



MPBALEKAR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 121 OF 2022

Amol S/o. Maroti Gadhve,
Aged about 30 years, Occ.: Labour,
R/o. Sawangi (Dod), Tq. Hinganghat,
Dist. Wardha.
(Presently at Central Prison Nagpur)

.... **APPELLANT**

VERSUS

State of Maharashtra,
Through P.S.O. Wadner,
Tq. Hinganghat, Dist. Wardha.

.... **RESPONDENT**

Mr. R.M. DAGA for Appellant.
Mrs. S.S. Dhote, APP for State-Responent.

CORAM : URMILA JOSHI-PHALKE &
NIVEDITA P. MEHTA, JJ.

DATE OF RESERVING THE JUDGMENT : **13-07-2026**
DATE OF PRONOUNCING THE JUDGMENT : **03-08-2026**

JUDGMENT : (PER : NIVEDITA P. MEHTA , J.)

1. The present appeal is directed against the Judgment and Order dated 28.01.2022 passed by the learned Additional Sessions Judge, Hinganghat in Special (POCSO) Case No.16 of 2019, whereby the appellant was convicted for the offences punishable under Sections 376AB, 376(2)(n) and 506 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'), and Sections 5(l), 5(m) and 5(n), punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act"). The



appellant has been sentenced to suffer imprisonment for life and to pay a fine of ₹50,000/- for the offence punishable under Section 376(2)(n) of the IPC and rigorous imprisonment for six years with a fine of ₹2,000/- for the offence punishable under Section 506(2) of the IPC, in default of payment, further rigorous imprisonment for three months. No separate sentence has been awarded for the remaining offences in view of the provisions of Section 42 of the POCSO Act. Being aggrieved thereby, the appellant has preferred the present appeal.

2. The prosecution case, in brief is that, PW 1, the informant, is the mother of the victim, who was residing at village Sawangi (Jod), Taluka Hinganghat, District Wardha, along with her husband, two daughters and in-laws. The appellant, was the informant's cousin nephew, who was residing in the adjoining house. It is the case of the prosecution that on 07.06.2019, at about 7.00 a.m., the informant and her husband had left for agricultural work, leaving their daughters at home. Upon returning home at approximately 12.30 p.m., they found both children missing. During the search, the elder daughter was found watching television at a relative's house; however, the younger daughter, who is the victim in the present case, could not be located. The informant then went to the house of the appellant, where she found the door closed. Despite repeated knocking and calling out the victim's name, the door was not opened immediately. After some time, she heard the victim crying from inside the house. Thereafter, the appellant opened the door, whereupon the complainant found the victim in a frightened condition. On taking the child home, she noticed blood stains upon the victim's clothes. Upon enquiry, the victim disclosed that the



appellant had taken her inside his house, closed the door, laid her upon a cot and subjected her to penetrative sexual assault. The victim further disclosed that the appellant threatened to kill her and her parents if she disclosed the incident and also stated that similar acts had been committed on earlier occasions.

3. Though the alleged incident had occurred on 07.06.2019, the report was not lodged immediately. On 01.07.2019, PW1 lodged a report with Wadner Police Station, on the basis of which Crime No.221 of 2019 came to be registered against the appellant for the offences punishable under Sections 376(2)(n), 376AB and 506 of the IPC and Sections 4 and 6 of the POCSO Act.

4. The investigation was initially undertaken by PW 5. During the course of investigation, the Investigating Officer visited the place of occurrence, prepared a spot panchanama (Exh.41).PW 5 also seized the bed-sheet lying upon the cot (Exh. 42), the clothes worn by appellant on the date of the incident, (Exh. 44) and the clothes worn by the victim at the relevant time (Exh. 25). After obtaining the consent of the victim's mother, the victim was referred for medical examination at the Rural Hospital, Wadner, from where she was referred to the Sub-District Hospital, Hinganghat.

