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A.F.R.

2026:AHC-LKO:42623-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL APPEAL No. - 1989 of 2016

Anku @ Parshuram

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Along with :

1. **Criminal Appeal No. 1763 of 2016:**
Santosh Kumar Gautam
Versus
State of U.P.

2. **Criminal Appeal No. 1905 of 2016:**
Pintu @ Dinesh
Versus
State of U P

Counsel for Appellant(s) : Abhinav Pankaj, Anjali Dubey, Archana Rawat, Arshad Hafeez Khan, Dinesh Kr. Sharma, Dr. Manoj Kumar Dubey, Jay Narayan Mishra, Jyoti Rawat, Mukesh Singh, Pramod Kumar, Pranvesh Awasthi, Rajiv Mishra, Ravi Prakash Yadav, Rohit Upadhyay, Roopani Mishra, Sanjay

Kumar Yadav, Smt. Shikha Srivastava, Vishwa Nath Singh

Counsel for Respondent(s) : Ravish Mishra, A.G.A.

Court No. - 1

HON'BLE RAJAN ROY, J.
HON'BLE RAJEEV BHARTI, J.

(Per: Rajeev Bharti, J)

1. Heard Shri Sanjay Kumar Yadav, learned counsel for the appellant in Criminal Appeal No.1989 of 2016; Shri Rohit Upadhyay, learned counsel for the appellant in Criminal Appeal No.1763 of 2016; Shri Jay Narayan Mishra, learned counsel for the appellant in Criminal Appeal No.1905 of 2016, Shri Ravish Mishra, learned AGA for the State and perused the record.

2. These appeals under Section 374 (2) Cr.P.C. have been preferred by appellants- Anku @ Parshuram bearing Criminal Appeal No.1989/2016; Santosh Kumar Gautam bearing Criminal Appeal No.1763/2016 and Pintu alias Dinesh bearing Criminal Appeal No.1905/2016, challenging the judgment and order dated 04.11.2016, passed by learned Special Judge (POCSO Act) /Additional Sessions Judge, Barabanki in S.T. No. 03/2015 and S.T. No. 22/2015, arising out of Crime No.387 of 2014, Police Station-Deva, District- Barabanki, convicting and sentencing the appellant-Anku @ Parshuram to undergo imprisonment for life under Section 376 I.P.C. with a fine of ₹10,000/-, and in default of payment of fine to further undergo on year rigorous imprisonment. The

appellant- Anku @ Parshuram was further convicted and sentenced to undergo imprisonment for life under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to 'POCSO Act') with a fine of ₹10,000/-, and in default of payment of fine, to further undergo one year's rigorous imprisonment. Further, the appellants, namely, Anku @ Parshuram, Santosh Kumar Gautam, and Pintu @ Dinesh were convicted under Section 363 IPC and sentenced to five years' rigorous imprisonment with a fine of ₹10,000/- each, and in default of payment of fine, to undergo one year's rigorous imprisonment. They were also convicted under Section 366 IPC and sentenced to five years' rigorous imprisonment with a fine of ₹10,000/- each, and in default of payment of fine, to undergo one year's rigorous imprisonment. All the substantive sentences were directed to run concurrently.

3. Considering the circumstances of the case, the name of the victim is not being mentioned in this judgment.

4. The informant Santram submitted a written complaint at Police Station- Deva on 22.10.2014 stating that his daughter, aged about 14 years, had been enticed away on 13.10.2014 at about 01:00 PM by the accused Anku @ Parshuram s/o Dularey, resident of Madhavpur, Police Station Deva, Barabanki. He alleged that Anku @ Parshuram fled with her in a Maruti car bearing registration No. UP32-AB-7365.

5. It was further alleged that Anku @ Parshuram's friends were also involved in the incident. Despite an extensive search, the victim could not be traced. On the basis of a written complaint, FIR bearing Crime No.387/2014, under Sections 363, 366 I.P.C, and Section 6 of the POCSO Act was registered at Police Station-Deva, District- Barabanki, and the investigation commenced. After investigation, the police found sufficient evidence and submitted the charge sheet against the accused Anku @ Parshuram, under Sections 363, 366, 376 IPC and Section 6 of the POCSO Act; against the accused Harishchandra @ Harvindar under Section 368 IPC and Section 6 of the POCSO Act; and against the accused Pintu alias Dinesh and Santosh Kumar Gautam, under Sections 363, 366 IPC. The Court took cognizance of the offenses and summoned the accused persons. After hearing both sides, the charges were framed against the accused persons under the above-mentioned sections.

