

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE**

**HON'BLE SHRI JUSTICE VIVEK AGARWAL
&
HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY**

CRIMINAL APPEAL NO.5028 OF 2023

**CHILD IN CONFLICT WITH LAW: ST
Vs.
STATE OF MADHYA PRADESH
&
CRIMINAL APPEAL NO.5488 OF 2023**

**CHILD IN CONFLICT WITH LAW: SD
Vs.
STATE OF MADHYA PRADESH
&
CRIMINAL APPEAL NO.8459 OF 2023**

**CHILD IN CONFLICT WITH LAW: DB
Vs.
STATE OF MADHYA PRADESH**

Appearance:

Shri Neeraj Singh- Advocate for the appellant in CRA No.5028/2023,

Shri Sharad Verma- Advocate for the appellant in CRA No.5488/2023,

Shri Abhaya Shankar Pathak- Advocate for the appellant in CRA No.8459/2023.

Shri Manas Mani Verma- Public Prosecutor for the respondent/State.

Reserved on : 19.12.2025

Pronounced on : 06.01.2026

JUDGMENT

Per: Justice Ramkumar Choubey:

The appellants have preferred these appeals under Section 374 of Cr.P.C. being aggrieved by the impugned judgment dated 07.03.2023 passed in Special Case No.01/2022 by the learned Children's Court, Waidhan, District Singrauli where by convicted the appellants for the offences under Sections 376(3), 376(2)(n), 376AB and 376DB of IPC, under Sections 5(g), 5(l) and 5(m) read with Section 6 of the Prevention of Children From Sexual Offences Act, 2012 (commonly referred as "POCSO Act") and Section 3(2)(v) of the Schedule Castes & Schedule Tribes (Prevention of Atrocities) Act, 1989 (in short- "the SC/ST (PA) Act") and by virtue of Section 42 of the POCSO Act and Section 71 of IPC, sentenced the appellants with life imprisonment i.e. imprisonment for remainder of their natural life and fine of Rs.20,000/- with default stipulation and also sentenced under Section 3(2)(v) of SC/ST (PA) Act for life imprisonment and fine of Rs.20,000/- with default stipulation. All these appeals are being heard together and decided by this common judgment.

2. The appellants being child in conflict with law have been tried by the Children's Court whereas two other co-accused have been tried by the Court of Special Judge, designated under the POCSO Act. One another child in conflict with law was dealt with by Juvenile Justice Board. Since, as per the prosecution case, all of them were involved, the names of the appellants and the juvenile being child in conflict with law, shall be mentioned here in acronym, as in CRA No. 5028/2023 – 'ST', as in CRA No. 5488/2023 – 'SD' and as in CRA No. 8459/2023 –'DB', one another child in conflict with law who was dealt with by Juvenile Justice Board as the 'Juvenile' and two other co-accused being adult as 'Co-accused'.

3. The encapsulated facts necessary to reach a decisive conclusion are that on 24.01.2021 the prosecutrix, aged 11 years and 6 months has submitted a written complaint (Ex.P-1) to the SHO of Police Station Vindhyanagar District Singrauli stating that in the month of December, 2019 she used to go for tuition during which friendship took place with the appellant DB, who had made an obscene video of the prosecutrix and thereafter DB along with other appellants ST, SD, Co-accused and Juvenile started blackmailing and threatened her that they would make her obscene video viral, and on that pretext, they compelled her to come to the MIG Colony, Marriage Hall. It is further stated that on some day in December, 2019 when she was coming back from the tuition at about 6:30 in the evening, the appellant SD asked her that what your brother is doing inside the boundary of MIG Colony, Marriage Hall and when she went inside along with SD where all other appellants, Juvenile and Co-accused were already present and they all compelled the prosecutrix for physical relationship and they all one-by-one violated the privacy of the prosecutrix and they repeated this obscene activity till the end of December. It is stated that due to fear of ignominy, she did not disclose this incident at her home, however after few days all these persons again pressurized her and tried to compel her to come to the MIG Colony, Marriage Hall for making physical relationship. They also used filthy language denoting her caste. Under these circumstances on 23.01.2021 at about 9.O'clock the prosecutrix tried to commit suicide on the terrace of her house where her mother had seen the prosecutrix and thereafter the mother of the prosecutrix and other members of the family counselled the prosecutrix, then she narrated the entire incident to her parents and family members. The prosecutrix along with her parents went to the concerned police station and submitted a written complaint (Ex.P-1).

