



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

D.B. Criminal Appeal (DB) No. 123/2018

Asha Ram @ Ashumal, S/o Thewardas @ Thaumal,  
R/o Sant Asha Ram Bapu Ashram Motera Sabarmati,  
Dist Ahmedabad, Gujarat.

----Appellant

Versus

State, Through Pp

----Respondent

Connected With

D.B. Criminal Appeal (Sb) No. 622/2018

Miss Sanchita @ Shilpi D/o Mahendra Kumar Gupta,  
R/o 35-Molshri Vihar, Vip Road,  
Raipur, Chhattisgarh.

----Appellant

Versus

State Of Rajasthan

----Respondent

D.B. Criminal Appeal (Sb) No. 665/2018

Sharad Chandra @ Sharat Chandra

----Appellant

Versus

State Of Rajasthan

----Respondent

For Appellant(s) : Appeal No. 123/2018  
Mr. Devadatt Kamat, Sr. Advocate  
assisted by Mr. Rajesh Inamdar  
Mr. Nishant Bora  
Mr. Yashpal Rajpurohit  
Ms. Shivangi Pathak  
Mr. Bharat Sain  
Mr. Rewant Solanki,  
Mr. Arpit Linda,  
Mr. JR Lohia  
Mr. Shashwat Anand  
for appellant Asha Ram

Appeal No. 665/2018  
Mr. Vineet Jain, Sr. Advocate  
assisted by Mr Praveen Vyas  
for appellant Sharad Chandra

Appeal No. 622/2018  
Mr. Devadatt Kamat, Sr. Advocate



assisted by Mr. Deepak Menaria  
Mr. Yashpal Rajpurohit  
for appellant Shilpi

For Respondent(s) : Mr. Deepak Choudhary, AAG assisted by  
Mr. K.S. Kumpawat

Mr. P.C. Solanki with Ms. Muskan Moondra  
Mr. Shubham Dave  
Mr. Vipul Soni  
Ms. Lavisha Soni  
Mr. Kautubh Dave  
for complainant.



**HON'BLE MR. JUSTICE ARUN MONGA**  
**HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

**Judgment**

**Reserved on : 20.04.2026**

**Pronounced on : 27.05.2026**

**Reportable**

**Per Arun Monga, J**

**D.B. Criminal Appeal (DB) No. 123/2018**

**PRELUDE:**

1. Before this Court, vide the instant appeal, stands a convict, in the twilight of his life, at 86 years of age, reverentially addressed as 'Bapu' by his devoted followers, many of whom regard him as a self-proclaimed godman and spiritual guide. Yet, behind that aura of cult faith lie the impugned findings of the learned Trial Court, which led to his conviction for the rape of a minor girl (the victim) and sentenced for remainder of his life. He challenges the conviction and sentence imposed upon him, asserting, inter alia, that he was framed by extortionists. He asserts that the hand of fate which brought him before justice was not divine reckoning, but a conspiracy of greed. The hands of justice have been guided not by truth, but by blackmailers. He is not a predator, but a pawn.



1.1. While the appellant seeks freedom from sentence and restoration of his honour, on the other hand, the victim, a child then, also stands before this Court and opposes the appeal stating that she was robbed of her honour for the rest of her life. Like her parents, she had placed complete trust and devotion in the appellant as his disciple, thus alleging a graver charge against the appellant that he robbed her innocence and ravaged her honour irreparably. Born on 4<sup>th</sup> of July, America's Independence Day<sup>1</sup>, the child who came into this world on a day symbolic of freedom, dignity, and liberty, states that she was stripped of all three on the very night of 15th August, 2013, when India rejoiced in its own freedom. The victim's case is that for the Appellant imprisonment is only physical, but for her, the sentence imposed upon her soul is lifelong. No Court can grant her release, is what she says.

**INTRODUCTORY:**

2. Two more appeals, viz. 622/2018 and 665/2018, of the co-convicts are also clubbed with the above appeal filed by the prime accused/convict. All three appeals are directed against the same impugned judgment/order dated 25.04.2018 passed by the learned Judge, Special Court, POCSO Act Cases, Jodhpur and are being disposed of by this common judgment.

The breakup of the three appeals vis-a-vis conviction under various penal provisions and corresponding sentences awarded to the three appellants vide the impugned judgment/order, is as under:

A. Appellant Asha Ram @ Ashumal:

(i) OFFENCE UNDER SECTION 370(4) INDIAN PENAL CODE – For this offence, he is punished with rigorous imprisonment for a term of 10 years along with a fine of Rupees One lac. In the event of non-

<sup>1</sup> Her date birth is stated to be 04.07.1997, though same disputed by appellant, but all of that is discussed in later part of judgment





payment of the fine, the accused shall undergo an additional rigorous imprisonment for one year.

(ii) OFFENCE UNDER SECTION 342 INDIAN PENAL CODE – For this offence, he is punished with rigorous imprisonment for a term of one year along with a fine of Rs. 1000. In the event of non-payment of the fine, the accused shall undergo an additional rigorous imprisonment for one month.

(iii) OFFENCE UNDER SECTION 506 INDIAN PENAL CODE – For this offence, he is punished with rigorous imprisonment for a term of one year along with a fine of Rs. 1000. In the event of non-payment of the fine, the accused shall undergo an additional rigorous imprisonment for one month.

(iv) OFFENCE UNDER SECTION 376(2)(f) INDIAN PENAL CODE – For this offence, he is punished with life imprisonment which shall be for the remainder of his natural life along with a fine of Rupees One Lac. In the event of non-payment of the fine, the accused shall undergo an additional rigorous imprisonment for one year.

(v) OFFENCE UNDER SECTION 376-D INDIAN PENAL CODE – For this offence, he is punished with life imprisonment which shall be for the remainder of his natural life along with a fine of Rupees One Lac. In the event of non-payment of the fine, the accused shall undergo an additional rigorous imprisonment for one year.

(vi) OFFENCE UNDER SECTION 23 OF JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2000 – For this offence, he is punished with a simple imprisonment for a term of six months.

(vii). Asha Ram was also convicted for offence under Section 120B, 354A and 509 of IPC, Section 7/8 and 5(g)/6 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act) but no sentence for those offences was awarded by the learned Trial





Court as per Section 42 of POCSO Act (alternate punishment provision) and for offence under Section 120B read with other Sections.

B. Appellants Shilpi @ Sanchita and Sharad Chandra @ Sharat Chandra:

(i) OFFENCE UNDER SECTION 370(4) INDIAN PENAL CODE – For this offence, he is punished with rigorous imprisonment for a term of 10 years along with a fine of Rupees One Lac. In the event of non-payment of the fine, the accused shall undergo an additional rigorous imprisonment for one year.

(ii) OFFENCE UNDER SECTION 376-D INDIAN PENAL CODE – For this offence, each accused is punished with rigorous imprisonment for a term of 20 years along with a fine of Rs. 50,000/-. In the event of non-payment of the fine, each accused shall undergo an additional rigorous imprisonment for two years.

(iii) Both the appellants were also convicted for offences under Section 5(g)/6 and Section 7/8 of the POCSO Act but no sentence for those offences was awarded by the learned Trial Court as per Section 42 of POCSO Act.

### **FACTS**

3. Briefly stated, facts are as under:

3.1. The prosecution case arises out of a Tehrir (written complaint) submitted by the complainant, "Su," at 2:45 a.m. on 20.08.2013 at Police Station Kamla Market, Central District, Delhi. On the basis of this complaint, FIR No. 0/2013 was registered for offences under Sections 342, 376, 354-A, 506, 509 read with Section 34 of the Indian Penal Code; Sections 23/26- of the Juvenile Justice Act; and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO).

3.2. According to the Tehrir, the complainant was a resident student of Class XII at Sant Shri Asha Ram Gurukul, Parasia Road, Chhindwara,





Madhya Pradesh. She resided with her family—her father, Shri Karamveer Singh; her mother, Smt. Sunita Singh; her elder brother, Shri Somveer Singh; and her younger brother, Shri Yashveer Singh. On 06.08.2013, she suddenly began experiencing giddiness, whereupon the Hostel Warden, Shilpi, informed her that she was under the influence of ghosts or evil spirits and stated that the matter would be discussed with Asha Ram.

3.3. On 07.08.2013, Shilpi telephoned the complainant's residence and informed her family that she was unwell and should be taken to a major city for treatment. Between 10:00 and 11:00 p.m. on 08.08.2013, her parents reached the Gurukul and spoke with her over the telephone. On the morning of 09.08.2013, they came to the Girls' Hostel to take her home and met Shilpi in person. Shilpi reiterated that the complainant was under the influence of evil spirits, stated that Asha Ram had been apprised of the matter and had called for her, and advised the parents to take her immediately to the place where Asha Ram was present.

3.4. On 09.08.2013, the complainant returned to her house at Shahjahanpur. Her father thereafter inquired about Asha Ram's whereabouts and learnt that he was scheduled to be in Delhi on 12.08.2013. The family reached Delhi on 13.08.2013, only to be informed that Asha Ram had proceeded to Jodhpur, Rajasthan. Shiva, who was then serving Asha Ram, instructed them to come to Jodhpur immediately.

3.5. Upon reaching near Manai village, adjacent to Jodhpur, where Asha Ram was staying, they found the gate of the Ashram closed and disciples (sadhaks) standing outside. The complainant's father contacted Shiva by telephone, following which the gate was opened and they were allowed entry. Inside, Asha Ram was seated on a chair delivering spiritual discourses. The complainant and her parents also sat





there. After some time, Asha Ram inquired from where they had come. The complainant stated that she was studying in a Gurukul. Asha Ram then declared that he would exorcise her of evil spirits and spoke further about spirituality and matters concerning her future.

3.6. Subsequently, Asha Ram sent one of his sevaks to summon the complainant and her parents to meet him. He showed them his cottage, gave them prasad, and arranged accommodation for their stay. They stayed in the room so provided. On 15.08.2013, even food was sent to them. Later, Asha Ram conducted a satsang (spiritual discourse).

3.7. On the night of 15.08.2013, Asha Ram summoned the complainant and her parents to his cottage. He first spoke with her mother and father and then directed them to sit near the gate, engage in japa (silent chanting of God's name) and meditation, and leave after some time. He asked the complainant to sit behind his kutiya on a platform (chabutara) and offered her milk. After she consumed it, he asked her parents to leave. They initially did not comply; subsequently, the father went away, while the mother continued to sit nearby.

3.8. Asha Ram then entered his room through the front door. After some time, he switched off the lights and called the complainant inside through the back door. Once inside, he asked her to sit near him and engaged her in conversation. He then sent her to check what her parents were doing. Upon her return, she informed him that her mother was still seated outside and her father had left. At that point, he locked the room and began molesting her.

3.9. When she started crying, he threatened to have her parents killed. By intimidating and frightening her, he silenced her, kissed her, touched her inappropriately, and ran his hands over her entire body. He forcibly kissed her repeatedly and compelled her to perform a sexual act. He attempted to remove her clothes forcibly. When she cried and





screamed, he covered her mouth. The molestation allegedly continued for approximately one to one and a half hours. Two or three of Asha Ram's sevaks were present outside the room during this time. Before she left, he threatened her with dire consequences if she disclosed the incident to anyone.

3.10. Thereafter, she returned with her mother to the room allotted to them. On 16.08.2013, Asha Ram left for Delhi, and the complainant and her family returned home. Before departing, Asha Ram instructed her father to send her to Ahmedabad for an anushtan (religious observance) for seven to eight days, after which she would be sent back to Chhindwara. However, following the incident, she did not go to Ahmedabad. Upon reaching home, she narrated the entire episode to her parents and sought legal action against Asha Ram, the warden Shilpi, and Shiva.

3.11. According to the prosecution, upon receipt of the Tehrir report dated 20.08.2013 at Police Station Kamla Market, Delhi, ASI Pushpalata immediately arranged for the complainant's medical examination at Lok Nayak Hospital. Thereafter, the Tehrir was placed before the Duty Officer at the police station, on the basis of which FIR No. 0/2013 dated 20.08.2013 was formally registered. The complainant was subsequently provided counselling through an NGO activist, and her statement under Section 164 of the Code of Criminal Procedure was duly recorded on 20.08.2013 before the competent Magistrate.

3.12. As the alleged incident had occurred within the territorial jurisdiction of Jodhpur, Rajasthan, the complainant, accompanied by her parents and a police team, was sent to Jodhpur for further proceedings. On 21.08.2013 at 6:15 p.m., FIR No. 122 was registered at Police Station Women (West), Jodhpur, under Sections 342, 376, 354-A, 506, and 509 read with Section 34 of the Indian Penal Code; Sections 23 and





26 of the Juvenile Justice (Care and Protection of Children) Act; and Section 8 of the Protection of Children from Sexual Offences Act, 2012.

The investigation of the case was entrusted to the Assistant Police Commissioner (West), Jodhpur.

3.13. After investigation, charge-sheet dated 06.11.2013 was filed against accused Asha Ram, under Sections 370(4), 342, 354-A, 376(2)(f), 376-D, 506, 509 read with Section 34, and 120-B of the Indian Penal Code; Sections 23 and 26 of the Juvenile Justice Act; and Sections 5(f)/6, 5(g)/6, and 8 of the POCSO Act, 2012.

3.14. As against accused Ms. Sanchita alias Shilpi and Sharad Chandra @ Sharat Chandra, the charge-sheet filed was for offences punishable under Sections 342, 354-A, 370(4), 376(2)(f), 376-D, 506, 509 read with Section 34, 109, and 120-B of the Indian Penal Code; Sections 23 and 26 of the Juvenile Justice Act; and Sections 5(f)/6, 5(g)/6, and 7/8 read with Section 17 of the POCSO Act, 2012.

3.15. Similarly, the charge-sheet filed against accused Prakash and Shiva alias Sevarama Hethvadia for offences under Sections 370(4), 342, 354-A, 376(2)(f), 376D, 506, 509 read with Section 34, 109 and 120-B of the Indian Penal Code; and Sections 5(f)/6, 5(g)/6 and 7/8 read with Section 17 of the POCSO Act, 2012.

3.16. After charge-sheet was filed before the learned District & Sessions Judge, Jodhpur District, Jodhpur, the case was transferred to the POCSO Court, Jodhpur.

3.17. Learned Trial Court after hearing the arguments on charge vide his order dated 07.02.2014 framed charges against accused Asha Ram alias Ashumal for the offences punishable under Sections 370 (4), 342, 354A, 376(2)(f), 376D, 506, 509, 120B of Indian Penal Code, Section 23 of Juvenile Justice (Care and Protection of Children) Act and Section 5(f)/6, 5(g)/6 and 7/8 of POCSO Act, 2012; against accused persons





Ms. Sanchita alias Shilpi and Sharad Chandra alias Sharat Chandra for the offences punishable under Sections 342/34, 354A/34, 370(4), 376(2)(f), read with Sections 120B/109, 376D, 506/34, 509/34, and Section 109/120B of Indian Penal Code and Section 23 of Juvenile Justice (Care and Protection of Children) Act and Sections 5(f)/6 read with Sections 17, 5(g)/6, 7/8 read with Section 17 of Protection of Children from Sexual Offences Act, 2012 and against accused persons Prakash and Shiva alias Sevaram for the offences punishable under Sections 370 (4), 342/34, 354-A/34, 376(2) (f), read with Sections 120-B and 109, 376-D, 506/34, 509/34, 109/120-B of Indian Penal Code and Section 5(f)/6, 5(g)/6, 7/8 read with Section 17 of Protection of Children from Sexual Offences Act, 2012. However, accused persons Asha Ram, Shilpi and Sharad Chandra were discharged from the penal provisions of Section 26 of Juvenile Justice (Care and Protection of Children) Act.

3.18. All the accused persons were explained separately the charges framed against them. After hearing and understanding the charges framed, all the accused persons denied the charges (pleaded not guilty) and claimed trial.

### **EVIDENCE**

3.19. From the side of prosecution, the statements of following witnesses were recorded:

<b>Witness No. &amp; Name</b>	<b>Category</b>	<b>Particulars of Testimony</b>
PW-1: Pushplata	Police Witness	ASI who recorded the victim's initial complaint in Delhi, facilitated her medical examination, and prepared documentation for her Section 164 statement.
PW-2: Nirpal Singh	Police Witness	Duty Officer at Police Station Kamla Market who registered the initial FIR No. 0/13 upon receiving the ruqa from ASI Pushpalata.
PW-3: Dr. Shailja	Medical Witness	Gynaecologist at Lok Nayak Hospital who conducted the medical examination of



		the victim and proved the clinical notes and medical certificate.
PW-4: Dr. RajenderSingh	Medical Witness	Medical Officer who conducted the initial physical examination of the victim and prepared her MLC sheet.
PW-5: SU	Victim & Eye Witness	The prosecutrix who testified about being misled into believing she was possessed and provided a detailed account of the sexual assault by AsaramAsha Ram inside his kutiya.
PW-6: Ranjeet	Material Witness	Owner of the farmhouse in Manai; confirmed building the kutiya for Asha Ram and that the victim's family stayed in an upstairs room from 14 to 16 August 2013.
PW-7: Kiran Jha Thakur	Material Witness	Representative of an NGO who conducted counselling for the minor victim at the police station on 20 August 2013.
PW-8: Dr. Shubhkaran	Medical Witness	Member of the Medical Board who conducted the medical examination of the accused, Asaram, on 1 September 2013.
PW-9: Dr. M. K. Chhabra	Medical Witness	Member of the Medical Board who corroborated the testimony of PW-8 regarding the examination of the accused at the R.A.C. Guest House.
PW-10: Dr. Arvind Jain	Medical Witness	Professor of Medicine and member of the Medical Board that conducted the physical examination of Asaram.
PW-11 Kripal Singh	Material Witness	LIC agent and long-time follower who corroborated that the victim's father was worried about his daughter being "possessed by evil spirits" in August 2013.
PW-12: Sunita Singh	Relative Witness	Mother of the victim; testified about the phone calls regarding her daughter's illness, the trip to Jodhpur, and the daughter's subsequent disclosure of assault.
PW-13: Omaram	Police Witness	Deposed regarding the production of two mobile phones (Samsung and Reliance) by Uday Chhangani before the investigating officer.
PW-14: RameshchandraKhatik	Police Witness	Witnessed the production of a Carbon Company mobile phone on behalf of Uday on 27 September 2013.
PW-15: Kushala Ram Jaat	Police Witness	Malkhana In-charge who managed the storage of seized mobiles and CDs containing scenes of "exorcism" and activities involving girls at the ashram.
PW-16: Sandeep Kumar Jaat	Police Witness	Carried evidence to the FSL in Jaipur and witnessed the recovery of a Blackberry phone from the accused Shilpi.
PW-17: Prema Ram Jatt	Police Witness	Handled the official forwarding letters and acknowledgment receipts for the evidence sent to FSL Jaipur.
PW-18: Jitendra Singh Rajpoot	Police Witness	Procured and furnished the Call Detail Records (CDRs) for the mobile numbers of the accused persons and the complainant.
PW-19: Rahul K. Sachan	Material Witness	Former close associate of Asaram who alleged witnessing past sexual misconduct by the accused and the use of intoxicants.