6. On 05.10.2016, after hearing both the parties, the trial court passed a detailed order consolidating the Criminal Case No.3/2015 against Anku @ Parshuram and Harinandan @ Harishchandra @ Harvindar with Criminal Case No.22/2015 against Santosh Kumar Gautam and Pintu. Criminal Case No. 03/2015 was treated as the leading file. Therefore, both the matters, are being decided together through this common judgment.

7. The prosecution examined the witnesses Santram- informant as PW-1, Ramu as PW-2, Dr. Sangeeta as PW-3, HCP Ramraj as PW-4, victim/prosecutrix as PW-5, Inspector Amarnath Yadav as PW-6, Sub-Inspector Omkar Nath Yadav as PW-7 and Dr. Rajiv Kumar Singh as PW-8. Further, the prosecution proved written complaint as Ex-Ka-1, recovery memo as Ex-Ka-2, medical report as Ex-Ka-3, supplementary medical report as Ex-Ka-4, FIR as Ex-Ka-5, GD entry as Ex-Ka-6, statement under Section 164 Cr.P.C. as Ex-Ka-7, site plan as Ex-Ka-8, application for recording statement under Section 164 Cr.P.C. as Ex-Ka-9, application for inspection of statement as Ex-Ka-10, charge sheet as Ex-Ka-11, X-ray report as Ex-Ka-12 and age certificate as Ex-Ka-13 and after concluding all the prosecution evidence, the statements of the accused were recorded under section 313 Cr.P.C. in which they denied the allegations and claimed false implication due to malice and mal-intention.

8. Before the Trial Court, Santram (PW1), who is the informant and father of the victim, in his deposition stated that about 8-9 months earlier, the accused Anku @ Parshuram, with the help of Santosh, Pintu and Harishchandra @ Harvindar enticed away his 14-year-old daughter in a Maruti car. Despite searching for several days, he could not find her daughter and later lodged the FIR. He further stated that after about one and a half months, the girl was recovered from Anku @ Parshuram's custody near Bhayara road crossing.

9. Ramu (PW-2), brother of the victim, deposed that his sister, aged about 15 years, was enticed away by Anku @ Parshuram with the help of Santosh, Pintu, Harishchandra @ Harvindar, and her sister was later recovered from Anku @ Parshuram's custody after about one month.

10. The victim was medically examined by Dr. Sangeeta (PW-3) on 24.11.2014. The findings in the medical examination stated that the condition of the victim was normal. Hymen was old, torn, and healed. No spermatozoa or gonococci were found. No definite opinion regarding sexual assault could be given. She further stated that the age of the victim was assessed as about 14 years.

11. The victim/prosecutrix, examined as PW-5, stated that about one year and nine months ago, while she was going to the field, the accused Anku, along with the co-accused Santosh and Pintu, approached her and asked her to run away and marry him. When she refused, they forcibly pushed her into a Maruti van, gagged her mouth, and threatened to kill her if she screamed. She further stated that the accused Santosh and Pintu got off the way. Anku @ Parshuram kept her first at his brother-in-law Harinandan @ Harishchandra @ Harvindar's house at Kodari. Then took her to Piprauli, where he kept her for one month. During this period, Anku @ Parshuram used to do bad things with her. He filled vermillion in her hair parting. Despite her request to be sent back home, the accused refused. Eventually, the police recovered her

while she was standing with Anku @ Parshuram near Bhayara road.

12. Inspector Amarnath Yadav (PW-6) described the investigation process, preparation of the site plan, recording of statements, medical examination of the victim and filing of the charge sheet. Dr. Rajiv Kumar Singh (PW-8) produced the X-ray report and the age certificate of the victim.

13. On the basis of the aforesaid discussion of facts, the entire evidence on record, and the applicable legal principles, the learned Trial Court concluded that the prosecution had successfully proved, beyond reasonable doubt, the charges levelled against accused Anku @ Parshuram under Sections 363, 366 and 376 of I.P.C. and Section 6 of POCSO Act. The Trial Court further held that the prosecution had succeeded in establishing, beyond reasonable doubt, the charges under Sections 363 and 366 of I.P.C. against accused Santosh Kumar Gautam and Pintu @ Dinesh.

14. However, the learned Trial Court found that the prosecution had failed to prove, beyond reasonable doubt, the charges under Section 368 of the Indian Penal Code and Section 6 of POCSO Act against co-accused Harishchandra @ Harvinder @ Harinandan.

SUBMISSION ON BEHALF OF THE APPELLANT ANKU @ PARSURAM

15. Learned counsel for the appellant submitted that the FIR was lodged after an unexplained delay, which creates serious doubts

regarding the genuineness of the prosecution's case. There was no independent public witness either at the stage of recovery or investigation. The medical evidence does not conclusively establish the commission of rape, and no external injury was found on the body of the prosecutrix. It is also submitted that the prosecution failed to conclusively prove the age of the prosecutrix. The possibility of a consensual relationship could not be ruled out, and there were material contradictions in the statements of the victim recorded under Sections 161 and 164 Cr.P.C. and the deposition before the trial court. It is also submitted that the learned trial court failed to appreciate the settled principles. Learned counsel for the appellant further argued that the statement under Section 164 Cr.P.C. is not substantive evidence and can only be used for limited purpose of corroborations or contradictions.

