

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 101 of 2018

Vijay Ramesh Dantani

(at present in Arthur Road Jail)

Aged 47 years

Add. Room No. 7, Pragati Rahivashi Seva Sangh,

Waghariwada, Dattamandir Road,

Vakola, Mumbai

...Appellant

vs.

1. The State of Maharashtra

(Through the Senior Inspector of Police,
Mahim Police Station)

2. XYZ

(Through the Senior Inspector of Police,
Mahim Police Station)

...Respondents

Ms. Lakshmi Raman, for the Appellant.

Ms. Sharmila Kaushik, APP for the Respondent-State.

Ms. Manisha Devkar, for Respondent No. 2.

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CORAM: **MANISH PITALE &
SHREERAM V. SHIRSAT, JJ**

RESERVED ON: **10th JUNE, 2026**
PRONOUNCED ON: **21st AUGUST, 2026**

JUDGMENT: *(Per Shreeram Shirsat, J.)*

1. The present Appeal has been filed challenging the impugned judgment and order dated 22.11.2017 passed by the Special Judge under the Protection of Children from Sexual Offences Act, 2012 (POCSO), Gr. Bombay in POCSO Special Case No. 41/2015, whereby the Appellant has

been convicted for the offence punishable under Section 6 of the POCSO Act, 2012 and has been sentenced to undergo Imprisonment for Life and pay a fine of Rs.1,000/-, and in default to undergo Simple Imprisonment for 1 month. As the Trial Court imposed punishment under Section 6 of the POCSO Act, 2012, no separate punishment was awarded under Section 376 of the Indian Penal Code (IPC) as per Section 42 of the POCSO Act, 2012. The Appellant was acquitted for the offences punishable under Section 10 read with Section 9 (l), (m) of the POCSO Act, 2012. The Appellant was also directed to pay compensation of Rs.25,000/- to the Victim-girl as per Section 33(8) of the POCSO Act, 2012 within 1 month of the date of the order, failing which it was directed that the Appellant shall undergo Simple Imprisonment for 1 year.

2. Brief facts of the prosecution case are as under:

a] It is the case of the prosecution that the First Informant- Saavji Kharva, the father of the victim "N", was residing on the footpath at T.H. Katariya Road, Near Status Hotel, H.P. Petrol Pump, Mahim (West), Mumbai, along with his daughter "N", aged 11 years and three other children. He used to earn his livelihood by selling garlands.

b] It is further the case of the prosecution that the Appellant- Vijay Ramesh Dantani, got acquainted with the First Informant and began frequently visiting him on the footpath, where the First Informant resided

with his family. It is also the case of the prosecution that on several occasions, the Appellant and the used to consume liquor with the First Informant and sleep on the footpath where the First Informant along with his family used to reside.

c] It is further the case of the prosecution that on the night of 25.10.2014, the Appellant came to the First Informant, both consumed liquor, had dinner and went to sleep. Thereafter, on the next morning, a known "Bhabhi" informed the First Informant that at approximately 2:30 a.m., when she had come to collect garbage, the Appellant was found sleeping over the victim's body. Upon receiving such information, the father of the Victim-girl went up to the Appellant and warned him to not do the same and asked him to go away.

d] It is further the case of the prosecution that on 30.10.2014 at about 2:00 a.m., the Appellant had again come to the footpath, in an intoxicated condition, where the First Informant resided and remained there till morning. In the morning, at about 11:30 a.m., the victim was found suffering from vomiting, and upon being inquired by one Pinki Didi, the victim disclosed that approximately four days prior, the Appellant had untied the string of her pajama, shut her mouth, climbed upon her and committed forcible intercourse with her, causing her pain and bleeding and that she had been suffering since then.

e] It is further the case of the prosecution, that while the conversation was taking place, people gathered at the spot, a police vehicle arrived and took them to the Police Station. Thereafter, the Station House Officer registered Crime No. 346/2014 for the offence punishable under Section 376 of the IPC read with Sections 4, 8 and 12 of the POCSO Act, 2012.

3. The Trial Court had framed the charge under Section 6 read with Section 5 (m), (l) of the POCSO Act, 2012, read with Section 376 of the IPC. The prosecution had made an application for addition and alteration of charge and had prayed that Section 10 of POCSO Act, 2012 be added in the charge. The said application came to be allowed and Section 10 read with 9 (l), (m) of the POCSO Act, 2012 came to be added.

4. To bring home the guilt of the Accused-Appellant, the prosecution examined 9 witnesses (P.W. 1 to P.W. 9):

P.W.	NAME	ROLE
1	Saavji Kharva	First Informant (Father of the Victim-girl)
2	‘N’	Victim-girl
3	Kisan Dharmpal Sarsar	Panch Witness to seizure of the clothes of the Appellant
4	Sunita Dharamvir Sode	Panch Witness to seizure of the clothes of the Victim-girl
5	Dr. Rajesh Dere	Medical Officer who examined the Appellant-Accused

6	PSI Jayshree Sawant	Officer who recorded the statement of the Victim-girl 'N'
7	Dr. Amtira Jain	Medical Officer who examined the Victim-girl 'N'
8	Dr. Rohan Thorat	Medical Officer
9	API Keshav Dinde	Investigating Officer

5. On completion of the prosecution evidence, statement of the Appellant under Section 313 Cr.P.C. was recorded, wherein the Appellant denied the case of the prosecution and further stated that he was falsely implicated in this case because the father of the Victim-girl owed him money. The Appellant was also granted an opportunity to lead any defence evidence, if so desired. The Appellant neither chose to lead any defence evidence, nor did he examine himself on oath.

