



1

CRA-550-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN

ON THE 17th OF MARCH, 2026CRIMINAL APPEAL No. 550 of 2016*AJAY @ SHERA @ SHAMSHER AND OTHERS**Versus**THE STATE OF MADHYA PRADESH*

.....
Appearance:

Shri Alkesh Kumar Mishra– Advocate for the appellants.

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

.....
Heard on : 05.02.2026

Pronounced on : 17.03.2026
.....

JUDGMENT

Per. Justice Ratnesh Chandra Singh Bisen.

With the consent of learned counsel for the parties, appeal is heard finally.

2. This criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 has been preferred by the appellants, being aggrieved of the judgment of conviction and order of sentence dated 11.12.2015 passed by the learned Special Judge (Atrocities) Satna, M.P. in Special Sessions Trial No. 121/2014, whereby the appellants were convicted and sentenced as under:-

Appellant No.1-Ajay@Shera@Shamsher

<u>Conviction</u>		<u>Sentence</u>		
<u>Section</u>	<u>Act</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>Imprisonment in lieu of fine</u>



2

CRA-550-2016

376(D)	I.P.C.	R.I. for 20 years	Rs.500/-	R.I. for 6 months
376(2)(i)	I.P.C.	No separate punishment has been awarded as this section is related with the same offence		
5(g)	Protection of Children from Sexual Offences Act, 2012	No separate punishment has been awarded as this section is related with the same offence		
6	Protection of Children from Sexual Offences Act, 2012	No separate punishment has been awarded as this section is related with the same offence		

Appellant No.2- [Kalu @ Amit](#) Kol

<u>Conviction</u>		<u>Sentence</u>		
<u>Section</u>	<u>Act</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>Imprisonment in lieu of fine</u>
376(D)	I.P.C.	R.I. for 20 years	Rs.500/-	R.I. for 6 months
376(2)(i)	I.P.C.	No separate punishment has been awarded as this section is related with the same offence		
5(g)	Protection of Children from Sexual Offences Act, 2012	No separate punishment has been awarded as this section is related with the same offence		
6	Protection of Children from Sexual Offences Act, 2012	No separate punishment has been awarded as this section is related with the same offence		



3. The case of the prosecution, in brief, is as under:-

3.1 The prosecutrix, a minor girl from the Scheduled Caste Kori community, was gang-raped on July 30, 2014, around 7:30 PM while heading to relieve herself near Choute Baba's field. Accused-appellants Kailash Kol and Kamlesh abducted her to Vijay Raj Singh's field in Village Shukulgawan, P.S. Tala, District Satna. They covered her mouth, threatened to kill her, and raped her before fleeing. Fearing her father, she first told her maternal grandmother, then informed her mother and sister at home.

3.2 On July 31, 2014, an FIR was registered at P.S. Tala under Sections 376D and 376(2)(i) IPC, Sections 5(g) and 6 of the POCSO Act, 2012, and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 (Crime No. 155/2014). The prosecutrix (PW-4) was medically examined that night by Dr. Alka Mahule (PW-12).

3.3 A charge sheet was filed before the Sessions Judge, Satna, and transferred to the Special Judge (Atrocities), Satna and charges were framed under the above sections. Both accused denied the charges, claiming false implication, and examined DW-1 (Kailash Kol) and DW-2 (Kamlesh) in defense.

3.4 The trial court on appraisal of evidence available on record convicted and sentenced both the appellants as mentioned hereinabove.

4. Learned counsel for the appellants submitted that judgment of the trial court is illegal and factually wrong. He submitted that appellants were falsely implicated due to prior enmity and village rivalry. Key contradictions in the prosecutrix's and witnesses' statements undermine the prosecution's case, which the trial court ignored. Medical evidence does not support gang rape or link the appellants forensically to the crime. He further submitted that no independent witnesses were called, despite their presence at the scene. Alternatively, any act was consensual but mislabeled as Section 376-D of IPC. According to him, the prosecution failed to prove guilt beyond reasonable doubt and as such, prayed that appellants be acquitted from the charges.