4. On the basis of the said written complaint (Ex.P-1), an FIR (Ex.P-2) vide Crime No.73/2021 for the offence under Sections 376, 376(2)(n), 376D, 376DA, 354C of IPC, Sections 5/6, 11, 12, 13 and 14 of POCSO, Act and Sections 3(2)(v) and 3(1)(w)(i) of SC/ST (PA) Act has been registered at Police Station Vindhyanagar, District Singrauli. The matter was investigated during which the statement of the prosecutrix under Section 164 of Cr.P.C. was recorded. She was medically examined. A mobile hand set was recovered from the appellant DB and a CD of video recording uploaded therein and also photographs print were prepared. The articles collected from the prosecutrix during her medical examination and samples collected from the appellants and co-accused were sent for examination to the Forensic Science Laboratory (FSL), Sagar.

5. After completion of the investigation, the final report was submitted to the Court of Special Judge against a Co-accused and before the Juvenile Justice Board against five others. The Juvenile Justice Board, District Singrauli vide order dated 30.11.2021 has forwarded another Co-accused for regular trial being an adult. Therefore in Special Case No.30/2021 the both Co-accused were tried and convicted and sentenced similarly.

6. The learned Juvenile Justice Board, Singrauli vide order dated 4.1.2022 has directed that appellants-ST, SD and DB being aged above 16 years and below than 18 years be tried as adults by the Children's Court in the light of the provisions of Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity- "the JJ Act"). The learned Children's Court vide order dated 10.06.2020 passed in view of the provisions of Section 19 of the JJ Act read with Rule 13(1) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (for brevity- "the JJ Rules, 2016") has determined that the

appellants are to be tried as adult. Therefore, the appellants-ST, SD and DB were tried as adult by the Children's Court, Singrauli in Special Case No.01/2022.

7. At trial, the appellants abjured their guilt and pleaded false implication. After completion of trial, the learned Children's Court vide impugned judgments dated 07.03.2023 convicted the appellants and sentenced them as mentioned above.

8. Learned counsel for the respective appellants submitted that the appellants have wrongly been convicted by the learned Children's Court without appreciation of evidence. It is submitted that there is no evidence with regard to obscene video or photographs of the prosecutrix were taken from the mobile phones of the appellants. The statements of the prosecutrix (PW-1) are general and omnibus and with intent to falsely implicate the appellants. It is also submitted that other witnesses namely mother of the prosecutrix (PW-2) and father of the prosecutrix (PW-3) have also made general and omnibus statements just to support the statement of the prosecutrix, as they have also intended to falsely implicate the appellants. It is further submitted that apart from the prosecutrix herself, her mother and father, no independent witness has been produced by the prosecution. It is intensely submitted that the prosecution story has not been corroborated by medical and forensic evidence, thus, the allegations as to repeated sexual intercourse with the prosecutrix by the appellants and three others are evidently false. It is also submitted that the caste and age of the prosecutrix have not been duly proved. The learned counsel for the appellants submitted that at the most affair between the DB and the prosecutrix is shown from the evidence adduced on record, which does not constitute any alleged offence. Learned counsel for the respective appellants submitted that the sentence awarded by the learned Children's Court is against the

mandatory provisions of the JJ Act. Therefore, it is prayed that the appellants are entitled for acquittal.

9. On the other hand, learned counsel for the respondent/State submitted that the learned Children's Court has rightly convicted the appellants, as the alleged offences levelled against them have been proved beyond reasonable doubt by the evidence adduced by the prosecution. It is further submitted that the version of the prosecutrix can be accepted without being corroborated the same, however the statement of the prosecutrix has been duly corroborated by the statements of her mother and father. Thus, it is submitted that the appeals filed by the appellants deserve to be dismissed.