6. After hearing the prosecution as well as the defence and upon appreciation of the evidence on record, the Special Judge under the POCSO Act, 2012, Gr. Bombay, was pleased to convict the Accused-Appellant for the offence punishable under Section 6 of the POCSO Act, 2012 and sentenced him to undergo Imprisonment for Life and pay a fine of Rs.1,000/- and in default to undergo Simple Imprisonment for 1 month. As the Trial Court imposed punishment under Section 6 of the POCSO Act, 2012, no separate punishment was awarded under Section 376 of the IPC

as per Section 42 of the POCSO Act, 2012. The Appellant was acquitted for the offences punishable under Section 10 read with Section 9 (l), (m). The Appellant was also directed to pay compensation of Rs. 25,000/- to the victim-girl as per Section 33(8) of the POCSO Act, 2012 within 1 month of the date of the order, failing which it was directed that the Appellant shall undergo Simple Imprisonment for 1 year.

7. Being aggrieved by the judgment and order of conviction passed by the Special Judge under POCSO Act, 2012, Gr. Bombay in POCSO Special Case No. 41/2015, dated 22.11.2017, the Appellant has approached this Court by way of the present Appeal.

8. Heard the Ld. Counsel Adv. Lakshmi Raman for the Appellant and Ld. APP Ms. Sharmila Kaushik for the Respondent-State and Ld. Counsel Adv. Manisha Devkar for the Respondent-Victim-girl 'N'.

9. The Learned Counsel for the Appellant submitted that the conviction recorded by the Special Judge at Gr. Bombay is vitiated on account of several infirmities going to the root of the prosecution case. The Ld. Counsel for the Appellant submitted that there is an unexplained delay of four days in the registration of the F.I.R. It was submitted that the alleged incident took place on the night of 25.10.2014 and that the victim had disclosed the same to P.W. 4- Sunita Sode on the very next day i.e. 26.10.2014. Despite such disclosure having been made on 26.10.2014, the

F.I.R came to be registered only on 30.10.2014. It was submitted that the prosecution offered no explanation whatsoever for this delay of four days and that the same casts a doubt on the case of the prosecution. It was also argued by the Ld. Counsel for the Appellant that there is a lack of clarity insofar as the date of the incident is concerned. It was pointed out by the Ld. Counsel for the Appellant that the F.I.R registered by the First Informant stated that the incident occurred on 25.10.2014 at 2:30 a.m., however, the statement given by the victim on 30.10.2014, before the Medical Officer, states that the incident took place two to three days prior.

10. The Ld. Counsel for the Appellant further submitted that the prosecution failed to establish that the alleged incident occurred on more than one occasion. It was accordingly submitted that the offence under Section 5 (1) of the POCSO Act, 2012 is not made out from the evidence on record and the conviction insofar as it relates to the said provision, cannot be sustained. It was further argued by the Ld. Counsel for the Appellant that, given the circumstances that the victim and her family used to sleep next to one another on the footpath, it is unlikely and improbable that any attempt or sign of resistance by the victim or her screaming during the incident would go unnoticed and unheard.

11. The Ld. Counsel for the Appellant further submitted that there exist inconsistencies in the statement of the victim recorded under Section 164

of the Cr.P.C and her evidence as P.W. 2. It was submitted that the deposition of the victim contains material improvements and inconsistencies when read in contrast to her Section 164 Cr.P.C. statement, which makes it unreliable. It was therefore submitted by the Ld. Counsel for the Appellant, that considering the aforementioned material infirmities and inconsistencies, the case of the prosecution against the Appellant cannot be said to have been proved beyond reasonable doubt.

12. In support of her contentions, the Ld. Counsel for the Appellant has relied upon the following authorities:

*I. Nirmal Premkumar and Anr. v/s State represented by Inspector of Police*¹

*II. Lallu Manjhi and Anr. v/s State of Jharkhand*²

*III. Radhe Shyam v/s State of Rajasthan*³

*IV. Roshan v/s State of Maharashtra, through Police Station*⁴

*V. Manirul Islam v/s State of Assam and Anr.*⁵

13. *Per Contra*, the Ld. APP submitted that the conviction recorded by the Special Judge at Gr. Bombay is well-founded and amply supported by

1 (2024) 20 SCC 293

2 (2003) 2 SCC 401

3 (2014) 5 SCC 389

4 2025 SCC OnLine Bom 3365

5 (2021) 6 GAUHATI LAW REPORTERS 55

the evidence on record. It was submitted by the Ld. APP, that the testimony of the Victim-girl on the material aspect that the Appellant committed penetrative sexual assault on her is consistent and was not shaken in cross-examination and hence, if there were any such improvements and inconsistencies, the same are to be treated as immaterial. The minor inconsistencies as to the peripheral details are natural variations in the deposition of a child witness aged 11-12 years who was recounting a traumatic incident after a long period of time and therefore, it cannot be said to have hampered the foundation of the case of the prosecution. On the medical and forensic evidence, it was submitted by the Ld. APP that the absence of external injuries and the negative Chemical Analyser Reports do not negate the commission of penetrative sexual assault when the Victim-girl has narrated the incident with precision. Therefore, the Ld. APP concluded her arguments by submitting that the conviction of the Appellant, in the light of cogent and convincing evidence, primarily the reliable sole testimony of the Victim-girl, deserves to be upheld. Thus, the judgment and order of conviction passed by the Special Judge under the POCSO Act, 2012 at Gr. Bombay calls for no interference in this Appeal.