5. *Per contra*, counsel for the State supported the trial court's judgment. He



argued that the prosecution has proved its case beyond reasonable doubt. The prosecutrix's clear, consistent, and reliable testimony is sufficient for conviction without corroboration. Minor contradictions in witness statements are natural and do not affect the core case. Medical evidence supports her account of gang rape under Section 376-D of Indian Penal Code and lack of serious injuries is irrelevant. He further submitted that the trial court correctly assessed the evidence and as such, no interference is called for.

6. Heard the learned counsel for the parties and perused the record of the trial court.

7. To bring home the charges, the prosecution examined as many as 14 witnesses.

8. Dr. R.K. Tiwari (PW-1) deposed that on 01.08.2014, he was posted as Medical Officer at CHC Amarpatan. On the said date, he examined accused Kalu @ Amit Kol and Ajay @ Shera and opined that both the accused were capable of sexual intercourse. The report is Ex. P/1 and P/2 respectively.

9. Kamlesh Kori (PW-2) has not supported the prosecution case and he has been declared hostile by the prosecution.

10. Rajendra Prasad Napit (PW-3) has been posted as an Assistant Teacher at Government Primary School, Kotar, District Satna since 2006 and produced the prosecutrix's Scholar Register Ex. P/4) in court. It covers entries from 2009 to the present. Entries have been made in this register starting from number 12601 to 3010. Entry No. 2926 showing the prosecutrix was admitted to Class 6 on 05.07.2013, with date of birth 15.08.2000. He also produced her school admission application form (with the same date of birth) and the annexed transfer certificate from the Headmaster, Government Ancient School, Shukulgada, Tehsil Amarpatan, District Satna. He also stated that the said application form was produced by father of victim on 05.07.2013 which is Ex. P/5. The transfer certificate is also annexed with the application form which was issued by the Head Master of Primary School, Shukulgada which is Ex. P/6. Mother of the prosecutrix (PW-6) also confirmed that her daughter (prosecutrix) was a 14-year-old student studied in Class 7th at Government Primary School Kotar. Victim (PW-5) also stated that she studied up to Class 7th at Government Primary



School, Kotar.

11. The mother of the victim (PW-6) has stated in her examination in chief that the victim was 14 years of age at the time of the incident. The above fact has not been rebutted in her cross-examination. Thus, from the evidence of Mangal Prasad Napit (PW-3) and the mother of the victim (PW-6), it is proved that on the date of the incident, the age of the complainant was 14 years. The Hon'ble Supreme Court in **Jarnail Singh vs state of Haryana (2013)7SCC 263** has propounded the following principles in paragraphs, 23 and 24, which reads as under:-

“ 23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.

24. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW, PW 6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied up to Class 3 only, and thereafter, had left her school and had started to do household work. The prosecution in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix



VW, PW 6 on the next available basis in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW 4) to prove the age of the prosecutrix VW, PW 6. Satpal (PW 4) was the Head Master of Government High School, Jathlana, where the prosecutrix VW, PW 6 had studied up to Class 3. Satpal (PW 4) had proved the certificate Ext. PG, as having been made on the basis of the school records indicating that the prosecutrix VW, PW 6 was born on 15-5-1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are therefore of the view that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW, PW 6. It would also be relevant to mention that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the prosecutrix VW, PW 6. The deposition of Satpal, PW 4 has not been contested. Therefore, the date of birth of the prosecutrix VW, PW 6 (indicated in Ext. PG as 15-7-1977) assumes finality. Accordingly it is clear that the prosecutrix VW, PW 6, was less than 15 years old on the date of occurrence i.e. on 25-3-1993. In the said view of the matter, there is no room for any doubt that the prosecutrix VW, PW 6 was a minor on the date of occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court, that even if the prosecutrix VW, PW 6 had accompanied the appellant-accused Jarnail Singh of her own free will, and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor”.