10. Heard the learned counsel for the parties and perused the record.

11. Firstly, in order to attract the provisions of SC/ST (PA) Act, the learned Children's Court has recorded the finding that the prosecutrix belongs to Scheduled Caste as is evident from the caste certificate (Ex.P-8C) issued by the competent authority. The caste certificate (Ex.P-8C) has been proved by Ravichandra Shah (PW-10) who has categorically stated that the caste certificate of the prosecutrix has been issued by the Sub Divisional Officer (Revenue), Singrauli in Case No. RS/463/0104/32237/2014 on 18.8.2015. This fact has not been challenged by the appellants and also none of the appellants have claimed that any one of them belongs to Scheduled Caste or Scheduled Tribe. Therefore, the provisions of SC/ST (PA) Act would be attracted.

12. So far as the age of the prosecutrix is concerned, to attract the provisions of POCSO Act, she must be a child as defined in Section 2(d) of the POCSO Act which says that "child" means any person below the age of eighteen years. Similarly, under clause *sixthly* of Section 375 of IPC, the prosecutrix is to be under the age of eighteen years.

13. The prosecutrix (PW-1) stated that her date of birth is 31.10.2009 and she got first admitted in Class-I in D-Paul School, Vindhyanagar. Similarly, the mother of the prosecutrix (PW-2) and father of the prosecutrix (PW-3) both have stated that the date of birth of the prosecutrix is 31.10.2009 and she got admitted in D-Paul School, Vindhyanagar. Vinish Joseph (PW-4) is the Coordinator of D-Paul School, Vindhyanagar. He has categorically stated that as per the scholar register (Ex.P-10C) at S.No.4932, the date of birth of the prosecutrix is entered as 31.10.2009, which was recorded on 10.3.2014 at the time of first admission of the prosecutrix in the said school. This witness has also produced the original admission Form (Ex.P-11C) along with the birth certificate wherein the date of birth of the prosecutrix is mentioned as 31.10.2009.

14. The evidence of these witnesses with respect to the date of birth of the prosecutrix has been discussed and duly appreciated by the learned Children's Court and it has been proved that the date of birth of the prosecutrix is 31.10.2009, and according to which on the date of incident i.e. 16.12.2019, the age of the prosecutrix was below 18 years. Thus, the prosecutrix was a child.

15. The prosecution has examined as many as 13 witnesses to bring home the charges levelled against the appellants. The prosecutrix (PW-1) stated that in December, 2019 she became friend with the appellant DB, which was platonic friendship in nature. She further stated that on a day of December, 2019, DB called her in MIG Colony, Marriage Hall near Navjivan Vihar. When she reached there, DB started kissing her, but she was not aware that that DB had shot her video. She further stated that other appellants, Juvenile and Co-accused are friends of DB and she got acquainted with them while studying in school and tuition. She stated that DB had shown that video to her and also many other boys and friends of DB used to blackmail her saying that they will make the video viral.

16. The prosecutrix (PW-1) further stated that on 16.12.2019 at about 6:30 in the evening when she was going to her shop after tuition, the appellant SD met her outside the Marriage Hall and asked her, what her brother was doing inside the boundary of Marriage Hall and when she entered into the Marriage Hall, her brother was not there, but the appellants, Juvenile and Co-accused were there and they all asked the prosecutrix that if she did not allow to commit intercourse with her, then they will make her video viral and they have also abused her by her caste. She further stated that the appellants, Juvenile and Co-accused undressed her and violated her privacy. She kept shouting and stopping them, but as the place of incident being dark and desolated, nobody paid heed to her shrieks.

