IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 231 of 2015
Reserved on: 24.2.2026
Date of Decision: 18.3.2026

Paramjeet Singh @ Pamma ...Appellant

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***No.***

For the Appellant : Mr N.K. Thakur, Senior Advocate, with Mr Karanveer Singh, Advocate.

For the Respondent-State : Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction and order of sentence dated 25.6.2015, passed by learned Special Judge, Una, District Una, H.P., vide which the appellant (accused before learned Trial Court) was convicted and sentenced as under:-

Under Section 4 of the POCSO Act	To suffer imprisonment for seven years, pay a fine of ₹10,000/- and

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

	in default of payment of fine, to undergo simple imprisonment for two months.
Under Section 293 of the IPC	To suffer imprisonment for one year, pay a fine of ₹2000/- and in default of payment of fine, to undergo further simple imprisonment for 15 days.

(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for the commission of offences punishable under Sections 377 and 294 of the Indian Penal Code (IPC) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). It was asserted that the victim (name withheld to protect his identity) was born on 26.7.1999. The accused had committed a bad act with the victim on 2.9.2013. The victim narrated this fact to his mother, who made inquiries from the accused. The accused apologised. The victim revealed that the accused had taken him to his home and sexually penetrated his anus. The incident was narrated to the victim's father, who reported the matter to the police. FIR (Ex.PW14/A) was registered. SI Prem Raj (PW13) investigated the matter. He visited the spot and prepared

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the site plan (Ex.PW13/A). He arrested the accused and filed an application (Ex.PW11/B) for the medical examination of the accused. Dr G.S. Didhra (PW11) examined the accused and opined that he was capable of performing sexual intercourse. He seized the hair from the private part of the accused. He also seized the underwear (Ex.P5), the undervest (P6) and the handkerchief (P7) of the accused and handed them over to the police official accompanying the accused after sealing them. Dr Vinod Dhiman (PW10) medically examined the victim and found an abrasion on the right mid leg medial aspect. He seized the underwear and knickers, perianal swab, rectal swab, normal saline rectal side, blood samples and head hair of the victim and handed them over to the police officials accompanying the accused. He issued the MLC (Ex.PW10/B). Photographs of the spot (Ex.PW2/B and Ex.PW2/C) were taken. The wife of the accused produced a mobile phone containing a SIM and a memory card. The mobile phone was sealed in a parcel with three seals of Seal 'M'. Seal impression (Ex.PW4/B) was taken on a separate piece of cloth, and the parcel was seized vide memo (Ex.PW4/A). An application (Ex.PW5/A) was filed for obtaining the victim's birth certificate. Ved Prakash (PW5) issued a birth certificate (Ex.PW5/B) and an

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extract (Ex.PW5/C) regarding the victim's birth. The case property was sent to SFSL, and as per the report of analysis (Ex.PW10/C), no blood and semen were detected in the articles seized by the Medical Officer. One porn clip was found on the memory card, which could be played on the mobile phone. Report (Ex.PW13/B) was issued. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court charged the accused with the commission of offences punishable under Section 4 of the POCSO Act and Section 293 of IPC, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 15 witnesses to prove its case. Victim (PW1) narrated the incident. Victim's father (PW2) made the complaint to the police. The victim' mother (PW3) deposed about narration of the incident to her. Ramesh Kumar (PW4) is the witness to the recovery of the mobile phone. Ved Prakash (PW5) issued the birth certificate. Constable Manjeet Kumar (PW6) accompanied the victim to the hospital and brought the samples to the Police Station. HHC Narinder Kumar

(PW7) carried the case property to RFSL, Dharamshala. HC Shakti Nandan (PW8) was working as MHC with whom the case property was deposited. Vikas Kondal (PW9) proved that the accused was using SIM number xxx326. Dr Vinod Dhiman (PW10) examined the victim. Dr G.S. Didhra (PW11) examined the accused. HHC Rajinder Singh (PW12) accompanied the accused for his medical examination and brought the samples to the Police Station. SI Prem Raj (PW13) investigated the matter. Inspector/SHO Mohinder Singh (PW14) signed the FIR and filed an application for medical examination of the victim. Dr Jagjit Singh (PW15) examined the mobile phone and memory card.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case. He stated that his mobile phone was taken from him in the evening. The memory card did not belong to him. His clothes were seized by the police, not by the Doctor. He claimed that he was innocent and was falsely implicated. He did not produce any evidence in defence.

6. Learned Trial Court held that the victim's statement was natural and creditworthy. He was proven to be a minor on the date of the incident. No reason could be elucidated as to why he would make a false statement. The minor contradictions in

the statements were not sufficient to discard the prosecution's case. The mere absence of the injuries was not sufficient to discard the prosecution's case. The defence taken by the accused in the cross-examination that the informant had to pay ₹15000/- for the repair of his vehicle, and he made a false complaint against the accused to avoid the payment, was not believable. There is a presumption under Section 30 of the POCSO Act, and the burden is upon the accused to rebut the presumption. Hence, the learned Trial Court convicted and sentenced the accused as noted above.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal asserting that the learned Trial Court erred in convicting and sentencing the accused. The prosecution's story is highly improbable. There was a delay in reporting the matter to the police, and no explanation was provided for it. The Medical Officer has not found any injury around the victim's anus, which falsified the prosecution's version. The victim had attended the school the next day, which is highly unnatural. The houses of the victim and the accused were surrounded by abadis, and no person from the locality was examined. The victim improved

upon his version and claimed that a porn clip was shown to him. The integrity of the case property was not established. Therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set-aside.