14. The Ld. APP has relied upon ***Mohammed Ashraf Mohammed Wasir Ansari v/s The State of Maharashtra***⁶ to buttress her arguments.

15. Before advertng to the grounds raised by the Ld. Counsel for the Appellant, we find it advantageous to refer to the settled legal principles on the issue of the sole testimony of the prosecutrix. The Hon'ble Apex Court in the case of ***Vijay @Chinee v/s State of Madhya Pradesh***⁷ held that the testimony of the prosecutrix, if found to be reliable, need not be subject to corroboration. The relevant paragraphs are quoted as below:

*“13. In **State of Himachal Pradesh Vs. Raghubir Singh** (1993) 2 SCC 622, this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity.*

*14. A similar view has been reiterated by this Court in **Wahid Khan Vs. State of Madhya Pradesh** (2010) 2 SCC 9, placing reliance on earlier judgement in **Rameshwar Vs. State of Rajasthan** AIR 1952 SC 54.*

15. Thus, the law that emerges on the issue is to the effect that statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”

16. In this background, let us analyze the deposition of P.W. 2, the Victim-girl, in order to ascertain whether her evidence can be believed without looking for any corroboration or whether the evidence is such that

⁶ 2024 SCC OnLine Bom 4495

⁷ (2024) 20 SCC 293

the court finds it difficult to believe the witness in absence of any corroboration.

17. P.W. 2- the Victim-girl 'N,' vividly and discernibly described the incident that occurred. She narrated the incident with clarity and precision. She also named the Appellant and stated that he was the person who inflicted penetrative sexual assault upon her. When she was asked as to what happened to her, she distinctly stated that while she was sleeping, the Appellant tied her hand and legs and when she started shouting, he gagged her mouth and opened the string of her pajama and did the act. Further, she was also asked as to what the Appellant had done to her to which she has precisely described and this is reflected in her evidence as answers to Question Nos. 15 to 25. The answers to the aforementioned questions are not reproduced herein for the sake of judicial decorum. In fact, while answering one of the questions put to her, the trial court observed that the witness looked humiliated. What makes her evidence further believable is that she also manually demonstrated, while answering Question No. 25 as to how the Appellant tied her mouth. She further identified the Appellant in the court room. In the cross-examination, apart from minor discrepancies, the defence could not shake the testimony of the Victim-girl with respect to the incident in question i.e. penetrative sexual assault and she withstood the cross-examination.

18. The Ld. Counsel for the Appellant pointed out that there were several discrepancies and glaring contradictions in the statement of P.W. 2, thereby raising serious doubts on the credibility of the victim's testimony. It was submitted by the Ld. Counsel for the Appellant, that the victim in her 164 Cr.P.C statement, stated that at the time of the incident, her father was sleeping next to her, however, in her deposition before the Special Judge, the victim changed her version and stated that at the time of the incident, both her mother and father had gone to bring flowers. Additionally, the presence of the mother entirely is disputed, as during the cross-examination, when a suggestion was put to P.W. 2 that her mother is not alive, she replied that it was true. Thus, it was submitted that such a discrepancy as regards the presence of her own mother diminishes the reliability of the deposition of the victim. The contention raised was that, if the Victim-girl can give a false answer to such a basic question, she can falsely implicate the Appellant as well. No doubt, she answered that the mother and the father had gone to get flowers when the Appellant committed the sexual act upon her and in the cross-examination she also agreed to the suggestion that her mother is not alive, however it cannot be said to be a major discrepancy which would overturn her deposition about the actual act of penetrative sexual assault being inflicted upon her by the Appellant. The ordeal of the Victim-girl aged 11 to 12 years and her

mental condition recounting a traumatic incident during the cross-examination also cannot be lost sight of and therefore, even if there are minor contradictions whilst answering the suggestions raised during cross-examination, the same will not discredit the testimony of the Victim-girl or in any manner affect the case of the prosecution, unless the contradiction is so glaring, that no person of ordinary prudence would believe it to have occurred.

19. It has come in the evidence of P.W. 2, that she was asked in Q. 46, whether she had stated the name Vijay Dantani before the Doctor (P.W. 7), to which she deposed that she had told the name of the Appellant to P.W. 7. However, P.W. 7 in her deposition stated that the victim had given the history of forceful sexual intercourse by an unknown person. It was therefore argued that this material discrepancy is of vital importance which goes to the root of the case. Although it can be said that there is discrepancy, however weighing the entire evidence of P.W. 2 and P.W. 7, we are inclined to accept the testimony of P.W. 2 as there is no reason for P.W. 2 to not give the name of the Appellant when she otherwise graphically described the incident. Therefore, even if the history of penetrative assault is given by her to be of unknown person as narrated by P.W. 7, the same will not be of much significance as P.W. 2 herself, had

categorically named the Appellant to P.W. 4- Sunita Sode and also before the court.