17. The prosecutrix (PW-1) further stated that on subsequent dates as well when she used to go to her shop and returning from her tuition, then appellants, Juvenile and Co-accused used to violate her privacy. Due to fear of video getting viral and infamy, she did not narrate the incident to her parents. Later on, she narrated to her mother that some boys stare at her and harass her. The prosecutrix (PW-1) further stated that 15 days before 23.01.2021, appellant DB and other appellants, Juvenile and Co-accused again asked her to meet them in the Marriage Hall, but this time she did not go to the said place and they again started to threaten her that they will make the video viral. Due to the fear of ignominy she decided to commit suicide. She further stated that on 23.01.2021 at about 9:00 PM she went to the terrace of her house to commit suicide and when her mother saw her and asked as to what had happened, then she narrated the entire incident to her mother. Thereafter she along with her father went to the Vindhyanagar Police Station District Singrauli and submitted a written complaint (Ex.P-1).

18. Mother of the prosecutrix (PW-2) has also stated in the line of the prosecutrix but in the cross-examination she has admitted that from 16.12.2019 to

23.01.2021 or prior to that the prosecutrix had not narrated about the incident. She also stated though she has given her mobile phone to the prosecutrix but she had not read or seen any message on her mobile, if received any time. The mother of the prosecutrix (PW-2) has admitted that whatever she has stated i.e. on the basis of narration of her daughter (prosecutrix). Similarly, father of the prosecutrix (PW-3) admitted that the prosecutrix had never told him about any incident. He admitted in his cross-examination that the prosecutrix had not ever told him about the incident. He admitted that he has no personal knowledge of the incident, but he is stating as narrated by his wife (PW-2) to him.

19. Smt. Priyanka Singh Baghel (PW-13) stated that on 24.01.2021 at Police Station Vindhyanagar the prosecutrix (PW-1) has submitted a written complaint (Ex.P-1) on the basis of which she has registered an FIR (Ex.P-2) and after obtaining the consent (Ex.P/6 & P/7) from the mother and father of the prosecutrix, sent the prosecutrix for medical examination vide Form (Ex.P/10).

20. The mother of the prosecutrix (PW-2) and father of the prosecutrix (PW-3) both have given their statements on the basis of the story narrated by the prosecutrix to her parents. The prosecution's case hinges on the sole testimony of the victim's evidence, hence, the statements of the prosecutrix (PW-1) being sole witness, needs to be evaluated and tested on the touchstone of settled legal propositions. At this juncture, it would be appropriate to revisit the law laid down by the Apex Court regarding the evidential value attached to the testimony of a lonesome victim in the matter involving sexual offences.

21. In case of **Vimal Suresh Kamble v. Chaluverapinake Apal S.P., (2003) 3 SCC 175** the Supreme Court in paragraphs 17 and 21 has opined as under:-

“17. From the facts noticed above it appears to us that the evidence of PW 1 (prosecutrix) cannot be safely

relied upon to base a conviction. The medical evidence or the report of the Chemical Analyst do not support the case of the prosecution. That obviously is on account of the fact that the clothes had been washed and the appellant had taken bath twice after the occurrence. She was examined on the next day at about 8.00 p.m. In these circumstances if no incriminating evidence was found by the Chemical Analyst or the doctor, that is not surprising.

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21. On an overall appreciation of the evidence of the prosecutrix and her conduct we have come to the conclusion that PW 1 is not a reliable witness. We, therefore, concur with the view of the High Court that a conviction cannot be safely based upon the evidence of the prosecutrix alone. It is no doubt true that in law the conviction of an accused on the basis of the testimony of the prosecutrix alone is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality, and there is no other evidence on record which may even lend some assurance, short of corroboration that she is making a truthful statement. We, therefore, find no reason to disagree with the finding of the High Court in an appeal against acquittal. The view taken by the High Court is a possible, reasonable view of the evidence on record and, therefore, warrants no interference. This appeal is dismissed.”

22. In case of **Sadashiv Ramrao Hadbe v. State of Maharashtra and Another, (2006) 10 SCC 92** the Apex Court while dealing with a case based on sole testimony of prosecutrix, held as thus;

“9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is

unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.

10. In the present case there were so many persons in the clinic and it is highly improbable that the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbabilise the prosecution version.”