8. I have heard Mr N.K. Thakur, learned Senior Counsel assisted by Mr Karanvir Singh, learned counsel for the appellant/accused and Mr Jitender Sharma, learned Additional Advocate General, for the respondent/State.

9. Mr N.K. Thakur, learned Senior Counsel for the appellant, submitted that the prosecution has failed to prove its case beyond a reasonable doubt and the learned Trial Court erred in convicting and sentencing the accused. The victim's testimony was not corroborated by the medical evidence, and the absence of the injuries made the prosecution's case suspect. Learned Trial Court ignored the contradictions. Therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set-aside.

10. Mr Jitender Sharma, learned Additional Advocate General, for the respondent-State, submitted that the victim's testimony was natural and was rightly accepted by the learned

Trial Court. The absence of the injuries is not fatal to the prosecution's case. The explanation provided in the cross-examination that a false case was made against the accused to avoid the payment of ₹15,000/- is highly improbable. Learned Trial Court had rightly held that the minor contradictions were bound to come with the passage of time and should not have been used to discard the prosecution's case. Therefore, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. The victim (PW1) stated that he was present in his home on 2.9.2013. The accused called his (victim’s) mother and told her that he was to repair the vehicle as per the instructions of the victim’s father. The victim’s mother handed over the keys to the accused and sent the victim with the accused. The accused and the victim went to the parked vehicle. The accused started repairing the vehicle. The victim asked the accused to repair the vehicle speedily because the victim had to go to the temple. The accused told him that he was also to visit the temple, and he would accompany the victim. The accused repaired the vehicle and asked the victim to visit his house. No one was present in the

house of the accused. The accused tried to show a porn video on his mobile phone, but the victim refused. The accused removed the victim's underwear and sexually penetrated his anus. The victim felt pain. The victim pushed the accused. The accused asked the victim not to narrate the incident to any person. He narrated the incident to his mother at about 8.00 PM. His father returned in the evening, and the incident was narrated to him. He took the victim to the Police Station where the application was filed.

13. He stated in his cross-examination that the house of the accused was at a distance of 3-4 minutes' walk from his house. The vehicle was parked in the house of a retired Inspector residing in the village. 9-10 houses surrounded his house, and 4-5 houses surrounded the house of the accused. He did not raise any cries because he was perplexed. Many people used to visit the temple. The accused had dropped him off at his home on his bike. His mother did not narrate the incident to any person. He had attended the school on 3.9.2013, but did not narrate the incident to any classmate. His mother was a homemaker. She did not disclose the incident to any Pradhan, Ward Panch or respectable person of the society. He used to visit the house of the accused,

and the accused was well known to him. He admitted that his mother used to get his vehicle repaired from the accused. He denied that his father owed ₹15000/- to the accused for repair charges and made a false case to avoid the payment. He denied that he was making a false statement.

14. The testimony of the victim was natural. It was suggested to him in the cross-examination that his father owed ₹15000/- to the accused, and a false case was made to avoid the payment; however, the accused did not state this fact in his statement recorded under Section 313 of Cr.P.C. He only claimed that a false case was made against him, and the witnesses deposed falsely against him. He did not produce any evidence to establish this fact. The victim's father (PW2) denied in his cross-examination that he owed money to the accused and that he had made a false statement. A denied suggestion does not amount to any proof and cannot be used to discard the prosecution's case.

15. It was submitted that there is a delay in reporting the matter to the police, which made the prosecution's case highly suspect. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***State of H.P. v. Sanjay Kumar, (2017) 2 SCC 51: (2017) 1 SCC (Cri) 648: 2016 SCC OnLine SC***

1473 that the delay in lodging the FIR cannot be used as a ritualistic formula to discard the prosecution's case, especially in sexual offences. It was observed on page 64:

> "**24.** When the matter is examined in the aforesaid perspective, which in the opinion of this Court is the right perspective, the reluctance on the part of the prosecutrix in not narrating the incident to anybody for a period of three years and not sharing the same event with her mother is clearly understandable. We would like to extract the following passage from the judgment of this Court in ***Tulshidas Kanolkar v. State of Goa, (2003) 8 SCC 590: 2004 SCC (Cri) 44]***: (SCC p. 592, para 5)
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> > "5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment or exaggeration in the prosecution's version on account of such delay, it is a relevant factor. On the other hand, a satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution's case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle."

25. In ***Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977***, this Court observed that: (SCC p. 522, para 7)

> "7. ... The submission overlooks the fact that in India, women are slow and hesitant to complain of such assaults, and if the prosecutrix happens to be a married person, she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false."

26. Likewise, in ***State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316***, it was observed: (SCC p. 394, para 8)

> *8.* ... The courts cannot overlook the fact that in sexual offences, delay in the lodging of the FIR can be due to a variety of reasons, particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident, which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged."

16. A similar view was taken in ***Sekaran v. State of T.N.*, *(2024) 2 SCC 176: (2024) 1 SCC (Cri) 548: 2023 SCC OnLine SC 1653,*** wherein it was observed at page 182:

> "**14.** We start with the FIR, to which exception has been taken by the appellant, urging that there has been no satisfactory explanation for its belated registration. It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each

> particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution's version.
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> **15.** In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction."

17. In the present case, the incident occurred on 2.9.2013. The matter was reported to the police on 3.9.2013. The victim's father was not present at the home, and the victim and his mother cannot be faulted for not approaching the Police Station in the absence of the victim's father. Thus, the mere delay is not sufficient to discard the prosecution's case.

