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GANESAN

v.

STATE REPRESENTED BY ITS INSPECTOR OF POLICE

(Criminal Appeal No. 680 of 2020)

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OCTOBER 14, 2020

**[ASHOK BHUSHAN, R. SUBHASH REDDY
AND M. R. SHAH, JJ.]**

C *Protection of Children from Sexual Offences Act, 2012 – ss. 7 and 8 – Protection of Children from Sexual Offences Rules, 2012 – r.7(2) – Appellant- accused was tried for the offences punishable u/s. 7 r/w. s. 8 of the POCSO Act – Relying upon the deposition of PW-3 victim, aged 13 years the accused was convicted for the offence u/s. 7 of the POCSO Act and sentenced to undergo 3 years rigorous imprisonment u/s. 8 of the Act – The*
D *accused was also ordered to pay rupees one lakh to the victim girl, by way of compensation u/r. 7(2) of the Rules, 2012 – Before the High Court, it was noted that there was no representation on behalf of the appellant, therefore, a legal aid counsel was appointed – The legal aid counsel pleaded the inability of the accused person*
E *to pay the order of compensation and requested to set aside the order of compensation – The High Court modified the judgment and order passed by the trial Court with respect to compensation to the effect that compensation amount shall be paid by the State to the victim girl and thereafter if the State finds that the accused has got sufficient means, the same can be recovered from the*
F *accused under the Revenue Recovery Act – Before the Supreme Court, the appellant-accused contended that the trial Court has committed a grave error in convicting the accused, relying upon the sole testimony of PW-3-victim – It was also emphasised that the appeal was disposed of within the four days from the date of*
G *providing legal assistance to the accused and it was very short time for the legal aid counsel to receive the papers from the Registry and inspect original documents – Held: It is required to be noted that there is nothing on record that the legal aid counsel was not having any papers – On persual of the entire judgment of the trial Court, the PW-3-victim has fully supported the case of the*
H *prosecution – She has narrated in detail how the incident had taken*

place and she has been thoroughly cross-examined – Her testimony is reliable and trustworthy – The sole testimony of the PW-3 is unblemished and evidence is of sterling quality – The trial Court has not committed any error in convicting the accused, relying upon the sole deposition of PW-3-victim – The High Court has rightly convicted the accused for offence u/s. 7 of the POCSO Act and rightly sentenced u/s.8 of the POCSO Act.

Dismissing the appeal, the Court

HELD: 1. In the present case, the appellant-accused has been convicted by the trial Court for the offence under Section 7, punishable under Section 8 of the POCSO Act. This Court has gone through the entire judgment passed by the trial Court as well as the relevant evidence on record, more particularly the deposition of PW1-father of the victim, PW2-mother of the victim and PW3- victim herself. It is true that PW2-mother of the victim has turned hostile. However, PW3-victim has fully supported the case of the prosecution. She has narrated in detail how the incident has taken place. She has been thoroughly and fully cross-examined. This Court does not see any good reason not to rely upon the deposition of PW3 – victim. PW3 aged 15 years at the time of deposition is a matured one. She is trustworthy and reliable. As per the settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy. [Para 9][774-F-H]

2. On evaluating the deposition of PW3 – victim on the touchstone of the law laid down by this Court in the aforesaid decisions, this Court is of the opinion that the sole testimony of the PW3 – victim is absolutely trustworthy and unblemished and her evidence is of sterling quality. [Para 9.3][780-C]

3. Therefore, in the facts and circumstances of the case, the trial Court has not committed any error in convicting the accused, relying upon the deposition of PW3 – victim. The trial Court has imposed the minimum sentence provided under Section 8 of the POCSO Act. Therefore, the trial Court has already shown the leniency. At this stage, it is required to be noted that allegations against the accused which are proved from

- A the deposition of PW3 are very serious, which cannot be permitted in the civilized society. Therefore, considering the object and purpose of POCSO Act and considering the evidence on record, the High Court has rightly convicted the accused for the offence under Section 7 of the POCSO Act and has rightly sentenced the accused to undergo three years R.I. which is the minimum sentence provided under Section 8 of the POCSO Act. [Para 9.3][780-D-F]
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- C *Vijay alias Chinee v. State of Madhya Pradesh* (2010) 8 SCC 191 : [2010] 8 SCR 1150 ; *Krishan Kumar Malik v. State of Haryana* (2011) 7 SCC 130 : [2011] 8 SCR 774 ; *Rai Sandeep alias Deepu v. State (NCT of Delhi)*, (2012) 8 SCC 21 : [2012] 6 SCR 1153 – relied on.

- D *Anokhilal v. State of Madhya Pradesh* AIR 2020 SC 232 ; *Vinod Kumar v. Gangadhar* (2015) 1 SCC 391 : [2014] 10 SCR 1050 – referred to.