SUBMISSION ON BEHALF OF THE APPELLANTS PINTU @ DINESH AND SANTOSH

16. Leaned counsel for the appellants further argued that Pintu @ Dinesh and Santosh were residing along with the main accused in the same village and the appellants have been falsely implicated due to village politics. There was no motive for the appellants to kidnap the prosecutrix. The learned Trial Court erred in law by failing to correctly appreciate and apply the legal principles governing the facts and circumstances of the present case. The findings recorded by the learned Trial Court are not only contrary

to law but are also manifestly erroneous, perverse, and against the weight of the evidence on record.

17. The learned Trial Judge failed to properly appreciate the material contradictions and inconsistencies in the testimony of the prosecution witnesses and, instead of extending the benefit of reasonable doubt to the appellants, erroneously accepted the prosecution case.

SUBMISSION ON BEHALF OF THE STATE

18. Per contra, learned A.G.A. supported the impugned judgment and submitted that the testimony of the prosecutrix is wholly reliable and inspires confidence. The minor contradictions are natural and inconsequential and the prosecutrix consistently supported the prosecution's case at every stage. The age of the prosecutrix stood fully established through medical examination.

19. It is submitted that the consent of a minor under the POCSO Act is legally immaterial. It is further argued that the absence of injuries or semen does not negate sexual assault. The statement under Section 164 Cr.P.C. substantially corroborates depositions before the trial court, and the findings recorded by the trial court are based upon proper appreciation of evidence and warrant no interference.

POINTS OF DETERMINATION

(i) Whether the charges under sections 363, 366, 376 IPC, and section 6 of the POCSO Act against Anku @ Parshuram have been proved beyond reasonable doubt?

(ii) Whether the conviction of Pintu alias Dinesh and Santosh Kumar Gautam is sustainable in law on the basis of facts and evidence on record?

(iii) Whether the impugned judgment suffers from perversity or legal infirmity warranting interference under Section 374(2) Cr.P.C.?

ANALYSIS

20. While exercising power under Section 374(2) Cr.P.C., the Appellate Court is entitled to re-appreciate the evidence. However, interference with conviction is warranted only when findings are perverse, manifestly illegal, or wholly unsupported by evidence.

21. In so far as the delay in lodging the FIR is concerned, the same stands satisfactorily explained. The normal rule that prosecution has to explain delay and lack of prejudice does not apply per se to rape cases, as the Hon'ble Supreme Court held in the case of **State of U.P. Vs. Manoj Kumar Pandey, AIR 2009 SC 711** (Three-Judge Bench) and **Santosh Moolya Vs. State of Karnataka, (2010) 5 SCC 445**. In offenses involving minor girls' family members ordinarily search for the victim before approaching authorities due to social stigma and emotional trauma. Thus, the delay in lodging the FIR is not fatal in the present case.

22. It is pertinent to mention here that prosecution witness no.1 was, in fact, subjected to cross-examination by the counsel appearing for the co-accused Pintu and Santosh. Although the counsel representing appellant Anku @ Parshuram could not independently cross-examine the informant- P.W.-1 due to his death.

23. Furthermore, P.W.1 was the informant, and whatever he deposed regarding the incident was also narrated by P.W.5/victim and when the said witness had already been cross-examined on behalf of the co-accused, the appellant has failed to demonstrate any specific prejudice caused to his defence.

24. Significantly, neither before the Trial Court nor in the present appeals had the appellants specifically contended that the inability of their counsel to cross-examine prosecution witness no.1 resulted in a failure of justice or caused irreparable prejudice to their defence.

25. It is a settled principle of criminal jurisprudence that every procedural irregularity does not vitiate a trial unless actual prejudice is shown to have been caused to the accused.

26. Moreover, the conviction of the appellants are not founded solely upon the testimony of prosecution witness no.1. The prosecution case is substantially supported by testimony of the victim, the recovery of the victim from the company of the appellants, and other attending circumstances appearing on record. Therefore, in

the facts and circumstances of the present case, the absence of a separate cross-examination of prosecution witness no.1 by the appellants' counsel does not constitute a ground to discard the prosecution case or to extend the benefit of doubt to the appellants.

27. However, while appreciating the evidence of prosecution witness no.1, the Court has remained conscious of the fact that the appellants did not have the opportunity of independent cross-examination. Consequently, any improvement or assertion made by the witness beyond the contents of the First Information Report is required to be scrutinized with due caution.