18. It was submitted that the victim had not narrated the incident to anyone in the locality or in the school, which makes his testimony doubtful. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Motiram Padu Joshi v. State of Maharashtra*, *(2018) 9 SCC 429: (2018) 3 SCC (Cri) 738: 2018 SCC OnLine SC 676*** that the Court cannot discard the

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testimony of a witness because he failed to act in a particular manner. It was observed:

> "**15.** Evidence of PWs 3 and 4 is assailed on the ground that PWs 3 and 4 have not gone to the rescue of the deceased, and it is quite unbelievable that, on seeing the accused who were armed with weapons, both of them went inside the house. It is further submitted that the trial court rightly held that their evidence is not trustworthy, and the High Court was not right in intervening in such a finding and basing the conviction on the evidence of PWs 3 and 4. In their evidence, PWs 3 and 4 have stated that on seeing a number of accused armed with deadly weapons, they got frightened and went inside the house, stood near the window and saw the occurrence. *Their evidence cannot be doubted on the grounds that they did not intervene in the attack nor make attempts to save the deceased. On witnessing a crime, each person reacts in his own way, and their evidence cannot be doubted on the grounds that the witness has not acted in a particular manner. The evidence of PWs 3 and 4 cannot be doubted merely because they have not acted in a particular manner.*
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> **16.** We may usefully refer to ***Rana Partap v. State of Haryana [Rana Partap v. State of Haryana, (1983) 3 SCC 327: 1983 SCC (Cri) 601]*** as under: (SCC p. 330, para 6)
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> > "*6.* Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysterical and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Everyone reacts in his own special way.

> There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

19. The accused had sexually penetrated the victim. The victim was perplexed and did not understand the sequence of events, as deposed by him. Therefore, the victim's version cannot be discarded because the victim had failed to narrate the incident to any person.

20. Victim's mother (PW3) corroborated the victim's version. She stated that the accused came to her house and told her that her husband had asked him to repair the vehicle. She handed over the keys of the vehicle to her son (the victim) and sent him along with the accused. The victim returned at about 7.00 pm, and he was perplexed. The victim revealed that the accused had shown him the porn film on the mobile and committed a bad act. The victim complained of severe pain in the anus. She went to the house of the accused and inquired about the incident. The accused begged a pardon from her.

21. She stated in her cross-examination that her husband's brother resides at Mehatpur. Her house was located at lonely place. She did not notice blood stains on the underwear of her son. She did not inform her husband and did not get her son

treated by anyone. She volunteered to say that no Doctor is available in the village after 7.00 PM. She did not disclose the incident to anybody in the village. The wife and mother of the accused were present in the house when she went to his house. The house of the accused was located in a lonely place. The victim had not gone to the school on 3.9.2013. Many people had gathered at her house. She denied that the accused had not done any bad act with the victim.

22. It was submitted that there are various contradictions in the victim's statement and the statement of his mother. The victim's mother stated that no house is located in the vicinity of her house and the house of the accused, whereas the victim stated that 5-6 houses were located in the vicinity. She stated that the victim had not gone to the school on 3.9.2013, whereas the victim stated that he had gone to the school on 3.9.2013. These discrepancies make the prosecution's case doubtful. This submission is not acceptable. The incident had occurred on 2.9.2013, and the statements were recorded on 7.2.2014 and 12.5.2014 after the lapse of more than six months. Learned Trial Court rightly held that the discrepancies were bound to come with the passage of time and could not have been used to reject

the prosecution's case. Hon'ble Supreme Court held in ***Rajan v. State of Haryana, 2025 SCC OnLine SC 1952,*** that the discrepancies in the statements of the witnesses are not sufficient to discard the prosecution case unless they shake the core of the testimonies. It was observed: -

> "**32.** The appreciation of ocular evidence is a hard task. There is no fixed or straitjacket formula for the appreciation of the ocular evidence. The judicially evolved principles for the appreciation of ocular evidence in a criminal case can be enumerated as under:
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> > *"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.*
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> > *II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.*
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> > *III. When an eye-witness is examined at length, it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so*

incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, a hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer, not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large, a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a videotape is replayed on the mental screen.

VII. Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence, which so often has an element of surprise. The mental faculties, therefore, cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

IX. By and large, people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to the exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such

> *matters. Again, it depends on the time sense of individuals, which varies from person to person.*
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> *XI. Ordinarily, a witness cannot be expected to recall accurately the sequence of events that take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on.*
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> *XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and, out of nervousness, mix up facts, get confused regarding the sequence of events, or fill in details from imagination on the spur of the moment. The subconscious mind of the witness sometimes operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him.*
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> *XIII. A former statement, though seemingly inconsistent with the evidence, need not necessarily be sufficient to amount to a contradiction. Unless the former statement has the potency to discredit the latter statement, even if the latter statement is at variance with the former to some extent, it would not be helpful to contradict that witness." [See* ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217: 1983 Cri LJ 1096: (AIR 1983 SC 753) Leela Ram v. State of Haryana (1999) 9 SCC 525: AIR 1999 SC 3717*** and ***Tahsildar Singh v. State of UP (AIR 1959 SC 1012)"***

23. In the present case, the discrepancies did not relate to the core of the prosecution case but to the circumstances surrounding the incident. They were bound to come with time and did not make the prosecution case suspect.

24. It was submitted that the victim's mother had not narrated the incident to anyone in the village. She had not called

her husband, and such conduct is highly unnatural. This submission cannot be accepted. As already stated, a witness cannot be expected to act in a particular manner. The incident involved sexual penetration and could not have been revealed to any person but to closely related persons. Hence, her testimony cannot be doubted because she had not narrated the incident to anyone.