CASE LAW REFERENCE

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|---|--------------------|-------------|----------|
| | [2020] AIR 232 | referred to | Para 6 |
| | [2014] 10 SCR 1050 | referred to | Para 6.1 |
| E | [2010] 8 SCR 1150 | relied on | Para 7.1 |
| | [2011] 8 SCR 774 | relied on | Para 9.2 |
| | [2012] 6 SCR 1153 | relied on | Para 9.3 |

- F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 680 of 2020.

From the Judgment and Order dated 29.04.2019 of the High Court of Judicature at Madras in Criminal Appeal No. 844 of 2018.

Mr. G. Sivabalamurugan, AOR for the petitioner.

- G The Judgment of the Court was delivered by
M. R. SHAH, J.

1. Leave granted.

- H 2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.04.2019 passed by the High Court of Judicature at

Madras in Criminal Appeal No. 844 of 2018, the appellant – original A
accused has preferred the present appeal.

3. That the appellant herein – original accused was tried by the
learned Fast Track Mahila Court, Dharmapuri for the offences
punishable under Section 7 read with Section 8 of the Protection of
Children from Sexual Offences Act, 2012 (hereinafter referred to as B
the “POCSO Act”). That relying upon the deposition of PW3 – victim,
who at the relevant time was studying in 5th standard and aged 13 years,
convicted the accused for the offence under Section 7 of the POCSO
Act and sentenced him to undergo three years rigorous imprisonment,
which is the minimum sentence provided under Section 8 of the POCSO C
Act. The learned trial Court also passed an order to pay rupees one
lakh to the victim girl, by way of compensation, under Rule 7(2) of the
Protection of Children from Sexual Offences Rules, 2012.

4. Feeling aggrieved and dissatisfied with the judgment and order
of conviction and sentenced passed by the learned trial Court, the
accused preferred appeal before the High Court being Criminal Appeal D
No. 844 of 2018. The appeal was taken up for further hearing on
24.04.2019. The High Court noted that there was no representation on
behalf of the appellant and therefore by order dated 24.04.2019 directed
to remove the name of the appellant’s counsel and further directed the
High Court Legal Aid Committee to appoint Legal Aid Counsel for the E
appellant. The appeal was listed for further hearing on 29.04.2019. On
29.04.2019, the learned Legal Aid Counsel appearing for the appellant
made only submission with respect to compensation of rupees one lakh
awarded by the learned trial Court awarded to the victim girl under
Rule 7(2) of the Protection of Children from Sexual Offences Rules,
2012. It was submitted on behalf of the accused that he is unable to F
pay the compensation of rupees one lakh to the victim girl and pleaded
leniency and requested to set aside the order of compensation awarded
by the learned trial Court. That by the impugned judgment and order
dated 29.04.2019, the High Court partly allowed the said appeal and
modified the judgment and order passed by the learned trial Court with
respect to compensation only and modified the said order to the effect G
that compensation amount shall be paid by the State to the victim girl
and thereafter if the State finds that the accused has got sufficient
means, the same can be recovered from the accused under the
Revenue Recovery Act. The High Court dismissed the appeal so far
as the conviction and imposition of sentence of three years rigorous H
imprisonment is concerned.

A 5. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.04.2019 passed by the High Court, the original accused has preferred the present appeal.

B 6. Learned counsel appearing on behalf of the appellant has vehemently submitted that no sufficient opportunity was given to the accused before passing the impugned judgment and order. It is submitted that the High Court has passed the order on 24.04.2019 providing the services of Legal Aid Counsel to represent the case of the appellant and thereafter the learned Legal Aid Counsel was heard on 29.04.2019, i.e., within a period of four days only and without considering the appeal on merits the impugned judgment and order has been passed. It is submitted that it was very short time for the Legal Aid Counsel to receive the papers from the Registry and inspect the original documents. It is further submitted that as observed by this Court in the case of *Anokhilal v. State of Madhya Pradesh AIR 2020 SC 232* that failure to afford hearing to the accused violates even minimum standards of due process of law. It is submitted that it is further observed that the legal services provided to the accused should be meaningful and not an empty formality.

E 6.1 Learned counsel appearing on behalf of the appellant-accused has also pressed into service Order 41 Rule 31, CPC and the decision of this Court in the case of *Vinod Kumar v. Gangadhar (2015) 1 SCC 391*.

F 6.2 On merits, learned counsel appearing on behalf of the accused has vehemently submitted that as such the mother of the victim-PW2 turned hostile and therefore the learned trial Court has committed a grave error in convicting the accused, relying upon the sole testimony of PW3 – victim. It is submitted that PW2 – mother of the victim did not support the case of the prosecution and even did not support the deposition of PW3 – victim and therefore the learned trial Court committed a grave error in convicting the accused. It is further submitted that in fact the learned trial Court accepted that there are lapses on the part of the prosecution and therefore the benefit of doubt ought to have been given to the accused.