12. The main argument advanced by counsel for the appellant is that Dr Alka Mahule (PW-12) had examined the victim medically and had advised for conducting x-ray and as per x-ray report, victim, age was between 17 to 18 years .thus, the victim be considered to be above 18 years of age. The said argument cannot be accepted in the light of the judgment passed by the Supreme Court in case of **State of MP versus Anoop Singh (2015) 7 SCC 773** wherein the Supreme Court in paragraphs 16 to 18 has held as under:-

"16. In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rule 12(3)(b). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence in the form of Exts. P-5 and P-6 cannot be discarded. Therefore, the trial court was correct in relying on the documents.

17. The High Court also relied on the statement of PW 11 Dr A.K. Saraf who took the x-ray of the prosecutrix and on the basis of the ossification test, came to the conclusion that the age of the prosecutrix was more than 15 years but less than 18 years. Considering this the High Court presumed that the girl was more than 18 years of age at the time of the incident. With



respect to this finding of the High Court, we are of the opinion that the High Court should have relied firstly on the documents as stipulated under Rule 12(3)(b) and only in the absence, the medical opinion should have been sought. We find that the trial court has also dealt with this aspect of the ossification test. The trial court noted that the respondent had cited *Lakhanlal v. State of M.P.* [2004 SCC OnLine MP 16 : 2004 Cri LJ 3962], wherein the High Court of Madhya Pradesh said that where the doctor having examined the prosecutrix and found her to be below 18½ years, then keeping in mind the variation of two years, the accused should be given the benefit of doubt. Thereafter, the trial court rightly held that in the present case the ossification test is not the sole criterion for determination of the date of birth of the prosecutrix as her certificate of birth and also the certificate of her medical examination had been enclosed.

18. Thus, keeping in view the medical examination reports, the statements of the prosecution witnesses which inspire confidence and the certificates proving the age of the prosecutrix to be below 16 years of age on the date of the incident, we set aside the impugned judgment [*Anoop Singh v. State of M.P., Criminal Appeal No. 924 of 2006, order dated 10-7-2008 (MP)*] passed by the High Court and uphold the judgment and order dated 24-4-2006 passed by the Third Additional Sessions Judge, Satna in Special Case No. 123 of 2003.”

13 . Accordingly, considering the above principles, it is concluded that merely because the doctor conducting the medical examination advised ossification testing to determine the victim’s age and such a test was conducted, the prosecution’s case is not affected on that ground. The ossification test becomes necessary only in cases where documents mentioned under sub-section (2) of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 are not available. Therefore, the argument advanced on behalf of the appellants carry no weight. Hence, the trial court’s conclusion that on the date of the incident, i.e., 30.07.2014, the victim’s age was below 18 years is found to be free from any error.

14. The prosecutrix (PW-5) in her statement deposed that on the date of incident at 7:30 PM, she was heading to the fields to relieve herself. Near Natipal's field, accused Ajay (Shera) and Kalu (Amit Kol) approached. Shera told her to come for something wrong; she refused and threatened to tell her mother. They covered her mouth, dragged her to Chhutthu Babba Ji's field, threatened to kill her if she screamed, and raped her one after the other (Shera first while Kalu held her, then Kalu while Shera held her) and thereafter they fled. She went to uncle Kamlesh's house, told her grandmother, then went home around 10-11 PM and told her mother and sister. Due to the late hour, they filed the report at Tala police station the next



day with her mother Lilavati. Police medically examined her (Ex. P-7), made a site map (Ex. P-8), seized her caste certificate (Ex. P-9), recorded her statement, and she gave one before the magistrate in Amarpatan. The mother of the victim (PW6) has stated in her testimony that the victim told her that when she was going out to the fields to relieve herself, Kalu Kol of Nai Basti Koter and Ajay alias Shera Kewat met her near the field of Chhotu Babba and said that they wanted to do something wrong with her. Accused Shera caught hold of her and took her to the field of Vijay Raj Singh, where he laid her down on the ground under the ridge(field) while accused Kalu pressed her mouth. The victim further stated that accused Ajay alias Shera forcibly removed her clothes, and removed his own clothes, and committed rape with against her will. Thereafter, accused Kalu alias Amit also committed rape with against her will. Thus, the testimony of the victim (PW5) is corroborated by the statement of this witness (PW6). It also appears that after the incident, the victim (PW5) narrated the entire details of the occurrence to her mother (PW6).