PW-20: Arvind Vajpeyi	Educational Witness	Principal who proved the victim's date of birth as 04.07.1997 and reported receiving threats and a live cartridge for providing school records.
PW-21: Karamvir Singh	Relative Witness	Father of the victim; detailed the family's devotion, the journey for "spiritual treatment," and the events of the night the assault occurred.
PW-22: Ramkishor @ Kishor	Material Witness	Son of the farmhouse owner; confirmed the family stayed in their house and attended the satsang on 15 August 2013.
PW-23: Mahendra Singh	Material Witness	Former manager who alleged Asaram habitually targeted young girls by discouraging their education to maintain religious influence.
PW-24: Gian Singh Bhadoria	Hostile Witness	A former worker who resiled from his police statement, denying he purchased or provided a Reliance SIM card to Asaram in 2009.
PW-25: Pukhdas	Police Witness	Collected the victim's original admission and age records from her school in Shahjahanpur.
PW-26: Mahender Singh	Police Witness	Conducted the videography of the victim's statement and the crime scene at the Manai farmhouse.
PW-27 Satya Prakash	Police Witness	Witness to the arrest of Asaram and the preparation of the site plan and spot verification memos at Village Manai.
PW-28: Motiram	Police Witness	Assisted in seizing visitor registers, bank records, and appointment letters from the Chhindwara Ashram.
PW-29: Papparam	Police Witness	Witness to the arrests of Shiva, Prakash, and Sharad Chandra; also witnessed the transcription-- of the crime scene videography.
PW-30: Ramdev	Police Witness	SHO who assisted in the spot inspection identified by Asaram and the seizure of records from the Chhindwara Gurukul staff.
PW-31: Devender Pawar	Hostile Witness	A follower who retracted his statement that a mobile SIM he purchased was used by the accused Shilpi.
PW-32: Nitin Bhalla	Hostile Witness	Denied providing a SIM at Asaram's instance, claiming he gave it to another person during a satsang in Delhi.
PW-33: Vivek Sharma	Ashram Staff	Principal of Chhindwara Gurukul; produced the victim's Class XII attendance records and transfer certificates.
PW-34: Sushil	Ashram Staff	Warden of the Boys' Hostel; produced gate registers and confirmed the father's visit to the Gurukul on 8 August 2013.
PW-36: Neha Totlani	Ashram Staff	Warden of the Girls' Hostel; testified that no illness was recorded for the victim and spoke about the victim's conduct.
PW-37: Shri Ram Kashyap	Ashram Staff	Ashram volunteer who provided documents related to the administration and bank operations, including Shilpi's appointment letter.
PW-38: Babu Singh	Investigation & Law Enforcement	Reader at the DCP office who served summons to the accused and obtained passport details of the accused. He also recorded witness statements in Ahmedabad and collected registration





		and Income Tax records related to the Ashram.
PW-39: Ajay Kumar	Material Witness (Prior Misconduct)	A former Sewadar who testified about historical mismanagement and alleged sexual misconduct involving the accused and Narayan Sai dating back to 1995. He claimed to have seen girls being taken to the "Sant Kutiya" late at night and was later assaulted for inquiring into these activities.
PW-40: Uday Sangani	Official Record & Document Witness	A Sewadar at the Ahmedabad Ashram who produced various records for the police, including the Hostel Manual (Ex. P-81), employee lists, and mobile phones (Articles 4, 5, and 6) belonging to the accused persons.
PW-41: Mukta Parik	Investigation & Law Enforcement	The SHO who registered the FIR (Ex. P-106) and conducted significant portions of the investigation in Chhindwara. She seized school and hostel records, proved the arrest of the accused, and ultimately filed the charge-sheet after concluding a criminal conspiracy existed.
PW-42: Sudha Ben	Material Witness (Hostile)	An Ashram member since 1985 who testified that she never witnessed any misconduct. She was declared hostile by the prosecution after she resiled from her previous police statement.
PW-43: ACP Chanchal Mishra	Investigation & Law Enforcement (I.O.)	The Primary Investigating Officer who oversaw the entire case. She recorded statements, conducted site inspections at Manai, and coordinated the collection of medical, academic, and forensic evidence. She proved the conspiracy narrative and the accused's role in the assault.
PW-44: Vinay Kumar	Technical & Nodal Evidence	The Nodal Officer for Reliance Communication who provided Call Detail Records (CDRs) (Ex. P-141 to P-148) for the accused and the victim's family. He verified the authenticity and integrity of the digital communication records used as evidence.

3.20. The prosecution in support of its case submitted documents Ex.P-1 to Ex.P-161 and also produced 30 articles, which are as under:

**PROSECUTION DOCUMENTARY EVIDENCE (EXHIBITS P-1 TO P-161)**

Exhibit No.	Description of Document	Date of Exhibition	Witness/Person who Proved/Produced the Exhibit
Ex P-1 to Ex P-3	Victim's Medical/Injury Reports (Lok Nayak Hospital)	19.03.14	PW-1 (Pushplata) / PW-3 (Dr. Shailja) / PW-4 (Dr. Rajender Singh)
Ex P-4	Written Complaint by Victim	19.03.14	PW-1 (Pushplata) / PW-5 (Victim)
Ex P-5 to Ex P-7	Statements and Applications u/s 164 Cr.P.C.	19.03.14	PW-1 (Pushplata) / PW-43 (Chanchal Mishra)
Ex P-8A to Ex P-	Police Station Diary Entries and Information Letters	19.03.14	PW-1 (Pushplata) / PW-35 (Nitin Deve)



10A			
Ex P-11 to Ex P-11B	Chak--FIR (Dated 20.08.2013)	20.03.14	PW-2 (Nirpal Singh)
Ex P-12	Clinical Note/Medical Report (Lok Nayak Hospital)	04.04.14	PW-4 (Dr. Rajender Singh)
Ex P-13 to Ex P-14	Map of Incident Place and Site Inspection Memos	15.04.14	PW-5 (Victim) / PW-27 (Satya Prakash) / PW-41 (Mukta Parik) / PW-43
Ex P-15	Victim's Letter to Police Commissioner, Jodhpur	15.04.15 [sic]	PW-5 (Victim) / PW-41 (Mukta Parik)
Ex P-16 to Ex P-32	Photographs of Ashram, Cottage, and Incident Scene	21.04.14	PW-5 / PW-26 (Mahendra Singh) / PW-41 / PW-43
Ex P-33 to Ex P-33A	Medical Board Orders (MDM Hospital)	07.02.14	PW-8 (Dr. Shubhkaran) / PW-9 (Dr. M.K. Chhabra) / PW-10 (Dr. Arvind Jain)
Ex P-34	Accused Asaram Medical Board Report	18.07.14	PW-8 / PW-9 / PW-10 / PW-43
Ex P-35	Memo of Dual Sim Mobiles (Produced by Uday Sangani)	26.04.14	PW-13 (Oma Rao) / PW-40 (Udai)
Ex P-36	Memo of Reliance Mobile, Battery, and SIM	01.10.14	PW-14 (Ramesh Chandra) / PW-30 (Ramdev) / PW-40 / PW-43
Ex P-37 to Ex P-37/3	Malkhana Register Entries (Women's Police Station)	01.10.14	PW-15 (Khusalram) / PW-41 / PW-43
Ex P-38	Memo of Download --(Accused Shiva)	01.10.14	PW-30 (Ramdev) / PW-43
Ex P-39	FSL Acknowledgement/Receipt	01.10.14	PW-15 (Khusalram) / PW-16 (Sandeep Kumar) / PW-17 (Prema Rao)
Ex P-40	FSL Report (Dated 20.09.2013)	01.10.14	PW-15 (Khusalram) / PW-43
Ex P-41	Memo of Investigation DVD	01.10.14	PW-15 / PW-30
Ex P-42	Letter to send --Malkhana to FSL	02.12.14	PW-16 (Sandeep Kumar) / PW-17 (Prema Rao) / PW-43
Ex P-43	Seizure Memo-- (Accused Ms. Shilpi)	02.12.14	PW-16 (Sandeep Kumar) / PW-43
Ex P-44	Call Details and Analysis Charts of Accused Persons	04.12.14	PW-18 (Jitendra Singh) / PW-43
Ex P-45 to Ex P-47	Victim's School Admission Records and Birth Certificate	06.12.14	PW-20 (Arvind Vajyapi) / PW-25 (Pukhdas)
Ex P-48 to Ex P-49	FIR Copies (Police Station SadarKotwaliShahjahanpur)	09.12.14	PW-20 (Arvind Vajyapi)
Ex P-50	Birth Certificate Photocopy	13.01.15	PW-20 (Arvind Vajyapi) / Produced during supplemental proceedings
Ex P-51	Statement of Witness Gyan Singh Bhadoria	09.02.15	PW-24 (Gyan Singh Bhadoria)
Ex P-52	Arrest/Seizure Memo of Accused Asha Ram	08.02.15	PW-27 (Satya Prakash) / PW-41 / PW-43
Ex P-53 to Ex P-	Crime Detail Report (CDR) and Site Inspection Memos	21.02.15	PW-27 / PW-30 / PW-43





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Ex P-55	Memo of Production Record (Uday)	21.02.15	PW-27 / PW-40 / PW-43
Ex P-56 to Ex P-58	Production Memos of Ashram/School Records	23.02.15	PW-28 (Moti Ram) / PW-34 (Sushil) / PW-41 / PW-43
Ex P-59 to Ex P-60	Seizure Memos of Mobiles/SIMs (Accused Sharad)	23.02.15	PW-28 / PW-41 / PW-43
Ex P-61	Seizure Memo of Records (Ms. Neha Totlani)	23.02.15	PW-28 / PW-36 (Neha Totlani) / PW-41 / PW-43
Ex P-62 to Ex P-64	Power of Attorney and Board Resolutions	23.02.15	PW-28 / PW-37 (Sriram Kashyap) / PW-41 / PW-43
Ex P-65 to Ex P-66	Victim's School Certificates (Transfer/Leaving)	23.02.15	PW-28 / PW-33 (Vivek Sharma) / PW-41 / PW-43
Ex P-67	Appointment Letter of Accused Sanchita Gupta	23.02.15	PW-28 / PW-37 / PW-40 / PW-41 / PW-43
Ex P-68	Arrest Memo of Accused Shiva	24.02.15	PW-29 (Papparam) / PW-30 / PW-43
Ex P-69 to Ex P-70	Transcription Memo and Videography Records	24.02.15	PW-29 / PW-30 / PW-43
Ex P-71 to Ex P-72	Arrest Memos (Accused Prakash and Sharad)	24.02.15	PW-29 / PW-38 (Babu Singh) / PW-43
Ex P-73	Search Memo (Residential Place of Accused Prakash)	26.02.15	PW-30 (Ramdev) / PW-43
Ex P-74	Intimation Memo u/s 27 (Accused Sanchita)	26.02.15	PW-30 (Ramdev)
Ex P-75	Statement of Devendra Pawar	02.03.15	PW-31 (Devender Pawar)
Ex P-76	Statement of Nitin Bhalla	04.03.15	PW-32 (Nitin Bhalla)
Ex P-77 to Ex P-84	School Attendance and Guardian Documents	11.03.15	PW-33 (Vivek Sharma) / PW-41 / PW-43
Ex P-85 to Ex P-87	Leave Applications (Victim and Bhavya Shukla)	19.03.15	PW-36 (Neha Totlani) / PW-41 / PW-43
Ex P-88 to Ex P-102	Police Reports and FIRs (Gujarat Police Stations)	March 2015	PW-38 (Babu Singh) / PW-43
Ex P-103	Statement u/s 164 Cr.P.C. (Ajay Kumar) --	09.10.13	PW-39 (Ajay Kumar) --/ PW-43 Chanchal Mishra
Ex P-104	List of workers of Chhindwara Girls Hostel	13.04.15	PW-40 (Udai)
Ex P-105	Warden Correspondence to ACP West	15.04.15	PW-40 (Udai)
Ex P-106	FIR No. 122/13 (Jodhpur)	22.04.15	PW-41 (Mukta Parikh)
Ex P-107 to Ex P-116	Educational Certificates and Health Records	2015	PW-35 (Nitin Deve) / PW-41 / PW-33
Ex P-117	Police Statement of Sudha Ben	08.07.15	PW-42 (Sudha Ben) / PW-43
Ex P-118 to Ex P-120	Revenue Records (Manai Village)	July 2015	PW-43 (Chanchal Mishra)





Ex P-121 to Ex P-124	Information Memos u/s 27 (Accused Persons)	July 2015	PW-43 (Chanchal Mishra)
Ex P-125	Arrest Memo (Accused Sanchita Gupta @ Shilpi)	16.07.15	PW-43 (Chanchal Mishra)
Ex P-126	Website Printouts of Ashram Addresses	16.07.15	PW-43 (Chanchal Mishra)
Ex P-127 to Ex P-128	Railway Reservation Charts (Jodhpur)	July 2015	PW-43 (Chanchal Mishra)
Ex P-129 to Ex P-139	Mobile/Call Detail Analysis and Charts	July 2015	PW-43 (Chanchal Mishra)
Ex P-140 to Ex P-149	Official Call Detail Records and Certificates	2016	PW-44 (Vinay Kumar Sharma)
Ex P-150 to Ex P-161	Supplemental School Records and Electoral Roll App.	2017	Produced during re-examination / PW-43


**PROSECUTION PHYSICAL EVIDENCE (ARTICLES 1 TO 30)**

Article No.	Description	Associated Exhibit/Witness
Article-1	PS Kamla Market Diary Entries (Register No. 2)	Ex P-8A, P-9, P-10 / PW-1
Article-2	FIR Register (PS Kamla Market 2011-13)	Ex P-11 / PW-2
Article-3	Women's Help Desk --2013 PS Kamla Market	<b>Note:</b> Contains Defence Exhibit Ex D-1.
Article-4	Samsung Mobile	Ex P-35 / PW-13 / PW-40
Article-5	Reliance LG Mobile	Ex P-35 / PW-13 / PW-40
Article-6	Carbon Company Mobile (White)	Ex P-36 / PW-14 / PW-40
Article-7	Nokia Mobile SIM	PW-15 / PW-30 / PW-43
Article-8	Black Mobile (Virgin Company) with SIM	PW-15 / PW-30 / PW-43
Article-9	Compact Disc (C.D.)	PW-15 / PW-43
Article-10-14	DVD (Quantity: 5)	PW-15 / PW-43
Article-15	DVD: Videography of Victim's Statements (21.08.13)	PW-26 / PW-43
Article-15 (bis)	Attendance Register (12th Class, Asaram Gurukul)	PW-33 / PW-41
Article-16	Sealed CD: Videography of Spot Inspection	PW-26 / PW-30
Article-16 (bis)--	Attendance Register (11th Class, Asaram Gurukul)	PW-33 / PW-41
Article-17	Girls Hostel Register (Chhindwara)	PW-34 / PW-36 / PW-41
Article-18	Entry Book (Asha Ram Gurukul Boys Hostel Main Gate)	PW-34 / PW-41
Article-19	Girls Hostel Medical Register (Chhindwara)	PW-36 / PW-41
Article-20	Samsung Reliance Mobile, SIM, and Battery	PW-41 / PW-43
Article-21-28	Eight Reliance SIMs	PW-41 (Mukta Parikh)



Article-29	Airtel SIM	PW-41 (Mukta Parikh)
Article-30	Docomo SIM	PW-41 (Mukta Parikh)

3.21. From the side of defence, the statements of following witnesses were recorded:



Witness No. & Name	Category	Particulars of Testimony
DW-01: Ms. Charul Arora	School & Hostel Environment	Alleged that on 21/08/2013, the victim admitted she had fabricated the case with her parents and others to defame the accused. She also testified that the victim had an improper relationship with a teacher, Pankaj Dubey, and possessed prohibited mobile phones.
DW-02: Channa Ram Kumawat	Alibi & Manai Presence	Stated that the accused was in seclusion at Manai and no public satsang was held during the night of the alleged incident. He challenged the timing of photographs presented by the prosecution and denied witnessing any assault.
DW-03: Arjun Kumar Tekwani	Alibi & Manai Presence	Provided an alibi by stating his family was at the Manai farmhouse for an engagement (Roka) ceremony on 14/08/2013 and 15/08/2013. He denied that the accused practiced occult rituals.
DW-04: Sushila Chelani	Alibi & Manai Presence	Confirmed her presence at the Roka ceremony on 15/08/2013 and stated the program lasted until nearly midnight, which challenges the prosecution's timeline. She estimated the victim's age at 19-20 years.
DW-05: Jaya Kamat	Official Records & Documents	A school principal who deposed about certain school records Ex D/6A, Ex D/7A, Ex D/8A and Ex. P-150 regarding the victim's age. She also testified that the victim's name was changed from Shubham Devi to Supriya Singh.
DW-06: Vishnu Devada	Alibi & Manai Presence	A farmhouse resident who stated the victim appeared normal and cheerful and shared meals with the family. She denied the cottage was exclusive to the accused and estimated the victim's age as 20-22 years.
DW-07: Megha Sharma	School & Hostel Environment--	Testified about the victim's character, alleged outings with a teacher (Pankaj Dubey), and reported seeing them together. She also mentioned the victim's original name was Shubham Devi.
DW-09: Kumari Reena	School & Hostel Environment--	A room warden who claimed the victim's 18th birthday was celebrated in August 2013, contradicting the claim that she was a minor. She denied any "possession by spirits" occurred.
DW-10: Manisha Devra	Alibi & Manai Presence	Claimed the victim stayed in her company the entire night of 15/08/2013 and had requested sanitary pads for menstruation. She stated the victim slept in a room with other women, not in the cottage.
DW-11: Vidhya	School & Hostel Environment--	Alleged the victim's parents provided a false birthdate in school records for government benefits. She described the victim as "disobedient" and noted she was weak in her studies.
DW-12: Sangeeta	Conspiracy & Character	Alleged that material prosecution witnesses (Rahul Sachan, etc.) were motivated by money and had been expelled for misconduct. She mentioned reading a 2008 extortion fax demanding ₹50 crore.



DW-13: Yogesh Bhati	Social Work & Conspiracy	Highlighted the accused's disaster relief and social work. He alleged Rahul Sachan had a "bad character" and corroborated the existence of a ₹50 crore extortion threat in 2008.
DW-14: Madan Singh	Alibi & Manai Presence	A security guard who testified he was on duty at the cottage gate from 8:00 PM to midnight on 15/08/2013 and witnessed no incident. He stated the accused was away until midnight.
DW-15: Ram Mehar	Conspiracy & Records	Claimed the victim's DOB was 06.08.1995 and her original name was Shubham Devi. He alleged overhearing a conspiracy meeting at a dhaba in 2013 to frame the accused for ₹50 crore extortion.
DW-16: Anchal Kumawat	Expert Testimony	A researcher who conducted psychological profiling of the accused, concluding he was mentally sound and had been observing celibacy for forty years.
DW-17: Sanjay Kumar	Character & Fact Witness	Testified about the accused's visit to Gurgaon, describing his interactions with a child as showing "parental affection" rather than misconduct.
DW-18: Rakesh Kumar Singh	Character & Social Work	A wrestler who testified to the accused's character and his promotion of celibacy and parent-worship activities since the year 2000.
DW-19: Jigyasa Bhavsar	Conspiracy & Extortion	A clinic employee who alleged seeing the victim's father and others planning a conspiracy at a clinic to plant sexual allegations and send an extortion fax.
DW-20: Dr. Shilpa Aggarwal	Expert Testimony	A psychologist who evaluated the accused and found him mentally stable and resilient, concluding he was "incapable of committing any sexual misconduct".
DW-21: Brijender Sharma	Conspiracy & Journalist	A journalist who claimed the victim's family tried to find a lawyer in Jaipur to file a "false case" on 16/08/2013 before they eventually went to Delhi.
DW-22: Vikrant Sharma	Investigation & Jammu SIT	Alleged a conspiracy involving Bholanand to extort money. He also claimed to have seen obscene messages exchanged between the victim and teacher Pankaj Dubey.
DW-23: Pooja Devi	Investigation & Jammu SIT	Claimed Bholanand asked her to find girls to make false sexual allegations against the accused in exchange for money and protection.
DW-24: Suresh Kumar	Conspiracy & Advocate	An advocate who testified the victim told him in his chambers that no misconduct had occurred and she was only acting on her father's directions.
DW-25: Rambachan	Official Records & Documents	An RTO official who produced licensing records for the victim's brother to challenge the family's reported ages and history.
DW-26: Uday Singh	Official Records & Documents	A public servant who produced ration card records from 2005 to highlight age inconsistencies in the victim's family history.
DW-27: Angrez Singh	Investigation & Jammu SIT	An investigating officer from the Jammu SIT who detailed the probe into the alleged conspiracy by Bholanand and others against the ashram.
DW-28: Dr. Amit Kumuir	Official Records & Documents	Provided testimony regarding birth register records from 1990; noted they lacked official seals and informant signatures.
DW-29: Suresh Sharma	Investigation & Jammu SIT	A member of the Jammu SIT --who corroborated the investigation into the conspiracy narrative involving Bholanand and Pankaj Dubey.
DW-30: Vinay Prakash Srivastava	Official Records & Documents	An election official who testified regarding age entries in electoral rolls, noting that human or printing errors are common in such records.
DW-31: Deepak	Investigation & Technical	A Nodal Officer for Reliance who provided Call Detail Records (CDRs) that were used by the





Gandotra	Jammu police in their conspiracy investigation.
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3.22. The defence in support of its case submitted documents Ex.D-1 to Ex.D-225 and also produced 5 articles, which are as under:

**DEFENCE DOCUMENTARY EVIDENCE (EX.D-1 TO EX.D-225)**

Exhibit No.	Document Description	Witness who Proved / Presented
EXD-1	Women Help Desk Register entry	PW-1 ASI Pushplata (Article-3)
EXD-2	Victim "Su" Police Statement	PW-5 "Su" (during cross-examination)
EXD-3	Apology Letter written by Victim "Su" Singh	PW-5 "Su" / DW-7 Megha Sharma
EXD-4	Written NGO Report by Kiran Jha Thakur	PW-5 "Su" / PW-7 Kiran Jha Thakur
EXD-5	Shahjahanpur Assembly Voter List	DW-30 Vinay Prakash Srivastava
EXD-6 / 6A	Admission Form of Shubham Devi (Mumukshu Ashram)	PW-5 "Su" / DW-5 Jaya Kamat
EXD-7 / 7A	Registration Form of Shubham Devi	PW-5 "Su" / DW-5 Jaya Kamat
EXD-8 / 8A	Scholar's Register & Transfer Certificate of Victim	PW-5 "Su" / DW-5 Jaya Kamat
EXD-9 to 13A	Affidavits of Karamveer Singh (Multiple pages)	PW-21 Karamveer Singh / DW-5 Jaya Kamat
EXD-15	Police Statement of Pushplata	PW-1 ASI Pushplata
EXD-16 / 16B	Birth Certificate / Birth Register (Karnvir/Somvir)	PW-12 Sunita Singh / DW-28 Dr. Amit Kumar
EXD-17	Police statement of Mrs. Sunita Singh	PW-12 Sunita Singh / PW-43 Chanchal Mishra
EXD-18	Victim "Su" Leave Application	PW-12 Sunita Singh
EXD-20A / 20B	Driving License Register (Somvir Singh)	PW-12 Sunita Singh / DW-25 Ram Vachan
EXD-21 to 24	Photos of Satsang at Manai (15.08.2013)	DW-2 Channaram / DW-3 Arjun Tekwani
EXD-26 / 26A	Photo of Asha Ram Ji under Neem tree	DW-3 Arjun Kumar Tekwani
EXD-27 to 31	Sewakarya Forms (Karamveer family members)	PW-21 Karamveer Singh
EXD-38 / 38A	Vaccination / Survey Register	PW-12 Sunita Singh
EXD-40 / 40A	Ration Card Application Form (Ramdiya)	PW-12 Sunita Singh / DW-26 Udai Singh
EXD-42	Victim "Su" original LIC form	PW-12 Sunita Singh
EXD-45	Search Memo (Shilpi)	PW-16 Sandeep Kumar
EXD-47	Child Registration and Transfer Certificate	PW-20 Arvind Vajpayee
EXD-60 /	Certified Photos of Transport	PW-21 Karamveer Singh