5. Subsequently, the investigation was transferred to PW-7, Police Sub-Inspector Madhuri Gaikwad, who was attached to the POCSO Cell, Hinganghat. PW-7 who carried out the further investigation. During the course of investigation, the statements under Section 164 of the Code of Criminal Procedure (for short, "Cr.PC.") were recorded and, upon completion of the investigation, a charge-sheet was filed against the appellant for the



offences punishable under Sections 376AB, 376(2)(n) and 506 of the IPC and Sections 5(l), 5(m) and 5(n) punishable under Section 6 of the POCSO Act. The case, being exclusively triable by the Court of Sessions, was committed to the Court of the learned Additional Sessions Judge, Hinganghat. Charge came to be framed against the appellant, to which he pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined seven witnesses, namely, PW1, Informant and mother of victim (Exh.21), PW2, Nilesh Khudsange, panch witness (Exh.34), PW3, Ashwinkumar Chittawar- panch witness (Exh.39), PW4, victim (Exh.52), PW5, PSI Apeksha Meshram (Exh.57), PW6, API Ashish Gajbhiye (Exh.85) and PW7, Madhuri Gaikwad- Investigating Officer (Exh.88) and relied upon documentary evidence.

6. Upon completion of the prosecution evidence, the statement of the appellant came to be recorded under Section 313 of the Cr.PC. The appellant denied the incriminating circumstances appearing against him and claimed false implication on account of previous enmity between the two families, allegedly arising after the death of the victim's grandfather. He did not lead any defence evidence. Upon appreciation of the evidence on record and after hearing the parties, the learned Trial Judge, by the impugned Judgment and Order dated 28.01.2022, convicted and sentenced the appellant as stated hereinabove.

7. The learned Trial Court, upon an overall appreciation of the oral and documentary evidence, held that the prosecution had successfully established the guilt of the appellant beyond reasonable doubt. It found the testimony of the victim (PW-4) to be cogent, natural and trustworthy, holding that the



testimony inspired confidence and received assurance from the evidence of the informant (PW-1), the spot panchanama, the seizure of the clothes of the victim and the appellant, and the investigation carried out by the Investigating Officers. The learned Trial Court further held that the prosecution had established the age of the victim and the foundational facts necessary for invoking the statutory presumptions under Sections 29 and 30 of the POCSO Act, which the appellant had failed to rebut. The defence contentions regarding tutoring of the victim, omissions and contradictions in the prosecution evidence, and false implication on account of previous enmity came to be rejected. Holding that the prosecution had proved the charges beyond reasonable doubt, the learned Trial Court convicted and sentenced the appellant by the impugned judgment. Being aggrieved by the said judgment and order of conviction, the appellant has preferred the present appeal before this Court.

8. Mr. R.M. Daga, learned counsel appearing for the appellant, submitted the impugned judgment is contrary to the evidence on record and suffers from serious infirmities. He submitted that the First Information Report was lodged after an unexplained delay of about twenty-two days. Though the prosecution sought to explain the delay on the ground of social stigma and the death of her father-in-law, the explanation, according to him, is neither natural nor satisfactory, particularly in a case involving allegations of repeated sexual assault upon a minor. According to him, the delay assumes significance in the facts of the present case, particularly in view of the defence that there existed previous enmity between the families of the appellant and the victim, giving rise to a possibility of false implication.



9. Learned counsel for the appellant further submitted that the medical evidence does not support the prosecution case inasmuch as the hymen of the victim was found to be intact and no external injuries were noticed on her person. He contended that the allegation of forcible penetrative sexual assault is not corroborated by the medical evidence. It was further submitted that the Chemical Analyser's reports are inconclusive and do not lend any support to the prosecution case. According to him, the testimony of PW-1 and PW-4 suffers from material omissions and contradictions, and the prosecution has failed to establish the charge beyond reasonable doubt. He also submitted that, as per the evidence of the victim herself, the relatives of the appellant were present in the house at the relevant time, rendering the prosecution version inherently improbable.

10. Learned counsel for the appellant lastly submitted that the learned Trial Judge failed to appreciate the evidence in its proper perspective and overlooked the material infirmities in the prosecution case while recording the conviction. He further submitted that the sentence imposed upon the appellant is unsustainable in law. It was, therefore, prayed that the impugned Judgment and Order be quashed and set aside and the appellant be acquitted of the offences with which he has been charged. In support of his submissions, learned counsel for the appellant relied upon the following decisions :-

- i. Sayyad Nadim Asad v. State of Maharashtra, Cri. A No. 837 of 2022.*
- ii. Syed Andrabi v. National Investigation Agency, Jammu, SLP (Crl.) No.1090 of 2026.*
- iii. Vaibhav Singh v. State of Uttar Pradesh, SLP (Crl.) No. 7416 of 2026.*
- iv. Tapas Palit v. State of Chhattisgarh, Cri. A No. 738 of 2025 arising out of SLP (Crl.) No. 15971 of 2024.*



v. Athar Parweez v. Union of India, Cri. A No. 5387 of 2024 arising out of SLP (Crl.) No. 9209 of 2024.