28. The legislative objective behind the POCSO Act is the protection of children from sexual exploitation. A child in law is incapable of giving valid consent for sexual intercourse within the meaning of the POCSO Act. Once the prosecutrix is found to be below 18 years of age, the plea of consent becomes legally insignificant.

29. In this regard, reliance may be placed on the decision of the Apex Court in **Satish Kumar Jayanti Lal Dabgar Vs. State of Gujarat**, reported in **(2021) 3 SCC 12**. The relevant para is being reproduced below :-

> *"16. The Legislature has introduced the aforesaid provision with sound rationale and there is an important objective behind such a provision. It is considered that a minor is incapable of thinking rationally and giving any consent. For this reason, whether it is civil law or criminal law, the consent of a minor is not treated as valid consent. Here the*

> *provision is concerning a girl child who is not only minor but less than 16 years of age. A minor girl can be easily lured into giving consent for such an act without understanding the implications thereof. Such a consent, therefore, is treated as not an informed consent given after understanding the pros and cons as well as consequences of the intended action. Therefore, as a necessary corollary, duty is cast on the other person in not taking advantage of the so-called consent given by a girl who is less than 16 years of age. Even when there is a consent of a girl below 16 years, the other partner in the sexual act is treated as criminal who has committed the offence of rape. The law leaves no choice to him and he cannot plead that the act was consensual. A fortiori, the so-called consent of the prosecutrix below 16 years of age cannot be treated as a mitigating circumstance."*
>
> *(Emphasis has been laid upon underline parts)*

30. In the present case, no convincing material could be elicited by the defence to demolish the prosecution's evidence regarding age. In this case, though the prosecution did not produce any educational certificate of the prosecutrix, but the radiological examination substantially supports the prosecution's case. Accordingly, this Court holds that the prosecutrix was a minor (around 14 years) on the date of occurrence.

31. Much emphasis has been laid by learned counsel for the appellants upon the alleged inconsistencies between the statements under Sections 161 and 164 Cr.P.C. and testimony before the court. At this stage, it becomes necessary to examine the legal character and evidentiary value of a statement recorded under Section 164 Cr.P.C.. A statement under Section 164 Cr.P.C. is recorded by a

Judicial Magistrate during investigation in order to preserve the version of a witness at the earliest possible stage, free from police influence. Such a statement is not substantive evidence by itself. However, it can be utilized for the purpose of corroboration under Section 157 of the Evidence Act or contradictions under Section 145 of the Evidence Act.

32. The Hon'ble Supreme Court in the case of **Ram Kishan Singh vs. Harmit Kaur, (1972) 3 SCC 280** observed that the statement under Section 164 Cr.P.C. cannot be treated as substantive evidence but can be used to corroborate or contradict thereof. Similarly, in the case of **George vs. State of Kerala, (1998) 4 SCC 605**, it has been held that a statement under Section 164 Cr.P.C. assumes significance where a witness supports the prosecution's case during trial.

33. In the present matter, the prosecutrix in her statement under Section 164 Cr.P.C. specifically stated that she had been taken away by the appellant and was subjected to sexual intercourse. During deposition before the trial court, the prosecutrix substantially reiterated the same allegations. Minor omissions or variations relating to peripheral details do not affect the prosecution's version.

34. Human memory is not expected to possess photographic precision, particularly in a case involving traumatic sexual offenses. The

broad consistency between the statement under Section 164 Cr.P.C. and testimony before the trial court lends substantial assurance to the prosecution's case. No material contradictions going to the root of the prosecution's story could be demonstrated by the learned counsel for the appellant. Thus, the statement under Section 164 Cr.P.C. in the present case materially corroborates the testimony of the prosecutrix and strengthens the prosecution's version.

35. It is important to note that Section 361 provides for kidnapping from lawful guardianship.—*Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.*

Explanation.— The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

(Exception)— This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

36. Furthermore, Section 363 IPC contemplates regarding punishment for kidnapping.—*Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine*.

37. Section 366 I.P.C. contemplates kidnapping or abduction with the intent that a woman may be compelled to marry or forced/seduced to illicit intercourse. The evidence on record clearly establishes the removal of the prosecutrix from lawful guardianship, followed by repeated sexual exploitation. Essential ingredients of Section 366 IPC, therefore, stand fully established.

38. From a perusal of Section 361 of IPC, it appears that there must be an act of enticing or taking, in addition to establishing the child's minority (being sixteen for boys and eighteen for girls) and care/keep of a lawful guardian. Such 'enticement' need not be direct or immediate in time and can also be through subtle actions like winning over the affection of a minor girl, which is being clearly established from the evidence on record.