61	Companies	
EXD-69	Proof of Somvir's driving license	DW-25 Ram Vachan
EXD-74	Voter List of Karamvir Singh (2012)	DW-30 Vinay Prakash Srivastava
EXD-75	Copy of Nutrition Register	PW-21 Karamveer Singh
EXD-81 / 81A	Ration Card Details	PW-43 Chanchal Mishra
EXD-82	Police Statement of Karamvir Singh	PW-21 Karamveer Singh / PW-43 Chanchal Mishra
EXD-99	Affidavit and letters by Shailesh Kumar (Bhavya's father)	PW-43 Chanchal Mishra
EXD-100/1-7	Online Weather Reports (August 2013)	PW-43 Chanchal Mishra
EXD-101-106	RTI documents / Police Journal copies	PW-43 Chanchal Mishra
EXD-107-111	Call Details (Jammu investigation)	PW-43 Chanchal Mishra / DW-22 Vikrant Sharma
EXD-114	First Information Report (Jammu)	DW-22 Vikrant Sharma / DW-27 Angrez Singh
EXD-115 / 115A	CFSL Chandigarh Voice Report (Vinod Gupta)	DW-27 Angrez Singh
EXD-117	Teacher Prayer Form (Pankaj Dubey)	PW-43 Chanchal Mishra
EXD-118	Customer Application Form (Reliance)	PW-43 Chanchal Mishra
EXD-122 / 123	Urdu to English Translation & Certificate	PW-43 Chanchal Mishra
EXD-129	Photocopy of Malkhana Register	PW-43 Chanchal Mishra
EXD-131	FIR (Gurgaon) regarding Media Trial	DW-17 Sanjay Kumar
EXD-132	List of Nodal Officers	PW-44 Vinay Kumar Sharma
EXD-133-141	Photos of Victim (WhatsApp/Facebook)	DW-1 Charul Arora
EXD-142-155	Commendation Letters (President/Gov/CM)	DW-13 Yogesh Bhati
EXD-158-160	Photos of Asaram visiting Sanjay Kumar's house	DW-17 Sanjay Kumar
EXD-185	Fax Message (Extortion threat)	DW-19 Jigyasa Bhavsar
EXD-187-191	Academic Degrees (Shilpa Agrawal)	DW-20 Dr. Shilpa Aggarwal
EXD-192-195	Questionnaires for AsaramAsha Ram	DW-20 Dr. Shilpa Aggarwal
EXD-197-198	Journalist Press Cards	DW-21 Brijender Sharma
EXD-203 / 203A	Complaint to Jammu Court (Original/Copy)	DW-22 Vikrant Sharma
EXD-204 / 204A	Script of Conversation (Vikrant & Bholanand)	DW-22 Vikrant Sharma / DW-27 Angrez Singh
EXD-211 / 212	Seizure Memo and CDRs (Pankaj Dubey)	DW-22 Vikrant Sharma / DW-27 Angrez Singh
EXD-216 /	Original Ration Register Page (2005)	DW-26 Udai Singh





216A		
EXD-221 / 224	CDRs of Pankaj Dubey and others	DW-31 Deepak Gandotra
EXD-222	Section 65-B Evidence Act Certificate	DW-31 Deepak Gandotra
EXD-225	Customer Application Form (Pankaj Dubey)	DW-31 Deepak Gandotra

### DEFENCE PHYSICAL EVIDENCE (ARTICLES D-1 TO D-5)

Article No.	Description
Article D-1	Compact Disk: Chindwara Satsang CD dated 25-03-2015
Article D-2	Compact Disk: Ahmedabad Satsang CD dated 25-03-2015
Article D-3	Compact Disk: Delhi Satsang CD dated 25-03-2015
Article D-1 (bis)	DVD photographs (Regions D-161 to D-163 and D-165 to D-171)
Article D-4	Compact Disk: Asha Ramji Pravachan dated 16.04.2015
Article D-5	Original CD presented by Witness Vikrant Sharma

3.23. Following questions were framed by the learned Trial Court  
(English translation):

“(1) Whether the age of prosecutrix was less than 18 years on 15.08.2013? Therefore, whether she comes within the category of child as defined in Section 2(D) of Protection of Children Act?

(2) Whether the accused Asha Ram by committing an act of wrongful confinement, prevented prosecutrix girl child to go beyond a certain limit on 15.08.2013 at about 10 p.m. in the Kutiya situated in Manai Ashram and inflicted sexual harassment to her and on her resistance, extended threats to her and by threatening to kill her parents, exercised assault/criminal form towards her and by extending threats to cause physical injury and to kill her parents, with a motive to terrorize her, caused criminal intimidation and with a motive to disrespect her modesty, violated her seclusion by uttering obscene words and molesting her and with a sexual intent, touched the vagina, urethra and chest of the prosecutrix girl child and caused stimulating penetrative sexual assault/rape?

A. If yes, whether the act of penetrative sexual assault committed on the aforesaid date, time and place by the accused Asha Ram upon the prosecutrix girl child had been committed while remaining in the capacity of a manager of the religious organization/trust?

B. Whether the aforesaid rape committed by the accused Asha Ram with the prosecutrix on the aforesaid date, time and place was committed by him while remaining in the capacity of a trustee or authority towards her by extending threats to her and against her wishes?

(3) Whether the accused persons Sharad Chandra @ Sharat Chandra, Ms. Sanchita @ Shilpi, Prakash and Shiva @ Savaram at any time prior to 15.08.2013, hatched a criminal conspiracy in connivance and collusion with the accused Asha Ram having sole motive to inflict sexual abuse to the prosecutrix girl child on behalf of the accused Asha Ram and to commit rape with her and for this purpose, the aforesaid accused persons constituted a group and the aforesaid criminal conspiracy functioning in the furtherance of common intention, provided aid to him and for the purpose of exploitation of the prosecutrix girl child, committed an act of misdemeanor by means of fraud, deceit, inducement etc. consequent upon which, the accused





*Asha Ram committed offence as described in Issue No. 2 against the prosecutrix/girl child?*

*(4) Whether the accused persons namely Sharad Chandra @ Sharat Chandra, Ms. Sanchita @ Shilpi and the accused Asha Ram @ Ashumal having genuine influence and control over the prosecutrix/girl child, assaulted her and caused undue mental and physical injury to her?*

*(5) If yes, the accused persons are liable to be punished for which offence.”*

4. By dealing with and deciding these questions, learned Trial Court, vide its judgement dated 25.04.2018, convicted and sentenced the accused-appellants as already enumerated above in the introductory part. Hence, the instant set of appeals.

### **GROUND OF APPEAL**

5. Grounds of appeal taken from DB CrI.Appeal No. 123/2018 filed by Asha Ram @ Ashumal are summarized below :

- (a) Learned Trial Judge erred in appreciating the evidence;
- (b) Learned Trial Judge failed in his duty to restrain adverse media propaganda against the appellant;
- (c) Trial was vitiated by the adverse media propaganda against the appellant;
- (d) The investigating agency and the prosecution consciously acted in a manner to poison the atmosphere against the appellant and make it impossible to examine the issues of fact and law dispassionately;
- (e) FIR was lodged after inordinate delay and that too at Delhi, a place other than jurisdictional police station by pre-concert and deep planned and the learned Trial Court failed to find out the real reasons behind this course;
- (f) Learned Trial Judge failed to examine the flaws and dishonest manipulations during investigation;
- (g) Learned Trial Judge erred in determining the age of prosecutrix;



- (h) Learned Trial Judge did not properly examine and evaluate the testimony of the prosecutrix, who was the star witness and also of the other witnesses and the findings recorded by the learned Trial Court on material issues of fact are wrong;
- (i) Learned Trial Judge misinterpreted the provisions about presumption contained in Section 29 of the POCSO Act, 2012;
- (j) The prosecution had miserably failed to prove the commission of offence defined under Section 375 IPC, punishable under Section 376(2)(f) IPC but the Learned Trial Judge wrongly convicted and sentenced the appellant for the same;
- (k) The ingredients of Section 376(D) IPC were not made out and the conviction and sentence for the same are wholly unwarranted;
- (l) Prosecution also failed to prove the offences under Sections 370, 342 and 506 IPC;
- (m) Offence under Section 120B IPC had not been proved. In any case the Learned Trial Judge acted in a contradictory manner. This offence is independently punishable even if the act of conspiracy is not done or attempted. Yet, the Learned Trial Judge, having recorded the conviction under Section 120-B IPC, did not award any independent punishment for the said offence.
- (n) Prosecution had failed to prove that qua the appellant, provisions of Section 23 of the Juvenile Justice (Care and Protection of Children) Act were attracted in the case.

6. Besides some of the aforesaid grounds with some difference in language, appellants Shilpi @ Sanchita and Sharad Chandra @ Sharat Chandra also asserted in their appeals that it had not been proved that at the time of allegedly asking the parents of the prosecutrix to take her





to appellant Asha Ram @ Ashumal, they had any knowledge regarding future offences to be committed by him.

7. We have heard the learned counsels for parties at length and with their able assistance gone through record.

### **ARGUMENTS, DISCUSSION AND ANALYSIS**

8. Mr. Devadatt Kamat, learned Senior Counsel instructed and assisted by Mr. Rajesh Inamdar and Mr. Nishant Bora, Advocates for the appellant-Asha Ram advanced a multi-pronged challenge to the prosecution's case, endeavoring to dismantling each and every charge and thus seeking hon'ble acquittal. He advanced arguments in line with the grounds of appeal, inter alia, contending that the event of may 2013, the alleged genesis of the conspiracy, more particularly the events between 02.08.2013 and 09.08.2013, the alleged acts attributed to accused nos. 2 and 3, the events between 09.08.2013 and 14.08.2013, the movement of the prosecutrix with her parents, the event of 14.08.2013, and the alleged meeting of appellant at Manai, with reference to '*Bhootwali Ladki*', do not establish any culpability, direct or indirect; therefore, the offence under Section 370 is not made out, nor is Section 120B attracted; similarly, events relating to the main allegation under Section 376 r/w Section 376D, namely kissing the private part, removal of the salwar, or disrobing the victim, coupled with the Medical Report of the prosecutrix revealing an intact hymen and absence of injuries, do not establish guilt; merely the sole testimony of the prosecutrix, in the facts and circumstances of the present case, cannot be treated as gospel truth without corroboration; imposing the maximum punishment of life imprisonment for the remainder of life under Section 376(2)(f) is disproportionate and without jurisdiction; the offence under Section 376D is not made out; the unnatural conduct of the prosecutrix and her family, both before and after the alleged





occurrence, coupled with other fatal illegalities / defects, namely absence of scientific or FSL testing by the prosecution, failure to summon the FSL and technical team for inspection and DNA analysis of the scene of crime, lack of objectivity and fairness in the investigation conducted by the IO, non-applicability of the provisions of the POCSO and JJ Acts to the present case, and erroneous reliance on the matriculation certificate Exh. P-107A, strike at the very root of the prosecution story; the Ld. Trial Court ought to have correctly determined the age of the prosecutrix; the probable motive for false implication was not properly considered; Sections 342, 354A, and 506 of IPC were not proved beyond reasonable doubt; Material Improvements Masquerading as elaboration were disregarded by the trial Court; the prosecution was required to establish its case beyond reasonable doubt, which it failed to do; and the conviction and sentence of the Appellant – Asha Ram appear to rest on moral grounds.

9. Mr. Vineet Jain, learned Senior Counsel assisted by Mr. Praveen Vyas, Advocate appearing for the appellant Sharat Chandra (co-accused), inter alia, argued that the prosecution has built a case that suggests the co-accused was involved in a long chain of criminal activity (A → B → C). However, they have only proved, if at all, his involvement in act A. For them to be convict, acts B and C, which involve future crime viz. rape, it must be proved that at the time the other co-accused/appellants herein committed act A, they had a clear, conscious knowledge, or intent, to commit the specific subsequent acts B and C. Since no such evidence proving this necessary future intent of their minds has been produced, charges against them qua all the offenses must fail. In other words, at its heart, this argument is a direct challenge to the *Mens Rea* element required by the prosecution. He would rely on the elementary of criminal law viz. *Actus Reus* and *Mens*





*Rea* to canvass that while their actions (asking the parents to take victim to the prime accused) may have constituted an *actus reus*, but the prosecution has failed to prove the necessary corresponding *mens rea* regarding future acts. They can only be responsible for what they knew, or reasonably ought to have known. A successful charge of conspiracy requires proof that all parties agreed, at some point in time, to commit an illegal act (or series of acts). If the co-accused lacked knowledge of the future scope of the crime, the agreement required for a criminal conspiracy clearly does not exist.

9.1. Learned Senior Counsel argued that the deception charge fails at the threshold, at the three stages i.e. neither the FIR nor the NGO report nor even statement under Section 164 CrPC record any interaction between the appellant Sharat Chandra and 'Su'. Section 120B IPC could not have been invoked for a vague, open-ended incident allegedly occurring on 15.08.2013, particularly when the principal offence itself is not established. The appellant committed no harbouring under Section 370 IPC. Ingredients thereof are completely amiss. The allegation is merely that he *sent* 'Su', which is no offence in law. On Section 376D IPC, the appellant was absent from the scene entirely. Moreover, having been acquitted under Section 354 read with Section 34 IPC on the ground of non-presence and non-participation, the same common intention cannot be differently construed to sustain a conviction under Section 376D, the two conclusions are legally irreconcilable. The POCSO charges equally cannot stand, given the admitted position that the appellant was never at the scene of crime. Senior Counsel also pointed out that the subsequent testimonies of the victim and her parents show marked improvement over their earlier Section 161/164 CrPC statements and the original FIR version regarding





the role attributed to his clients, and the same must therefore be discarded to that extent.

9.2. Qua the co-appellant Sanchita, Mr. Kamat learned Senior Counsel assisted by Mr. Deepak Menaria, Advocate would adopt the arguments of Mr. Vinit Jain, except where in conflict with their stand taken qua Asha Ram. He would also argue that she had to join the school only recently in March, 2013 and hardly even knew the appellant Asha Ram enough so as to have meeting of mind with him of any kind. He would urge when the co-accused had no knowledge of the future at all and/or of the full scope of the crime alleged, the ingredients essential qua criminal conspiracy are plainly absent. An alleged conspirator cannot be bound by acts she/he neither knew of nor agreed to do, either by omission or commission. Thus, the entire prosecution case against her collapses on that count alone, is the argument.

10. While, on the other hand, Mr. Deepak Choudhary, the learned State Counsel and Mr. P.C. Solanki, learned counsel for the victim/complainant argued in support of the impugned judgment seeking upholding of convictions of all the appellants on every count with no leniency on the sentence already awarded to them.

11. Before we commence the discussion and analysis, a caveat here. Apart from the arguments noted above, the succeeding part of this judgment canvas a fuller landscape of contentions, many of them common across all three appellants, woven into our discussion and analysis that follows.

11.1. In latter part of this judgment, the convictions of appellant Asha Ram @ Ashumal have not been upheld for offences under Sections 120B, 34 and 376D IPC and Sections 5(g)/6 of POCSO Act and the convictions of appellants Shilpi @ Sanchita and Sharad Chandra @ Sharat Chandra for offences under Section 370(4) read with Section





120B IPC and Section 376D IPC and Section 5(g)/6 and 7/8 of POCSO Act and the same are being set aside. Our discussion and conclusions here after reached against the various other offences is recorded accordingly.

12. Mr. Kamat, learned senior counsel for the appellant contended that the FIR was lodged after inordinate delay and that too at Delhi, a place other than jurisdictional Police station by pre-concert and deep planning and the learned Trial Court failed to find out the real reasons behind this course. We are unable to accept the contention.

13. The learned Trial Court elaborately dealt with the said contention in paras 256 to 260 of the impugned judgment and by recording detailed reasons rejected the contention that the prosecution had failed to explain the delay intervening the commission of offence on 15.08.2013 and the registration of FIR on 20.08.2013 at 2.50 AM.

Summing up its reasons and found as under:

*“Hon’ble Supreme Court has expressed the opinion in the reverent decision of "Deepak vs. State of Haryana, Criminal Appeal No. 65/2012" decided on 10<sup>th</sup> March 2015, the delay in filing of an FIR, in sex crime, is due to various reasons. Two weeks after the incident in the said case, the prosecutor told his mother about the incident, who promptly filed a lawsuit in the police station. In the above episode, the victim's photograph was taken by the accused and recorded her words on mobile too and he was scaring of her with the above evidence. The situation of the case, in hand, is even not different. The victim appears to be scared of the accused's stature and powers and the person whom she worships as god, by doing such a horrible act by him, her thought process will surely get numb. In my humble opinion, considering the facts and circumstances of the case, the prosecution has given sufficient clarification of the delay of 5 days for filing an FIR. Hence, the argument of the defendant is not acceptable. Here, this argument is also given by the learned counsels for the accused persons, if the victim was so scared of accused Asha Ram, why did she come with her father to meet Asha Ram in the ongoing Satsang in Delhi? In my humble opinion, till the girl did not provide information about the incident to her family, she was not confident whether her family members, enchanted with Asha Ram's hypnosis, would rely on her or not. But, once she has reported about the incident to her parents on the pressure of the mother and the parents, who stood by her, resolved by asking the accused Asha Ram to meet him in this regard, then the girl got this courage because her parents are with her, so should go with them and ask Asha Ram why he committed such an act? Certainly, in case of happening of any incident, if the parents of the victim co-operate with her, it encourages her to face the criminal as well as the society. Therefore, the said argument of the defendant is not acceptable.”*





13.1. To add to the above, we are of the view that even if some part of the delay in lodging in the FIR remains unexplained, the same is not fatal to the case, provided the available material against the accused satisfies the conscience of the Court. It seems that this test is also met in the instant case.

14. The prosecutrix had revealed the incident to her mother on 19.08.2013. Her parents wanted to meet appellant Asha Ram @ Ashumal to verify facts by confronting him with the revelations of the prosecutrix. Having been told by the Sewak of appellant Asha Ram @ Ashumal that he was then available at Delhi, the parents of the prosecutrix along with the prosecutrix left Shahjahanpur same day for Delhi. When they reached there, they were told that the Satsang had ended and appellant (Asha Ram @ Ashumal) had gone to Jodhpur. For registration of FIR at jurisdictional police station at Jodhpur, they would have to travel further from Delhi to Jodhpur. That would entail delay in the the registration of FIR at jurisdictional police station, Jodhpur. Obviously, to obviate that delay, the zero FIR was lodged at Kamla Nagar Police Station, Delhi near to the Satsang place.

14.1. In our opinion, the learned Trial Court correctly rejected the contention that the FIR was lodged with undue delay at a non-jurisdictional police station in Delhi, pursuant to pre-concert and deliberate planning. We concur with this finding. The contention to the contrary is accordingly rejected.

15. Likewise, we are unable to accept the ground raised in appeal and as canvassed in course of the arguments that the trial was vitiated by the adverse media propaganda against appellant and; that learned Trial Judge failed in his duty to restrain such adverse media propaganda. If the appellant was aggrieved by any adverse media propaganda, it was open to him to take recourse to appropriate legal proceedings for





preventing the same. If he did not take recourse to law for this purpose or failed in any such attempt, the blame cannot now be laid at the door of the learned Trial Court, who decided the case on its merits.

16. We also find no merit in the contention of the learned senior counsel for appellants that the learned Trial Judge erred in appreciating the evidence; the investigating agency and the prosecution consciously acted in a manner to poison the atmosphere against the appellant and make it impossible to examine the issues of fact and law dispassionately; learned Trial Judge failed to examine the flaws and dishonest manipulations during investigation; did not properly examine and evaluate the testimony of the prosecutrix, who was the star witness and also of the other witnesses and the findings recorded by the learned Trial Court on material facts are wrong.

17. Impugned judgment, mainly in Hindi, typed on legal size paper up to the findings of conviction, runs into 444 pages. It is followed by pages 445 to 449 bearing the sentencing order. In our opinion, the learned Trial Court took pains and fully evaluated and analysed the evidence from every angle and recorded its conclusions consistent with record and relevant law. We are inclined to agree with the same, except of course the findings excluded by way of the caveat recorded above. With that exception and caveat, we reject the contention that the learned Trial Judge erred in appreciating the evidence.