20. The Ld. Counsel for the Appellant further argued that P.W. 2 made several contradictory statements in her deposition when compared with her previous 164 Cr.P.C statement, as regards the details of the incident. P.W. 2, in her 164 statement stated that the Appellant tied her mouth with her T-shirt whereas the victim in her deposition stated that the Appellant had tied her mouth with the help of an *odhani*. Further, it has come in the deposition of P.W. 7, the medical officer, that P.W. 2 told her that a handkerchief was tied around her mouth. As far as the argument regarding the type of cloth used to tie the mouth of the victim is concerned, there is no doubt that P.W. 2 has provided differing statements at each instance but that, in our opinion, cannot be regarded as a material discrepancy which was intentionally done by the victim to improve upon her case. If we consider the answer to Q. 25, the victim has demonstrated the act of the Appellant gagging her mouth so that she doesn't shout. What is important here is the evidence about the act of tying her mouth and even if there is some discrepancy with respect to the medium used, in our opinion, considering the age of the Victim-girl, it pales into insignificance.

21. Further the Victim-girl, also stated in her examination-in-chief, while answering Q. 14, that her hands and legs were tied by the Appellant.

It was urged that the same was a material improvement which was never previously stated by her in her 164 statement. We are of the considered opinion that, assuming that the deposition of tying of hands and legs is an improvement, however, the same was a part of the victim's overall narration of the incident, to which there is no cross-examination and therefore the same has gone unchallenged.

22. Although there are some contradictions and discrepancies in the statements and deposition of P.W. 2, we are of the opinion that these circumstances by themselves, are insufficient to discredit the testimony of P.W. 2 on the material aspect of penetrative sexual assault. Having regard to the tender age of the victim, it would be wholly unrealistic to expect her to accurately specify the details surrounding the incident. Minor discrepancies or approximations surrounding the occurrence of the incident are natural and do not strike at the root of the prosecution case. The discrepancy, if any, is merely peripheral in nature and does not undermine the core substratum of the case of the prosecution. The victim's deposition cannot be discarded on account of such minor discrepancies when the gravamen of her testimony regarding the occurrence of the incident stands unshaken.

23. In this regard, it would also be apposite to refer to the judgment of the Hon'ble Supreme Court in the case of ***State of Himachal Pradesh v/s Asha Ram***⁸. The relevant paragraph is reproduced hereunder:

“5. ... It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting 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. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.”

24. It is the contention of the Appellant that an unexplained delay in the filing of the F.I.R raises serious concerns over the genuineness of the said complaint. This Court finds it appropriate to make a reference to the judgment in the case of ***State of Himachal Pradesh Vs. Prem Sing***⁹ which states as follows:

“6. So far as the delay in lodging the FIR question is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution

⁸ Criminal Appeal No. 660 of 2008

⁹ 2026 SCC OnLine Bom 983

case merely on the ground that there is some delay in lodging the FI R . In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction. Additionally, we find that the prosecution has clearly established commission of offence punishable under Sections 354 and 506 IPC. So far as the offence punishable under Section 376 I PC is concerned, the basic ingredients are set out in Section 37 5 I PC. On a reading of the evidence of the prosecutrix, we find that a case of rape has not been established so far as the respondent is concerned.”

25. From the above, it can be deduced that delay in filing F.I.R for sexual offences cannot be equated with the cases involving other offences. Even if the delay in case of sexual assault has not been properly explained but is found to be natural, then in such a case the same will not enure to the benefit of the accused. The court should examine the broader probability of a case and should not be swayed away by minor contradictions to discard the case of the prosecution, which is otherwise found to be reliable. It was argued by the Ld. Counsel for the Appellant that the prosecution has not been able to establish the date of the incident. Further analysis of the evidence of P.W. 2 and P.W. 7 shows that there is inconsistency regarding the date of the incident. P.W. 7, the Medical Officer, deposed that the victim had informed her that she was subjected to sexual assault for the first time three days prior to the medical examination, which, according to P.W. 7, would place the occurrence on or about 27th or 28th October, 2014. Furthermore, P.W. 7 has stated in the cross-examination that as per the history given by the victim, she was

raped three days back. She also stated that there was congestion and the said congestion could not have been caused due to infection but by use of force on that part. She further stated that congestion may stay for 4-5 days. P.W. 7 clarified that fresh injury means injury within 3 days and she also agreed that the forensic expert would be a fit person to opine about the exact date of the injury and that she cannot state the exact date on which the victim was sexually assaulted.

26. We find that an incorrect statement given by a minor prosecutrix regarding the date of occurrence would not be construed as a contradiction that would result in demolishing the case of the prosecution. While we are cognizant of the fact that the prosecution has been unable to establish the exact date on which the offence was committed by the Appellant, however, we are not inclined to disbelieve the occurrence of the incident itself, on these grounds. The lack of definite details or minor contradictions about the incident, in the statement of a minor victim, if it is not so glaring, does not have such far reaching consequences, that it would negate the very thrust of the prosecution case, which otherwise can be believed. In these circumstances, the inability of the prosecution to prove the exact date of the occurrence with complete precision cannot be treated as a circumstance fatal to its case, particularly when the

substantive evidence of the victim is cogent, consistent and inspires confidence.

27. P.W. 4 deposed that she knew the father of the victim and that he was residing with his four children. She also deposed that she knew his daughter 'N' who was 8 years old at that time. She further deposed that on 26.10.2014 when she was going to work, she met 'N', who was looking scared and when she asked her what had happened, she told her that one '*Viju*' harasses her in the night time. She further deposed that 'N' told her that *Viju* shut her mouth and opened the string of her pajama and slept on her body. She further identified the Appellant in the Court. Although, it has come by way of omission that she had stated before the police that *Viju* used to harass P.W. 2 in the night time, and that P.W. 2 told that *Viju* shut her mouth and opened the strings of her pajama and slept on the victim's body, the same has not in any manner been demolished in the cross-examination. She has admitted in the cross-examination that she has not seen the incident. Apart from this, there was no cross-examination which would discredit her testimony.