23. The Supreme Court, in case of **Raju and others v. State of Madhya Pradesh, (2008) 15 SCC 133** has, by placing reliance on a decision rendered in **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384**, restated the legal proposition with regard to the evaluation of medical evidence and testimony of prosecutrix in a case of gang rape in the following terms;

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

24. The sole testimony of prosecutrix can be made basis of conviction even without corroboration if she is found to be a 'sterling witness'. The Supreme Court in **Rai Sandeep v. State, NCT Delhi, (2012) 8 SCC 21** dealing with a case of gang rape, on considering its various pronouncements, underlined the characteristics of a sterling witness as under;

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and

howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

25. In a recent decision of **Nirmal Premkumar & Another v. State Rep. by Inspector of Police, 2024 INSC 193**, the Supreme Court has revisited the law laid down by it regarding the weight to be attached to the testimony of the victim in matters involving sexual offences where the prosecution's case hinges on the victim's evidence. The relevant paragraphs of the judgment reads as under;

“11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose

serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

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14. In *Krishan Kumar Malik v. State of Haryana* [(2011) 7 SCC 130] 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:

“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.”

15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without

further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt *qua* the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.

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17. When considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version.

18. However, an alleged offence of sexual harassment in a public place, as opposed to one committed within the confines of a room or a house, or even in a public place but away from the view of the public, stands on somewhat different premise. If any doubt arises in the Court's mind regarding the veracity of the victim's version, the Court may, at its discretion, seek corroboration from other witnesses who directly observed the incident or from other attending circumstances to unearth the truth.

26. In the present case, the prosecutrix (PW-1) in her examination has stated about the chronology of the incident that first time she became friend with the appellant DB in December, 2019 and December, 2019 itself, one day the DB called her in a Marriage Hall where he kissed her and also shot her video. The prosecutrix (PW-1) has stated in examination-in-chief that one or two week prior to 16.12.2019, DB had taken her to the MIG colony Marriage Hall where he kissed her and while kissing, DB had made a video. But, she has admitted in her cross-

examination that photographs and video are prior to 16.12.2019 which were taken on two-three different dates.

27. Investigation Officer Devesh Kumar Pathak (PW-11) though stated that he has recovered a mobile hand set (Art. A-2) from the appellant DB on his disclosure vide memorandum (Ex.P/12) and seizure memo (Ex.P/13) in the presence of witnesses Ramchandra Sahu (PW-7) and Santosh Verma (PW-8). Both witnesses Ramchandra Sahu (PW-7) and Santosh Verma (PW-8) have supported the version of Devesh Kumar Pathak (PW-11) and admitted their signature on memorandum (Ex.P/12) and seizure memo (Ex.P/13) in their examination-in-chief. Devesh Kumar Pathak (PW-11) further stated that photographs (Ex.P/7 to P/17) and CD (Art. A-1) from the mobile hand set were prepared by Anil Kumar Dubey (PW-6) who has given a Certificate (Ex.P/11) under Section 65B of the Indian Evidence Act. Anil Kumar Dubey (PW-6) has stated that he is working in a computer repairing shop wherein the police brought a mobile from which he prepared a CD (Art. A-1) and same was handed over to the police and also a certificate (Ex.P/11). In cross-examination, he admitted that he had not seen the contents of the mobile-phone because the police personnel had opened the mobile and Whatsapp.

28. Surprisingly, no photograph or CD is available on record of the Children's Court pertaining to the case No. 01/2022. However, photographs (Ex.P/7 to P/17) and CD (Art. A-1) are available on record in case No.30/2021 in which Co-accused were tried by the Special Judge. Since, both cases were tried by two different Courts under different law, though by a same presiding Judge, the evidence adduced in one case cannot be taken into consideration in another case. Despite this lacuna on the part of the prosecution, there are certain admissions made by the prosecution witnesses in their statements recorded during trial,

therefore, the fact of video recording and photographs can be considered up to that extent. Investigation Officer Devesh Kumar Pathak (PW-9) admitted in his cross-examination that the dates are mentioned on the photographs on which they are taken. He admitted that the dates are mentioned as 05.09.2020, 17.09.2020 and 20.09.2020, whereas, the date of incident was 16.12.2020. He expressed his ignorance of recording of video.