18. On perusal and careful appraisal of the impugned judgment, we are of the opinion that it was rendered after dispassionate examination of the issues of fact and law by the learned Trial Court. We find no worthwhile material therein to support the contention of the learned counsel for the appellant that the investigating agency and the prosecution consciously acted in a manner to poison the atmosphere





against the appellant and make it impossible to examine the issues of fact and law dispassionately. The same is accordingly rejected.

19. It was after completion of investigation that the challan against the appellants was filed in the Court. On perusal of the impugned judgment, we are of the opinion that Learned Trial Judge duly and properly examined and dealt with case from all angles including the investigation part; examined and evaluated the testimony of the prosecutrix and the other witnesses. After due application of mind, Learned Trial Court passed the impugned judgment consistent with the record and applicable law, of course, with the exception/caveat already noted. We, therefore, reject the contention on behalf of the appellants that the Learned Trial Judge failed to examine the flaws and dishonest manipulations during investigation; did not properly examine and evaluate the testimony of the prosecutrix, who was the star witness and also of the other witnesses and the findings recorded by the learned Trial Court on material issues of fact are wrong.

20. It was also submitted that during pendency of the instant appeals in this Court, Mr. Ajay Pal Lamba, the then DCP (West), Jodhpur had published a book titled "Gunning for the Godman, the True Story Behind Asha Ram's Conviction". In his own narration, Mr. Lamba stated in this book that he "immediately swung into action" before the transfer of the Delhi zero FIR to Jodhpur and directed the SHO of PS, Soorsagar to seal and secure the entire campus and sent a team to examine the location and that he had personally filmed the alleged scene of the crime on his mobile phone. The contention is that this narration in the book authored by Mr. Ajay Pal Lamba, the then DCP(West), Jodhpur assumes critical importance as it establishes that the investigative steps at the alleged scene of crime were initiated on 21.08.2013 even before the zero FIR was formally transferred to Jodhpur and before the regular FIR No.





122/13 was registered on 21.08.2013 at 06:15 PM and the same supports the appellant's consistent contention that the investigation was pre-determined and commenced prior to lawful registration of FIR in Jodhpur, thereby vitiating the entire investigative process and the videographed scene of crime was shown to the prosecutrix during her overnight stay in the police station.

20.1. Admittedly, an order dated 10.02.2022 was passed by this Court allowing the appellant's Application No. 1/2021 under Section 391 CrPC for summoning Mr. Ajay Pal Lamba as a witness for proving the facts stated in his book. However, that order was set aside vide an order dated 17.04.2023 passed by the Hon'ble Supreme Court in **State of Rajasthan vs. Asha Ram @ Ashumal**<sup>2</sup>. Thus, the facts stated in his book have remained unproved. In our opinion, the appellant cannot fall back and rely upon the unproved contents of the book in question to question and find fault with the proved investigation of the case.

20.2. We, therefore, reject the appellant's contention that the investigation was pre-determined and commenced prior to lawful registration of FIR in Jodhpur, thereby vitiating the entire investigative process.

21. It was contended that the prosecution had failed to prove beyond reasonable doubt that there was any telephonic communication between appellant Sanchita @ Shilpi and the parents of the prosecutrix wherein the said appellant had asked them to come Chhindwara. We are unable to accept the contention. Prosecution has led sufficient and reliable evidence, including the sworn testimony of PW-12 Sunita Singh and her husband PW-21 Karamvir Singh to show that following missed mobile phone call from appellant Sanchita @ Shilpi, a return call was made to her. She had told about the health problem of their daughter

<sup>2</sup> SLP (Cri.) No. 2044/2022





and had asked the parents of the prosecutrix to come Chhindwara. It has also been established on record that thereafter, the parents of the prosecutrix had actually gone to Chhindwara and met appellant Sanchita @ Shilpi as also their daughter at the School. The mobile phone (No. 7804907062) from/to which the relevant calls were made, was actually recovered/seized by the police from the possession of appellant Shilpi. Quite often people do use the mobile phone numbers registered in others' names. It is, therefore, inconsequential if the said mobile phone was registered in the name of someone else than appellant Sanchita @ Shilpi.

22. Learned Senior Counsel for appellants argued that it was highly improbable that the prosecutrix and her family would have accepted and acted upon the story of the prosecutrix being haunted by ghosts and that the learned Trial Court erred by accepting this story. It was further contended that even otherwise, this part of the story was rendered doubtful owing to the non-examination of Ms. Bhavya Shukla, who was admittedly present when appellant Shilpi had allegedly told the parents of the prosecutrix that she be taken to appellant Asha Ram @ Ashumal for ghost healing. For the reasons given below, we are not inclined to accept this contention.

22.1. Second limb of this contention is taken up first. It was pointed out that Bhavya d/o Shailesh Kumar had written letter dated 29.08.2013 to the District & Sessions Judge complaining that she had been threatened by Karamvir Singh, father of the prosecutrix and Jodhpur Police to depose against the appellant. Similar letters were issued by Shailesh Kumar to the then Hon'ble Chief Justice of India seeking investigation and action against the officers. Further, Shailesh Kumar had filed affidavit Ex D-9 stating that the father of the prosecutrix and his aides had threatened to depose against the accused.





22.2. Qua the second limb of argument, the learned Trial Court, in such circumstances, ought to have, in exercise of its functions under Section 311 CrPC, summoned and examined Bhavya as Court witness. However, it failed to do so. Let us assume, as contended, that the testimony of Bhavya, if examined, would have gone in favour of the appellants and against the prosecution story. If the defence thought so, nothing prevented the appellants from calling her as a defence witnesses. Having not done that, they cannot be heard now to urge that the learned Trial Court, in exercise of its suo motu power under Section 311 CrPC, ought to have summoned Bhavya as Court witness, but failed to do so.

22.3. Things have to be seen from the perspective of the prosecutrix and her family. Indisputably, appellant Asha Ram @ Ashumal was a religious guru, 'Bapu' as they all addressed him. Testimony of PW-21 Karamvir Singh shows that he got influenced by him and had taken Deeksha at Ahmedabad. He had served the appellant for 11-12 years by all means, used to give him at least 10% of his income and sometimes even more. In a satsang at Haridwar, he (appellant Asha Ram @ Ashumal) had told the audience that children who study in Gurukul would make progress and rise. They (Karamvir Singh and his wife Sunita Singh) had got their daughter and younger son admitted to Chhindwara Gurukul (which is named after name of appellant Asha Ram @ Ashumal) for good education and sacraments (sanskaars). His daughter was to be admitted in 8<sup>th</sup> class. However, as the seats in that class were full, she was admitted to the 7<sup>th</sup> class. Indisputably, Karamvir Singh was doing his business and the family was residing at Shahjahanpur (UP). It is not shown if facilities for good education were not available at or near Shahjahanpur. Getting their two children admitted to Chhindwara Gurukul (MP) and their residence in the school



hostel there meant that they would be studying and living away from the family. Not only that, it entailed huge extra expense and logistical difficulties for the family. Despite all this, the family got admitted the two children (prosecutrix and her younger brother) to Chhindwara Gurukul (MP).

22.4. PW-12 Sunita Singh, mother of the prosecutrix, deposed that she had taken Deeksha from Asha Ram in 2002 and knows him since then. Their whole family, (she, her husband and three children) had taken Deeksha from Asha Ram. Ashram of Asha Ram in Shahjahanpur was got built by her husband along with others. She had been listening Asha Ram's pravachan at Ahmedabad, Surat, Nasik, Ujjain, Allahabad, Delhi, Lucknow, Bareilly and Rohtak. The prosecutrix deposed on 11.04.2014 that she too had taken Deeksha from Asha Ram about 6-7 years before that date (meaning thereby in 2007-08).

22.5. Thus, sufficient evidence (unanimous depositions of the prosecutrix, mother and father both) was led by the prosecution to show that parents of the prosecutrix had taken Deeksha from the appellant in 2002 and their daughter, the prosecutrix, took Deeksha in 2006 from appellant Asha Ram @ Ashumal. Obviously, since taking Deeksha, they were his staunch devotees, had been deeply indoctrinated, had held appellant Asha Ram @ Ashumal high in their esteem and had great faith in him and his advice.

22.6. Faith is a powerful force. Powerful enough to suspend even the sharpest of minds. Devotees of religious gurus will often embrace, without question, the most superstitious pronouncements and irrational counsel, including tales of ghosts and the supernatural. What is more striking is that even prudent, scientifically minded individuals are not immune: when they repose deep trust in another, reason quietly yields to belief. This surrender of rationality is all the more pronounced when a





person stands at the edge of despair, trapped in crisis, overwhelmed by difficulty, and desperately searching for answers that logic has failed to provide. It is precisely in such moments of vulnerability that the irrational finds its most willing audience. Devotion thus has a peculiar power to suspend reason. Quite often, devotees of religious gurus would fall prey, without questioning those in whom they have faith. As seems to have happened in the case in hand.

22.7. 'Shri Asha Ramji Gurukul, Senior Secondary School Boys and Girls, Chhindwara' was named after appellant Asha Ram @ Ashumal and obviously was under his control. Shilpi @ Sanchita and Sharad Chandra @ Sharat Chandra accused were the Warden of the girls hostel and Director of the said Gurukul School respectively. For them, appellant Asha Ram @ Ashumal was an important person interested in and concerned with the affairs of the School. They (Shilpi @ Sanchita and Sharad Chandra @ Sharat Chandra) were, therefore, likely to be in touch with him and apprising him from time to time about the affairs of the School, its hostel and the students. Further, they were unlikely to ignore or act against what appellant Asha Ram @ Ashumal had asked in this case (to have the prosecutrix sent to him for ghost healing). Since her admission in 7<sup>th</sup> class, the prosecutrix was a student of 'Shri Asha Ramji Gurukul, Senior Secondary School Boys and Girls, Chhindwara (MP). At the relevant time (in August, 2013) she was in 12<sup>th</sup> class and was an inmate of the School hostel for Girls. Her parents were far away at Shahjahanpur (UP).

22.8. Prosecutrix had suffered a fall in the hostel bathroom on 06.08.2013 and had also complained of dizziness. In such premise, it is quite likely that appellants Shilpi @ Sanchita and/or Sharad Chandra @ Sharat Chandra felt concerned about her health problem and they or either of them apprised appellant Asha Ram @ Ashumal about it. On



being told by latter to have the prosecutrix sent to him for her ghost healing, Shilpi @ Sanchita called the parents of the prosecutrix to Chhindwara. There they were told by appellant Shilpi @ Sanchita about the problem of their daughter and that she had also spoken about the same to appellant Asha Ram @ Ashumal and he had advised that the prosecutrix be brought to him for ghost healing. Later, when they met appellant Sharad Chandra @ Sharat Chandra, he also told them that prosecutrix be taken to appellant Asha Ram @ Ashumal for ghost healing. Learned Trial Court noticed the unanimous testimony of the prosecutrix and both of her parents on these facts.

22.9. As already noted, appellant Shilpi @ Sanchita hostel warden had told the parents of the prosecutrix that she had spoken to appellant Asha Ram @ Ashumal about her problem and that he had advised that she be brought to him for ghost healing. They had also been told by appellant Sharad Chandra @ Sharat Chandra to take their daughter to appellant Asha Ram @ Ashumal for ghost healing. Parents of the prosecutrix had no reason to disbelieve the statement of appellant Shilpi @ Sanchita, hostel warden, who had told them that she had spoken about problem their daughter and that he had advised that she be brought to him for ghost healing. Moreover, they had also been told by appellant Sharad Chandra @ Sharat Chandra to take their daughter to appellant Asha Ram @ Ashumal for ghost healing. Thereafter, the parents of the prosecutrix took her to appellant Asha Ram @ Ashumal at his Ashram in Manai.

22.10. In the given facts and circumstances, there seems nothing improbable if the prosecutrix and her family accepted and acted upon the story of the prosecutrix being haunted by ghosts and had gone to appellant Asha Ram @ Ashumal for ghost healing. We, therefore, reject the contention that the learned Trial Court erred by accepting this story.





23. We also find no merit in the contention that learned Trial Judge erred in determining the age of prosecutrix and had misinterpreted the provision about presumption contained in Section 29 of the POCSO Act, 2012.

23.1. For ready reference, Section 29 of the POCSO Act is reproduced as below:

*“Section 29: Presumption as to certain offences – Where a person is prosecuted for committing or abetting or attempting to commit any offence under Section 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.”*

The Section *ibid* shows that where a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and 9 of the 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. Indisputably, in present case, the appellant has been prosecuted, inter alia, for offences under Sections 5(f)/5(g) punishable under Section 6 and for an offence under Section 7 punishable under Section 8 of the POCSO Act. The presumption under the Section 29, *ibid*, was/is, inter alia, that the appellant had committed the offences unless the contrary is proved. In other words, the presumption under Section 29 is rebuttable.

23.2. Perusal of impugned judgment shows that it is premised on the basis that the presumption under Section 29 of the Act, *ibid*, is rebuttable. This, to our mind, is in consonance with the language, object and spirit of the statute. We, therefore, reject the contention that Learned Trial Judge misinterpreted the provisions about presumption contained in Section 29 of the POCSO Act, 2012.

24. It was argued by learned senior counsel for the appellants that for determination of the age of the prosecutrix, Learned Trial Court wrongly





relied upon **Jarnail Singh v. State of Haryana**<sup>3</sup> contending that in the said judgment, there was no conscious consideration that the the procedure for determination of age of the prosecutix, was the same as prescribed in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 for the child in conflict with law. We are unable to agree to the said contention.

24.1. Perusal of the judgment in **Jarnail Singh** (supra) shows that having observed that even though Rule 12, *ibid*, is strictly applicable only to determine the age of a child in conflict with law, the Lordships of the Apex Court were of the view that the aforesaid statutory provision should be the basis for determining the age even for a child who is a victim of crime as there is hardly any difference so far as the issue of minority is concerned between a child who is in conflict with law and a child who is a victim of crime. It is obvious that it was after conscious consideration and application of mind that the Hon'ble Apex Court had taken the view that the procedure prescribed in Rule 12, *ibid*, of the Juvenile Justice (Care and Protection of Children) Rules, 2007 to determine the age of a child in conflict with law, should also be the basis for determining the age even for a child who is a victim of crime. We, therefore, reject the contention that in the said judgment, there was no conscious consideration about the procedure for determination of the age for a child who is a victim of crime.

25. Learned counsel for appellants also submitted that the POCSO Act, 2015 had come into effect from 01.01.2016 during pendency of the trial before the learned Judge, Special Court. Section 94 of the Act, *ibid*, prescribes the procedure. It was contended that in the face of that provision under the Act, earlier judgment in **Jarnail Singh** (supra) for adoption of the procedure under Rule 12 of the Juvenile Justice (Care

<sup>3</sup> (2013) 7 SCC 263.





and Protection of Children) Rules, 2007 for determination of age of the prosecutrix was not applicable to the case in hand. We are unable to accept this contention.

25.1. For ready reference, Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and Section 94 of Juvenile Justice Act, 2015 are reproduced below:

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007

*"12. Procedure to be followed in determination of Age.--*

*(1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board or as the case may be the Committee referred to in Rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*

*(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.*

*(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-*

*(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;*

*(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*

*(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;*

*(b) and only in the absence of either (i), (ii) or (iii) of Clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.*

*and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the Clauses (a) (i), (ii), (iii) or in the absence whereof, Clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.*

*(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.*

*(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7A, Section 64 of the Act and these rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.*

*(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."*

Section 94 of Juvenile Justice Act, 2015

*"94. Presumption and determination of age-*





(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

25.2. As would be seen, both of these provisions prescribe the same process for determination of the age of the prosecutrix and the only difference between both provisions under Section 94(2) of JJ Act, 2015 and Rule 12 (3) the 2007 Rules, is that under Act, *ibid*, the School birth certificate and the matriculation or equivalent certificates are on equal footing, but under Rule 12(3) of the 2007 Rules, the Matriculation certificate has priority. Further the rule, *ibid*, provides the birth certificate from school should be from the school other than a play school and that the Matriculation certificate has priority over birth certificate from school. In our opinion, the evidentiary value of the Matriculation certificate showing date of birth is not diminished, merely because under Section 94 of the JJ Act, 2015, date of birth certificate from the school has also been added thereto. To our mind, in case of their variance, the Court has to look into and evaluate the relevant material available on record and decide the question of date of birth appropriately.





25.3. In present case, learned Trial Court referred to the photostat copy Ex D/8-A of the entry in the Scholars' Register of Shri Shankar Mumukshu Vidyapeeth, Shahjahanpur produced by the defence showing the victim/s date of birth as 06-08-1995. This document (Ex D/8-A) purports to be copy of the same entry Ex P/150 which had earlier been produced by the prosecution. Their comparison, in our opinion, is quite revealing rather disturbing. Ex P/150 only shows that the victim was admitted on 06.04.1999 to Nursery class of the Vidyapeeth and promoted on 10.04.2000, with words 'passed'. Of course, in the line below, against the printed letters 'KG' (short for Kindergarten) date '10-04-2000' was also mentioned and nothing more. As against this, Ex D/8-A, produced by the defence and purporting to be the Photostat copy of the same entry Ex P/150), further mentions about the victim's admission to KG on 10.04.2000, promotion on 10.05.2001; admission to class I on 10.5.2001 and promotion on 26.03.2002. Obviously, some times after the issue of Photostat copy Ex P/150 of the entry, the aforesaid additions/ changes were made in the Scholars' Register of Shri Shankar Mumukshu Vidyapeeth, for extraneous reasons.

25.4. Learned Trial Court found that DW-5 Jaya Kamat Principal of the Vidyapeeth was unable to explain the various flaws and discrepancies about the students' dates of birth etc. pointed out in School Scholars' Register. It then opined that entry Ex D/8A pertaining to the prosecutrix did not inspire confidence and that merely on its basis, disbelieving the Marticulation certificate (showing the victim's date of birth as 04.07.1997) was not appropriate. Learned Trial Court also observed that the relevant record of victim's admission to class II of Saraswati Shishu Mandir, transfer certificate of Shri Pratap Singh Memorial Secondary School, Kharkhoda (Haryana), transfer certificate of Sant Shri Asaram Gurukul, Chhindwara consistently showed her date of birth





as 04.07.1997. It opined that from class 2 of Saraswati Shishu Mandir to class 12 of Sant Shri Asaram Gurukul, the victim's date of birth was recorded as 04.07.1997. Learned Trial Court also observed that Photostat of entry Ex P-150 in the Scholars' Register of Shri Shankar Mumukshu Vidyapeeth, Shahjahanpur only shows that the prosecutrix had been admitted only to the Nursery class and that in Rule 12(3)(A) (II) of the Juvenile Justice (care and Protection of Children) Rules, 2007, certificate of play school has not been given any recognition.

25.5. Thus, even by retrospective application of Section 94 (2) of JJ Act, 2015 and the process prescribed therein for determination of the age of the prosecutrix, the result is the same (victim's date of birth being 04.07.1997) as it would have been under Rule 12 of the Juvenile Justice (care and Protection of Children) Rules, 2007.

25.6. The ratio of judgment in the case of **Jarnail Singh** (supra) relied upon by the learned Trial Court would, therefore, be applicable in the instant case also.

25.7. In **Jarnail Singh** (supra), it was also held that if, in the scheme of options under Rule 12 (3) an option is expressed in the preceding clause, it has over-riding effect on the option expressed in the subsequent clause. The highest rated option would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child is the highest rated option. In case the said certificate is available, no other evidence can be relied upon.

25.8. The view taken in the case of **Jarnail Singh** (supra) for determination of the age of the prosecutrix was also taken in **Mahadeo v. State of Maharashtra & anr.<sup>4</sup>, State of Madhya Pradesh v.**

<sup>4</sup> (2013) 14 SCC 637.



**Anoop Singh<sup>5</sup>** and **Vishal Gund @ Aman v. State of Rajasthan<sup>6</sup>**

which have also been relied upon by the learned Trial Court.

25.9. Such being position, we are of the opinion that the process/procedure for determination of age of a child victim laid down in the case of **Jarnail Singh** (supra) with reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 would also apply for determination of the age of the prosecutrix even after POCSO Act, 2015 had come into effect from 01.01.2016, except for treating the birth certificate from school on the footing of matriculation certificate. By giving reasons cogent enough, it has been held that even by retrospective application of the Act, the result about the age/date of birth of the prosecutrix would be the same i.e. it being 04.07.1997

25.10. We, therefore, reject the contention that in the face of that provision under the Act, earlier judgment in **Jarnail Singh** (supra) for adoption of the process/procedure under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 for determination of age of the prosecutrix, was not applicable to the case in hand.

25.10. Para 125 of impugned judgment shows that in **Asha Ram @ Ashumal vs. State of Rajasthan<sup>7</sup>**, an order dated 15.10.2014 was passed by the Hon'ble Supreme Court allowing the appellant's prayer for summoning of documents in which date of birth of victim was given differently from what is alleged by the prosecution. Pursuant thereto, those documents were produced in defence. The same were duly taken into consideration by the learned Trial Court.

25.11. Learned Trial Court also referred to relevant documents on record, from class 2 of Sarswati Shishu Mandir to class 12 of Sant Shri Asa Ram Gurukul, including the High School examination certificate of Secondary Education Board, Madhya Pradesh produced by the

<sup>5</sup> (2015) 7 SCC 773.