39. Section 376(2)(i) of I.P.C. contemplates committing rape on a *woman when she is under sixteen years of age.*

40. So far as the conviction of the appellants under Section 376 (2)(i) I.P.C. and Section 6 of POCSO Act is concerned, it is a settled law that conviction can be founded upon the sole testimony of the

prosecutrix, if it inspires confidence. The prosecutrix has consistently supported the prosecution's case during the investigation as well as the trial. Nothing substantial could be elicited during cross-examination to discredit her testimony on material particulars. Minor inconsistencies regarding peripheral effects are natural and inconsequential. In addition thereto, Human memory is not expected to possess photographic precision, particularly in a case involving traumatic sexual offenses.

41. In her deposition before the Court, the prosecutrix stated that at the time of the incident ,she was about 14 years of age. At about 12:00–1:00 P.M., while she was proceeding from her house to the fields, Anku alias Parshuram, accompanied by Santosh and Pintu, came to her and asked whether she would marry him. She refused. Anku insisted that he would marry her. Thereafter, all three persons forcibly lifted her into a Maruti van and gagged her mouth with a cloth, preventing her from raising an alarm. They also threatened to kill her if she shouted.

42. The witness further stated that Pintu and Santosh got down from the vehicle on the way. Thereafter, Anku took her to Kodri and kept her at the house of his brother-in-law, Harinandan, for one day. Subsequently, he took her to the house of another of his sisters at Piprauli, where she was kept for about one month. The witness stated that during this period, "वहां अंकू उसके साथ बुरा

काम करते थे." She further stated that she understood the meaning of the expression "बुरा काम".

43. The witness further deposed that at Piprauli, Anku applied sindoor in the parting of her hair and his sister residing there applied colour to her feet. Although she objected, they did not heed her objections and told her to let them do as they wished. She further stated that the name of Anku's brother-in-law at Piprauli was Ashok. Harinandan had also come there, and she requested him to take her back to her parents, but no one paid heed to her request.

44. The witness also deposed regarding the arrival of the police while she and Anku were standing on the road towards Bhayara, their apprehension by the police, the preparation of the recovery memo and other related documents, her medical examination, and the recording of her statement under Section 164 Cr.P.C. before the Magistrate.

45. In Court, the witness identified her signatures on the Recovery Memo (Exhibit Ka-2) and proved the statement recorded before the Magistrate as Exhibit Ka-7.

46. Maxim *"falsus in uno, falsus in omnibus"* is not applicable in India. It is merely a rule of caution. Thus, even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding the acquittal of a number of other co-accused persons, his conviction can be

maintained. The Court has to separate grain from chaff and appraise in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected in toto. A witness may be speaking untruth in some respect and it has to be appraised in each case as to what extent the evidence is worthy of acceptance; merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. Falsity of a particular material witness on a material particular would not ruin it from the beginning to the end. The aforesaid Maxim, while it does not apply in India, is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroidery, or embellishment. Similar view has been taken by the Apex Court in the case(s) of **Edakkandi Vs. State of Kerala, (2025) 3 SCC 273 (Para 22)** and **Ilangovan Vs State of TN, (2020) 10 SCC 533 (Three-Judges Bench)**.

47. In a case of rape, the testimony of the prosecutrix stands at par with that of an injured witness. It is not necessary to insist on corroboration if the evidence of the prosecutrix inspires confidence and appears credible. An accused can be convicted on the basis of the sole testimony of the prosecutrix without any further corroboration, provided the evidence of the prosecutrix

inspires confidence and appears to be natural and truthful. A woman or girl raped is not an accomplice, and to insist on corroboration of the testimony amounts to an insult to womanhood. In principle, the evidence of a victim of sexual assault stands at par with evidence of an injured witness, just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender. The evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. Corroboration in the form of an eye-witness account of an independent witness may often be forthcoming in physical assault cases, but such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration, drawing inspiration from rules devised by the courts in the Western world. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence as a general rule, there is no reason to insist on corroboration except from the medical evidence where having regard to the circumstances of the case, medical evidence can be expected to be forthcoming subject to this qualification that corroboration can be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having leveled such an accusation on account of the instinct of self-preservation or when

the probability factor is found to be out of tune. In the case(s) of **Lok Mal Vs. State of UP, (2025) 4 SCC 470 (Para 13)** and **Santosh Prasad Vs. State of Bihar, (2020) 3 SCC 443**, the Hon'ble Apex Court has repeatedly held that the testimony of a victim of sexual assault stands on a higher pedestal akin to injured witness.

48. Learned counsel for the appellant (Anku) has emphasized the absence of injuries and the lack of detection of semen. However, the absence of injuries by itself cannot negate the offense of rape, particularly where examination is delayed. The medical evidence is corroborative in nature and trustworthy.