28. Further analysis of the evidence of P.W. 7 would show that no external injuries were found on the victim's body and that the Chemical Analyser Reports are entirely negative for semen and blood and that no

inflammation, redness or soreness was found on the private part of the victim. It was therefore contended that the lack of forensic and medical corroboration creates a reasonable doubt regarding the commission of the alleged offence. In the present case, P.W. 2 in her deposition, accurately described the act of penetrative sexual assault. The evidence of P.W. 7, corroborates the evidence of P.W. 2 in material aspects insofar as the version of penetrative sexual assault is concerned. P.W. 7 deposed that when she examined the genitals of P.W. 2, she found that the hymen was torn at 3'O clock, 6'O clock and 9'O clock positions and that there was congestion but no active bleeding. She deposed that the overall findings were consistent with an act of sexual intercourse being inflicted upon her, however the FSL reports were pending. She identified the reports and the contents thereof to be correct and stated that the injury, as mentioned in Column No. VI(g), to the hymen is possible if a person commits forcible sexual intercourse. Even otherwise, it is a settled position of law that ocular evidence always prevails over medical evidence.

29. It is well settled that absence of semen in forensic analysis does not by itself dislodge the theory of penetrative sexual assault. The positive finding of hymen tear with congestion persisting for 4 to 5 days is independently corroborative of the victim's testimony and is consistent with the timeline of the incident. The legal position in this regard stands

precisely elucidated in *Madan Gopal Kakkad v/s Naval Dubey*¹⁰. The Hon'ble Apex Court, in the aforementioned case, held as under:

"37. We feel that it would be quite appropriate, in this context, to reproduce the opinion expressed by Modi in Medical Jurisprudence and Toxicology (Twenty First Edition) at page 369 which reads thus:

"Thus to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one."
(emphasis supplied)

38. In Parikh's Textbook of Medical Jurisprudence and Toxicology, the following passage is found: "Sexual intercourse.- In law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains."

30. P.W. 5 is the Medical Officer who examined the Appellant. This witness has categorically opined that *"there was nothing to suggest that the person examined was incapable of performing sexual intercourse at the given time and place"*. Nothing was elicited in the cross-examination of this witness to discredit the said opinion or to cast any doubt upon the findings recorded in the medical examination to the extent of his ability to

¹⁰ (2005) 13 SCC 766

perform penetrative sexual act. Therefore, the medical evidence does not indicate any physical incapacity on the part of the Appellant to commit the act of penetrative sexual assault.

31. It has come in the evidence of P.W. 6, PSI Jayshree, that there were CCTV cameras installed at the petrol pump and therefore it was contended that the investigation suffers from serious lapses inasmuch as the investigating agency failed to collect the CCTV footage from the petrol pump situated opposite the spot of the incident and did not examine any independent witnesses, despite the incident having occurred at a public place. This court is of the considered opinion that the investigation could have been more comprehensive indeed, on the aforesaid aspects. The investigating agency ought to have made an endeavour to collect the best available evidence and to examine all material witnesses. In this backdrop, the question that falls for consideration is whether these lapses strike at the root of the prosecution case. We do not find that these lapses are such as would create any doubt about the prosecution case. It is well settled that defects or omissions in investigation do not, by themselves, vitiate the case of the prosecution or entitle the accused to an acquittal. The court is required to examine whether the evidence brought on record, notwithstanding such lapses, is sufficient to establish the guilt of the accused beyond reasonable doubt. We find that in the present case there is

no reason to doubt the version of P.W. 2 and therefore even if there are any lapses in investigation, it will not cause any dent to the case of the prosecution which otherwise inspires confidence.

32. The defence raised by the Appellant in his 313 Cr.P.C statement, is that the victim's father owed him money and hence the present case was registered to falsely implicate him. However, the Appellant has not adduced any evidence to substantiate the said claim. In these circumstances, such a defence cannot be accepted or considered by the court, as mere suggestions or explanations, without proof, cannot displace the case of the prosecution. In this regard, a profitable reference can be made to the judgment of the Hon'ble Supreme Court in ***Munish Mubar v/s The State of Haryana AIR 2013 Supreme Court 912***. It states thus:

“25. Moreso, it was the duty of the appellant to furnish some explanation in his statement under Section 313 Cr.P.C., as under what circumstances his car had been parked at the Delhi Airport and it remained there for 3 hours on the date of occurrence. More so, the call records of his telephone make it evident that he was present in the vicinity of the place of occurrence and under what circumstances recovery of incriminating material had been made on his voluntary disclosure statement. Merely making a bald statement that he was innocent and recoveries had been planted and the call records were false and fabricated documents, is not enough as none of the said allegations made by the appellant could be established.”