11. *Per contra*, Mrs. S.S. Dhote, learned Additional Public Prosecutor appearing for the respondent-State, supported the impugned judgment. She submitted that the learned Trial Court has properly appreciated the oral and documentary evidence on record and rightly recorded the finding of guilt against the appellant. According to her, the prosecution has succeeded in establishing the guilt of the appellant beyond reasonable doubt and no interference is warranted in the exercise of appellate jurisdiction.

12. Learned APP submitted that the testimony of the victim is natural, cogent and inspires confidence. According to her, the victim has consistently attributed the commission of the offence to the appellant from the stage of disclosure made to her mother, the statement recorded under Section 164 of the Cr.P.C. and her deposition before the learned Trial Court. She submitted that the discrepancies highlighted by the defence are only minor variations, which do not affect the substratum of the prosecution case. She further contended that the testimony of PW-1 substantially corroborates the version of the victim and that the explanation offered for the delay in lodging the First Information Report has rightly been accepted by the learned Trial Court having regard to the social realities surrounding offences of such nature.

13. Learned APP further submitted that the investigation was conducted fairly and in accordance with law. According to her, the preparation of the spot panchnama, seizure of the relevant articles, medical examination of the victim and the appellant, collection of biological samples, forwarding of the seized articles for chemical analysis, collection of the birth certificate and



recording of the statement of the victim under Section 164 of the Cr.P.C. are duly supported by the documentary evidence. She submitted that PW-2 and PW-3 have proved the relevant panchnamas and that nothing substantial has been elicited in their cross-examination to discredit their testimony. It was further submitted that the Investigating Officers have satisfactorily explained the steps taken during investigation and that no mala fides or deliberate fabrication has been established.

14. Learned APP further submitted that the prosecution has duly established the age of the victim through the birth certificate issued by the competent authority, thereby proving that she was a child within the meaning of Section 2(1)(d) of the POCSO Act. According to her, once the testimony of the victim is accepted and the foundational facts stand established, the statutory presumptions under Sections 29 and 30 of the POCSO Act become applicable and the appellant has failed to rebut the same.

15. It was lastly submitted that the learned Trial Court has assigned cogent and convincing reasons for accepting the prosecution case and that the findings recorded are based upon a proper appreciation of the evidence on record and the settled principles of law. Learned APP, therefore, prayed that the appeal, being devoid of merits, deserves to be dismissed and the conviction and sentence imposed upon the appellant be affirmed. In support of her submissions, learned APP relied upon the following decisions:-

- i. *State of Himachal Pradesh v. Manga Singh*, 2019 (16) SCC 759
- ii. *Wahid Khan v. State of Madhya Pradesh*, 2010 (2) SCC 9
- iii. *Lokmal alias Loku v. State of Uttar Pradesh*, 2025 (4) SCC 470
- iv. *State of Punjab v. Gurjit Singh*, SLP (Crl) No. 5075 of 2026.
- v. *Tasleem Ahmed v. State (NCT of Delhi)*, SLP(Crl) No. 3867 of 2026.



16. Before advertng to the rival submissions, it would be appropriate to evaluate the evidence adduced by the prosecution. The appreciation of the evidence of the prosecution witnesses forms the foundation for determining whether the prosecution has succeeded in establishing the guilt of the appellant beyond reasonable doubt. Particular attention is warranted in cases under the POCSO Act, given the tender age of the victim. The evaluation of depositions forms the basis for subsequent analysis and judicial conclusions. As such evidence of the prosecution witnesses is discussed as under:

17. PW-1, Kalpana Ramaji Gadhve, the first informant and mother of the victim, reiterated the prosecution case and deposed regarding the disclosure allegedly made to her by the victim after the incident. She stated that upon enquiry, the victim disclosed that the appellant had subjected her to forcible sexual intercourse and had also committed similar acts on earlier occasions and threatened her with dire consequences if she disclosed the incident. She further stated that when she and her husband confronted the appellant, he also threatened them. PW-1 deposed that the report was not lodged immediately as the family was under fear, her father-in-law had expired, and after the funeral ceremonies and discussions with relatives, the FIR (Exh.22) came to be lodged on 01.07.2019. She proved the First Information Report (Exh.23), the birth certificate of the victim (Exh.24), seizure of the clothes of the victim (Exh.25) and the consent for medical examination (Exh.29). During cross-examination, she admitted that prior to the incident the victim used to frequently visit the appellant's house and that both families were on cordial terms so much so that often the victim used to stay with the parents



of the appellant, but denied the suggestions of false implication, tutoring of the victim or previous enmity.