G 6.3 It is further submitted that even PW1 categorically admitted in his cross-examination that there is existence of previous enmity between the parties. It is submitted that in that view of the matter the learned trial Court ought not to have convicted the accused.

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7. The present appeal is vehemently opposed by Shri Yogesh Kanna, learned Advocate appearing on behalf of the respondent-State. It is submitted that merely because the appeal was disposed of within four days from the date of providing legal assistance to the accused, it cannot be presumed that no fair and sufficient opportunity was given to the accused to defend the case. It is submitted that it cannot be presumed that the legal aid counsel was not having any material and no papers with him. It is submitted that from the impugned order it appears that the legal aid counsel made only one submission with respect to compensation and in fact the same has been considered in favour of the accused by modifying the judgment and order passed by the learned trial Court.

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7.1 On merits, it is vehemently submitted by the learned counsel appearing on behalf of the respondent-State that in the present case the learned trial Court has not committed any error in convicting the accused relying upon the deposition of PW3-victim whose evidence is trustworthy and reliable. It is submitted that she has been fully cross-examined by the defence. It is submitted that there is no reason to doubt the testimony of the victim. It is submitted that as per the settled proposition of law, there can be a conviction on the sole testimony of the victim. Reliance is placed upon the decision of this Court in the case of *Vijay alias Chinee v. State of Madhya Pradesh, (2010) 8 SCC 191*.

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7.2 It is further submitted that in the present case merely because PW2-mother of the victim has turned hostile, the testimony of the PW3, which otherwise is reliable and trustworthy, cannot be doubted. It is submitted that even otherwise PW2 cannot be said to be the eye-witness to the incident and therefore when PW3-victim has fully supported the case of the prosecution, the learned trial Court has not committed any error in convicting the accused for the offence under Section 7, punishable under Section 8 of the POCSO Act. It is submitted that as such the learned trial Court has taken a very lenient view and has awarded minimum sentence provided under Section 8 of the POCSO Act.

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7.3 Making the above submissions, it is prayed to dismiss the present appeal.

8. We have heard the learned counsel for the respective parties at length.

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A 8.1 Learned counsel appearing on behalf of the appellant has very much emphasised on disposal of the appeal within four days from the date of providing legal assistance to the accused. It is the case on behalf of the appellant-accused that on 24.04.2019, his advocate remained absent and the High Court directed the Legal Aid Committee to provide legal assistance to the appellant-accused and the matter was adjourned
B to 29.04.2019 and on the very date, i.e., On 29.04.2019, the learned legal aid counsel did not argue the appeal on merits and has confined the appeal with respect to order of compensation awarded by the learned trial Court. Therefore, it is the case on behalf of the accused that no fair and sufficient opportunity was given to the accused. Heavy reliance
C is placed on the decision of this Court in the case of *Anokhilal (supra)*. However, it is required to be noted that as such nothing in on record that the legal aid counsel was not having any papers. There cannot be any dispute with respect to proposition of law laid down by this Court in the case of *Anokhilal (supra)*. However, in the facts and circumstances of the case and considering the fact that the High Court
D has given partial relief to the accused and considering the fact that out of the sentence of three years R.I., the appellant has already undergone two years and three months (approximately), instead of remanding the matter to the High Court for a fresh decision, we have called upon to the learned counsel for the respective parties to submit the case on merits, and the learned counsel on behalf of the respective parties have
E made their submissions on merits, noted hereinabove.

9. In the present case, the appellant-accused has been convicted by the learned trial Court for the offence under Section 7, punishable under Section 8 of the POCSO Act. We have gone through the entire judgment passed by the learned trial Court as well as the relevant
F evidence on record, more particularly the deposition of PW1-father of the victim, PW2-mother of the victim and PW3-victim herself. It is true that PW2-mother of the victim has turned hostile. However, PW3-victim has fully supported the case of the prosecution. She has narrated in detail how the incident has taken place. She has been thoroughly and fully cross-examined. We do not see any good reason not to rely upon
G the deposition of PW3 – victim. PW3 aged 15 years at the time of deposition is a matured one. She is trustworthy and reliable. As per the settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy.

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9.1 Whether, in the case involving sexual harassment, molestation etc., can there be conviction on the sole evidence of the prosecutrix, in the case of *Vijay alias Chinee (supra)*, it is observed in paragraphs 9 to 14 as under:

“9. In *State of Maharashtra v. Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550 this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person’s lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)

“16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be

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A infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.”

B 10. In *State of U.P. v. Pappu*, (2005) 3 SCC 594 this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of
C injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of
D her testimony. The Court held as under: (SCC p. 597, para 12)

“12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She
E stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony.
F Assurance, short of corroboration as understood in the context of an accomplice, would do.”