33. Further, in the cross-examination of P.W. 2, the defence suggested to the victim that she did not like the Appellant as he used to drink liquor with her father, to which the witness has answered in the negative. This

court finds that the Victim-girl, P.W. 2, who is a child aged approximately 11-12 years, can have had no conceivable animosity towards the Appellant so as to falsely implicate him in an offence of such grave nature and it is also difficult to conceive that the father of the victim would stoop so low to involve his minor child as a victim in a sexual offence just to take revenge from the Appellant. It was held similarly by the Hon'ble Supreme Court in the case of *The State of Punjab v/s Gurmit Singh & Ors.*¹¹ has held as under:

“Even if it be assumed for the sake of argument that there was some such litigation, it could hardly be a ground for a father to put forth his daughter to make a wild allegation of rape against the son of the opposite party, with a view to take revenge. It defies human probabilities. No father could stoop so low as to bring forth a false charge of rape on his unmarried minor daughter with a view to take revenge from the father of an accused on account of pending civil litigation. Again, if the accused could be falsely involved on account of that enmity, it was equally possible that the accused could have sexually assaulted the prosecutrix to take revenge from her father, for after all, enmity is a double edged weapon, which may be used for false implication as well as to take revenge.”

34. Further, the victim has categorically described the act of penetrative sexual assault committed upon her by the Appellant and her testimony on this material particular has remained unshaken in the cross-examination. This Court, by any stretch of imagination, is unwilling to believe that the victim would go to the extent of falsely implicating the Accused-Appellant taking into consideration the societal implications that the victim herself is likely to face. In the light of the aforesaid, it would be apposite to refer to

¹¹ CRL.REF. 2/2024

the judgment of the Hon'ble Apex Court in the case of **Bharwada**

Bhoginbhai Hirjibhai v/s The State of Gujarat.¹² The court held that :

"10. ... Without the fear of making too wide a statement, of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is just generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not-so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because:- (1) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over powered by feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent."

12 AIR 2009 SC 1010

35. Further, a suggestion was also put to P.W. 4 in order to insinuate that there was an ongoing quarrel between the victim's father and the Appellant. It was put to her that due to the quarrel on the count of money between 'N's father and the Appellant, 'N's father had lodged a false complaint against the Appellant. However, the suggestion was denied. This suggestion was not put to the victim who would have been a more appropriate witness to answer this question. This court finds that neither of the aforesaid grounds of false implication merits acceptance. This court accordingly holds that the plea of false implication taken up by the Appellant is not worthy of credence.

36. Further, in an attempt to dislodge the reliability and sufficiency of the testimony of the Victim-girl, the Ld. Counsel for the Appellant has placed heavy reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Nirmal Premkumar and Anr. v/s State represented by Inspector of Police***¹³. The relevant observations according to the Ld. Counsel, from the said judgment are reproduced hereunder:

“20. 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

13 (1992) 3 SCC 204

circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

21. In Ganesan v. State, this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

.....

23. In Krishan Kumar Malik v. State of Haryana, this Court 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: (SCC p. 138, paras 31-32).

"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."

37. The Ld. Counsel for the Appellant has also placed reliance upon the judgment of ***Lallu Manjhi and Anr. v/s State of Jharkhand (citation)*** and ***Roshan v/s State of Maharashtra, through Police Station***, in support of the same contention, to contend that the testimony of the victim-girl is

unreliable and does not inspire confidence so as to form the sole basis for conviction.

38. There can be no doubt about the proposition of law laid down by the Hon'ble Supreme Court in the aforementioned case laws, however, upon a careful perusal of the same, we are of the view that they do not advance the case of the Appellant. The aforementioned judgments lay down the settled principles governing the appreciation of oral evidence and testimony of a solitary witness and the circumstances in which such testimony may form the sole basis of conviction. Applying the said principles to the facts of the present case, this Court is of the considered view that P.W. 2 has consistently and in unambiguous terms deposed about the act of penetrative sexual assault committed upon her by the Appellant, describing the act of penetration resulting in pain and bleeding. In the present case, there is direct evidence of the victim herself as regards the acts of the appellant. Further, her testimony on the gravamen of the act of penetrative sexual assault by the Appellant was wholly unshaken in her cross-examination. The minor variations urged by the Appellant relate only to the peripheral details, which the law consistently recognises as natural in the deposition of a traumatised child witness. The testimony of P.W. 2 accordingly falls squarely within the first category identified in the aforementioned authorities i.e. that of a '*wholly reliable testimony*'.

Therefore, both judgments relied upon by the Ld. Counsel for the Appellant do not support the case of the Appellant.

39. At this stage it will be apposite to refer to the judgment passed by this Court in the case of ***Ramesh Dada Kalel v The State of Maharashtra and another***¹⁴ wherein it is observed as under:

*“35. There is substance in the contention raised by the learned APP, by relying upon the judgments of the Supreme Court in the cases of ***State of Punjab vs. Gurmit Singh and others*** (supra), ***Ranjit Hazarika vs. State of Assam*** (supra), ***State of Himachal Pradesh vs. Asha Ram*** (supra) and ***Deepak Kumar Sahu vs. State of Chhattisgarh*** (supra). In the aforesaid judgments, the Supreme Court has questioned as to why the evidence of a girl, who complains about the offence of rape, is to be viewed with doubt, disbelief or suspicion. It is laid down that once the judicial conscience of the Court is satisfied that the evidence of the prosecutrix inspires confidence, further corroboration is not necessary. It is emphasized that the evidence of a victim of sexual assault, is entitled to great weight, absence of corroboration notwithstanding.*

“36. The Supreme Court has held in the said judgments that if, for some reason, the Court finds it difficult to place implicit reliance on the testimony of the prosecutrix, it may look for evidence that would lend assurance to her testimony, short of corroboration required in the case of an accomplice. The Supreme Court has indicated that in cases where victims are minor, appropriate sensitivity is to be observed and the evidence of such a minor victim of sexual offence, needs to be taken into account without showing undue suspicion or hyper technicality.”