49. As regards the role attributed to Anku @ Parshuram in the commission of the offence, the prosecution has successfully proved, beyond reasonable doubt, that the prosecutrix was a minor at the time of occurrence. The prosecution has further proved the charges of kidnapping and penetrative sexual assault against the prosecutrix; statement recorded under Section 164 Cr.P.C. materially corroborates her statement before the Court. Upon a careful appraisal of the evidence on record, the prosecutrix is found to be reliable, trustworthy and worthy of credence. Ocular testimony cannot be discarded solely on medical grounds. The finding regarding the old, torn hymen and attending circumstances lends assurance to the prosecution's case.

50. The findings recorded by the learned Trial Court are well founded and supported by the evidence available on record and, therefore, warrant no interference by this Court. Consequently, in the case of Anku @ Parshuram, no perversity or miscarriage of justice could be demonstrated by learned counsel for the appellant.

51. So far as the complicity of the co-appellants Pintu and Santosh are concerned, this Court has carefully scrutinized the evidence on record. The prosecution's case against the said co-accused-appellants rests primarily upon their names being disclosed by the prosecutrix and subsequently mentioned in the FIR. However, a closer scrutiny of the evidence reveals that their implication is not beyond reasonable doubt. It is neither supported by reliable ocular testimony nor by any independent corroborative material. PW-1, informant (father of the prosecutrix) categorically admitted during cross-examination that he had not witnessed the occurrence with his own eyes and that the report was lodged solely on the basis of information allegedly received from his daughter over the telephone. He specifically stated that '*maine apne ankho se nahi dekha tha, maine apni ladki ke batana ke adhar par report likhwayi'*. He also admitted that the name of Santosh was mentioned in the FIR on the basis of what was told to him by his son, i.e. P.W.2. More importantly, P.W.2 during cross-examination made material admissions striking at the root of the prosecution's case against Pintu and Santosh. He stated that he had deposed

before the court on the basis of information heard from others and further admitted that the persons related to the appellant Anku and his friends were also implicated in this case. P.W.2 specifically stated that '*Anku ke rishtedaro ko bhi phasaya gaya aur Anku ke mitro ko bhi is case me phasaya gaya'*. He further admitted that *'Anku ke rishtedaro wa mitro ko isliye likha diya ki we pairvi na kar sake'*. The aforesaid admission is of great significance. It demonstrates that the relatives and friends of the main accused were named in the case, not on account of their actual involvement, but with the object of preventing them from pursuing or supporting the defence of the main accused. The statement of the prosecutrix was recorded thereafter under Section 164 Cr.P.C. wherein she mentioned about presence of these co-accused Santosh and Pintu along with main accused Anku @ Parshuram on the road. In her testimony before the Court also she reiterated the same and also stated that Santosh and Pintu got off the vehicle on way. She had not stated about their presence with others, thereafter nor has she attributed any role to them in examination-in-chief and in her statement recorded under Section 164 Cr.P.C. after they had got off from the vehicle, but surprisingly in her cross-examination by Pintu's counsel she mentioned about presence of Pintu and Santosh at the house of Harinandan in Village – Kodri and also that they left the house after sometime which is inconsistent. Read conjointly with the testimony of P.W.1 and P.W.2, as discussed earlier, implication of

co-accused Santosh and Pintu appears to be on saying of others and is not corroborated by any other evidence. The admission of P.W.2, referred above, creates a serious doubt in the prosecution's story and renders the implication of the co-accused persons highly doubtful.

52. No overt act constituting rape, wrongful confinement, or any other subsequent offence has been attributed to the co-appellant Pintu or Santosh in the FIR, in statements under Sections 161 and 164 Cr.P.C., or in deposition before the trial court. The prosecution has also failed to establish any prior meeting of minds, common intention or common object so as to attract constructive criminal liability. No independent witness has supported the prosecution's version regarding the participation of co-accused/appellants Pintu and Santosh. The Investigating Officer also failed to collect any material demonstrating their continued involvement after the initial stage of the occurrence.

53. It is the settled principle of criminal jurisprudence that suspicion, however, strong, cannot substitute legal proof. In ***Sharad Virdhi Chand Sarda vs. State of Maharashtra, (1984) 4 SCC 116,*** the Hon’ble Supreme Court has held that guilt must be established beyond reasonable doubt and cannot rest upon conjectures or suspicion.

54. In the present case, the admissions of PW-1 and PW-2 themselves create substantial doubt regarding the involvement of co-accused/appellants Pintu and Santosh. The evidence on record does not satisfy the standard of proof required in a criminal trial. The trial court failed to appreciate these material admissions and proceeded to convict the co-accused/appellants without there being cogent and reliable evidence establishing their participation beyond a reasonable doubt.