18. PW-2, Nilesh Vijayrao Khudsange, is the panch witness to the seizure of the medical samples of the victim and the appellant. He proved the seizure panchnamas at Exhibits 35 and 36. During cross-examination, he denied the suggestions that the panchnamas had been prepared before his arrival, that no proceedings were conducted in his presence, or that he was deposing falsely at the instance of the police.

19. PW-3, Ashwinkumar Ashok Chittawar, is the panch witness to the spot panchnama and the seizure of the bedsheet from the house of the appellant, the clothes of the appellant and the clothes of the victim. He proved the spot panchnama (Exh.41), seizure panchnamas (Exhs.42, 44 and 25) and identified the articles seized during the course of investigation. During cross-examination, he admitted that the appellant was not present when his clothes were seized and that Exh.44 did not bear the appellant's signature. He, however, denied the suggestions that the panchnamas were prepared at the police station, that he had never visited the spot, or that he was deposing falsely.

20. PW-4 is the victim. After putting preliminary questions to ascertain the competency of victim, the learned Trial Judge found that she was capable of giving rational answers and proceeded to record her evidence without administering oath. She identified the appellant as her cousin residing in the adjoining house. According to the victim, while she was playing at her house, the appellant called her to his house, whereafter he closed the door, made her lie on a cot, removed her clothes as well as his own trousers, and committed



sexual assault upon her. She further stated that the appellant pressed her mouth when her mother knocked at the door, applied coconut oil to her private part after the incident, and threatened to kill her parents if she disclosed the occurrence. She also alleged that the appellant had subjected her to similar acts on three previous occasions. She identified the clothes worn by her at the time of the incident. During cross-examination, she admitted that, prior to the lodging of the FIR, her grandfather had expired and both families had attended the funeral ceremonies. Though she denied that any quarrel had taken place between the families, she admitted that her parents had abused the appellant during the funeral. She further admitted that the appellant's house was adjacent to her house, that children used to play in the surrounding area. She deposed that at the time of the alleged incident, the appellant's mother and father were present at his home. She denied that her mother tutored her about incidence before recording of her deposition. Certain omissions in her previous statement were brought on record during the course of her cross-examination.

21. PW-5, Apeksha Shalikram Meshram, the then Police Sub-Inspector attached to Wadner Police Station, deposed that she recorded the oral report of PW-1, on the basis of which the First Information Report came to be registered. She proved the various investigative steps undertaken by her, including preparation of the spot panchnama, seizure of the clothes of the victim and the appellant, seizure of the bedsheet from the place of occurrence, referral of the victim for medical examination and arrest of the appellant. She further admitted that she had not recorded the statements of any witnesses during the course of her investigation.



22. PW-6, Ashish Kevalram Gajbhiye, the then Officer-in-Charge of Wadner Police Station, deposed that, upon perusal of the report recorded by PW-5, he directed registration of the crime against the appellant and entrusted further investigation to PW-5. He further stated that he entrusted the investigation to PW 5. During cross-examination, he denied the suggestions that he had not perused the complaint before registering the offence or that the crime had been registered under incorrect provisions.

23. PW-7, Madhuri Shankarrao Gaikwad, Investigating Officer, who carried out the subsequent investigation, deposed regarding recording of the statement of the victim under Section 164 of the Code of Criminal Procedure, collection of the birth certificate of the victim, forwarding of the seized articles for chemical analysis, obtaining the medical opinion and, upon completion of the investigation, filing of the charge-sheet against the appellant. She denied the suggestions that the accused had been falsely implicated on account of prior disputes between the families and maintained that the investigation was conducted fairly.

24. We have given our careful consideration to the rival submissions advanced by the learned counsel appearing for the parties. In the backdrop of the submissions advanced and the evidence on record, the question that falls for consideration is whether the prosecution has succeeded in proving the guilt of the appellant beyond reasonable doubt and whether the impugned judgment and order warrants interference in the present appeal.