25. Dr Vinod Dhiman (PW10) examined the victim. He only found an abrasion on the right mid leg medial aspect. It was submitted that the absence of the injury around the anus would falsify the victim's version. This submission cannot be accepted. Dr Vinod Dhiman (PW10) categorically stated that the possibility of penetration and sexual assault could not be ruled out. He further stated that one finger was admitted with discomfort during digital examination, and slight pain or discomfort was present while taking the rectal swab. He stated in his cross-examination that there was no injury, but there was slight pain while inserting a finger in the anus. Therefore, the Medical Officer had noticed the discomfort and the pain in the anal region. It was laid down by the Hon'ble Supreme Court in ***Childline India Foundation v. Allan John Waters, (2011) 6 SCC 261,***

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that there is no requirement of corroboration of the testimony of the victim of the sexual abuse. It was observed: -

> **49.** Regarding the requirement of corroboration about the testimony of PWs 1 and 4, with regard to sexual abuse, it is useful to refer to the decision of this Court in ***State of Kerala v. Kurissum Moottil Antony [(2007) 1 SCC 627 : (2007) 1 SCC (Cri) 403]***. In that case, the respondent was found guilty of the offences punishable under Sections 451 and 377 IPC. The trial court had convicted the respondent and imposed a sentence of six months and one year's rigorous imprisonment, respectively, with a fine of Rs. 2000 in each case. The factual background shows that on 10-11-1986, the accused trespassed into the house of the victim girl, who was nearly about 10 years of age on the date of the occurrence and committed an unnatural offence on her. After finding the victim alone in the house, the accused committed an unnatural offence by putting his penis and having carnal intercourse against the order of nature. The victim PW 1 told about the incident to her friend PW 2, who narrated the same to the parents of the victim and accordingly, on 13-11-1986, an FIR was lodged.
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> **50.** On consideration of the entire prosecution version in ***Kurissum Antony [(2007) 1 SCC 627: (2007) 1 SCC (Cri) 403]***, the trial court found the accused guilty and convicted and sentenced him as aforesaid. An appeal before the Sessions Judge did not bring any relief to the accused, and a revision was filed before the High Court, which set aside the order of conviction and sentence. The primary ground on which the High Court directed acquittal was the absence of corroboration, and the alleged suppression of a report purported to have been given before the FIR in question was lodged. In support of the appeal, the State submitted that the High Court's approach is clearly erroneous, and it was pointed out that corroboration is not necessary for a case of this nature.

51. The following observations and conclusions in ***Kurissum Antony [(2007) 1 SCC 627 : (2007) 1 SCC (Cri) 403]*** are relevant : (SCC pp. 629-30, paras 7-11)

> "7. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. A similar view was expressed by this Court in ***Rafiq v. State of U.P. [(1980) 4 SCC 262: 1980 SCC (Cri) 947]*** with some anguish. The same was echoed again in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [(1983) 3 SCC 217: 1983 SCC (Cri) 728]***. It was observed in the said case that, in the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration, as a rule, is adding insult to injury. A girl or a woman in the tradition-bound, non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity or dignity had ever occurred. She would be conscious of the danger of being ostracised by society, and when, in the face of these factors, the crime is brought to light, there is an inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J., in ***Rameshwar v. State of Rajasthan [1951 SCC 1213: AIR 1952 SC 54: 1952 Cri LJ 547]*** were : (AIR p. 57, para 19)
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> > '*19.* ... The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except

> where the circumstances make it safe to dispense with it, must be present to the mind of the judge....'
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> *8.* To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in 'the case of an accomplice to a crime'. (See ***State of Maharashtra v. Chandraprakash Kewalchand Jain [(1990) 1 SCC 550: 1990 SCC (Cri) 210]*** .) Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about the lack of corroboration has no substance.
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> *9.* It is unfortunate that respect for womanhood in our country is on the decline, and cases of molestation and rape are steadily growing. Decency and morality in public and social life can be protected only if courts deal strictly with those who violate the social norms.
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> *10.* The above position was highlighted by this Court in ***Bhupinder Sharma v. State of H.P. [(2003) 8 SCC 551: 2004 SCC (Cri) 31***]
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> *11.* The rule regarding non-requirement of corroboration is equally applicable to a case of this nature, relating to Section 377 IPC."
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> **52.** We are in agreement with the above-said conclusion, and in a case of this nature, the Court is not justified in asking for further corroboration apart from the testimony of PWs 1 and 4. Accordingly, we reject the contention raised by the learned Senior Counsel for the accused.

26. The victim stated that the accused had attempted to show a porn clip to him. This was duly corroborated by the

presence of the porn clip in the mobile phone of the accused. The accused claimed in his statement recorded under Section 313 of Cr.P.C. that the memory card did not belong to him. However, this denial is not acceptable. Ramesh Kumar (PW4) stated that the wife of the accused produced the mobile phone of her husband with dual SIM and a memory card, which were seized by the police. He was not cross-examined at all regarding the recovery of the mobile phone or the presence of the SIM card and memory card in it. Therefore, his testimony that the wife of the accused had produced a mobile phone containing a SIM card and a memory card has to be accepted as correct. It was laid down by the Hon'ble Supreme Court in ***State of Uttar Pradesh Versus Nahar Singh 1998 (3) SCC 561*** that where the testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the arguments. This position was reiterated in ***Arvind Singh v. State of Maharashtra, (2021) 11 SCC 1: (2022) 1 SCC (Cri) 208: 2020 SCC OnLine SC 4,*** and it was held at page 34:

> "**58.** A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is and what his position in life is, or to shake his credit, by injuring his character, although the answer to such questions may directly or indirectly incriminate him or may directly or indirectly expose him to a penalty or forfeiture (Section 146 of the Evidence Act). A witness is required to be cross-examined to bring forth

inconsistencies and discrepancies, and to prove the untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 from 18:50 hrs; therefore, it was required for him to cross-examine the truthfulness of the prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19:00 hrs is an incorrect reading of the arrest form (Ex. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-2014 at 14:30 hrs at Wanjri Layout, Police Station, Kalamna. The time, i.e. 17, 10 hrs mentioned in Column 2, appears to be when A-1 was brought to the Police Station, Lakadganj. As per the IO, A-1 was called for interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour t-shirt which was given by Dr Chandak to his employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses about the place and manner of the arrest, the argument that the accused was arrested on 1-9-2014 at 18:50 hrs is not tenable.