55. Accordingly, this Court is of the considered opinion that the prosecution has failed to prove the guilt of co-accused/appellants Pintu and Santosh beyond reasonable doubt. They are, therefore, entitled to the benefit of the doubt and deserve to be acquitted of all charges levelled against them.

56. It is pertinent to mention here that the learned Sessions Judge acquitted one other accused, Harishchandra @ Harvinder @ Harinandan, on the ground that the prosecution failed to adduce any specific, cogent, and reliable evidence establishing his active participation in the commission of the alleged offences. The prosecutrix did not level any direct allegation of rape or sexual assault against him and merely stated that she had been kept at his house for one day by the accused Anku @ Parshuram. The trial Court further noted that the prosecutrix had not made any complaint against Harishchandra while staying at his house. In the absence of evidence demonstrating his knowledge of the offence,

common intention, or any overt act facilitating the crime, the learned Sessions Judge held that the prosecution had failed to prove the charges against him beyond a reasonable doubt and consequently extended to him the benefit of doubt, resulting in his acquittal.

57. In the present case, the appellant Anku @ Parshuram has been convicted under section 376 IPC as well as section 6 of the POCSO Act on account of the same act of sexual assault committed upon the victim. The occurrence pertains to 13.10.2014, and therefore, the punishment provisions as existing on the date of occurrence are required to be taken into consideration. Before proceeding to determine the appropriate quantum of sentence, it is necessary to advert to section 42 of POCSO Act. This provision stipulates that any act or omission constitutes an offense punishable under the POCSO Act as well as under certain provisions of the Indian Penal Code, including Section 376 IPC. The offender shall be liable to punishment under the provision that provides for punishment greater in degree.

58. A perusal of the record demonstrates that the prosecutrix was approximately 14 years of age on the date of occurrence. Consequently, the offence, proved, was not punishable under Section 376 IPC simpliciter but was squarely covered by Section 376(2)(i) IPC, as applicable at the relevant time, which specifically dealt with rape upon a girl under sixteen years of age

and prescribed rigorous imprisonment for a term not less than ten years, extendable to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine. The learned Trial Court, however, framed a charge and recorded a conviction under Section 376 IPC simpliciter without adverting to the aggravated provision attracted by its own findings regarding the age of the victim.

59. Further, the learned Trial Court awarded separate substantive sentences under Section 376 IPC and Section 6 of POCSO Act. Such an approach is contrary to Section 42 of the POCSO Act, which mandates that where the same act constitutes an offence punishable under the POCSO Act as well as under Section 376 IPC and its aggravated forms, the offender shall be liable to punishment only under the enactment providing punishment greater in degree. The object of Section 42 of POCSO Act is to prevent duplication of punishment for the same act.

60. At the relevant time, Section 6 of POCSO Act prescribed a minimum sentence of ten years' rigorous imprisonment extending to imprisonment for life and fine, while section 376(2)(i) I.P.C. prescribed rigorous imprisonment for a term not less than ten years, extendable to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.

61. Therefore, once the conviction arose out of the same act of penetrative sexual assault upon a child, separate punishments under both provisions could not legally be imposed. The learned Trial Court thus committed an error in law in sentencing the appellant-Anku @ Parshuram separately under Section 376 IPC and Section 6 POCSO Act, instead of applying Section 42 of the POCSO Act and imposing punishment only under the appropriate aggravated provision, namely Section 376(2)(i) IPC.

62. **The object of section 42 of the POCSO Act is to avoid duplication of punishment where the same act constitutes offenses under both enactments and to ensure that the offender is not subjected to double punishment for the same criminal act. The provision does not mandate the imposition of maximum punishment in every case, nor does it curtail the judicial discretion of the Court to determine an appropriate sentence within the statutory limits prescribed by law**.

63. Therefore, while mentioning the conviction of the appellant- Anku @ Parshuram under both Sections 376(2) (i) IPC and Section 6 of the POCSO Act, this Court is required to impose a sentence that satisfies the mandate of Section 42 of the POCSO Act and remains proportionate to the facts and circumstances of the case. This Court is of the opinion that the convict shall remain in prison for the remainder of his natural life, amounts to a punishment qualitatively more severe than ordinary life imprisonment, as it

extinguishes the possibility of release through remission or commutation under the statutory regime.

64. Accordingly, this Court proceeds to examine whether the sentence imposed by the trial court requires interference on the touchstone of proportionality, mitigating circumstances, and settled principles governing sentencing discretion, also keeping in view the legal provision permitting conviction under a more serious penal sections 376(2)(i) I.P.C. than the one 376 I.P.C. under which the charge has been framed.