40. This Court now proceeds to consider the submission advanced by the Ld. Counsel for the Appellant placing reliance upon ***Radhe Shyam v. State of Rajasthan***¹⁵ to the effect that the testimony of a child victim, while being primary in nature, must be found credible and trustworthy before it can be acted upon and that such testimony, irrespective, may necessitate

¹⁴ (2021) 6 GLR 55

¹⁵ (2014) 5 SCC 389

independent corroboration. The Ld. Counsel invited the attention of the court to the following observations:

“12. In Panchhi², after reiterating the same principles, this Court observed that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and, thus, a child witness is an easy prey to tutoring. This Court further observes that the courts have held that the evidence of a child witness must find adequate corroboration before it is relied upon. But, it is more a rule of practical wisdom than of law. It is not necessary to refer to other judgments cited by the learned counsel because they reiterate the same principles. The conclusion which can be deduced from the relevant pronouncements of this Court is that the evidence of a child witness must be subjected to close scrutiny to rule out the possibility of tutoring. It can be relied upon if the court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, the court must find adequate corroboration to the child witness’ evidence. If found reliable and truthful and corroborated by other evidence on record, it can be accepted without hesitation. We will scrutinize PW 2 Banwari’s evidence in light of the above principles.”

41. A similar principle has also been laid down in ***Manirul Islam v/s State of Assam***¹⁶.

42. While there is no doubt about these established principles of law, the same do not assist the case of the Appellant. In the present case, this court finds the testimony of P.W. 2, the Victim-child, to be wholly reliable, consistent and free from any indication of tutoring or material contradiction. Her sole testimony is therefore sufficient to sustain the conviction. In any event, even assuming corroboration to be necessary, the requirement also stands fully satisfied if we peruse the evidence of PW 7.

¹⁶ 1996 SCC 2 (384)

The testimony of P.W. 2 is independently corroborated by the medical evidence of P.W. 7, who found a torn hymen with congestion and opined that the injuries were consistent with forcible sexual intercourse. The medical findings thus lend material corroboration to the version of the victim regarding penetrative sexual assault. Even PW 4 has deposed what PW 2 had narrated to her about the incident. The narration of PW 2 to PW4, may not be verbatim, but evidence of PW 4 certainly lends corroboration to the testimony of PW 2 to establish the presence of the Appellant and as the perpetrator of the act.

43. In a catena of judgments of the Hon'ble Supreme Court it has been held that the testimony of the victim of sexual assault is independently sufficient unless there are compelling reasons which necessitate looking for corroboration of her statement. A profitable reference can be made to the judgment of the Apex Court in the case of ***State of Punjab v/s Gurmit Singh (supra)*** wherein it is held that:

“The testimony of the victim in such case 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.

The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult

to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

44. Thus, it is made clear that the courts should find no difficulty in acting on the testimony of the victim of the sexual assault alone to convict the accused where the testimony inspires confidence and is found to be reliable and even if there are minor contradictions or insignificant discrepancies, the same should not be a ground for throwing out an otherwise reliable prosecution case. Thus, seeking corroboration of the victim's statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury and that corroboration as a condition for judicial reliance on the testimony of the victim is not a requirement of law but a guidance of prudence.

45. Taking into consideration, the overall conspectus of the matter, we are of the opinion that the testimony of the Victim-girl inspires confidence and that there is nothing to disbelieve her. It is very unlikely that a young girl of 11-12 years would have a grudge against the Appellant-Accused and would concoct a false story of such nature. The evidence recorded clearly shows that she has narrated the incident in a very transparent and natural manner and without any tutoring. We, therefore, find that the prosecution has proved its case beyond reasonable doubt and therefore as

far as offence under Section 376 IPC is concerned, the same stands proved.

46. It was argued by the Ld. Counsel for the Appellant that the offence under Section 5 (1) of the POCSO Act, 2012 is not conclusively established by the prosecution. Section 5 (1) of the POCSO Act, 2012 reads as:

(1) whoever commits penetrative sexual assault on the child more than once or repeatedly.

47. It was contended that the prosecution has not been able to establish that the penetrative sexual assault happened on more than one occasion. The analysis of the evidence of P.W. 7, the Medical Officer, shows that the victim had informed her that she was subjected to sexual assault for the first time three days prior and for the second time two days prior to the medical examination. Furthermore, P.W. 7 has stated in the cross-examination that as per the history given by the victim, she was raped three days back. However the same does not find corroboration in the testimony of P.W. 2. Victim-girl, in her cross-examination, deposed that:

“Q. 47 I put it to you that accused Vijay had not done such act with you, what you have to say?”

Ans. He had done the act once with me.”

48. The above answer by the victim, herself clarifies that she was subjected to penetrative sexual assault at the hands of the accused only once and that there is nothing else in her deposition to point out that the

penetrative sexual assault took place more than once. Additionally, there is no other evidence brought on record by the prosecution to establish the frequency of the penetrative sexual assault as alleged. Thus, in the light of discrepancy in the evidence regarding the occurrence of the penetrative sexual assault more than once, we hold that the ingredients of Section 5 (l) of the POCSO Act are not satisfied.

