the victim had developed a liking for the accused. It is in this context that the court must view the subsequent conversations between the accused and the victim (Ext.D2). The trial Court has had the benefit of listening to the deposition of PW1. It is clear from the decision of the Supreme Court in ***Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793*** that “..... the court which has seen the witnesses depose, has a great advantage over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naivete and clever equivocation, manipulated conformity and ingenious untruthfulness of persons who swear to the facts before him.”⁵ In that view of the matter, there is nothing in Ext.D2 that would counter the case of the prosecution. Further, when the testimonies of PW1 (the victim) and PWs 2, 3, 5 and 6 indicate that the sexual abuse of the victim started at a time when she was a minor, any consent becomes immaterial. Therefore, even if I were to ignore the fact that the failure to produce the entire conversation makes the contents of Ext.D2 unreliable, I find nothing in Ext.D2 that

⁵ On this point also see the decisions in *Sarju Pershad v. Raja Jwaleshwari Pratap Narain Singh*, AIR 1951 SC 120 and *Lakshmanan Chettiar v. Periakaruppa Thevar*, 1968 SCC OnLine Mad 76.



would advance the case of the appellant/accused.

29. There is no scope for interference with the sentence of imprisonment as the learned trial judge has only imposed the minimum prescribed sentence of imprisonment in respect of the offences for which the appellant/ accused has been convicted and the substantive sentence for each of the offences is to run concurrently.

For all these reasons, I find no merit in this appeal. The appeal is, therefore, dismissed, confirming the conviction and the sentence imposed on the appellant.

sd/
GOPINATH P.
JUDGE

acd