29. It is evident that if any such photographs were taken and video clipping was recorded, the same were taken and recorded in September, 2020 with the knowledge of the prosecutrix and which, along with other evidence available on record, reveals that the prosecutrix was in affair with DB at her own volition. The prosecutrix (PW-1) has admitted in her cross-examination that after having friendship with DB, she and DB used to meet in the MIG Park beside Marriage Hall. She further admitted that both used to meet anywhere upon their calling to each other. Therefore, the story put-forth by the prosecutrix (PW-1) in her examination-in-chief and in written complaint (Ex.P-1) with regard to the making of video recording in December, 2019 without her knowledge appears to be untrue.

30. The prosecutrix (PW-1) has stated that the friends of DB used to say that they would make her video viral, but there is no evidence on record that other appellants have shown any such video-clipping through their mobile phone or any electronic device. Except one mobile hand set (Art. A-2) which was recovered from the appellant DB, no mobile phone or device containing any video or photograph of the prosecutrix has been recovered from the appellants. Investigation Officer Devesh Kumar Pathak (PW-9) admitted that he did not recover mobile phone sets of other appellants and parents of the prosecutrix. The prosecutrix (PW-1) has mentioned few names to whom such video clipping was shared by the appellants but, no such witness is produced by the prosecution with respect to

exhibition or viral of obscene video clipping or photographs of the prosecutrix. There is also no evidence on record to show that the appellants have transmitted any such video or photographs to others as stated by the prosecutrix (PW-1) that some of her friends told her that they had seen her video-clipping. In fact, except the appellant DB, there is no electronic device or other evidence showing involvement of the appellants St and SD in making and/or transmitting any video or photographs, obscene or otherwise, of the prosecutrix. It is not proved that the appellants ST and SD have any material with them on the basis of which they could blackmail the prosecutrix.

31. The prosecutrix (PW-1) further stated that on 16.12.2019 the appellant SD, friend of DB, asked her to see her brother inside the boundary of the Marriage Hall and when she entered into the Marriage Hall, all were present there and all had asked her to commit bad act and also abused her by denoting her caste. This is a very general and omnibus allegation against the appellants for want of specific acts and more particularly medical evidence, because the prosecutrix (PW-1) further stated that all (six persons) have undressed her and they inserted finger in her private part, and they all had made penetrative sexual assault. The prosecutrix (PW-1) further stated that after this incident on 16.12.2019, many a times when she used to go for tuition, the appellants and others had repeated the same bad act in the Marriage Hall, but she did not disclose this incident to her family members due to fear of video getting viral and infamy. Later on, she narrated the incident to her mother that some boys stare at her and harass her. However, the prosecutrix (PW-1) has not specified the date and time on which the appellants have violated her privacy many a times after 16.12.2019. The prosecutrix (PW-1) has stated in her cross-examination that on 16.12.2019, and on subsequent occasions she could not identify anyone who had committed bad act

with her due to darkness in Marriage Hall i.e. place of incident. The prosecutrix (PW-1) has made certain statements contradictory to her statement recorded under Section 164 of CR.P.C. (Ex.P/5) as to the first meeting with the appellant DB and violation of her privacy by all others.