<sup>6</sup> (2013) SCC OnLine Raj 3930.

<sup>7</sup> SLP (Crl.) No. 3517/2014.





prosecution and found that in all of them, the date of birth of the victim is mentioned as 04.07.1997, thus showing that on 15.08.2013, she was a child (below 18 years of age).

25.12. As noticed above, Learned Trial Court also referred to various documents produced in defence to show that on the relevant date (15.08.2013), the prosecutrix was not less than 18 years.

25.13. Turning now to the criticism against relevant documents produced by the prosecution to prove the age of the prosecutrix, the learned Trial Court also observed that in the instant case, the accused persons want to convince the Court that the father of the prosecutrix, intentionally, years ago wrote the age of his daughter less so that in future, if rape would be committed with her, then he can have the accused punished by treating her as a child under the provisions of the Protection of Children from Sexual Offences Act, 2012. We are of the considered opinion that it would be absurd, preposterous and the height of perversity to attribute any such motive to the father of the prosecutrix. Any such suggestion/attempt has, therefore, to be rejected out of hand.

25.14. Para 107 of impugned judgment shows that Criminal Revision No. 514/2014 had been filed by the appellant against an order dated 08.05.2014 passed by the learned Trial Court dismissing his application under Section 34 of the POCSO Act, 2012. Appellant's revision petition was dismissed vide order dated 15.05.2014 passed by the learned Single Judge of this Court. Relevant part thereof is as under:

*"A collective reading of Section 7A of the JJ Act 2000, Section 34 of the POCSO Act, 2012 and rule 12 of the JJ Rules, 2007 in the light of the law laid down in Jarnail Singh's case (supra) of the Apex Court, it can be said that when the matriculation or equivalent certificate of the prosecutrix has been filed by the prosecution which has not been denied by the prosecutrix then no more enquiry is needed under Section 7A of the JJ Act, 2000 and it is only during the course of the statement of the prosecutrix, by her cross examination, the defence can challenge the age mentioned in her matriculation certificate to be false."*





The aforesaid finding recorded by the learned Single Judge, is nonetheless the finding of this Court. The said order having not been challenged has attained finality.

26. It was also argued rather strenuously that genuineness of the Matriculation certificate (of the prosecutrix) had not been proved and yet the learned Trial Court wrongly relied upon the same. Again, this contention is liable to be rejected.

26.1. Para 54 of the impugned judgment referring to the testimony of PW-35 Nitin Dubey, the then SHO, shows, *inter alia*, that on 25.08.2013, he had gone to the house of victim at Shahjahanpur; when he asked for her original Matriculation certificate, the prosecutrix told that she would herself need the original for further studies, etc. and when required, she will provide the said original certificate. She gave its copy, which was compared with the original. The said copy is Ex P-107 and the original document (Matriculation certificate) is Ex P-107/A. Learned Trial Court rejected the appellants' objection against production of these documents by observing/holding as under:

*“Both the above documents were displayed in the testimony of PW-35 Nitin Dave on 4-6-2015 and 14-5-2015, respectively, on which the objection was raised that the said documents are not related to the witness, hence the said The documents can not be displayed in evidence by the said witness.*

*In the humble opinion, the said documents have been issued by Madhya Pradesh Board of Secondary Education Bhopal, which fall under the category of public documents. Therefore, the said documents issued by the said State Institution can be displayed in the evidence. Apart from this, both of the above documents had been displayed as evidence on 14-7-2015 by PW-33, Vivek Sharma . Therefore, the said baseless objection of the defense party is rejected.”*

26.2. To be noted here that under Section 57 of the Evidence Act, the Court shall take judicial notice, *inter alia*, of all seals which any person is authorised to use by the Constitution or an Act or Regulation having the force of law in India. Section 56 of the Act, *ibid*, provides that no fact of which the Court will take judicial notice need to be proved. Section 94 of the POCSO Act, 2015 does not prescribe any new or





additional procedure/conditions for admitting into evidence the Matriculation certificate issued by the concerned examination Board.

26.3. In this case, the Matriculation certificate of the prosecutrix Ex P-107/P-107A bears the seal of the Board of Secondary Education, Madhya Pradesh, Bhopal which is judicially noticeable. This being the position, we are unable to accept the contention that the Matriculation Certificate Exh-P-107-A (original) of the prosecutrix and its copy Ex P-107 were wrongly admitted into evidence and taken into consideration by the learned Trial Court.

26.4. Learned Trial Court also referred to various documents produced in defence to show that on the relevant date (15.08.2013), the prosecutrix was not less than 18 years. It then took pains to deal with them one by one, duly noted their respective infirmities and weak evidentiary value, recorded reasons and justification on the basis of which the same were not given credence over the documents produced by the prosecution. After elaborate discussion and evaluation of evidence led and contentions from both sides (from para 107 to 186) in the light of relevant law, the learned Trial Court recorded a firm finding in para 187 of the impugned judgment that the date of birth of the prosecutrix is 04.07.1997. In other words, she was below 18 years of age at the time of commission of the offences.

26.5. We are of the opinion that the learned Trial Court followed the correct course of action for determination of the age of the prosecutrix and rightly believed and accepted the aforesaid evidence led by the prosecution showing her date of birth as 04.07.1997. We are inclined to agree to the same, uphold the said finding recorded in the impugned judgment and reject the contention that learned Trial Judge erred in determining the age of prosecutrix.





27. Having upheld the finding that date of birth prosecutrix was 04.07.1997, we reject the contention that the provisions of the POCSO Act and the JJ Act are not applicable to the case.

28. Learned Senior Counsel for appellants contended that the record negatives the story that the prosecutrix had gone to Haridwar in May, 2013 in a mixed group of 15-20 students (boys and girls) from the school and there she had met appellant Asha Ram @ Ashumal, which according to him, was the genesis of this case. In this connection, he pointed out to the relevant parts of the statement of prosecutrix in her statements (original in Hindi - transliterated in English) under Section 161 CrPC and during her cross-examination in Court:

**“Statement under Section 161 CrPC :**

*“Is se pehle jab maen May-June, 13 mein unke Haridwar Ashram gai thi, tab unhon ne kamre me bulakar chhone kee koshish kee, gaal par haath phera par maen ne socha Guru haen, Sant haen, bacha maan kar pyar kar rahe haen. ”*

x-x-x-x-x

**Cross-examination in Court:**

*“is prakar us samay Haridwar me Bapoo se teen baar mile the. In teenon bar jab mile, tab samoohi kroop se mile the. Yeh kehna galt hae ki Haridwar meen ekant mein Bapoo se akele milna hua ho. Maen Haridwar mein Bapoo se ekant mein kamre mein nahi milee thee.”*

28.1. We are unable to accept this contention also. The prosecutrix swore in the Court that she had gone to Haridwar in 2013 in a mixed group of 15-20 students (boys and girls) from the school and met appellant Asha Ram @ Ashumal there thrice, collectively each time. This testimony could not be shaken in cross-examination. Mere want of further evidence for its corroboration and/or absence its reference in application for leave Ex P-85, document of information about victim's outside tour Ex P-113, handwritten complaint dated 19.08.2013, zero FIR registered at Delhi, NGO report dated 20.08.2013 Ex D-4, victim's statement under Section 164 CrPC Ex P-7 and FIR dated 20.08.2013 registered at Jodhpur would not, in our opinion, falsify the sworn testimony of the prosecutrix.





28.2. Further, in our view, unless something untoward/unpleasant had happened on that visit to Haridwar when the prosecutrix met appellant Asha Ram @ Ashumal there in May, 2013, the same would have no material bearing with commission of the offences by the appellants in August, 2013, for which the appellants were tried,. It is, therefore, inconsequential even if, on this point, there had been some discrepancy inter se the statement of the prosecutrix under Section 161 CrPC and her deposition during cross-examination in Court, as reproduced above. In any case, any such discrepancy would not falsify or give rise to any reasonable doubt in the prosecution case at the trial.

29. Crux of the prosecution case has two parts-

(a) appellants' Shilpi @ Sanchita and Sharad Chandra @ Sharat Chandra had suggested to the parents of the prosecutrix to take her to appellant Asha Ram @ Ashumal for ghost healing;

and

(b) the offences committed on 15.08.2013 by appellant Asha Ram @ Ashumal in his kutiya at Manai Ashram.

29.1. Let us delve into these now.

30. PW-12 Sunita Singh, mother of the prosecutrix, deposed that on 06.08.2013, there was a missed call from appellant Shilpi on the phone of her son Somveer. On being called back, she had said that all members of the family should start chanting Maha Mrityunjay Mantra. On 07.08.2013, she (appellant Shilpi) called again and told her that the health of the prosecutrix was very bad and they should come to Chhindwara soon. This conversation took place with her and her husband. She had also talked to her daughter (proscutrix), which was arranged by appellant Shilpi. Her daughter also had told "health is very bad, the best doctor was to be visited, you come soon". On 08.08.2013, she and her husband (PW-21 Karamaveer Singh) reached Chhindwara





at about 08:30/09:00 PM, stayed in the boys' hostel. Later, they talked to their daughter (prosecutrix) who told that her health was bad at that time. Next day (09.08.2013), she had met appellant Shilpi in the girls' hostel. She then told in the presence of the prosecutrix that the latter was under the influence of evil spirits; she had a talk with Asha Ram (appellant Asha Ram) and he had advised that the prosecutrix be brought to him. PW-21 Karamveer Singh also deposed that on 09.08.2013, they had met Shilpi. He corroborated the testimony of his wife (PW-12 Sunita Singh) about the conversation with appellant Shilpi. He also deposed that thereafter, they had met appellant Sharad Chandra at the Gurkul. He too told that Asha Ram (appellant Asha Ram) had desired that the prosecutrix be brought to him for ghost healing. PW-5 'SU' (prosecutrix) deposed in the same vein.

31. On what happened after the entry of the prosecutrix into the kutiya till her exit, the relevant part of her deposition in Court verbatim (translated from Hindi) is as under:

*"12.04.2014.....I was sitting near the staircase, then by beckoning from back side door Asha Ram called me. First of all I went to washroom which was near to the said room. Thereafter I went inside the room, then Asha Ram asked me to go and see what my mother and father were doing. Thereafter, I went there to see them, then I saw that father had gone and mother was sitting there. Mother was sitting at the gate of the garden. Then I came back and told Asha Ram that mother was sitting and father had gone. At that time Asha Ram had already switched off the light of the room, and he was resting on the bed. Then he asked me to sit on the bed in his side, then he started touching my hand and he was talking to me. He told me 'what will you do after studying, I will make you orator. You may dedicate yourself to me, and you will stay with us, I will make your life.' He was talking, then he stood up and closed the door. Thereafter, he started acting foul with me. First of all he took out his clothes, then I cried and asked, 'Asha Ram what are you doing.'*

*Note: At this stage the witness started weeping. Therefore the statement of the witness was stopped and drinking water was given to her, thereafter she was asked whether or not she was in the position to give her statement, then the witness told that she would give her statement.*

*Then he pressed my mouth. Then he threatened me and told me 'if you will raise your voice then you will see what will do with you. I will get your mother and father murdered. Your whole family will disappear, and you will know nothing. Then he started molesting me, he was touching my whole body with his hand.*

*He was touching my private part. And he was kissing me and he hugged me. He put his hands in my clothes and started molesting me. Then he started pressurizing me to touch his private part and suck it. He had kissed at my private part, on my mouth and at all the places of my body. I was weeping, and requesting him to let me go. and was telling him 'we consider you as our god, what are you doing?' Then he continued to molest me, and he let me go after about one or one and quarter hour. At*





*the time of leaving, he told me 'don't tell anyone otherwise you will see.' He told me 'set your hair and clothes in order; then you may go and don't tell anything to anyone.' Then I came out from the back door from where I had gone inside. Outside the room, there was Baramda in front of the gate where Parkash was sitting.*

*Note: At this stage, on behalf of the prosecution adjournment has been sought for remaining statement. The same was opposed on behalf of accused persons, and submitted that it was only 4.00 O'Clock therefore the examination-in-chief should be continued, but the Special Public prosecutor submits that the witness is not in the position to continue her examination-in-chief, therefore the time may be allowed. Therefore the examination-in-chief of the witness has been deferred.*

*Dated: 15.04.2014*

*In continuation of 12.04.2014 the examination-in-chief of witness is continued.....*

*Question: Whatever happened with you inside the Kutiya, how did all those things affect you?*

*Note: The Ld. Counsel objected vehemently on behalf of accused persons and submitted that this question is irrelevant and there is no meaning of this question, because the complete incident of inside the room has already been narrated by the witness, and thereafter, asking this question is not relevant in accordance to law, while it has been submitted on behalf of prosecution that this question is relevant in accordance to law.; and this is not a leading question, therefore the permission may be given. Both the parties have been heard, the permission of asking question is granted.*

*Answer: I was shocked with this incident that a person, whom I treated as God, had committed such an obnoxious act. He made an attempt to undress me, removed my salvaar. I was not able to think.*

*When I came out from the room, then my mother was sitting in the garden at the gate. Thereafter, I came to the room with my mother.....”.*

32. At 10:30 in the night, the kutiya/room held only two souls. The appellant/Asha Ram and the minor victim. The door was shut. The bolt was drawn. The lights were extinguished. Within those four walls, in that darkness, only they knew what transpired. No third eye witnessed it; no third voice could speak to it. In such circumstances, to demand corroborative ocular evidence before believing the victim would be to demand the impossible. That would be punishing her for the very isolation her abuser engineered.

32.1. And then there is the question that answers itself: why would a Asha Ram summon a young girl alone to his room almost in the dead of night? The question is not rhetorical. It is damning. Innocence does not seek darkness and bolted doors. The intent writes itself across these facts in letters too large to ignore. The facts need no embellishment. They speak. Loudly, clearly, and with the force of truth.

32.2. Since none else other than appellant Asha Ram @ Ashumal and the prosecutrix was in the kutiya, which had been shut and bolted from





inside and the lights had been switched off, except the two of them, no one could/would know or have known what happened inside the kutiya. The version deposed to by the prosecutrix could not, therefore, be discarded or doubted for want of ocular corroborative evidence. The lengthy cross-examination of PW-5 (prosecutrix), her mother PW-12 and father PW-21 was conducted on numerous dates. None-the less, their testimony on material particulars could not be shaken. The victim's account, therefore, stands unimpeached and cannot be discarded merely for want of independent witnesses to a crime committed in deliberate secrecy.

33. PW-21 Karamvir Singh, his wife PW-12 Sunita Singh and the prosecutrix were unanimous in saying that on message from the appellant, on the date of occurrence in the evening they had gone to the Ashram and met the appellant. After satsang, when other devotees were leaving, the appellant had asked them to stay on and follow him towards kutiya. On way to kutiya, they were made to sit on the concrete path and do jaap. Later, the prosecutrix was asked to do the jaap behind the kutiya while her parents were told to continue jaap at the same place i.e. sitting on the concrete path. Again this evidence remained unimpeached. In our opinion, the same was rightly relied upon by the learned Trial Court.

34. It was pointed out that since the family of the prosecutrix and she herself had met the appellant (Asha Ram @ Ashumal) on 14.08.2013 at Manai Ashram, in the normal course, they would have gone back the same day. They had no reason to stay on for the night at Manai and meet the appellant next day. On that basis, it was contended that story about the incident of 15.08.2013 was doubtful. We are unable to accept this contention.





35. Karamveer Singh father, Sunita Singh mother along with their daughter (prosecutrix) had travelled all the way from Shahjahanpur (UP) to Manai Ashram in Jodhpur district via Delhi (distance stated to be about 1600 km) for ghost healing of the prosecutrix by the appellant. No doubt, they had reached Manai Ashram (Jodhpur district) and met the appellant on 14.08.2013. By travelling the long distance of about 1600 km and having reached Manai on 14.08.2013, naturally they (Karamveer Singh, Sunita Singh and their daughter) would have been considerably tired and in need of rest.

35.1. That apart, given the purpose of their going to Manai and meeting the appellant (solving the problem of ghost haunting of the prosecutrix) and the attending circumstances, there seems nothing unusual or improbable if they stayed on for the night of 14.08.2013 at Manai, to take the much needed rest, avail of opportunity for attending the appellant's satsang next day (on 15.08.2013) too and also seek any further advice from him for solving the problem of ghost haunting of the prosecutrix. During cross-examination of PW-6 Ranjit Singh resident of Manai, it was suggested that during Satsang on 14.08.2015, the appellant (Asha Ram @ Ashumal) had asked him to make arrangements for the stay of the prosecutrix and her parents. He admitted the suggestion and also stated that arrangements asked for their stay were actually made. This suggestion on behalf of the appellants and the answer thereto given by the witness is a clincher. It shows that the prosecutrix and her parents had actually stayed at Manai for the night of 14.08.2013. The prosecutrix and her parents were not cross-examined to question or dispute the reason of their staying at Manai for the night of 14.08.2013. We are of the opinion that in the given facts and circumstances, their stay at Manai for the night of 14.08.2013 was not unjustified and that there is no ground to assume that they had





done so only to falsely implicate appellant Asha Ram @ Ashumal for commission of the offences.

36. Learned counsel for appellants pointed out that at the time of her medical examination the prosecutrix on 20.08.2013, her hymen was found intact and there was no visible mark of injury on her body. On that ground, it was contended version of the prosecutrix qua the happenings inside the kutia was suspicious. We are unable to accept the contention.

37. Learned Trial Court noted that Medical examination on the body of the prosecutrix (on 20.08.2013) revealed that her hymen was intact and no external injury was present. Having noted these facts, the learned Trial Court further observed that victim had not given any statement that anything was put in her private parts and that she had only said that her private part was kissed by the appellant (Asha Ram @ Ashumal) and he tried to get his private part sucked by her.

38. Admittedly, there were/are no allegations of inflicting/causing of any bodily injury by the appellant to the prosecutrix or that there was any forcible penetration of the penis into her vagina. In such circumstances, the deposition of the prosecutrix about commission of the offences on 15.08.2013 by the appellant cannot be discarded merely because at the time of her medical examination on 20.08.2013, her hymen was found intact and there was no visible mark of injury on her body. The contention to that effect is, therefore, rejected.

39. It was contended that no scientific or FSL test was conducted by the prosecution, no FSL and technical team summoned to inspect for DNA analysis of the scene of crime. The prosecution story was, therefore, not free from suspicion. This contention is equally untenable. The offences had been committed on 15.08.2013. Following receipt of zero FIR from PS Kamla Nagar, Delhi, regular FIR No.122/13 of the case





was registered at Police Station (West) Jodhpur on 21.08.2013. Police investigation of the case commenced thereafter. Considering the manner of commission offences and the time gap of 6 days upto commencement of investigation (which stood explained, as already held above), and peculiar facts and circumstances of the case, after a time gap of 6 days of commission offences and following commencement (on 21.08.2013) of investigation, any subsequent scientific or FSL test and/or DNA analysis of the scene of crime, was unlikely to serve any useful purpose. In such circumstances, we are of the opinion that want of any such test/analysis did not make any dent in the prosecution case. Accordingly, we repel the contention that for want of any scientific or FSL test, the prosecution story was not free from suspicion.

40. Learned senior counsel for appellants pointed out several inconsistencies /discrepancies as below:

(a) *inter se* versions of the prosecutrix at various stages- report of the incident lodged with the police, zero FIR lodged at Delhi, NGO report, her statement recorded under Section 164 CrPC and the FIR lodged at Jodhpur vis-à-vis the deposition of the prosecutrix in Court;

(b) discrepancies inter se the statements of PWs Sunita Singh and Karamvir Singh, their own statements to the police under Section 161 CrPC and the deposition in Court. Furthermore, several discrepancies inter se the depositions of prosecutrix, PWs Sunita Singh and Karamvir Singh in the Court were also pointed out.

Basis above, it was contended that the prosecution story was rendered highly doubtful. We are unable to accept the contentions.

41. To test the above argument, let us dive a little deeper by seeing the relevant testimony. Following are the inconsistencies and discrepancies pointed out by Learned senior counsel for appellants:





**A. PW5/'Su'-prosecutrix:**

**Handwritten  
Complaint dated  
19.08.2013  
(@Pg. 1, CC-A)**

On the night of 8-8-13, between 10 to 11, my mother-father reached Gurukul, I had spoken to them on phone. On the morning of 9-8-13, my mother-father came to take me from the Girls Hostel. Then they spoke to "Shilpi". Shilpi said that there is a shadow of ghosts-spirits over Supriya, regarding which we have informed Asha Ram and he has called Supriya. Shilpi said wherever Asha Ram is, take her to him quickly.

**Statement under  
Section 164  
CrPC dated  
20.08.2013  
(@Pg.32-33,  
CC-A)**

Then on 8th August 2013, my parents reached there at night. They were accommodated in the school, and I was in the girls' hostel. In the evening, Shilpi made me talk to my parents over the phone. Then the next day, my parents came to the girls' hostel to take me. Then Shilpi didi told my parents that I was under the shadow of spirits, and this was conveyed to Asha Ram Asha Ramji, and he had called me.