65. Considering the totality of the facts and circumstances, this Court is of the opinion that while the conviction of the appellant (Anku) warrants no interference, the sentence imposed by the learned Trial Court calls for reconsideration.

66. As argued by learned counsel for the appellant, the age of the appellant, Anku @ Parshuram, was about 24 years at the time of conviction, which is also mentioned in the statement of the accused persons recorded under Section 313 Cr.P.C., and further stated that he is a first-time offender. There is no material available on record indicating that he has a criminal history or has previously been involved in any criminal activity. From a perusal of statement of the victim recorded under Section 164 Cr.P.C., it would further reveal that the appellant-Anku @ Parashuram was a family man having a child dependent upon him. Though such

factors cannot absolve the appellant of criminal liability, they nevertheless constitute relevant mitigating circumstances for the purpose of determining the appropriate quantum of sentence.

67. The Court further finds that the record does not disclose the existence of any exceptional aggravating circumstances such as extreme brutality, repeated acts of violence, use of deadly weapons, or conduct showing exceptional depravity so as to justify the imposition of the maximum punishment of imprisonment for life. While the age of the prosecutrix and the nature of the offence remained serious aggravating circumstances, the principle of proportionality and individualized sentencing require the Court to balance the aggravating and mitigating factors in a fair and judicious manner.

68. Accordingly, having regard to the age of the appellant- Anku @ Parshuram, his status to be a first-time offender, the absence of criminal antecedents, his family responsibilities and the overall facts and circumstances of the case, this Court is of the considered opinion that the ends of justice would be adequately served by modifying the sentence of imprisonment for life to rigorous imprisonment of 14 years along the fine imposed by the learned Trial Court.

69. From a perusal of custody certificate dated 01.07.2026, received by learned A.G.A. from Senior Superintendent, Central Jail, Varanasi,

it appears that the appellant- Anku @ Parshuram has already spent a period of 14 years, 2 months and 28 days in jail including remission period.

70. In view of the above, Criminal Appeal No.1989 of 2016 is **partly allowed** so far as the appellant Anku @ Parshuram is concerned. The conviction of the appellant-Anku @ Parshuram under the relevant provisions of law, as recorded by the learned Trial Court, is hereby affirmed. However, the order of sentence is modified to the extent that the appellant shall undergo:

(i) Rigorous imprisonment for fourteen (14) years with a fine of ₹10,000/- for the offence under Section 376(2)(i) IPC. In default of payment of fine, he shall further undergo one year of rigorous imprisonment.

(ii) Rigorous imprisonment for five (5) years with a fine of ₹10,000/- for the offence under Section 363 IPC. In default of payment of fine, he shall further undergo one year of rigorous imprisonment.

(iii) Rigorous imprisonment for five (5) years with a fine of ₹10,000/- for the offence under Section 366 IPC. In default of payment of fine, he shall further undergo one year of rigorous imprisonment.

71. All the substantive sentences of imprisonment shall run concurrently. The appellant-Anku @ Parshuram shall be entitled to the benefit of Section 428 of the Code of Criminal Procedure, 1973

(corresponding to Section 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023, as applicable) for the period already undergone during investigation, inquiry and trial.

72. The appellant-Anku @ Parshuram shall deposit the entire amount of fine of ₹30,000/-, if not already deposited, before the learned Trial Court, failing which the default sentences shall follow in accordance with law.

73. In so far as the remaining appellants, namely Santosh Kumar Gautam and Pintu @ Dinesh, are concerned, since the prosecution has failed to adduce cogent and reliable evidence to establish their guilt beyond reasonable doubt, they are entitled to the benefit of doubt. Consequently, their convictions and sentences are set aside, and they are acquitted of all the charges.

74. Accordingly, Criminal Appeal Nos.1763 of 2016 and 1905 of 2016, filed by appellants, namely, Santosh Kumar Gautam and Pintu @ Dinesh, are **allowed**. The accused-appellants, namely, Santosh Kumar Gautam and Pintu @ Dinesh shall be released forthwith, if they are in jail, unless they are wanted in any other case, subject to compliance of Section 437-A Cr.P.C. The amount of fine, if deposited by the appellants, namely, Santosh Kumar Gautam and Pintu @ Dinesh shall be refunded.

75. Trial court record along with copy of this judgment and order be transmitted to the court concerned forthwith.

76. Let a copy of this judgment be sent to the Jail Authorities concerned and the court concerned for compliance.

(Rajeev Bharti, J.) **(Rajan Roy, J)**

Order Date :- 02.07.2026
Shravan/Anand

Digitally signed by :-
ANAND KUMAR SRIVASTAVA
High Court of Judicature at Allahabad,
Lucknow Bench