32. As per the prosecution story, the appellants and three others, in all six boys have repeatedly done sexual assault on the prosecutrix. Thus, the medical evidence is significant. Dr. Meenakshi Patel (PW-5) had examined the prosecutrix on 24.01.2021. This witness stated that she found no injury on the person of the prosecutrix and she did not find any marks of recent intercourse or struggle. This witness has prepared the medical examination report (Ex.P-10). As per the prosecution, the appellants and others have violated privacy of the prosecutrix first time on 16.12.2019 and many a times thereafter, but prosecutrix (PW-1) has not given any specific date or exact days of such act done by the appellants and others, moreover, she has stated in her cross-examination that she could not recollect that after 16.12.2019 till what period the incident happened with her at Marriage Hall. The prosecutrix underwent a medical examination on 24.01.2021. While the absence of recent physical trauma may be expected given the timeline, a repeated penetrative sexual assault involving six individuals against a teenager would typically result in lasting evidence of the physical abuse. Dr. Meenakshi Patel (PW-5) in her cross-examination has categorically stated that she has not mentioned in her medical report (Ex.P-10) that the hymen was ruptured and she admitted that had she found the hymen of the prosecutrix ruptured, then she would have mentioned the same in the report.

33. So far as the forensic test report (Ex.P-26) is concerned, human sperms were found in Article-D, F, G, I, K, L, N, O, Q, R and T, which are the semen slides and underwear of the appellants and others collected from them

during investigation on 25.01.2021, whereas no human sperms were found on the Articles-A, B and C, which are the underwear, pubic hair and vaginal slides of the prosecutrix collected on 24.01.2021 while her medical examination and Articles-E, H, J, M, P and S, which are pubic hair of the appellants collected from them during investigation on 25.01.2021. However, in the circumstances of the case, forensic examination of the samples collected long after it is also not unexpected to find no incriminating material of penetrative sexual assault in recent past. But, it is highly improbable that when six boys committed penetrative sexual assault on the prosecutrix again and again, and same does not appear in the medical examination of the prosecutrix. Therefore, the version of the prosecutrix has not been corroborated by the medical as well as forensic evidence.

34. Since the prosecutrix had admitted in her cross-examination about the vicinity of place of incident i.e. an under construction Marriage Hall, the conduct of the prosecutrix (PW-1) that she had not raised any alarm at any time of the incidents is unnatural. It is highly unlikely that a female would not raise alarm while being sexually assaulted by six persons repeatedly. Notably, that the shop of prosecutrix's father is also situated on the way of tuition class and place of incident. It is also unconvincing that the prosecutrix was abused by six boys repeatedly on the same place, but the prosecutrix neither raised any alarm nor tried to save her, though the place of incident was situated in such a dense locality that might not be out of sight of the surrounding people. Moreover, it is evident from the statement of the prosecutrix (PW-1) that she used to pass through the way where her father's shop is also located. The prosecutrix in her statement has admitted that the Marriage Hall is nearby to her father's shop.

35. Seemingly, the allegations levelled by the prosecutrix appear to be serious. An act of sexual assault by six boys on a jejune girl would figure quite

high in the list of offences of grave nature, but at the same time it is axiomatic that an accusation like present one against an adolescent boy which would result in a severe punishment destroying the whole life needs to carefully examined, so that an innocent is not put to jeopardy on the basis of half-baked evidence. In any case, irrespective of the nature of the alleged offences or mind-blowing story of the prosecution, the accused can be convicted only on proof of such offence beyond reasonable doubt, which is obligatory on the prosecution.

36. In the case at hand, when tested against established legal standards, the testimony of the prosecutrix fails to qualify as that of a "sterling witness," rendering her uncorroborated account insufficient to sustain a conviction. This Court finds that her testimony lacks the necessary reliability to inspire confidence, particularly given the total absence of independent supporting evidence, such as forensic, medical, the alleged viral of video recording or photographs, witness sightings at the MIG Colony Marriage Hall despite the claimed frequency of the incidents. Consequently, in the absence of such vital corroboration, the case does not meet the threshold of legal proof, and the conviction recorded by the Children's Court against the appellants ST and SD cannot be upheld.

37. At best, from the entire evidence adduced on record, it is revealed that only appellant DB was in association with the prosecutrix. Both had been in affair during which the appellant had kissed the prosecutrix, recorded her video and used to have sexual assault on the person of the prosecutrix which can only be classified as non-penetrative sexual assault for want of medical and/or forensic evidence. Since the prosecutrix was a child being under the age of 18 years, her consensual act or gesture, if any, does not matter. Therefore, on the basis of evidence available on record the appellant DB is liable to be held guilty of the offences of sexual assault and sexual harassment punishable under Section 7 r/w

Section 8 and Section 11 r/w 12 of the POCSO Act respectively and also under Section 3(1)(wi) of the SC/ST (PA) Act.