59. The House of Lords, in a judgment reported as ***Browne v. Dunn (1893) 6 R 67 (HL)***, considered the principles of appreciation of evidence. Lord Chancellor Herschell, held that it is absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness if not speaking the truth on a particular point, direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged. It was held as under:

> "Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and

> then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards, to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling."

60. Lord Halsbury, in a separate but concurring opinion, held as under:

> "My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to."

61. This Court, in a judgment reported as ***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***, quoted from ***Browne v. Dunn, (1893) 6 R 67 (HL)*** to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. This Court held as under: (***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***], SCC pp. 566-67, para 13)

> "*13.* It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of the delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:
>
> (*1*) to test his veracity,
>
> (2) to discover who he is and what his position in life is, or
>
> (*3*) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture."

62. This Court, in a judgment reported ***Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268,*** laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. It was held as under: (SCC pp. 294-95, paras 15-16)

> "*15.* Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed. PW 1

and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure. One is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in ***Bhoju Mandalv.Debnath Bhagat, AIR 1963 SC 1906***. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is required to put his version to the witness. If no such questions are put, the Court would presume that the witness account has been accepted as held in ***Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440***.

16. In ***Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60***, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by another party must be accepted as fully established. The High Court of Calcutta in ***A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359*** has laid down that the party is obliged to put his case in the cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court, ***Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35: AIR 1950 Nag 83*** has laid down that when attestation is not specifically challenged, and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in ***Karnidan Sardav.Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683*** has laid down that it cannot be too strongly emphasised that the system of

> administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff."

27. The mobile phone was sent to the FSL, and a porn clip was found in it. The victim could not have known about the presence of the porn clip in the mobile phone of the accused, and the presence of the porn clip corroborates his testimony.

28. It was submitted that the integrity of the case property was not established because there was a discrepancy in the number of seals. Memo (Ex.PW4/A) stated that the parcel was sealed with three seals of impression 'M', whereas the report of analysis (Ex.PW13/B) mentions the number of seals as four. Thus, the possibility of tampering with the case property could not be ruled out. This submission cannot be accepted. SI Prem Raj (PW13) sealed the parcel. He was not cross-examined regarding the integrity of the case property; rather, it was suggested that the mobile was taken on 4.9.2013 and falsely shown to be recovered on 6.9.2013 which suggestion was denied by him. HC Shakti Nandan (PW8) was working as MHC with whom the parcel was deposited. He specifically stated that nobody tampered with

the case property when it remained with him. He was also not cross-examined. Constable Manjeet Kumar (PW6) stated that he carried the parcel sealed with seal impressions 'M', sample seals and documents to FSL. The case property remained intact with him. He was also not cross-examined. The testimonies of the prosecution witnesses regarding the integrity of the case property have remained unshaken, and the integrity of the case property cannot be doubted merely because there is a discrepancy in the number of seals.

29. It was submitted that the complaint made to the police is silent regarding the showing of the porn clip. This was clearly an improvement, and learned Trial Court erred in relying upon it. This submission will not help the accused. The attention of the victim was not brought to the previous statement, and his credit has not been impeached as per the law. It was laid down by the Hon'ble Supreme Court in ***Binay Kumar Singh Versus State of Bihar, 1997 (1) SCC 283***, that if a witness is to be contradicted with his previous statement, his attention must be drawn towards it. It was observed: -

> "11. The credit of a witness can be impeached by proof of any statement which is inconsistent with any part of his evidence in Court. This principle is delineated in S. 155 (3) of the Evidence Act, and it must be borne in mind when

reading S. 145, which consists of two limbs. It is provided in the first limb of S.145 that a witness may be cross-examined as to the previous statement made by him without such writing being shown to him but the second limb provides that "if it is intended to contradict him by the writing his attention must before the writing can be provided, be called to those parts of it which are to be used for the purpose of contradicting him." There is thus a distinction between the two vivid limbs, though subtle it may be. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross-examine the witness with reference to the previous statements made by him. He may at that stage succeed in eliciting materials to his benefit through such cross-examination, even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with his present stand, his testimony in Court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second limb of S. 145.

12. In ***Bhagwan Singh's case (AIR 1952 SC 214)***, Vivian Bose, J., pointed out in paragraph 25 that during the cross-examination of the witnesses concerned, the formalities prescribed by S. 145 are complied with. The cross-examination, in that case, indicated that every circumstance intended to be used as a contradiction was put to him point by point and passage by passage. Learned Judges were called upon to deal with an argument that witnesses' attention should have been specifically drawn to that passage in addition thereto. Their Lordships were, however, satisfied in that case that the procedure adopted was in substantial compliance with S. 145, and hence held that all that is required is that the witness must be treated fairly and must be afforded a reasonable opportunity of explaining the contradictions after his attention has been drawn to them in a fair and reasonable manner. On the facts of that case, there is no dispute with the proposition laid therein.