**Statement  
under Section  
161 CrPC dated  
21.08.2013  
(@Pg.40-41,  
CC-A)**

On 8/8/13, my parents came to Chhindwara Ashram but were not allowed to meet me. I only spoke to my father through Vidya's mobile. On the morning of 9/8/13, between 9 and 9:30, I met my parents, and then Shilpi told them that I was under the shadow of a ghost and that Asha Ram had called us. She said we have to go wherever Asha Ram is. She tried to find out about Asha Ram, but could not get any information. Then my father asked the director, who said that Asha Ram would be in Delhi on the 12th-13th. That day, around 11-11:30, we left Chhindwara Ashram for our home in Azizganj.

**Deposition of  
the Prosecutrix  
(PW-5) dated  
11.04.2014  
(@Pg.59, CC-A)**

Then on 8th August, my father and mother had come to Chhindwara and stayed in the boys' hostel. That day they did not meet me. They met me the next day, i.e., on the morning of 9th August. My parents had reached Chhindwara on the night of 8th August. When my parents came to meet me, they met Shilpi didi in her office on the same day, i.e., the 9th. I was also there with them at that time. Then Shilpi didi told my parents that I was under the shadow of spirits and that she had spoken to Asha Ram, and that they should take me to him immediately, as he had called, and that there was no need to go anywhere else. Then my mother, father, and I went to my school. Then my father met Sharad sir. He told my father that I was under the shadow of spirits, and that they had spoken to Asha Ram, that he had called, and that I should not be taken anywhere else. Then my father asked Sharad sir where Asha Ram was, and he said to talk to





Shiva, he will tell where Asha Ram is, because he knows about Asha Ram's satsang. Then we left Chhindwara on 9th August.

**Date: 09.08.2013**

On 9-8-13, I reached my home Shahjahanpur. Then father found out where Asha Ram is, and that he will come to Delhi on 12-8-13

Then on 8 August 2013, my parents reached there at night. They were accommodated in the school and I was in the girls' hostel. In the evening, Shilpi made me talk to my parents on the phone. Then the next day, my parents came to the girls' hostel to take me. Then Shilpi didi told my parents that there is a shadow of spirits on me and this was told to Asha Ram Asha Ramji and he had called me.

On the morning of 9/8/13, between 9 and 9:30, I met my parents. Then Shilpi told them that there is a shadow of a ghost on me and Asha Ram has called us. You have to go where Asha Ram is. She tried to find out about Asha Ram, but could not find out. Then father asked the director and found out that Asha Ram will be in Delhi on 12-13. That day, around 11-11:30, we left the ashram in Chhindwara for our home in Azizganj.

On the morning of 9/8/13, between 9 and 9:30, I met my parents. Then Shilpi told them that there is a shadow of a ghost on me and Asha Ram has called us. You have to go to where Asha Ram is. She tried to find out about Asha Ram, but could not find out. Then father asked the director and found out that Asha Ram will be in Delhi on 12-13. That day, around 11-11:30, we left the ashram in Chhindwara for our home in Azizganj.

**10.08.2013**

On 9-8-13, I reached my home Shahjahanpur. Then father found out where Asha Ram is, and found out that he will come to Delhi on 12-8-13.

Then my parents took me home. My parents talked on the phone to a servant of Asaram Asha Ram named Shiva, and he told that Asaram Asha Ram is going to come to Delhi on 12 August 2013.

Then my parents took me home

We reached home next morning.

**11.08.2013 to 13.08.2013**

Then father found out where Asha Ram is, and found out that he will come to Delhi on 12-8-13. When we reached Delhi on 13-8-13, we found out that he

Then we came to Delhi. Asha Ramji was not in Delhi. Then my father talked to Shiva, who called us to Jodhpur.

My parents talked on the phone to a servant of Asaram Asha Ram named Shiva, and he told that Asaram Asha Ram is going to come to Delhi on 12

The next day, father asked Shiva on the phone about Asha Ram. Shiva is a servant of Asha Ramji, who stays with Asha Ramji. He knows where





is in Jodhpur (Rajasthan). Then Shiva, who stays in the service of Asha Ram, told us, 'You come to Jodhpur quickly.

August 2013.

Asha Ram is. My father has talked to him before as well. I also know him. Last year, in May-June, we girls went from Gurukul to meet Asha Ram at Haridwar Ashram, and I had talked to him then as well. Shiva told us that Asha Ram will be in Delhi on 12-13.

**14.08.2013**

On 14-8-13, we reached near Manai village ahead of Jodhpur, where Asha Ram had come. When I reached there, the gate was closed and all the sadhaks were standing outside. Then father talked to Shiva on the phone, and he opened the gate.

A little ahead of a village named Manai in Jodhpur, there is Asha Ramji's cottage where he was staying.

...On the morning of 14, we reached Jodhpur. Got ready in the railway station waiting room. Father talked to Shiva, then he told that here in Manai is Asha Ramji's cottage, and he himself noted down the address of Asha Ramji's cottages. We talked to an auto driver, but he didn't know any address, then we made an auto driver talk to Shiva, and Shiva explained the address to him. We came to Manai from him. Manai was about 30-35 KM from Jodhpur, it took 1-1:30 hours to reach. We reached the given address, which was like a big farmhouse with a lock on the gate. We were not allowed inside, then we made the gatekeeper talk to Shiva on the phone, then we were allowed to come inside.

And on the morning of 14 August, we reached Jodhpur. Mommy, Daddy, and I were all together. On 14 August, we reached Jodhpur around 10:30-11 in the morning. Then father talked to Shiva on the phone and asked where Asha Ram is, and Shiva explained the full address of Asha Ram to father. Then we reached Manai Ashram by auto, as told by Shiva. We reached Manai Ashram around 2-2:30 in the afternoon. The outer gate of Manai Ashram was closed and about ten to fifteen people were waiting at the gate. Then father called Shiva and told him that we have reached here, but the gate is closed. Then Shiva said that he will get the gate opened. After a little while, the gate was opened, and we went inside.





**B.** The discrepancies pointed out in versions of PW 12 Sunita Singh and PW 21 Karamveer Singh in their police statement under Section 161 CrPC and the depositions in Court are on following points:-

Statement of PW-12 (Mother) under Section 161 CrPC dated 21.08.2013 (Pg.152-153, CC-A)	Evidence of PW-12 (@Pg.165-168, CC-A)	Statement of PW-21 (Father) u/S.161, CrPC (@Pg.244-245, CC-A)	Evidence of PW-21 (@Pg.256-258, CC-A)
<b>Date: 09.08.2013</b>			
<p>The next day in the morning, we left for Gurukul Chhindwara and reached around 8:00 in the evening. We did not meet Supriya; spoke to her on the phone, and she said that she had felt dizzy, but now she was fine. We stayed at the Gurukul; Supriya was in the hostel, which was 6-7 km away from there. In the morning, we met Supriya, it was probably on 8/8/13. Shilpi told us that Supriya was under the shadow of spirits. This matter is known to Asha Ram, and we have to take Supriya to meet Asha Ram. My husband, Karmveerji, inquired about Asha Ram, and Supriya's school director told him that he might go to Delhi on the 12th-13th. That day, we took Shilpa (Supriya) along and returned to Shahjahanpur. We</p>	<p>Then, on 8th August, at around 4:30 AM, the two of us departed for Chhindwara, and we reached Chhindwara at around 8:30-9:00 PM. In Chhindwara, we went directly to the boys' hostel. We stayed at the boys' hostel that night. On the same day, my husband and I spoke to our daughter, which happened at around 10:30 PM. Then, from there, when I inquired about my daughter's health at the boys' hostel, they arranged for us to speak to our daughter. When we asked our daughter over the phone about her health, she said she was fine. We then said that we would not let her come immediately and that we would come in the morning. The next morning, I went to the girls' hostel, which was on 9th August. There, I first met Shilpi, inside the girls'</p>	<p>On 8/8/13, my wife and I departed by car from Shahjahanpur and reached Chhindwara Ashram at around 9:00 AM. We stayed at the Gurukul, and from there spoke to Supriya over the phone. She said that nothing had happened, just that she had felt a little dizzy, but she was now fine. At night, we did not meet Supriya. We stayed at the Gurukul, while Supriya's hostel was 6-7 km away. On 9/8/13, my wife and I went to meet Supriya. We met her at around 8:30-9:00 AM. Shilpi informed us that "there is a shadow of spirits in the hostel, and the same shadow has also come on Supriya. That is why Supriya became dizzy and fell in the bathroom. Asha Ram has been informed about her condition. He has told her a mantra to</p>	<p>Then, on the next day, 8th August 2013, my wife and I departed by car from Shahjahanpur to Chhindwara. We reached Chhindwara at around 9:00 PM that day. At the Gurukul gate in Chhindwara, we inquired about our daughter, and they said they would arrange a conversation. Around 10:00 PM, they allowed us to speak to our daughter on the phone. On the phone, our daughter said that she had felt dizzy and had fallen, but now she was fine. We then told her that we would come in the morning, as we would not be allowed to meet her that night. We stayed at the boys' hostel there. The next morning, we went to the girls' hostel. There, we met Shilpi, and we asked her about our daughter. Shilpi said that our daughter had felt dizzy and fallen,</p>





left our son so that his studies would not be affected.

hostel. I asked her about our daughter's health, and she said that she was fine and that she would also arrange for us to speak to her, and that we should sit. Then Shilpi said that our daughter was under the shadow of spirits. At that time, our daughter was also there. She had come there.

I asked Shilpi how she knew that our daughter was under the shadow of spirits. Shilpi said that there was a girl named Bhavya, in whom spirits come, and she had said that our daughter was under the shadow of spirits. Shilpi also said that they had spoken to Asha Ram, that he had called, and that we should take Supriya to wherever Asha Ram was. She also said not to take her anywhere else, only to Asha Ram.

The director of Gurukul in Chhindwara was Sharad Chandra. I did not meet him. My husband met him. When my husband met Sharad Chandra, my daughter and I were outside the room. My husband's meeting with Sharad Chandra was on 09/08/2013.

After meeting him on 9th August, at around 9:30-10:00 AM, my husband, my daughter, and I departed from Chhindwara to Shahjahanpur. My husband told me that

chant and has called her immediately."

After that, I met the hostel director, Sharad, who told me that "Asha Ram has called you to meet him along with your family." Then, we took Supriya with us and departed for home.

but she was now fine, and she would call her. Then our daughter came there. Shilpi said that there is a shadow of spirits in the hostel, and the same shadow had come upon Supriya, which was why she had become dizzy and fallen in the bathroom.

My wife asked Shilpi how she knew that our daughter was under the shadow of spirits. Shilpi said that there is a girl named Bhavya, who also experiences spirits, and that girl had said that Supriya was under the shadow of spirits. Shilpi said that they had spoken to Asha Ram, informed him, and that Asha Ram had given a mantra, and by the effect of that mantra, our daughter was now fine. Shilpi also said that Asha Ram had instructed that Supriya should be sent to her, and that there was no need to take her anywhere else or show her anywhere; Asha Ram had already been informed.

We then asked where we could meet Asha Ram, and Shilpi said that Sharad sir would tell us. We went to the Gurukul and met Sharad sir. Sharad is the director of the Gurukul. I know Sharad, who is present in Court. Sharad told us that our daughter was under the shadow of spirits and that Asha Ram had called us to meet him along with





	<p>Sharad Chandra had told him that Asha Ram would be in Delhi on 12th or 13th August, and that we could meet him there, that they had already spoken to him, and that our daughter was under the shadow of spirits.</p>	<p>our family. We asked Sharad where we could meet Asha Ram, and he said that he would probably be in Delhi on the 12th or 13th, and for the rest, Shiva would inform us. Then we left Chhindwara and departed for our home in Shahjahanpur.</p>
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**Date:10.08.2013**

<p>The next day after we reached home, my husband inquired about Asha Ram from Shiva, who is Asha Ram's main servant, and he told us that Asha Ram would come to the Ashram in Delhi</p>	<p>We went from Chhindwara to Shahjahanpur because we had to prepare to go to Delhi, take clothes, and money, etc.</p>	<p>We reached home on 10.8.2013</p>	<p>After coming to our home, we spoke to Shiva, and Shiva told us that on 12th August 2013, they will come to the Rajokri Ashram in Delhi and asked us to reach there.</p>
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**11.08.2013 to 13.08.2013**

<p>Then we departed for Delhi. After reaching Delhi, my husband called Shiva from the station, and he told us that Asha Ram's mood had changed, and he is in Jodhpur. That day we stayed in Delhi at my sister Babita's place, and the next day, probably on the 13th, we departed from Delhi by train.</p>	<p>In Shahjahanpur, in front of me, my husband spoke to Shiva, and he had told us that Asha Ram would come to Delhi on the 12th-13th. My husband had this conversation with Shiva on 11th August. We departed from Shahjahanpur for Delhi on 11th August at around 10:30-11:00 PM. We reached Delhi on the morning of 12th August. That day, we tried to find out which Ashram Asha Ram was in, but we could not find out. Therefore, we spoke to Shiva again. My husband then told me that he had spoken to Shiva and asked him where Asha Ram was, and Shiva told him that Asha Ram was in</p>	<p>On 11/8/13, after conversation with Asha Ram's servant Shiva, he asked us to reach the Rajokri Ashram in Delhi on 12/8/13. On the morning of 12/8, after reaching Delhi, we contacted Shiva from the station, and he informed us that Asha Ram was in Jodhpur. Then, on 13/8, we immediately made a sleeper reservation in the Mandor Express from Delhi.</p>	<p>Then we spoke to Shiva again on 11/8/2013 to confirm, and Shiva said to come to Delhi. On the night of 11th August, my wife, daughter, and I departed and reached Delhi on 12th August. After reaching Delhi, we spoke to Shiva, and Shiva informed us that Asha Ram was in Jodhpur and that we should come to Jodhpur. I know Shiva, who is present in Court today. Then we asked Shiva how we could reach Jodhpur, and Shiva said to come by Mandor Express or Jaisalmer Express. We could not get a reservation for the 12th, so we booked tickets for the 13th of August.</p>
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	<p>Jodhpur and said to come quickly. I was present when my husband spoke to Shiva.</p> <p>On 13th August, we did not get a reservation, and they said that a reservation was not available on 12th August either, so that day we stayed at my sister's place. Then, on the night of 13th August, we departed from Delhi for Jodhpur.</p>		
<b>14.08.2013</b>			
<p>On the morning of the 14th, we reached Jodhpur station. My husband Karmveer, Supriya, and I were all together. We got ready in the railway station waiting room. My husband asked Shiva for Asha Ram's whereabouts over the phone, and he told us that he was in Manai for solitary retreat. We spoke to the auto drivers on Shiva's instruction, and then they took us to Manai. At the main gate of the Ashram in Manai, there was a lock. At first, we waited, and then my husband spoke to Shiva, and on his instruction, we went inside to meet Asha Ram Ji.</p>	<p>On the morning of 14th August, we reached Jodhpur at around 10:30–11:00 AM. Then we went to the waiting room, bathed, and did other preparations. Then my husband spoke to Shiva, and Shiva informed us that Asha Ram was in a village called Manai and told us to come there. Then we went to Manai village by auto. My daughter, my husband, and I all went together. When we reached there, the main gate of the farm was closed. Then my husband tried to get the gate opened after seeing it, but there was no one there, so my husband spoke to Shiva again. After speaking to Shiva, the gate was opened. I do not remember who came to open the gate. After the gate was opened, we went inside.</p>	<p>On the morning of 14/8/13, we reached Jodhpur station. At Jodhpur station, we spoke to Shiva, and he gave us the address of the Manai Kutia. We asked the auto drivers, but all of them refused to tell us the way to the Kutia. Then Shiva arranged for an auto driver, who took us to Manai in about <math>\frac{3}{4}</math>–1 hour. When we reached the Ashram in Manai, the main iron gate of the Ashram was closed. We waited outside for a little while, then, through Shiva, we arranged a conversation at the gate over the phone, and after that, we were allowed to enter.</p>	<p>And on 14th August, we reached Jodhpur and arrived at the railway station. When we reached the railway station, Shiva called and asked where we were, and we told him that we had reached Jodhpur railway station. Then, after freshening up at Jodhpur railway station, we asked the way to Manai, but no one was willing to tell us. Then we asked Shiva and inquired about the way to Manai. Shiva spoke to the auto driver. Shiva had given the address of Manai. Then, when Shiva explained the route to the auto driver, we went to Manai by auto. In Manai, there was a large farm from the Ashram. When we reached there, we realized that Asha Ram's Ashram was here. There was a large iron gate, which was closed. Since the gate was</p>





		closed, we spoke to Shiva, and Shiva got the gate opened. The conversation with Shiva was over the phone.
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42. In light of the above testimonies, adverting to 'Exhibit D-04 NGO Report', the learned Trial Court observed/held (in Para 102 of the impugned judgment) as under :-

*"Aforesaid document was exhibited in the cross-examination during the evidence of P.W-5 "S" on 22-5-2014 by defendants. Regarding this document, the prosecution has been objecting that as said document does not fall under the category of previous statements, it cannot be used to confront with the witness. The defendants are of opinion that as the said report was inscribed according to witness statements, this report falls under category of previous statements by Section 145 of The Evidence Act.*

*I have carefully considered both the parties. Said document is report sent to Police Officer, Kamla Market Station, New Delhi; by Kiran Jha Thakur and is not statement of the victim. P.W-7 Kiran Jha Thakur in her testimony before the Court has stated that, as victim kept sharing her statements, she took whatever seemed relevant as judged by herself and wrote down this report in her own language. She mentions submitting brief report. In this situation, report exhibit D-04 cannot be stated as previous statement of the victim. Because neither does it contain all facts as conveyed by victim to Kiran Jha Thakur and nor is in victim's own language. So, objection is accepted."*

To the similar effect are the observations/findings re-iterated in para 349 of the impugned judgment. We are inclined to agree with the view taken by the learned trial Court. The said NGO report Ex D-4 had been prepared by Ms Kiran Jha Thakur, was a sort of counseling report. It was not even signed by the prosecutrix. The same cannot be treated as the latter's statement and relied upon to prove its inconsistency with any other statement of prosecutrix.

43. As regards the recording of statement of the prosecutrix under Section 164 CrPC Ex. P/7 by the learned Metropolitan Magistrate, New Delhi, leaves much to be desired. At the start of her statement Ex P/7 under Section 164 CrPC, the prosecutrix had stated her age as 16 years. The case had been registered, *inter alia*, under Sections 375/376 IPC. She was the victim of the offences which were quite grave in nature. In such situation, recording of her statement under the Section, *ibid*, required extra objectivity, sensitivity, care and attention.



43.1. The offence of rape defined in Section 375 IPC and punishable under Section 376 IPC is attracted if the offender applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person. As against this, the act kissing elsewhere on the body does not attract the said offence, but constitutes different and lesser degree offence. While recording the Statement of prosecutrix, the learned Magistrate ought to have been alive to this clear legal distinction between application of offenders mouth to (kissing) the vagina, anus, urethra of a woman, which attracted Sections 375/376 IPC and kissing simplicitor which constituted other lower degree offence.

43.2. The prosecutrix, in the course recording of this statement, had also stated that the appellant was kissing her repeatedly and it was after one to one plus half hours, that he had left her. She had not specified which part/s of the her body had been kissed by him. Considering that the FIR had been lodged, *inter alia*, under Sections 375/376 IPC, it would make a world of difference to the case depending on whether the victim was also kissed on her vagina, anus, urethra, which attracted Sections 375/376 IPC or it was kissing simplicitor on other parts of the body, which would not attract the said offences. The prosecutrix - a young child, was unlikely to know of the distinction in law between kissing of specific parts of body and the different consequences.

43.3. Such being the situation, we are of the opinion that before concluding her statement, the learned Magistrate was expected to clear the position about this material fact by himself questioning the prosecutrix as to which specific part/s of her body had been kissed; and depending upon her answer, to elicit further clarification appropriately, if necessary. That was not done. The omission, in our opinion, was quite





significant which substantially and materially diminished the sanctity and considerably reduced the evidentiary value and worth of the statement Ex P/7 under Section 164 CrPC as recorded. Intrinsic reliance cannot, therefore, be placed on it to contradict the sworn testimony of the prosecutrix in Court to the effect that the appellant had, inter alia, disrobed her and kissed her vagina.

43.4. To be noted here that in cross-examination on 12.06.2014, the prosecutrix, no doubt, admitted that in her statement Ex P/7 (under Section 164 CrPC) before the Learned Magistrate, the fact of kissing on her private part was not recorded, but had volunteered to state that it had been recorded that the appellant (Asha Ram @ Ashumal) had molested her forcibly for about one to one plus half hours, he was kissing and hugging her and that she thought that 'kissing every where' included 'kissing of vagina'. On this point she was not cross-examined further.

44. Coming now to the initial handwritten report Ex. P/4 submitted by the prosecutrix to Delhi Police. On a careful perusal of the document, it is clear to the naked eye that therein, initially the prosecutrix had written the relevant text thus- "Us ne zabardasti mere kapde utaare" - "उसने ज़बरदस्ती मेरे कपड़े उतारे."- Thereafter, firstly by overwriting, the word "utaare" उतारे was changed to "utaarne" उतारने; secondly by drawing a horizontal line across the overwritten word "utaarne" उतारने was struck off. Thereafter, the word "utaarne" उतारने was re-written. With this change, the formation of the sentence became- "Us ne zabardasti mere kapde utaarne laga"-. "उसने ज़बरदस्ती मेरे कपड़े उतारने लगा ."- Thus, by overwriting, striking off and then re-writing, the initially written text "उसने ज़बरदस्ती मेरे कपड़े उतारे" (us ne mere kapde utaare ) was changed to "उसने ज़बरदस्ती मेरे कपड़े उतारने लगा" - "Us ne zabardasti mere kapde utaarne laga".