38. Resultantly, the conviction of the appellants namely ST in CRA No. 5028/2023 and SD in CRA No. 5488/2023 as recorded by the learned Children's Court vide impugned judgment and the sentence imposed upon them stand set aside. The appeals, CRA No.5028/2023 and CRA No.5488/2023 accordingly are allowed. The Appellants ST and SD are acquitted and set at liberty and shall be immediately released from custody, if not required in any other case.

39. The conviction of the appellant namely DB in CRA No. 8459/2023 as recorded by the learned Children's Court vide impugned judgment and the sentence imposed upon him is hereby modified to the extent that the appellant DB is convicted for the offences of sexual assault and sexual harassment punishable under Section 7 r/w Section 8 and Section 11 r/w 12 of the POCSO Act respectively and also under Section 3(1)(wi) of the SC/ST (PA) Act.

40. So far as imposition of sentence against the appellant DB is concerned, he has been tried by the Children's Court being aged above 16 years and below than 18 years in view of the provisions of Section 18(3) and Section 19 of the JJ Act. The Supreme Court in **Ajeet Gurjar v. State of Madhya Pradesh, 2023 INSC 875** observed as under;

“9. There are two parts to sub-section 1 of Section 19. The first part requires the children's Court to decide whether there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973. If the Court is satisfied that the child needs to be tried as an adult as per the provisions of Cr.P.C., the Children's Court can proceed with the trial and thereafter pass an appropriate order subject to the provisions of sections 19 and 21 of the JJ Act.

41. Section 21 of the JJ Act finds place after section 19 and 20 providing scheme for a child in conflict with law attaining the age of 16 years and 21 years respectively. The same reads as under;

“21. Order that may not be passed against a child in conflict with law.-- No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.”

42. It is crystallized from the statutory scheme envisaged in the JJ Act, in case where child in conflict with law is tried as an adult by virtue of Section 19 of the JJ Act, the Children's Court is required to conduct the trial in accordance with the provisions of the JJ Act. The procedural recourse may also be taken from the Cr.P.C., for trial before a Court of Session, subject to such changes as are necessary to ensure compliance of the JJ Act. Therefore, it was obligatory on the learned Children's Court that the appellant DB, who was a child in conflict with law and had tried as an adult by the Children's Court, on being convicted shall be sentenced as per the mandate of the JJ Act. However, as this Court has modified the conviction, the appellant DB can be sentenced within the frame of Section 21 of the JJ Act.

43. Therefore, the appellant DB is hereby sentenced under Section 8 of the POCSO Act with rigorous imprisonment for five years and fine of Rs.5,000/- in default thereof undergo further rigorous imprisonment for a period of six months, and under Section 12 of the POCSO Act with rigorous imprisonment for three years and fine of Rs.3,000/- in default thereof undergo further rigorous imprisonment for a period of three months, and further sentenced under Section 3(1)(wi) of the SC/ST (PA) Act with rigorous imprisonment for five years and fine

of Rs.5,000/- in default thereof undergo further rigorous imprisonment for a period of six months, All the sentences of imprisonment shall run concurrently.

44. It is made clear that till the appellant DB attains the age of 21 years, he shall be made to stay in a place of safety or special home as the case may be, and till that period, the provisions of Sub-section (2) to (5) of Section 19 and Section 20 of the JJ Act shall be adhered in terms of the direction given by the learned Children's Court vide impugned judgment.

45. With aforesaid modification, Criminal Appeal No. 8459/2023 is disposed of.

46. The record of the Children's Court along with a copy of this judgment be sent back forthwith. A copy of this judgment be provided to the appellant DB and to the prosecutrix through respondent/State.

(VIVEK AGARWAL)
JUDGE

(RAMKUMAR CHOUBEY)
JUDGE

Ansari