25. At the outset, it would be appropriate to consider the contention raised on behalf of the appellant regarding the delay in lodging the First Information Report. The alleged incident is stated to have occurred on



07.06.2019, whereas the First Information Report came to be lodged on 01.07.2019, after a lapse of about twenty-two days. It is well settled that mere delay in lodging the First Information Report in cases involving sexual offences is not, by itself, fatal to the prosecution case, as hesitation on the part of the victim or her family to immediately approach the police may arise on account of trauma, fear, social stigma or other compelling circumstances. The decisions relied upon by the learned APP, particularly *State of Himachal Pradesh v. Manga Singh*, reiterate that Courts must adopt a sensitive approach while appreciating delay in such cases. However, at the same time, where the delay is considerable, the explanation offered by the prosecution assumes significance and has to be examined in the light of the facts and circumstances of each case. It is, therefore, necessary to examine whether the explanation offered by the prosecution satisfactorily accounts for the delay in the present case.

26. The prosecution has sought to explain the delay by contending that the appellant had threatened the victim and her family with dire consequences, the informant was apprehensive of social stigma and, during the intervening period, the family was occupied on account of the illness and subsequent funeral ceremonies of her father-in-law. PW-1 has reiterated the said explanation in her deposition. However, the explanation regarding the illness of her father-in-law does not find place in the First Information Report and appears to be an improvement made during the course of evidence. Apart from the bare testimony of PW-1, no material has been brought on record to substantiate either the alleged illness or any other circumstance preventing the informant from approaching the police for nearly twenty-two



days. The evidence further indicates that during the intervening period, an altercation had taken place between the two families during the funeral ceremony. Though the prosecution has denied the suggestion of previous enmity, the aforesaid circumstances render the explanation for the delay less than satisfactory. The delay, therefore, cannot be viewed in isolation; nevertheless, in the facts of the present case, it assumes significance while appreciating the overall reliability of the prosecution evidence.

27. In *Satpal Singh v. State of Haryana, (2010) 8 SCC 714*, the Hon'ble Supreme Court observed that although delay in lodging the First Information Report in cases involving sexual offences is not, by itself, fatal to the prosecution, the explanation offered must satisfy the Court when examined in the backdrop of the surrounding circumstances. Applying the said principle, the delay in the present case cannot, by itself, be treated as decisive; nevertheless, it is a circumstance which deserves to be kept in view while appreciating the prosecution evidence as a whole.

28. The prosecution case principally rests upon the testimony of PW-4, the victim. There is no dispute about the settled legal position that conviction for an offence of sexual assault can be founded on the sole testimony of the prosecutrix if her evidence is found to be natural, cogent and of such quality as to inspire the confidence of the Court. Corroboration is not an indispensable requirement. Equally, where the surrounding circumstances or the evidence on record give rise to legitimate doubt, the testimony of the prosecutrix is required to be scrutinised with greater care. It is, therefore, necessary to examine whether the evidence of PW-4 satisfies the aforesaid test. In *Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92*,



the Hon'ble Supreme Court observed that although conviction can be based on the sole testimony of the prosecutrix, where such testimony does not receive assurance from the medical evidence or the surrounding circumstances appear improbable, the Court is required to subject such evidence to careful judicial scrutiny before acting upon it. It is, therefore, necessary to examine whether the evidence of PW-4 satisfies the aforesaid test.

29. PW-4 has deposed that the appellant called her to his house, closed the door and committed penetrative sexual assault upon her. She further alleged that similar acts had been committed on three earlier occasions and that the appellant threatened to kill her parents if she disclosed the incident. However, the allegations regarding the earlier incidents remain general in nature. Neither the FIR nor the substantive evidence specifies the dates, occasions or particulars of the earlier alleged incidents. During cross-examination, the victim also admitted that her parents had abused the appellant at the funeral of victim's grandfather. Though such circumstance by itself does not establish false implication, it assumes relevance while examining whether the prosecution has succeeded in excluding every reasonable doubt. During her cross-examination, omissions with regard to certain material aspects of her version were also brought on record. It is equally settled that while the testimony of the prosecutrix may by itself sustain a conviction, such testimony must nevertheless inspire complete confidence and be tested against the probabilities emerging from the record. The Court is not expected to accept the evidence mechanically merely



because the allegation concerns a sexual offence. It is in this backdrop that the remaining evidence on record requires to be appreciated.