15. Asha Kori (PW-4) who is the aunt of the prosecutrix, stated that the prosecutrix had narrated the entire incident to her and from perusal of her statement also, it appears that victim told this witness that accused persons have raped her forcibly.

16. Sarita Bunkar (PW-8) who is sister of the prosecutrix has supported the case of prosecution and deposed that the prosecutrix had narrated entire incident to her.

17. Mamta (PW-9), who is the aunt of the prosecutrix, also supported the prosecution version and has been declared hostile by the prosecution. She deposed that the prosecutrix had narrated entire incident to her.

18. Sundresh Singh Marawi (PW-13) was posted as the Station House Officer at Tala Police Station on 31.07.2014. He deposed that the prosecutrix and her mother visited the station that day. They lodged a complaint against accused Shera Kewat and Kalu Kol, based on which he registered FIR No. 155/2014 under Sections 376(2)(j)(g) IPC, 3(2)(v) SC/ST Act, and 3/4 POCSO Act. He sent the FIR counter-copy to the concerned Magistrate, Ex. P/7 and its acknowledgment Ex. P-20.



19. Dr. Alka Mahule (PW-12) was posted as Medical Officer at District Hospital, Satna, since 31.07.2014. She deposed that on the said date, she examined 15-year-old prosecutrix from Village Shukulgawan, brought by Constable Savita Tripathi (No. 743, Tala PS). She deposed that prosecutrix was conscious, oriented, with developed secondary genital features. No external injuries (old forehead scar only). She further deposed that on internal examination, she found ruptured hymen (old tear); menstruating (day 3, minimal blood). Vulval smear/slides/underwear sealed and handed to constable; X-ray advised for age. No opinion on recent intercourse (Ex. P-17). FSL Sagar report: Ex. P-18. In para 6 of her cross-examination, she admitted that hymen tear old (not recent); no fresh injury; bleeding from menstruation; no swelling/inflammation internally/externally. She further stated that prosecutrix was below 18 years of age on the date of incident.

20. Umesh Tiwari (PW-11) was posted as Assistant Sub-Inspector at the Women's Police Station, Satna on 31.07.2014. He deposed that on that date, he recorded the statement of the prosecutrix at Tala Police Station as per her version. He admitted that the prosecutrix has not stated in her statement the names of accused persons. Further, her statement (Ex.D1) made no mention of the prosecutrix having met anyone near Netrapal's Bari, nor did it record that the accused were calling each other's names during the incident, thereby enabling her to identify them.

21. Dharmendra Singh (PW-10) did not support the case of the prosecution and has been declared hostile. He denied that accused persons stated anything before him. The memorandam of Amit @ Kalu Kol and Ajay @ Shera are Ex.P-12 and Ex.P-13, respectively.

22. Seetaram Yadav (PW-14) was posted as City Superintendent of Police, Satna since 20.08.2013. He deposed that during investigation he prepared the scene map (Ex. P/8) seized two sealed packets received from Head Constable Suman Rawat (Officer No. 121, Tala Police Station) vide seizure memo (Ex. P/21), recorded statements of witnesses Kamlesh Kori, Dharmendra Singh, Asha Kori, Savita Bunkar, Leela Kori, and Mamta Kori; recorded memorandum of accused Kalu @ Amit Kol (Ex. P/12) and Ajay @ Shera (Ex. P/13) in police custody before witnesses Dharmendra Singh and Ramlal



Kushwaha; prepared arrest memos for Ajay @ Shera (Ex. P14) and Kalu @ Amit (Ex. P/15) and sent seized property for FSL examination Ex. P/24).