13. So long as the attention of PW 32 (Sukhdev Bhagat) was not drawn to the statement attributed to him as recorded by DW-10 (Nawal Kishore Prasad), we are not persuaded to reject the evidence of PW-32 that he gave Ex. 14 statement at the venue of occurrence and that he had not given any other statement earlier thereto."

30. A similar view was taken in ***Alauddin v. State of Assam,*** ***2024 SCC OnLine SC 760,*** wherein it was observed:

"**7.** When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161(1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

8. As stated in the proviso to sub-Section (1) of section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act. Section 145 reads thus:

> "**145. Cross-examination as to previous statements in writing**.—A witness may be cross-examined as to previous statements made by him in writing or

> reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved can the contradictions be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating

Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act, in confronting the witness by showing him the relevant part of his prior statement, is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

9. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in accordance with clause (3) of Section 155 of the Evidence Act, which reads thus:

> "**155. Impeaching the credibility of the witness. —** The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him—
>
> (1) .....
>
> (2) .....
>
> (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted."

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trivial omission or contradiction brought to the record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission, depending

upon the facts of each case? Whether an omission is a contradiction also depends on the facts of each case.

10. We are tempted to quote what is held in a landmark decision of this Court in the case of ***Tahsildar Singh* v. *State of U.P., 1959 Supp (2) SCR 875.*** Paragraph 13 of the said decision reads thus:

> **"13.** The learned counsel's first argument is based upon the words "in the manner provided by Section145of the Indian Evidence Act, 1872" found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradicting him. In support of this contention, reliance is placed upon the judgment of this Court in ***Shyam Singh v. State of Punjab [(1952) 1 SCC 514:1952 SCR 812***]. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act, thus at p. 819:
>
> > Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and *if the former statement was reduced to writing*, then Section 145 requires that his attention must be drawn to these parts, which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case, all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made."
>
> It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court, and similar decisions were not considered the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of

Criminal Procedure. *Section 145 of the Evidence Act is in two parts: the first part enables the accused to cross-examine a witness as to aprevious statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction: in other words, both parts deal with cross-examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such a statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement were allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police, he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police, which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit it, the practice generally followed is to admit it, subject to proof by the police officer.* On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked, "Did you say before the police officer that you saw a gas light?" and he answers, "Yes", then the statement which does not

> contain such recital is put to him as a contradiction. This procedure involves two fallacies: one is that it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants, there is no self-contradiction of the primary statement made in the witness box, for the witness has not yet made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually said before him. In such a case, the question could not be put at all: only questions to contradict can be put, and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure." (emphasis added)

This decision is a *locus classicus*, which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the witnesses' prior statements based on which they were sought to be contradicted in the cross-examination."

31. It was held in ***Anees v. State (NCT of Delhi), 2024 SCC OnLine SC 757*** that the Courts cannot *suo motu* take cognisance of

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the contradiction and the same has to be brought on record as per the law. It was observed:

> "**64.** The court cannot *suo motu* make use of statements to the police that have not been proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words '*if duly proved*' are used in Section 162Cr. P.C.clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can it be looked into, but they must be duly proved for contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction, but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.
>
> **65.** Section 145 of the Evidence Act reads as follows:
>
> > *"**145. Cross-examination as to previous statements in writing.**— A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."*
>
> *66. Under Section 145 of the Evidence Act, when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of the witness is drawn to that part, and this must be reflected in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands*

> *proved, and there is no need for further proof of contradiction, and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement, and it must be mentioned in the deposition. By this process, the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the Investigating Officer is examined in the court, his attention should be drawn to the passage marked for contradiction; it will then be proved in the deposition of the Investigating Officer, who, again, by referring to the police statement, will depose about the witness having made that statement. The process again involves referring to the police statement and culling out the part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction."* *[See:* ***V.K. Mishra v. State of Uttarakhand: (2015) 9 SCC 588****]*

32. Since in the present case, the attention of the victim was not brought to the previous statement, his credit has not been impeached as per law, and his testimony cannot be rejected because this fact was not narrated in the FIR.

33. The victim's father stated in his cross-examination that he had passed higher secondary. His wife had told him about showing a porn clip, but he probably had not mentioned this fact. He would not have understood the significance of mentioning such a fact in the FIR, and the prosecution's case cannot be doubted due to his error. Further, the victim could not have invented such a fact without knowing that the mobile phone of the accused had a porn clip. Therefore, the prosecution's case

cannot be doubted because the showing of a porn clip was not mentioned in the FIR.

34. Section 29 of the Protection of Children from Sexual Offences Act, 2012 provides that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 & 9 of the Act, the Special Court shall presume that such person had committed or abetted or attempted to commit the offence as the case may be unless the contrary is proved. This Section was considered by the Bombay High Court in ***Amol Dudhram Barsagade vs. State of Maharashtra 2019 AllMR(Cri) 435,*** and it was held that once the foundation of the prosecution case is laid by legally admissible evidence, it becomes incumbent upon the accused to establish from the record that he has not committed the offence. It was observed:-

> "5. The learned Additional Public Prosecutor Shri S.S. Doifode would strenuously contend that the statutory presumption under Section 29 of the POCSO Act is absolute. The date of birth of the victim, 12.10.2001, is duly proved and is indeed not challenged by the accused, and the victim, therefore, was a child within the meaning of Section 2(d) of the POCSO Act, it is the submission. The submission that the statutory presumption under Section 29 of the POCSO Act is absolute must be rejected if the suggestion is that even if foundational facts are not established, the prosecution can invoke the statutory presumption. Such an interpretation of Section 29 of the POCSO Act would render the said provision vulnerable to

the vice of unconstitutionality. The statutory presumption would stand activated only if the prosecution proves the foundational facts, and then, even if the statutory presumption is activated, the burden on the accused is not to rebut the presumption beyond a reasonable doubt. Suffice it if the accused is in a position to create a serious doubt about the veracity of the prosecution's case or the accused brings on record material to render the prosecution's version highly improbable."