30. The medical evidence also assumes importance in the facts of the present case. The prosecution alleges that the appellant had repeatedly subjected the victim to forcible penetrative sexual assault and that, on the date of the incident, she had sustained bleeding from her private part. The victim was medically examined on 01.07.2019. The medical officer found that the hymen of the victim was intact and did not notice injuries suggestive of forceful penetrative sexual intercourse. The preliminary medical opinion also did not indicate forceful penetration. It is well settled that absence of injuries or an intact hymen does not, by itself, rule out the commission of penetrative sexual assault, nor is medical evidence conclusive in such cases. At the same time, where the allegation is of repeated forcible penetrative sexual assault, the medical findings cannot be ignored altogether. In the present case, the allegation is not of a solitary act but of repeated aggravated penetrative sexual assault over a period of time, and the medical examination does not disclose injuries, signs of healed tears or any circumstance broadly consistent with such allegation. Though this circumstance may not, by itself, discredit the prosecution case, it does not furnish medical assurance to the prosecution version and, therefore, assumes significance while appreciating the evidence as a whole.

31. Similar is the position regarding the scientific evidence. Considerable reliance has been placed by the prosecution upon the seizure of the clothes of the victim and the appellant, the bed-sheet from the place of occurrence and the biological samples collected during the course of investigation. However,



these articles admittedly came to be seized after a considerable lapse of time following the alleged occurrence. The Chemical Analyser's Reports and the material placed on record do not reveal any DNA profiling or other scientific material conclusively connecting the appellant with the alleged offence. The forensic evidence, therefore, does not independently establish the involvement of the appellant. Scientific evidence is undoubtedly a relevant circumstance in the appreciation of a criminal case, however, its evidentiary value has to be assessed in the context of the entire material available on record. In the present case, the forensic material neither conclusively incriminates the appellant nor lends any independent support to the prosecution case sufficient to overcome the doubts arising from the other circumstances on record.

32. The investigation also reveals certain deficiencies which cannot be overlooked. PW-5 admitted that, during the period when the investigation remained with her, she had not recorded the statements of witnesses under Section 161 of the Cr.P.C. PW-7 admitted that no formal order transferring the investigation formed part of the charge-sheet. Though these lapses may not, by themselves, vitiate the prosecution, they require consideration when viewed in conjunction with the other circumstances emerging from the evidence on record. More importantly, the Investigating Officer admitted that the alleged place of occurrence was situated in a populated locality surrounded by neighbouring houses. Despite this, no independent resident of the locality was examined, nor were any witnesses produced to corroborate the circumstances surrounding the alleged occurrence or the events immediately thereafter. The prosecution also did not examine those relatives



who, according to the informant herself, were consulted before lodging the FIR, nor was any witness examined who could have thrown light on the circumstances preceding its registration. Though non-examination of every witness is not fatal, the omission assumes significance in the facts of the present case. These omissions assume importance because the prosecution case rests substantially upon the testimony of closely related witnesses.

33. Learned APP rightly submitted that the principle that defective investigation should not automatically enure to the benefit of the accused cannot be disputed. Equally well settled is the principle that where the prosecution evidence itself is not free from doubt, such lapses cannot be brushed aside while determining whether the prosecution has succeeded in establishing the guilt of the accused beyond reasonable doubt. Criminal Courts are concerned not merely with the manner of investigation but with the reliability of the evidence ultimately produced before them. In the present case, the deficiencies noticed in the investigation cannot be viewed in isolation but are required to be appreciated together with the medical evidence, the forensic evidence and the other surrounding circumstances emerging from the record.

34. Learned counsel for the appellant also questioned the evidentiary value of the statement of the victim recorded under Section 164 of the Cr.P.C. The submission merits acceptance to the limited extent that such statement is not substantive evidence and can be used only for corroboration or contradiction of its maker. The learned Trial Court appears to have placed considerable reliance upon the consistency between the FIR, the statement under Section 164 of the Code and the deposition of the victim before the



Court. Such consistency may undoubtedly lend assurance to the prosecution case. However, the statement recorded under Section 164 of the Code, in our opinion, cannot, by itself, cure the deficiencies otherwise emerging from the substantive evidence adduced during the trial. The conviction must ultimately rest upon the evidence adduced before the Court and not merely upon the previous statement of the witness.