44.1. Obviously, this formation of the sentence in Hindi language is grammatically wrong.

44.2. To be noted that the appellant (Asha Ram @ Ashumal ) was a known religious guru and had mass following. The family of the prosecutrix and she herself were his longtime staunch devotees. The appellant was a young girl aged 16 years. Offences committed on 15.08.2013 by the appellant would have stunned the prosecutrix, caused grave mental pain, shock and trauma to her. After tiring road journey from Shahjahanpur with her parents, the prosecutrix had arrived at Delhi late in the evening of 19.08.2013. They reached Police Station, Kamla Nagar at about 11:30 pm. There, on being referred by the duty officer to ASI Pushp Lata, they had met her. The prosecutrix orally interacted with her about the incident, after which the latter asked her to write and give her report writing. At the police station itself, the prosecutrix then wrote the fairly lengthy report Ex. P-4. After completion, she gave it to PW-1 Pushplata ASI. The latter wrote the date 20.08.2013 signifying it's submission to and receipt by her.

44.3. The facts and circumstances show that while writing the report Ex. P-4 in the dead of night (between 19.08.2013 and 20.08.2013), the prosecutrix would be quite tired and fatigued and would not have yet overcome her mental pain, trauma, shock, stress and confusion because of the offences committed by the appellant. She would also have been quite worried about her own and family's honour, safety and her reputation and future life. The prosecutrix would not have been in calm, composed, stable and strong state of mind and perhaps had not gathered sufficient courage, confidence and strength to stand up to the appellant.

44.4. In our opinion, all these factors weighed heavily on the mind of the prosecutrix and had contributed to her predicament, confusion and





dilemma at the time of writing the police report. Fear for her own and the family's future, honour, image, safety and security was in her mind. Despite all that, somehow, initially the prosecutrix gathered some courage and confidence and wrote in report Ex P-4 that "Us ne zabardasti mere kapde utaare". Immediately after writing this, on sudden flashback, it seems that her courage and confidence partly gave way to the fear persisting in the mind for her own and the family's future, honour, safety and security. She then changed the said text to "Us ne zabardasti mere kapde utaarne laga" hoping that the change would reduce the risk to her own and the family's honour, image, safety and security. As already noted, this formation of the sentence in Hindi language is grammatically wrong.

46. A famous Urdu couplet here-

“करीब है यारो रोज़े महशर, छुपेगा कुशतों का खून क्यों कर;  
जो चुप रहेगी ज़बाने खँजर, लहू पुकारेगा आस्तीं का।

-अमीरमीनाई”

47. Translated in English it means –

*“The day of judgment is approaching, murder of the innocent would not remain hidden; Even if the dagger (metaphor for the offender and witnesses) remain mum, blood from the sleeve will cry out (reveal the offence) ”.*

Idea conveyed is that crime will not go unnoticed, ultimately the truth is bound to come out in one or the other way.

Excellent combination of poetry and juristic vision !!

48. In such circumstances, we are of the opinion that the initial and earliest version of the prosecutrix written in her police report Ex P/4 was that the appellant had forcibly disrobed her "Us ne zabardasti mere kapde utaare". However, immediately after its writing, on a sudden flash back in the circumstances and for the reasons as noted above, this version was changed to "Us ne zabardasti mere kapde utaarne laga"





hoping that the change would reduce the risk to her own and the family's future, honour, image, safety and security.

48.1. One ought to be mindful that the plight of a rape victim is not confined to the physical violation alone; it is a profound assault on dignity, identity, and self-worth. The abhorrent nature of the offence is such that when the honour of a young girl/woman is torn apart, she is left grappling not only with trauma, but with an overwhelming sense of shame imposed by society. Her self-esteem is shattered. She must endure the silent cruelty of insinuating glances and prying eyes that seem to brand her as "the one". It is this suffocating stigma, this fear of judgment, whisper, and social ostracism, that compels many survivors to retreat into silence. Rather than risk being scrutinized, doubted, or diminished, they conceal their suffering, even when doing so means allowing the perpetrator to escape accountability.

48.2. In the case in hand, a child who, along with her parents, did not merely trust the man, whom they worshiped as a Godman, but she consecrated that trust. She came to him not as a stranger, but as a disciple. She came with folded hands, not knowing that the very sanctum she sought refuge in had become a predator's lair. How to fight such a powerful man, it required lot of self-persuasion and courage and overcoming of the fears. This is the mindset she was grappling with.

49. In this backdrop, there was no significant gap of time between submission of police report Ex P/4 (as changed) and the recording of zero FIR registered at Police Station, Kamala Nagar, Delhi, submission of NGO report, recording of the statement under 164 CrPC and the subsequent lodging of the FIR registered at jurisdictional Police Station, Jodhpur. The prosecutrix would have been still under shock, stress, fear, worry and anxiety at the time of their recording. Besides, at the





relevant time, she would have thought that consistency was desirable inter se her initial version in police report Ex P/4 (as changed by over-writing, cutting and re-writing) and her subsequent versions at the time of recording of zero FIR at Police Station, Kamla Nagar, Delhi, the NGO report, the statement under 164 CrPC and the FIR registered at Jodhpur. The version in police report Ex P/4 (as changed) was thus carried over to the zero FIR dated 20.08.2013 registered at Delhi, the NGO report and the statement under Section 164 CrPC recorded same day.

50. Statement Ex D-2 of the prosecutrix under Section 161 CrPC was recorded by Ms. Chanchal Mishra, ACP. The same was got produced, exhibited in evidence and relied upon by the defence itself. While deposing in Court, the prosecutrix stated, *inter alia*, that appellant (Asha Ram @ Ashumal) had disrobed her and kissed her private part. No attempt was made to contradict this part of her testimony in Court by confronting her with her statement Ex. D-2 under Section 161 CrPC. The inference is obvious.

51. It seems that with passage of time and change of circumstances, the progress and completion of investigation, the prosecutrix overcame her stress, fear and anxiety, could gather necessary courage and confidence to state relevant facts more categorically and specifically.

52. We have held above that by over-writing, striking off and then re-writing, the initially written text of police report Ex. P/4 - "उसने ज़बरदस्ती मेरे कपड़े उतारे" (us ne mere kapde utaare) was changed to "उसने ज़बरदस्ती मेरे कपड़े उतारने लगा" - "Us ne zabardasti mere kapde utaarne laga". In police report Ex P/4 (even as changed), subsequent Zero FIR Ex P/11 dated 20.08.2013 lodged at Police Station Kamla Nagar, Delhi, NGO report, the FIR dated 21.08.2013 Ex P/106 registered at Police Station, Mahila





(West), Jodhpur, the fact of kissing everywhere was categorically recorded.

53. Thus read, the testimony of the prosecutrix in the Court about kissing of her vagina is in consonance with the initial and unchanged text of police report Ex P/4, including the text "Us ne zabardasti mere kapde utaare".

54. While deposing in Court, the prosecutrix stated that she thought 'kissing everywhere' included 'kissing of vagina'. She was a child aged 16 years at the time of submitting her handwritten report Ex P/4 to the police, lodging zero FIR at Delhi, preparation of NGO report by Ms. Kiran Thakur Jha, recording of statement under Section 164 CrPC and subsequent lodging of FIR at Jodhpur in August, 2013. She was unlikely to know of the distinction in law between kissing of specific parts of body and the different consequences. For a lay person, particular a child, the words 'every part of the body' obviously would include 'vagina'. To our mind, she had given a reasonable and acceptable explanation for the absence of specific words 'kissing of vagina' in the handwritten report to Delhi Police, zero FIR registered at Delhi, the NGO report, the statement under Section 164 CrPC and FIR registered at Jodhpur.

55. It has been held above that initially written text of police report Ex. P/4 was "उसने ज़बरदस्ती मेरे कपड़े उतारे" (us ne mere kapde utaare). By overwriting, striking off and then re-writing, it was changed to "उसने ज़बरदस्ती मेरे कपड़े उतारने लगा" - "Us ne zabardasti mere kapde utaarne laga". There was no significant gap of time between submission of police report Ex P/4 (as changed) and the recording of zero FIR registered at Police Station, Kamala Nagar Delhi, during NGO counselling, in the statement under Section 164 CrPC and the FIR registered at Jodhpur. The prosecutrix would have been still under shock, stress, fear, worry





and anxiety at the time of their recording. Besides, at the relevant time, she would have naturally thought that consistency was desirable inter se her initial version in police report Ex P/4 (though changed by overwriting, cutting and re-writing) and her subsequent versions at the time of recording of zero FIR registered at Police Station, Kamla Nagar Delhi, during NGO counselling, in the statement under Section 164 CrPC and the FIR registered at Jodhpur. The version in police report Ex P/4 (as changed) was thus carried over to the zero FIR dated 20.08.2013 registered at Delhi, the NGO report and the statement under Section 164 CrPC recorded same day. In such situation, the absence of specific words 'उतारे' 'disrobed' in the changed text and 'kissing of vagina' in the handwritten report with the changed text submitted by the prosecutrix to Delhi Police, zero FIR lodged at Delhi, the NGO report and statement under Section 164 CrPC and FIR registered at Jodhpur, in our opinion, is not fatal to sworn testimony of the prosecutrix in the Court. Therein, she swore that the appellant had also disrobed her "He made an attempt to undress me, removed my salvaar and kissed my vagina." (statement recorded in Hindi - मैं इस घटना से शॉकड रह गई, कि जिस आदमी को मैं भगवान समझती थी, उसने मेरे साथ ऐसी घिनौनी हरकत की, मेरे कपड़े खोलने की कोशिश की, मेरी सलवार उतार दी थी, मैं तो कुछ सोच ही नहीं पा रही थी .-उन्होंने मेरे प्राइवेट पार्ट पर, मुँह पर और सभी जगह किस्स किया था).

56. On collective and objective reading of the record with the testimony of the prosecutrix in Court, fairly, reasonably and without undue hair-splitting, we are inclined to hold that the fact of 'disrobing the prosecutrix' and 'kissing of vagina' were/are obvious and evident and stood established on record.

57. The discrepancy about disrobing and kissing of vagina of the prosecutrix, inter se, versions of the prosecutrix in report of the incident lodged with the police, zero FIR lodged at Delhi, NGO report, her statement recorded under Section 164 CrPC and the FIR lodged at





Jodhpur vis-à-vis the deposition of the prosecutrix in Court has been dealt with and explained in the preceding part of this judgment.

58. The prosecutrix deposed in Court that she had thought that 'kissing everywhere' included her private part. To our mind, this was a reasonable and acceptable explanation for the absence of specific words 'kissing of vagina' in the handwritten report of the incident lodged with Delhi Police, zero FIR lodged at Delhi, NGO report, her statement recorded under Section 164 CrPC and the FIR lodged at Jodhpur. Further, the prosecutrix deposed in Court, inter alia, that she was disrobed and kissed on the vagina by appellant Asha Ram @ Ashumal.

59. In that view of the matter, we are of the opinion, on this material fact, the testimony of the prosecutrix in Court is in consonance with her earliest version in the unchanged police report Ex P/4. Despite lengthy and grueling cross-examination on numerous dates, this part of her testimony could not be shaken. The same, in our opinion, ought not to be discarded merely because alongside the words 'kissed everywhere' actually written, the specific words 'disrobed' and 'vagina' were not mentioned in the changed text of police report Ex P/4, zero FIR lodged at Delhi, NGO report and the statement of the prosecutrix under Section 164 CrPC and FIR registered at jurisdictional Police Station, Jodhpur.

60. It is not disputed that since her admission to 7<sup>th</sup> class, the prosecutrix was studying in Chhindwara Gurukul School named after appellant Asha Ram @ Ashumal who was a religious guru; she was a hostel resident and that appellants Shilpi @ Sanchita and Sharad Chandra @ Sharat Chandra were the Hostel Warden and School Director (Principal), respectively at the relevant time. The prosecutrix has been consistent throughout about her fall in the hostel bathroom and the complaint of dizziness. PWs Sunita Singh, Karamvir Singh were consistent and unanimous throughout in stating that after telephonic





conversation with appellant Shilpi @ Sanchita, they had come to Chhindwara to meet her.

60.1. The prosecutrix also deposed that she too was present at that meeting; that appellant Shilpi @ Sanchita had told them that she had spoken to appellant Asha Ram @ Ashumal about the problem of the prosecutrix and he had advised that she be brought to him for ghost healing. PWs Sunita Singh, Karamvir Singh and the prosecutrix were also consistent and unanimous in their versions that appellant Sharad Chandra @ Sharat Chandra too had told them that the prosecutrix be taken to appellant Asha Ram @ Ashumal for ghost healing. They were also consistent and unanimous about their going to Manai Ashram and there meeting and attending the satsang of appellant Asha Ram @ Ashumal on 14.08.2013, having stayed at Manai for the night of 14.08.2013 and attending the satsang on 15.08.2013. PWs Sunita Singh, Karamvir Singh and the prosecutrix deposed that after the satsang, while other devotees were leaving the Ashram, appellant Asha Ram @ Ashumal had asked them to stay on. They were also unanimous in saying that at the asking of the appellant, they were doing jaap at the concrete path when the prosecutrix was asked to go behind the kutiya and continue her jaap there and the prosecutrix went there while her parents remained at the same place. The prosecutrix was throughout consistent in her version on the material facts and events after her moving to the backside of the kutiya, having been called inside and the offences committed by appellant Asha Ram @ Ashumal inside the kutiya.

61. On careful appraisal of the record and the impugned judgment, we are of the opinion that on material facts and events, the prosecution witnesses have been consistent in their respective versions at various





stages and that there is no unexplained material discrepancy, inter se, their depositions in Court.

62. In our opinion, the aforesaid remaining discrepancies pointed out by the learned defence counsel are on minute peripheral details and do not erode or destroy the substratum of the case.

63. Human perception is not a precision instrument. The ability to observe, absorb, retain, and recount varies profoundly from person to person, shaped by temperament, attention, and the irreversible passage of time. Memory, by its very nature, is not a photograph; it is a living, fading impression. As hours become days and days become years, even the sharpest recollections begin to soften at the edges. It is no surprise, then and certainly no mark of dishonesty, that truthful witnesses may stumble on peripheral details, contradict themselves on the margins, or waver when subjected to the relentless pressure of a protracted cross-examination. These are not the fingerprints of a liar; they are the leftover memories of an ordinary human being, faithfully trying to recall what time has already begun to erase.

63.1. Time spares no one, and neither does forgetting. Memory, however vivid at first, quietly yields to the passage of time. Even the sharpest human intelligence slowly surrenders to time. Because of such factors and natural fading of memory with lapse of time, minor discrepancies on minute peripheral details do arise even in the statements of truthful witnesses, more so when subjected to lengthy cross-examination, as in present case (cross examination of the victim runs into 81 pages).

64. We, therefore, reject the contention that the prosecution story was rendered highly doubtful because of the discrepancies, inter se, the own versions of the prosecutrix, PWs Sunita Singh and Karamvir Singh at various stages and the discrepancies, inter se, their depositions





during trial in the Court or that the learned Trial Court erred in ignoring them and accepting the prosecution story.

65. It was also contended that the sole testimony of the prosecutrix could not be taken as gospel in the absence of any corroboration. We do not agree. The evidence has to be weighed and evaluated and not counted or measured by volume. If the sole testimony of the prosecutrix is found reliable and credible, the same cannot be discarded merely for want of corroboration. In present case, we are of the opinion that the testimony of the prosecutrix in support of the charges against appellant Asha Ram @Ashumal remained unimpeached, was reliable and credible, inspired confidence and the learned Trial Court rightly accepted the same.

66. It was contended that the story of the prosecutrix having entered the kutiya was unbelievable as in her handwritten complaint, statement under Section 164 CrPC and NGO report, there was absolutely no reference about the existence of a bathroom of the kutiya. The same was introduced for the first time in the statement of the prosecutrix under Section 161 CrPC. We are unable to accept the contention. Actual existence of a bathroom adjoining the kutiya is not disputed. Mere absence of its specific reference in the handwritten complaint of the prosecutrix, statement under Section 164 CrPC and NGO report does not falsify the deposition of the prosecutrix about existence of the bathroom and the story of her having entered the kutiya.

67. In the earlier part of this judgment, we have upheld the finding recorded in the impugned judgment that the date of birth of the prosecutrix is 04.07.1997. It follows that on the date of commission of the offence (15.08.2013), she was below 18 years of age.

68. The prosecutrix categorically stated that when she tried to raise alarm (scream) and to resist appellant's (Asha Ram @ Ashumal)





inappropriate touch and attempt to molest her, she was gagged and threatened by him that if she would reveal the incident to anyone, her family would be finished. The appellant had disrobed her and kissed her vagina and committed the various offences. About this version, her testimony could not be shaken in cross-examination.

68.1. In present case, at the time of commission of the offence on 15.08.2013, the appellant was the religious guru of the prosecutrix and she was his devotee since 2006. Obviously, the appellant was in a position of trust or authority towards the prosecutrix.

69. The prosecutrix deposed, *inter alia*, that the appellant had removed her salwar and kissed her private part. During cross-examination while admitting that in the police report, NGO report, statement under Section 164 CrPC, she had not mentioned about kissing of her private part, she added that she had written of the kissing everywhere, which included her private part. Her testimony on this point and about kissing of her private part by the appellant could not be shaken in cross-examination. It was in consonance with her earliest version (before change of text) in handwritten complaint Ex P-4.

69.1. In the earlier part of this judgment, by giving reasons, it has been observed/held that the initial and earliest version of the prosecutrix written in her police report Ex P/4 was that the appellant had forcibly disrobed her "Us ne zabardasti mere kapde utaare" and that the absence of specific words 'kissing of vagina' in the changed handwritten report submitted by the prosecutrix to Delhi Police, zero FIR lodged at Delhi, the NGO report and statement under Section 164 CrPC and the FIR registered at Jodhpur, is not fatal to the aforesaid version showing, *inter alia*, that the appellant had disrobed the prosecutrix and kissed her vagina.





70. The lengthy testimony of the prosecutrix during trial was recorded on numerous dates. Learned Trial Court, after elaborate discussion and evaluation of the evidence on record and dealing with contentions on both sides, concluded that the appellant not only restrained the prosecutrix, rather tried to insert his penis in her mouth by removing all his clothes which means he manipulated her body in the manner so that he can penetrate in her mouth [attracting Section 375(c) IPC]; he also kissed on the private parts of the girl meaning thereby he applied his mouth to the vagina of the prosecutrix, not only touched her body with his hands, rather has kissed her vagina with his mouth [attracting Section 375 (d) of IPC].

70.1. Learned Trial Court was also found that after the incident, the prosecutrix went out of the kutiya and went to her mother PW-12 Sunita Singh, who was waiting for her at some distance from the kutiya. From there, both of them went to the house of the local person where their stay had been arranged. Next morning, the prosecutrix and both of her parents left for Shahjahanpur (UP). For the first time, the prosecutrix revealed the incident to her mother on 19.08.2013.

70.2. The learned Trial Court found that the prosecution story including penetrative sexual assault, rape causing criminal confinement of the prosecutrix, doing her sexual harassment, causing criminal intimidation on her and the appellant's showing his penis in front of her with the purpose of dishonouring her modesty had been proved.

71. In our opinion, the ingredients of the offence under Section 375 (c) & (d) punishable under Section 376 IPC were thus satisfied. To our mind, the learned Trial Court rightly accepted the said evidence for convicting the appellant under Section 376 IPC. We are inclined to agree with the view taken by the learned Trial Court. Consequently, we repel the contention that ingredients of Section 375 IPC had not been





proved beyond reasonable doubt or that the prosecution had failed to prove the commission of offence defined under Section 375 IPC, punishable under Section 376(2)(f) IPC.

72. We thus reject the contention that the ingredients for the application of Section 375/376(2)(f) IPC were not met and that the learned Trial Judge wrongly convicted and sentenced the appellant for the same.

73. It was contended that prosecution had failed to prove that offences allegedly committed by appellant Asha Ram @ Ashumal fall within the scope of Section 5(g) of the POCSO Act, 2012 punishable under Section 6 thereof. Para 368 of the impugned judgment is as under:

*“368- In the matter in hand from the evidence it has proved that accused not only kept caught the girl but also after putting of his own entire clothes tried to penetrate his penis her mouth, in other words in this manner manipulated her body so that we can done penetrated his penis in her mouth and he also kissed on the private part of the girl, in other words he applied his mouth on the vagina of the girl. Accused not only merely touched body of the victim but also he has kissed her vagina from his mouth also. Therefore, commission of penetration – sexual assault and forcible rape by the accused on prosecutrix “Su” is proved beyond doubt. Along with it commission of wrongful confinement of the girl, commission of her sexual extortion, commission of causing criminal intimidation and with the intention for out raising her modesty, exhibiting his penis before her has been proved beyond doubt.”*

On perusal of the record of the case, we find the aforesaid contention to be tenable as the ingredients of section 5(g) of the POCSO Act, 2012 are not attracted on the basis of material on record. We are thus not in agreement with the aforesaid finding of fact. On the other hand, it appears that offence under section 5(p) of the POCSO Act, 2012 seems to be made out.