35. Similar is the judgment of the Tripura High Court in ***Joubansen Tripura v. State of Tripura, 2021 SCC OnLine Tri 176***, wherein it was observed:

> "**12.** Upon meticulous reading of Section 29 and 30 of the POCSO Act, according to us, prosecution will commence the trial with an additional advantage that there will be presumption of guilt against the accused person, but, in our considered view, such presumption cannot form the basis of conviction, if that be so, it would offend Article 20(3) and 21 of the Constitution of India. Perhaps, it is not the object of the legislature to incorporate Sections 29 and 30 under the POCSO Act.
>
> **13.** As we have said in the first part of this paragraph, the prosecution will commence trial with an additional advantage of presumption against the accused, but the prosecution is legally bound to establish foundational facts that set the prosecution's case in motion. If the prosecution succeeds in establishing the foundational facts, then it will be the obligation of the accused to prove his innocence, but the standard of proof again will be on the basis of a preponderance of probabilities. Keeping in view the aforesaid principles, we shall proceed to decide as to whether the prosecution has been able to establish the foundational facts of the instant case. Foundational facts in the POCSO Act include:—
>
> (i) the proof that the victim is a child;
>
> (ii) that the alleged incident has taken place;

(iii) that the accused has committed the offence; and

(iv) whenever physical injury is caused, to establish it with supporting medical evidence.

14. *If the fundamental facts of the prosecution case are laid by the prosecution by leading legally admissible evidence, the duty of the accused is to rebut it by establishing from the evidence on record that he has not committed the offence. This can be achieved by eliciting patent absurdities or inherent infirmities in the version of prosecution or the oral testimony of witnesses or the existence of enmity between the accused and victim or bring out material contradictions and omissions in the evidence of witnesses, or to establish that the victim and witnesses are unreliable or that there is considerable and unexplained delay in lodging the complaint or that the victim is not a child. The accused may reach that end by discrediting and demolishing the prosecution witnesses by effective cross-examination. Only if he is not fully able to do so, he needs only to rebut the presumption by leading defence evidence. Still, whether to offer himself as a witness is the choice of the accused. Fundamentally, the process of adducing evidence in a POCSO case does not substantially differ from any other criminal trial, except that in a trial under the POCSO Act, the prosecution is additionally armed with the presumptions and the corresponding obligation on the accused to rebut the presumption. It is imperative to mention that in POCSO cases, considering the gravity of sentence and the stringency of the provisions, an onerous duty is cast on the trial court to ensure a more careful scrutiny of evidence, especially, when the evidence let in is the nature of oral testimony of the victim alone and not corroborated by any other evidence—oral, documentary and medical.* ***(emphasis supplied)***

15. Legally, the duty of the accused to rebut the presumption as arises only after the prosecution has established the foundational facts of the offence alleged against the accused. The yardstick for evaluating the rebuttable evidence is limited to the scale of preponderance of probability. Once the burden to rebut the presumption is discharged by the accused through effective cross-examination or by adducing defence

evidence or by the accused himself tendering oral evidence, what remains is the appreciation of the evidence let in. *Though it may appear that, in the light of presumptions, the burden of proof oscillates between the prosecution and the accused, depending on the quality of evidence let in, in practice, the process of adducing evidence in a POCSO case does not substantially differ from any other criminal case.* Once the recording of prosecution evidence starts, the cross-examination of the witnesses will have to be undertaken by the accused, keeping in mind the duty of the accused to demolish the prosecution case by an effective cross-examination and additionally to elicit facts to rebut the statutory presumption that may arise from the evidence of prosecution witnesses. Practically, the duty of prosecution to establish the foundational facts and the duty of the accused to rebut presumption arise, with the commencement of the trial, progress forward along with the trial and the establishment of one, extinguishes the other. To that extent, the presumptions and the duty to rebut presumptions are coextensive. ***(emphasis supplied)***

16. If an accused is convicted only on the basis of a presumption as contemplated in Sections 29 and 30 of the POCSO Act, then it would definitely offend Articles 20(3) and 21 of the Constitution of India. In my opinion, it was not the object of the legislature. Presumption of innocence is a human right and cannot *per se* be equated with the fundamental right under Article 21 of the Constitution of India. The Supreme Court, in various decisions, has held that provisions imposing the reverse burden must not only be required to be strictly complied with but also may be subject to proof of some basic facts as envisaged under the Statute. [***See State of Bombay v. Kathi Kalu Oghad, (1962) 3 SCR 10: AIR 1961 SC 1808 : (1961) 2 Cri LJ 856***].