35. The learned APP has relied upon the decisions to contend that the testimony of the victim in cases of sexual offences, if found to be reliable, cogent and trustworthy, can form the sole basis of conviction and does not require independent corroboration. It has further been contended that minor inconsistencies, omissions or lapses in investigation, which do not affect the substratum of the prosecution case, cannot by themselves be a ground for discarding the prosecution evidence. There can be no dispute with the aforesaid legal principles. However, the same have to be applied having regard to the facts and circumstances of each case. In the present case, the issue is not confined to isolated discrepancies or mere lapses in the investigation, but concerns the cumulative effect of various circumstances emerging from the evidence on record, including the delay in lodging the FIR, the circumstances preceding the registration of the offence, the absence of independent witnesses despite their availability, the medical and scientific evidence and the deficiencies noticed in the investigation. Therefore, in our considered opinion, the said principles cannot be applied mechanically in the present matter as the evidence on record is required to be appreciated in its entirety and in the backdrop of the surrounding circumstances emerging from the prosecution case.



36. The decisions relied upon by the learned counsel for the appellant reiterate the settled principles that suspicion, however strong, cannot take the place of proof, that the prosecution must first establish the foundational facts before the statutory presumptions under the POCSO Act can be invoked and where two views are reasonably possible on the evidence, the one favourable to the accused deserves to be adopted. In our considered opinion, the aforesaid principles aptly apply to the facts of the present case and reinforce the conclusion that the prosecution evidence falls short of the standard required to sustain the conviction of the appellant.

37. Equally, there can be no quarrel with the proposition that Sections 29 and 30 of the POCSO Act incorporate statutory presumptions in favour of the prosecution once the foundational facts necessary to attract their operation are established. However, the statutory presumption cannot relieve the prosecution of its primary obligation to prove those foundational facts by reliable and cogent evidence. The presumption cannot be invoked in a mechanical manner or as a substitute for proof where the prosecution evidence itself gives rise to reasonable doubt. In the present case, for the reasons discussed hereinabove, the evidence led by the prosecution does not inspire the degree of confidence necessary to invoke the statutory presumptions so as to sustain the conviction of the appellant.

38. On an overall appreciation of the evidence on record, we find that the prosecution case suffers from several infirmities which, when viewed cumulatively, create a reasonable doubt regarding the guilt of the appellant. The delay in lodging the First Information Report and the explanation subsequently offered therefor, the omissions and inconsistencies emerging



from the testimony of the prosecutrix, the absence of medical and scientific evidence lending assurance to the prosecution case, the deficiencies noticed during the investigation, and the limited evidentiary value of the statement recorded under Section 164 of the Code, cannot be viewed in isolation. Such an approach is contrary to the settled principles governing appreciation of evidence in criminal trials. In our considered opinion, once these circumstances are appreciated together, they render the prosecution case insufficient to establish the guilt of the appellant beyond reasonable doubt. Consequently, the appellant is entitled to the benefit of doubt.

39. Before parting with the matter, we deem it appropriate to observe that the learned Trial Court, while imposing sentence under Section 6 of the POCSO Act awarded imprisonment for life till the remainder of the natural life of the appellant. The alleged occurrence in the present case is of 07.06.2019, whereas the amendment to Section 6 of the POCSO Act introducing the said punishment came into force with effect from 16.08.2019. The Hon'ble Supreme Court, in ***Satauram Mandavi v. State of Chhattisgarh & Anr., SLP (Cri.) No.13834 of 2024***, has held that the amended provision cannot be applied retrospectively and that the enhanced punishment introduced by the Amendment Act, 2019 cannot be imposed in respect of offences committed prior to its enforcement, having regard to the mandate of Article 20(1) of the Constitution of India. In view of our conclusion that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt and that the conviction itself is liable to be set aside, it is not necessary to examine the aforesaid contention in any



greater detail. The aforesaid aspect is noticed only as an ancillary legal observation.

40. In view of the above discussion, we proceed to pass the following order:

ORDER

- i. The Criminal Appeal is allowed.
- ii. The judgment and order dated 28.01.2022 passed by the learned Additional Sessions Judge, Hinganghat in Special (POCSO) Case No.16 of 2019 is quashed and set aside.
- iii. The appellant is acquitted of the offences punishable under Sections 376AB, 376(2)(n), 506 of the Indian Penal Code and Section 5(l)(m) (n) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012.
- iv. The accused be released forthwith if not required in any other case.
- v. Application(s), if any, pending, shall stand closed.

(Nivedita P. Mehta, J.)

(Urmila Joshi-Phalke, J.)