73.1. Pertinently, while passing the impugned judgment, the learned trial court neither recorded any finding of conviction against the appellant for the offence under Section 5(p) of the POCSO Act, 2012, nor framed any charge under said section 5(p). The respondent State has not filed any appeal or cross-objections against the impugned





judgment. This being the position, while dealing with the appeal of the convict, he cannot be convicted for the commission of the offence under section 5(p) even if said section is attracted.

73.2. However, in terms of Section 222 of the CrPC (Section 245 of BNSS, 2023), on the proved facts of the case, an accused can be convicted of the minor offence, though he is not charged with it. In our opinion, the instant case warrants the invocation of the said provision i.e. Sections 3 and 4 of the POCSO Act, 2012. This omission by the learned Trial Court needs rectification.

73.3. For ready reference, Sections 3, 4 and 5 of the POCSO Act, 2012 are reproduced 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 to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

**4. Punishment for penetrative sexual assault.** (1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with 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 natural life of that person and shall also be liable to fine.

(3) 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.

**5. Aggravated penetrative sexual assault.-** (a) Whoever, being a police officer, commits penetrative sexual assault on a child -

- (i) within the limits of the police station or premises at which he is appointed; or
- (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
- (iii) in the course of his duties or otherwise; or
- (iv) where he is known as, or identified as, a police officer; or
- (b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child-
  - (i) within the limits of the area to which the person is deployed; or
  - (ii) in any areas under the command of the forces or armed forces; or
  - (iii) in the course of his duties or otherwise; or
  - (iv) where the said person is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits penetrative sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual





assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or  
 (e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or  
 (f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or  
 (g) whoever commits gang penetrative sexual assault on a child.

**Explanation.** When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(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

(j) whoever commits penetrative sexual assault on a child, which-

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (1) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks;

(iv) causes death of the child; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

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

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of [communal or sectarian violence or during any natural calamity or in similar situations]; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault."

73.4. As would be seen, under Section 3 (c) of the POCSO Act, 2012, a person is said to commit "penetrative sexual assault" if he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person. Under Section 3(d) a person is said to commit penetrative sexual assault if applies his mouth to the





penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person. It has been observed/opined above, by giving reasons, that after calling the prosecutrix inside the kutiya, the various offences had been committed inside the kutiya by appellant Asha Ram @ Ashumal inter alia, by applying his mouth to her vagina. Ingredients of Sections 3 and 4, *ibid*, thus stand satisfied. The offence falling within the scope of Section 3 of the POCSO Act, 2012 punishable under Section 4 thereof thus stood proved. It is held accordingly. The contention to the contrary is, therefore, rejected.

74. It was contended by learned defence counsel that the prosecution had failed to prove that qua appellant Asha Ram @ Ashumal, provisions of Section 23 of the Juvenile Justice (Care and Protection of Children) Act were attracted in the case. We are unable to accept this contention. The Section, *ibid*, provides that whoever, having the actual charge of, or control over a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child, unnecessary mental or physical suffering shall be punishable under the Section, *ibid*. Learned Trial Court, on appreciation of evidence, held that the said appellant was in actual charge and control over the prosecutrix, who was less than 18 years of age on the date, time and place of the commission of various offences by him. In the proved facts and circumstances of the case, we see no reason to differ with this view taken by the learned Trial Court. Accordingly, we reject the contention that the prosecution had failed to prove that qua appellant Asha Ram @ Ashumal, provisions of Section 23 of the Juvenile Justice (Care and Protection of Children) Act were attracted in the case.

75. At the cost of repetition, it may be stated that at the time of commission of the offence on 15.08.2013, the appellant was the





religious guru of the prosecutrix and she was his devotee since 2006 and was less than 18 years of age. Obviously, the appellant was in a position of trust or authority towards the prosecutrix. It has been proved on record that the appellant had asked Sanchita @ Shilpi and Sharad Chandra @ Sharat Chandra that the parents of the prosecutrix should bring her to him for solving her problem of shadow of ghosts. When the prosecutrix was brought to him, he called her inside his kutiya and committed the offences against her including penetrative sexual assault.

76. In the earlier part of this judgment, we have held that the commission of the offence of rape falling within the scope of Section 375(d) of IPC and punishable under Section 376(2)(f) of the Code as also the offence of penetrative sexual assault under Section 3/4 of the POCSO Act, 2012 by appellant Asha Ram @ Ashumal had been proved. The prosecution had proved that appellant Asha Ram @ Ashumal had conveyed to the parents of the prosecutrix through appellant Sanchita @ Shilpi that the prosecutrix be brought to him for ghost healing and that accordingly, she was taken to him at his Ashram in Manai. There, on the pretext of ghost healing, he called and received the prosecutrix inside his kutiya and committed these offences. Obvious inference is that it was for the purpose of exploitation that the appellant had received the prosecutrix on the pretext of ghost healing by practising fraud and deception.

77. Thus, he had also committed the offence under Section 370 IPC. We, therefore, reject the contention that there was no evidence to show that it was for the purpose of exploitation that the appellant had received the prosecutrix on the pretext of ghost healing by practising fraud and deception so as to attract liability of appellant Asha Ram @ Ashumal for the offence under Section 370 IPC.





78. We have already upheld the findings/conclusion recorded in the impugned judgment, *inter alia*, to the effect that at the relevant time, the appellant had restrained the prosecutrix. In other words, from the moment of her second entry inside the kutiya till after the commission of aforesaid offences and up to her exit from the kutiya, she was wrongfully confined inside the kutiya. Thus, the commission of offence of wrongful confinement of the prosecutrix by the appellant punishable under Section 342 IPC stood proved.

79. Without repeating the relevant part of foregoing observations, we are of the opinion that it stood proved on record that the appellant had threatened the prosecutrix that her family would be finished, if she would raise her voice or ever reveal the incident to anyone. Thus, the commission of offence under Section 506 IPC by the appellant also stood proved.

80. As a result, we reject the contention that the prosecution had failed to prove the offences under Sections 370, 342 and 506 IPC.

81. Perusal of the impugned judgment shows that the learned Trial Court based its findings/conclusions on the basis of record of the case without being influenced by any unfavourable antecedents of the appellant. In our opinion, there is no merit in the contention that the conviction and sentence of the appellant appear to be on moral grounds. The same is rejected.

82. It was contended that there was probable motive for false implication of the appellants. In Para 312 of the impugned judgment, learned Trial Court observed that in the comprehensive cross-examination of PW-21 Karamveer Singh, it had been suggested that he had hatched a conspiracy with former Director (of the School) Om Parkash Prajapati and Seema Ahuja, Warden of the Gurukul (hostel) to claim that a child to be born out of the latter's womb be projected as





Avtaar of Kalki for collecting gifts and donations; that on the surfacing of this conspiracy, Om Parkash Prajapati and Seema Ahuja were ousted from the Gurukul and that he (Karamveer Singh), had hatched a conspiracy with former Director (of the School) Om Parkash Prajapati and Seema Ahuja, Warden of the Gurukul (hostel) and that in furtherance of which he (Karamveer Singh) had filed this case through his daughter (the prosecutrix).

82.1. After noticing and analyzing the relevant evidence about so called conspiracy against the appellant and by giving cogent reasons in Paras 313 to 316, the learned Trial Court repelled this defence version and concluded in Para 317 as under:

*“In my humble opinion, it is clear from the present evidence that the defence has been absolutely unsuccessful to connect any relation of the alleged KalkiAvtaar conspiracy of Om Prakash Prajapati and Seema Ahuja from the complainant Karamveer Singh. Forms Ex.-D-27 to Ex.-D-31 have been submitted on behalf of the accused persons. From this it appears the above forms were in their possession. This is not at all clear that how he received the above forms from Om Prakash Prajapati. This clearly shows that there is truth in the statements of PW-21 Karamveer Singh that the above forms were filled by him and his family members in the conclave of programmes of the accused Asha Ram. In my humble opinion, this plea of the defence is not at all acceptable that PW-21 Karamveer Singh would have hatched any conspiracy in connivance with Om Prakash Prajapati and Seema Ahuja, which led to this present case.”*

82.2. Learned Trial Court then dealt with the defence version that after hatching of a conspiracy, inter se, Pankaj Dubey, PW-21 Karamveer Singh, his daughter (the prosecutrix), Bhola Nand and others, the appellant (Asha Ram @ Ashumal) was falsely implicated in this case to extort an amount of Rs. 50 crores from him. After noticing and thoroughly analyzing the relevant evidence from Para 318 onwards, and by giving cogent reasons, the learned Trial Court recorded its conclusion in Para 340 of the impugned judgment and rejected the defence said plea of controversy. Para 340, *ibid*, reads as under:

*“Therefore, according to the above deliberation, this plea of the defence side is not acceptable that Asha Ram would have been implicated by Pankaj Dubey, Karamveer Singh, Victim “Su”, Bholanand and other persons for extorting Rs.50.00 Crores by hatching conspiracy. It is notable here that the accused Asha*





*Ram would have been implicated under a pre-hatched conspiracy, then there was no need for the complainant to register First Information Report in Delhi while going to Delhi from Jodhpur via Jaipur and from there going to Shahjahanpur, coming to Delhi again, rather just after leaving Manai Ashram on 16.8.2013 he could have lodged report in Jodhpur. Registering report in Delhi and delay happened in registering the report itself shows that the complainant had no pre-planned conspiracy to implicate the accused Asha Ram, rather the report has been registered by the complainant side according to the circumstances of human nature.”*

83. We find no reason to differ with the aforesaid conclusions reached by the learned Trial Court in Paras 317 and 340 of the impugned judgment rejecting the defence version any motive and/or criminal conspiracy against the appellant and his implication on that account.

84. To add to it, we are also of the opinion that in any case, the aforesaid alleged conspiracies were aimed against appellant Asha Ram @ Ashumal only and appellants Shilpi @ Sanchita and Sharad Chandra @ Sharat Chandra were not the targets therein. Nothing else is shown on record why the prosecutrix and her parents would falsely implicate them (appellants Shilpi @ Sanchita and Sharad Chandra @ Sharat Chandra) in this criminal case. We, therefore, reject the contention that there was probable motive for false implication of the appellants and that they had been falsely implicated on that account.

85. It was also contended that there were no aggravating circumstances warranting imposition of maximum sentence of imprisonment for the remainder of the natural life of appellant Asha Ram @ Ashumal by the learned Trial Court.

85.1. Translated paras 7 and 8 of the sentencing order are as under:

*“7- I have heard the arguments of both sides on sentence and carefully perused the case file.*

*8- The accused is Asha Ram Saint. It has been proved from the evidence adduced on the case file that not only in India but in the foreign countries also, there are lacs of his disciples. It has also been revealed through evidence that more than 400 Ashrams are functioning in the name of accused Asha Ram. Keeping in view the facts of the present case, it is revealed that the father of the prosecutrix “Su” was also a disciple of the accused Asha Ram. He played an important role in raising construction of an Ashram for Asha Ram in Shahjahanpur and he also got constructed a cottage for the accused Asha Ram there also. He was devoted to the accused Asha Ram to such an extent that he even sent his daughter prosecutrix “Su” and son Yashvir Singh to a Gurukul situated at Chhindwara, a place far from Shahjahanpur. As per the incidence, the accused Asha Ram separated the prosecutrix “Su” from her parents on the pretext of conducting chants and subsequently, he called her in his room and committed an act of misdemeanor*





*with her. In my opinion, the accused Asha Ram has not only committed breach of trust of the complainant but he has also caused damage to the image of saints in the eyes of general public.”*

85.2. We see no reason to differ with the view in this behalf taken by the learned Trial Court and, therefore, repel contention contrary to it.

86. As already held, at the time of commission of the offence on 15.08.2013, the appellant Asha Ram @ Ashumal was the religious guru of the prosecutrix and she was his devotee since 2006 and was less than 18 years of age. Obviously, the appellant was in a position of trust or authority towards the prosecutrix. It has been proved on record that the appellant had asked Sanchita @ Shilpi and Sharad Chandra @ Sharat Chandra that the parents of the prosecutrix should bring her to him solving her problem of shadow of ghosts. When the prosecutrix was brought to him, he called her inside his kutiya and committed the offences against her including penetrative sexual assault.

86.1. As noted earlier, the appellant-Asha Ram appears to have committed the offence under Section 5(p) of the POCSO Act, 2012. But since the learned trial court did not record any finding of conviction for the said offence and the State has not filed cross-objection/appeal against the impugned judgment, while dealing with the appeal of the convict, the appellant could not be convicted for the commission of the said offence. However, in terms of Section 222 of the CrPC (Section 245 of BNSS, 2023), on the proved facts of the case, he is liable to be convicted of the minor offence of penetrative sexual assault under Section 3 punishable under Section 4 of the POCSO Act, 2012.

86.2. In the succeeding part of the judgment, it is being held that the offence of conspiracy, inter se, the appellants and the commission of offence of gang rape under Section 376D of IPC has not been proved. In view of this and the proved facts of the case as noted above, the conviction of appellant Asha Ram @ Ashumal under clause (g) of





Section 5 of the POCSO, Act 2012 is also not tenable. Accordingly, he has to be acquitted of charges under Section 5(g), *ibid*, but as already held, he is liable to be convicted for the offence under Section 3 punishable under Section 4 of the POCSO Act.

86.3. On a careful reading of the impugned judgment, we are inclined to hold that the rest of conclusions have been recorded by the learned Trial Court after threadbare examination of record of the case and are consistent with the same and the applicable law, of course with the caveat/exception already given.

87. As regards Sanchita @ Shilpi and Sharad Chandra @ Sharat Chandra, appellants in the connected appeals, prosecution case and finding recorded by the learned Trial Court are that it was at the instance of these appellants, the parents of the prosecutrix had taken her to the appellant Asha Ram for solving her problem of shadow of ghosts.

88. Learned counsel for State has not brought to our notice any worthwhile material on record to show that they (Sanchita @ Shilpi and Sharad Chandra @ Sharat Chandra, appellants) had known, when they asked the parents of prosecutrix to take her to Asha Ram @ Ashumal appellant that he would commit any offences including rape on the prosecutrix. Impugned judgment does not refer to any such evidence.

89. It is against normal human nature that at the time of asking Sanchita @ Shilpi and Sharad Chandra @ Sharat Chandra to have the prosecutrix sent to him for ghost healing, appellant Asha Ram @ Ashumal would have told them of his intention to sexually exploit her and/or commit any other offence against her. If at all they had known of any such intention of appellant Asha Ram @ Ashumal, they were most unlikely to do his bidding. It is, therefore, difficult to say that there was a prior meeting of mind and conspiracy hatched amongst





them to have the prosecutrix sent to appellant Asha Ram @ Ashumal for her sexual exploitation and/or commission of any other offence against her by appellant Asha Ram @ Ashumal.

90. In our opinion it was highly unlikely that, if Sanchita @ Shilpi and Sharad Chandra @ Sharat Chandra or either of them would have been aware of any such evil intention of Asha Ram @ Ashumal appellant, they would have told the parents of the prosecutrix to take her to him.

91. It cannot, therefore, be the case that the act of Sanchita @ Shilpi and Sharad Chandra @ Sharat Chandra, having asked the parents of the prosecutrix to take her to appellant Asha Ram @ Ashumal for ghost healing, was in pursuance of any criminal conspiracy, inter se, the three appellants. It follows that the prosecution had not proved on record the requisite meeting of minds, inter se, the three appellants for the commission of any offence, essential to attract liability under Section 120B of IPC.

92. In the premise, we hold that the prosecution had failed to prove the commission of offence of criminal conspiracy under Section 120B IPC, but the learned Trial Court fell in error in holding that the said offence had also been proved. Accordingly, it is held that prosecution had failed to prove commission of offence under Section 120B by the appellants. Though the learned Trial Court convicted the appellants for the offence of criminal conspiracy under Section 120B IPC, it did not award them any punishment for the same.

93. We are of the view that defence is right in contending that the offence under Section 376D IPC has not been proved. It has been held above that offence under Section 120B IPC had not been proved in the case. There is not even any allegation that more than one person had committed the offence of rape, let alone reliable evidence on record to prove the same. In our opinion, learned Trial Court erred in convicting





and sentencing the appellant for the offence gang rape falling under Section 376D IPC. Thus he ought to be acquitted of the said charge. However, on the proved facts of the case it stands established that the appellant had, inter alia, committed the offence of rape. We, therefore, convict him for the lesser/minor offence under Section 376 of IPC.

94. It follows that Sanchita @ Shilpi and Sharad Chandra @ Sharat Chandra, appellants cannot be held vicariously liable for the offences individually and actually committed by appellant Asha Ram @ Ashumal. Consequently, the conviction of appellants Sanchita @ Shilpi and Sharad Chandra @ Sharat Chandra and the sentence for the offences under Section 370(4) read with Section 120B IPC and Section 376D IPC and Sections 5(g)/6 and 7/8 of POCSO Act are liable to be set aside.

95. It also follows that the conviction of appellant Asha Ram @ Ashumal for offence under Section 120B IPC is also liable to set aside.

96. As an upshot of above discussion, the impugned judgment is modified as stated here in after.

### **CONCLUSION/SENTENCING**

#### **97. Appellant/convict Asha Ram**

97.1. We have given our thought to the learned trial court's well-reasoned order denying leniency to the appellant and find ourselves in full agreement with it. The appellant was 73 at the time. He is now 86. He thus stands before us bent by age and burdened by ailment, imploring a fresh look at his plea for leniency. We have considered his plea and applied our mind. We are unable to grant any indulgence, since in the shadow of his frailty cannot justify ignoring the victim's voice. Quiet. Devastating. Irrefutable. To ignore it would be to shake





society's faith in the criminal justice system, and send wrong a message no court must ever send, least of all when the perpetrator hid behind the cloak of a self-styled godman.

97.2. Aside above, victim's voice too demands to be heard. She does not come to this Court seeking sympathy but justice. She comes bearing an inconvenient truth: that for the Appellant, imprisonment is only physical. His confinement has walls. Her sentence has none of these. No warrant was ever issued for it. No court ever pronounced it. Yet, it was imposed upon her the moment this godman chose violation of law and morality over his vows. The sentence served upon her soul is lifelong, written not in ink, but in indelible anguish. It knows no remission, no parole, no appellate remedy. For, a rape victim does not merely carry a wound. She carries an erasure, of her dignity, of her identity, of the self she was before the moment which not only completely destroyed, but cleaved her life into a before and an after. The violation does not end when the act ends. It reverberates, through every moment of silence, every crowded room, every ordinary day made unbearable by the indelible memory of it.

97.3. In this backdrop, adverting to the sentencing, as noticed earlier, appellant was also convicted for offence under Section 354A and 509 of IPC, Section 7/8 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act) but, in light of Section 42 of the POCSO Act, no sentence for those offences, and rightly so, was awarded by the learned trial court.

98. In totality of circumstances, qua appellant Asha Ram @ Ashumal it is ordered as under:

(i) His convictions for offences under Sections 120-B, 34 and 376-D IPC, Sections 5(g)/6 of POCSO Act are set aside and he is acquitted of these offences;





(ii) His conviction for offences under Section 370(4), 342, 509, 506, 354A and 376(2)(f) Indian Penal Code and Section 23 of JJ (Care and Protection of Children) Act, 2000 and Section 7/8 of POCSO Act are upheld.

(iii) He is also convicted for offences under Section 376 of IPC and Sections 3 and 4 of POCSO Act;

99. As per Section 42 of POCSO Act, for offences under Sections 354A, 509 and 376 of IPC and Sections 3/4 and 7/8 of POCSO Act, no separate punishment is needed as greater punishment provided under Section 376(2)(f) of IPC is sufficient.

100. Punishments under Section 342, 370(4) and 506 IPC are upheld.

101. Punishment of greater degree under Section 376(2)(f), *ibid*, i.e., life imprisonment which shall be for the remainder of his natural life along with the fine as accorded by the learned trial court to Asha Ram is also thus upheld, without any other separate sentence/punishment for the other offences i.e. Sections 354A, 509, 376 of IPC and Sections 3/4 and 7/8 of POCSO Act though held guilty, as above. He is currently stated to be on interim bail. In view of his conviction and sentencing, bail granted to appellant Asha Ram @ Ashumal is cancelled. His bail bonds are forfeited and he is directed to surrender. Warrant for his arrest be also issued forthwith, he be taken into custody and sent to jail for undergoing the sentence.

102. **Appellants Shilpi @Sanchita &**

**Sharad Chander @ Sharat Chander**

The convictions of appellants Shilpi @ Sanchita and Sharad Chander @ Sharat Chander for offences under Section 370(4) read with Section 120-B IPC and Section 376-D IPC and under Section 5(g)/6 and Section 7/8 of the Protection of Children from Sexual Offences Act,2012 (for



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short POCSO Act), as recorded and sentence awarded for the same by the learned trial court, are set aside and they are acquitted of the same.

103. The three appeals stand disposed of in the above terms.

**(YOGENDRA KUMAR PUROHIT),J**

**(ARUN MONGA),J**

K.P. Singh Dewasi/-