17. It may safely be said that presumptions under Sections 29 and 30 of the POCSO Act do not take away the primary duty of prosecution to establish the fundamental facts. This duty is always on the prosecution and never shifts to the accused. POCSO Act has no different connotations. Parliament is competent to place a burden on certain

> aspects of the accused, especially those which are within his exclusive knowledge. It is justified on the ground that prosecution cannot, in the very nature of things, be expected to know the affairs of the accused. This is specifically so in the case of sexual offences, where there may not be any eyewitnesses to the incident. Even the burden on the accused is also a partial one and is justifiable on the larger public interest. [***State of Bombay v. Kathi Kalu Oghad, (1962) 3 SCR 10: AIR 1961 SC 1808: (1961) 2 Cri LJ 856; Noor Aga v. State of Punjab, (2008) 16 SCC 417; Abdul Rashid Ibrahim v. State of Gujarat, (2000) 2 SCC 513]***

36. It was laid down by the Hon'ble Supreme Court in ***Sambhubhai Raisangbhai Padhiyar v. State of Gujarat, (2025) 2 SCC 399: 2024 SCC OnLine SC 3769*** that when the prosecution has established the foundational facts, the burden shifts upon the accused to rebut the presumption. It was observed at page 413:

> **34.** Sections 29 and 30 of the POCSO Act read as under:
>
> "**29.** ***Presumption as to certain offences***.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.
>
> **30.** ***Presumption of culpable mental state***.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
>
> (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist

beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

35. It will be seen that a presumption under Section 29 is available where the foundational facts exist for the commission of an offence under Section 5 of the POCSO Act. Section 5 of the POCSO Act deals with aggravated penetrative sexual assault, and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the POCSO Act defines what penetrative sexual assault is. The relevant sections are extracted herein below:

"**3.** ***Penetrative sexual assault.***—A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child do so with him or any other person; or

5. ***Aggravated penetrative sexual assault.***—

(*a*)-(*h*) * * *

(*i*) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

***

(*m*) whoever commits penetrative sexual assault on a child below twelve years; or

6. ***Punishment for aggravated penetrative sexual assault.*** —(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of the natural life of that person, and shall also be liable to fine, or with death.

> (2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."
>
> **36.** The manner in which the appellant enticed the deceased child under the pretext of buying ice cream in spite of being dissuaded by the aunt (PW 10) and without the consent of the lawful guardians also makes out an offence under Section 364 IPC. The aggravated penetrative sexual assault clearly establishes an offence under Section 377 IPC and Sections 4 and 6 of the POCSO Act. The appellant has not rebutted the presumption by adducing proof to the contrary."

37. The foundational facts were explained by the Madras High Court in ***B. Mooventhan v. State of T.N., 2023 SCC OnLine Mad 5241*** as under:

> **30.** In Criminal jurisprudence, the prosecution has to prove the case. However, in view of Section 29 of the POCSO Act, where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the POCSO Act, the Court shall presume that such person has committed or abetted or attempted to commit the offence as the case may be unless the contrary is proved. The presumption to be drawn under Sections 29 and 30 of the POCSO does not absolve the prosecution of its duty to establish the foundational facts. The prosecution has to establish the *prima facie* case by adducing evidence. Only when the fundamental and primary facts are established by the prosecution will the accused be under an obligation to rebut the presumptions by adducing cogent evidence, where the standard of proof required to rebut the presumption is a preponderance of probabilities. In short, the basic, primary and fundamental facts are to be established by the prosecution.
>
> **31.** The term 'foundational facts' in the POCSO Act includes the following:
>
> (i) The victim is a child

(ii) The alleged incident has occurred

(iii) The accused has committed the offence

(iv) Medical evidence to support the physical injury, if any."

38. Similar is the judgment in ***State of Haryana v. Vishal,*** ***2022 SCC OnLine P&H 3827,*** wherein it was observed:

> **17.** Learned counsel for the State argued that, in view of provision of Sections 29 and 30 of the POCSO Act, a statutory presumption arises against the respondent/accused, and, the onus is upon him to prove his innocence, and that, in the present case, he has failed to prove his innocence, therefore, the statutory presumptions stand against him and he is liable to be convicted for the charges framed against him. A cumulative reading of Sections 29 and 30 of the POCSO Act would provide that, once the foundational facts have been proved by the prosecution, only then is the statutory presumption raised against the accused, and the onus shifts upon the accused to prove his innocence. In the present case, as we have discussed above in detail, the prosecution has failed to prove the foundational facts upon which a statutory presumption can be raised. "*Presumption*" is a rule of law which enables the Court to presume the existence of a fact on the basis of certain proved facts. The Court cannot presume the existence of certain facts in a vacuum. The prosecution has to discharge its initial burden by proving those facts which are essential to raise the statutory presumption. In the case at hand, the prosecution has failed to discharge its initial onus; therefore, the statutory presumption cannot be raised at the instance of the prosecution.

39. In the present case, the victim's testimony was sufficient to prove the foundational facts, and the burden shifted to the accused to lead evidence and to produce the evidence to

rebut the presumption, but he failed to do so, and he was rightly held guilty of the commission of an offence punishable under Section 4 of the POCSO Act.

40. The accused had also shown the pornographic clip to the victim, who was a minor; therefore, he was rightly held guilty of the commission of an offence punishable under Section 293 of the IPC.

41. Learned Trial Court had sentenced the accused to undergo simple imprisonment for seven years, which was the minimum punishment prescribed for the commission of an offence punishable under Section 4 of the POCSO Act. The learned Trial Court had also sentenced the accused to undergo imprisonment for one year for the commission of an offence punishable under Section 293 of the IPC. Section 293 of the IPC provides for the punishment of imprisonment up to three years. The victim was a minor, and the offence was grave. Accordingly, the punishment of one year cannot be said to be excessive, requiring any interference from this Court.

42. Therefore, there is no infirmity in the judgment and order passed by the learned Trial Court, and no interference is required with it.

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43. Hence, the present appeal fails, and it is dismissed.

44. The record of the learned Trial Court be returned along with a copy of this judgment.

(Rakesh Kainthla)
Judge

18th March, 2026
(Chander)