49. P.W. 8, the Medical Officer, has deposed that the age of the victim is 11 to 12 years which is an estimated age and not conclusive in nature. Hence, the prosecution has failed to establish beyond reasonable doubt that the victim was below twelve years of age so as to attract Section 6 r/w Section 5 (m) of the POCSO Act. The prosecution has relied upon the deposition of P.W. 8, who submitted that he is neither a radiologist nor a dentist and therefore, he could not conclusively establish that the age of the victim to be 11-12 years. While this Court takes into consideration the aforesaid submission, it is also pertinent to note that, P.W. 8 deposed that the age of the victim was assessed as being between 11-12 years on the basis of the ossification test conducted. It would be apposite to refer to the judgment of the High Court of Delhi in ***Court on its own motion v/s State of NCT of Delhi***¹⁷, wherein the Court has comprehensively dealt with the

¹⁷ (1983) 3 SCC 217

application of the margin of error in determining age on the basis of an ossification test. The Court held that:

“40. Thus, the Hon’ble Supreme Court in Rajak Mohammad (supra), held that the age established by a radiological examination might not be precise and, therefore, sufficient margin of error must be allowed. It also considered the upper estimated age observing that the accused must get the benefit of doubt.

.....

42. In Ram Suresh Singh v. Prabhat Singh⁹, Jyoti Prakash Rai v. State of Bihar¹⁰, it has been observed by Hon’ble Supreme Court that the age determined by ossification test is not a precise one and, therefore, two-year margin of error/ flexibility needs to be applied on either side. Of course, these judgments were in context of juvenile in conflict with law but the principle of applying ‘margin of error’ shall be no different while considering a case of child-victim.

43. In Karan v. State of Madhya Pradesh, it has been observed by Full Bench of Supreme Court that ossification test gives only a broad assessment of the age and it cannot give an exact age. It also observed that there is also element of margin of plus or minus one to two years.”

50. In view of the aforesaid, it is evident that an ossification test furnishes only an approximate age and cannot be regarded as a conclusive proof thereof. In the facts of the present case, the prosecution has not adduced any cogent evidence to establish, beyond reasonable doubt, that the victim was below twelve years of age. In such circumstances, the benefit of doubt regarding the age of the victim must enure to the Appellant and consequently, the conviction, particularly under Section 5 (m) of the POCSO Act, 2012 cannot be sustained.

51. On the aspect of sentencing, a reference could be made to the judgment in the case of ***Kalamuddin Mohammad Isteyar Ansari alias Koail***

*v/s State of Maharashtra and Anr*¹⁸ wherein whilst confirming the conviction of the accused under Section 376 of IPC and Section 6 of the POSCO Act, 2012, the Court had reduced the sentence after taking into consideration various factors such as no criminal antecedent, conduct of the accused etc. and the Court had imposed sentence of 12 years which was more than the minimum sentence of 10 years by observing that it would meet the ends of justice.

52. After perusing the evidence on record and carefully considering the submissions advanced by both the parties, we affirm the judgment of the Trial Court, which holds that the accused has committed the offence under Section 376 of the IPC. However, for the reasons recorded hereinabove, the conviction under Section 5 r/w Section 6 of the POCSO Act, 2012 cannot be sustained, as the prosecution has failed to establish the ingredients of section 5(l) and 5(m), so as to attract Section 5 of the Act. Accordingly, the conviction and sentence under Section 5 r/w Section 6 of the POCSO Act, 2012 is modified to a conviction and sentence under Section 3 r/w Section 4 of the POCSO Act, 2012.

53. We however note that the Appellant has suffered incarceration for almost 12 years and has no antecedents. We therefore deemed it fit to call

18 2026 SCC OnLine Bom 220

for a report from the Jail authority with regards to his behaviour and other considerations including remissions.

54. We have perused the report. From the report, we find that the behavior of the appellant in the jail was satisfactory. There is no untoward incident reported. The Appellant has undergone the sentence of 11 years 9 months since the date of his arrest, that is, from 30th October 2014, without availing any parole or furlough. It is also mentioned in the report from the jail authority that the Appellant is entitled for remission.

55. Taking into consideration all these aspects, we are of the opinion that the sentence can be reduced. However, taking into consideration the gravity of the offense, we are imposing more than the minimum sentence of 7 years. We find that imprisonment for a period of 12 years would meet the ends of justice. The Appellant has already undergone 11 years 9 months since the date of his arrest, that is, from 30th October 2014.

Hence, the following order.

ORDER

(i) The Appeal is partly allowed.

(ii) The conviction of the Appellant under Section 376 of the IPC passed by the Special Judge under POCSO Act, 2012 in POCSO Special Case No. 41 of 2015 is maintained. The conviction and

sentence under Section 5 r/w Section 6 of the POCSO Act, 2012 is modified to a conviction and sentence under Section 3 r/w Section 4 of the POCSO Act, 2012. However, the sentence of life imprisonment is set aside. Instead, the Appellant is sentenced to suffer Rigorous Imprisonment for 12 years and to pay a fine of Rs. 1,000/- for commission of offence punishable under Section 4 of the POCSO Act, 2012. In default of payment of fine, he shall undergo simple imprisonment of one month. No separate sentence is imposed for the offence punishable under Section 376 of the IPC, in view of Section 42 of the POCSO Act, 2012.

(iii) The direction of the Special Court awarding the compensation of Rs. 25,000/- under section 33(8) of the POCSO Act is maintained.

(iv) Since the appeal is disposed of, all pending applications stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)