23. Kailash Kol (DW-1), who is the father of the accused Amit Kol has stated in his testimony that Amit's name is not Kalu Kol. He told the police that his son's name is Amit Kol, not Kalu Kol. He also informed the police that on the date of the incident, Amit had gone for labour work to Jamuna Tola all day and returned home with him in the evening and was sleeping. This witness has admitted in para 3 of his cross-examination that he did not file any written report at the police station regarding his son.

24. Kamlesh (DW-2), who is the brother of the accused Ajay alias Shamsher, has stated in his testimony that when the police arrested his brother, he told the police that his brother Shamsher had gone to Jamuna Tola for labour work to plant crops on the date of the incident. His brother Shamsher Kevat does not have a second name. He further deposed that it is not the case that his brother Shamsher is known in the village by the name Shera.

25. The testimonies of these two witnesses are not acceptable in respect of the prosecution evidence. The defense of *alibi* (elsewhere presence) has been taken regarding the accused, but under Section 11 of the Indian Evidence Act, the distance must be so great that it is impossible for the accused to reach the scene of the incident but such a situation does not exist in this case. On the contrary, the victim (PW-5) has clearly stated in her testimony that on the evening of the date of the incident, around 7:00-7:30 PM, when she went towards the field for defecation, the accused forcibly raped her during that time. The said fact is corroborated by the statements of the victim's mother (PW-6), Asha Kori (PW-4), Sarita Kori (PW-8), and Mamta Kori (PW-9) because after the incident, these witnesses were informed about the incident by the victim herself. Additionally, the medical witness Dr. Alka Mahule (PW-13)'s statement confirms this fact, as the victim's hymen was torn and the edges were also ruptured. From the F.S.L. report Exhibit P-18, it is clear that human semen was found on the victim's slide (A), accused Ajay's underwear (D) and accused Amit's underwear. There is no fact in the cross-examination of the victim (PW-5) and the victim's mother (PW-6) on the



basis of which it can be concluded that they had any enmity with the accused persons due to which they would be interested in falsely implicating the accused.

26. The appellants argued that the victim (PW-5) admitted in paragraph 4 of her cross-examination that she had never seen the accused persons before the incident and did not know them. In paragraph 5 of the cross-examination, she also admitted that at the time of the incident she did not even know the names of the accused. In such a situation, the investigation should have conducted a Test Identification Parade (TIP). In the absence of an identification test, the testimony of the victim should not be considered admissible.

27. Considering the above argument in the context of the present case, it appears that the victim (PW-5) clearly stated that at the place of the incident the accused persons were calling each other by their names, through which she came to know their names. From the examination of the First Information Report (Exhibit P-7), it is clear that the report of the incident was written at the instance of the victim (PW-5) herself, and the names of the accused persons were clearly mentioned in it. Moreover, during her testimony before the court, the victim (PW-5) identified both accused persons and also stated that accused Ajay alias Shera belongs to the Kevat caste, which falls under the Other Backward Class (OBC) category, while accused Kalu alias Amit belongs to the Kol caste, which falls under the Scheduled Tribe (ST) category. In such circumstances, the above argument has no merit. In addition, it is appropriate to mention here that identification made in court is an important piece of evidence. There is no rule that if a Test Identification Parade was not conducted during the investigation, then the identification made by the witness in court has no value. In this regard, the principle laid down by the Hon'ble Supreme Court in **Malkhan Singh & Others v. State of Madhya Pradesh (2003) 5 SCC 746; AIR 2003 SC 2669**, decided by a three-judge bench, is relevant (Para 7) which reads as under:-

“It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons,



are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See *Kanta Prashad v. Delhi Admn.* [AIR 1958 SC 350 : 1958 Cri LJ 698] , *Vaikuntam Chandrappa v. State of A.P.* [AIR 1960 SC 1340 : 1960 Cri LJ 1681] , *Budhsen v. State of U.P.* [(1970) 2 SCC 128 : 1970 SCC (Cri) 343 : AIR 1970 SC 1321] and *Rameshwar Singh v. State of J&K* [(1971) 2 SCC 715 : 1971 SCC (Cri) 638] .)

28. Similarly, the principle laid down by the Hon'ble Supreme Court in **Ms. S versus Sunil Kumar & another**, reported in (2015)8 SCC 478 particularly paragraph 10 which is relevant and reads as under:-

“10.It has consistently been held by this Court that what is substantive evidence is the identification of an accused in court by a witness and that the prior identification in a test identification parade is used only to corroborate the identification in court. Holding of test identification parade is not the rule of law but rule of prudence. Normally identification of the accused in a test identification parade lends assurance so that the subsequent identification in court during trial could be safely relied upon. However, even in the absence of such test identification parade, the identification in court can in given circumstances be relied upon, if the witness is otherwise trustworthy and reliable. The law on the point is well-settled and succinctly laid down in *Ashok Debbarma* (*supra*).

29. Likewise, the principle laid down by the Hon'ble Supreme Court in **Raju Manjhi v. State of Bihar**, reported in (2019) 12 SCC 784, particularly paragraphs 14 and 15, which are relevant and reads as under:-

“14. As regards the claim of appellant that non identification of the accused by the witness would not substantiate the prosecution case, admittedly no prosecution witness has identified the accused—appellant which does not mean that the prosecution case against the accused is on false footing. As a general rule, identification tests do not constitute substantive evidence. The purpose of identification test is only to help the investigating agency as



to whether the investigation into the offence is proceeding in a right direction or not. In our view, non identification of the appellant by any prosecution witness would not vitiate the prosecution case. It is evident from the confessional statement of the accused that at the time of occurrence he and another accused Rampati Manjhi were guarding outside the informant's house while other accused were committing dacoity inside. We do not think that there is any justification to the argument that as none of the prosecution witnesses could be able to identify the appellant, he cannot be termed as accused. In our view, such non identification would not be fatal to the prosecution case in the given facts and circumstances.

15. The identification parade belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration [See : Kanta Prashad v. Delhi Administration, 1958 CriLJ 698 and Vaikuntam Chandrappa and Ors. v. State of Andhra Pradesh, AIR 1960 SC 1340].”

30. Thus, in light of the principles laid down in the above judicial precedents by the Hon'ble Supreme Court, the argument advanced by counsel for the appellants that since the investigating agency did not conduct a Test Identification Parade during the investigation, the identification of the accused by the victim in court has no value, cannot be accepted, and the said argument is therefore rejected.

31. On careful consideration of the entire evidence on record, we find no illegality or perversity in the judgment passed by the trial court. The age of the prosecutrix was duly proved through reliable school records and the testimony of her mother, establishing that she was a minor at the time of the incident. As laid down by the Supreme Court in case of Jarnail Singh (*supra*), school records are a valid basis for determining age. Therefore, the question of consent does not arise. The testimony of the prosecutrix is clear, consistent, and inspires confidence. It is well settled that conviction can be based solely on the trustworthy statement of the prosecutrix, even without independent corroboration. Minor contradictions pointed out by the defence do not affect the core of the prosecution case. The medical and FSL evidence further corroborate the version of the prosecutrix. The defence of false implication and *alibi* has not been proved by cogent evidence. No material contradiction or motive for false implication has been established. In



criminal jurisprudence, when the evidence of the prosecutrix is reliable and supported by surrounding circumstances, the conviction can safely be sustained.

32. Accordingly, we are of the opinion that the prosecution has proved the guilt of the appellants beyond reasonable doubt. The conviction and sentence passed by the trial Court against the appellants is hereby affirmed. The appeal lacks merit and is hereby **dismissed**.

33. Record of the trial Court be sent back forthwith.

(VIVEK AGARWAL)
JUDGE

(RATNESH CHANDRA SINGH BISEN)
JUDGE

Rao