11. In *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384, this Court held that in cases involving sexual harassment, molestation, etc.
G the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may
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look for some assurances of her statement to satisfy judicial conscience. A
The statement of the prosecutrix is more reliable than that of an injured
witness as she is not an accomplice. The Court further held that the
delay in filing FIR for sexual offence may not be even properly explained,
but if found natural, the accused cannot be given any benefit thereof.
The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21) B

“8. ... The court overlooked the situation in which a poor helpless
minor girl had found herself in the company of three desperate
young men who were threatening her and preventing her from
raising any alarm. Again, if the investigating officer did not
conduct the investigation properly or was negligent in not being C
able to trace out the driver or the car, how can that become a
ground to discredit the testimony of the prosecutrix? The
prosecutrix had no control over the investigating agency and the
negligence of an investigating officer could not affect the
credibility of the statement of the prosecutrix. ... The courts must, D
while evaluating evidence, remain alive to the fact that in a case
of rape, no self-respecting woman would come forward in a court
just to make a humiliating statement against her honour such as
is involved in the commission of rape on her. In cases involving
sexual molestation, supposed considerations which have no E
material effect on the veracity of the prosecution case or even
discrepancies in the statement of the prosecutrix should not, unless
the discrepancies are such which are of fatal nature, be allowed
to throw out an otherwise reliable prosecution case. ... Seeking
corroboration of her statement before relying upon the same, as F
a rule, in such cases amounts to adding insult to injury. ...
Corroboration as a condition for judicial reliance on the testimony
of the prosecutrix is not a requirement of law but a guidance of
prudence under given circumstances. ...

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21. ... The courts should examine the broader probabilities of a G
case and not get swayed by minor contradictions or insignificant
discrepancies in the statement of the prosecutrix, which are not
of a fatal nature, to throw out an otherwise reliable prosecution
case. If evidence of the prosecutrix inspires confidence, it must H

A be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend *assurance* to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

(emphasis in original)

C 12. In *State of Orissa v. Thakara Besra*, (2002) 9 SCC 86, this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

E 13. In *State of H.P. v. Raghubir Singh*, (1993) 2 SCC 622 this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.* (2010) 2 SCC 9 placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan*, AIR 1952 SC 54.

G 14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”

(Emphasis supplied)

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9.2 In the case of *Krishan Kumar Malik v. State of Haryana* (2011) 7 SCC 130, it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

9.3 Who can be said to be a “sterling witness”, has been dealt with and considered by this Court in the case of *Rai Sandeep alias Deepu v. State (NCT of Delhi)*, (2012) 8 SCC 21. In paragraph 22, it is observed and held as under:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all 12 other

A such similar tests to be applied, can it be held that such a witness
can be called as a “sterling witness” whose version can be
accepted by the court without any corroboration and based on
which the guilty can be punished. To be more precise, the version
of the said witness on the core spectrum of the crime should
B remain intact while all other attendant materials, namely, oral,
documentary and material objects should match the said version
in material particulars in order to enable the court trying the
offence to rely on the core version to sieve the other supporting
materials for holding the offender guilty of the charge alleged.”

C On evaluating the deposition of PW3 – victim on the touchstone
of the law laid down by this Court in the aforesaid decisions, we are
of the opinion that the sole testimony of the PW3 – victim is absolutely
trustworthy and unblemished and her evidence is of sterling quality.

Therefore, in the facts and circumstances of the case, the learned
D trial Court has not committed any error in convicting the accused, relying
upon the deposition of PW3 – victim. The learned trial Court has
imposed the minimum sentence provided under Section 8 of the POCSO
Act. Therefore, the learned trial Court has already shown the leniency.
At this stage, it is required to be noted that allegations against the
E accused which are proved from the deposition of PW3 are very serious,
which cannot be permitted in the civilized society. Therefore,
considering the object and purpose of POCSO Act and considering the
evidence on record, the High Court has rightly convicted the accused
for the offence under Section 7 of the POCSO Act and has rightly
F sentenced the accused to undergo three years R.I. which is the minimum
sentence provided under Section 8 of the POCSO Act.

10. Now so far as the amount of compensation awarded by the
learned trial Court is concerned, the High Court has modified the same
and has directed the State to pay the compensation to the victim and
thereafter to recover the same from the accused under the provisions
G of the land revenue, if it finds that the accused has sufficient means. It
is the case on behalf of the accused that the accused is very poor and
has no property. If that be so, he is not to worry. The aforesaid has
been taken care by the High Court by modifying the judgment and order
passed by the learned trial Court.

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11. Now so far as the reliance placed upon the decision of this Court in the case of *Vinod Kumar (supra)* and the reliance placed upon Order 41 Rule 31 CPC is concerned, as we ourselves have heard the appeal on merits and considering the fact that out of three years R.I., the appellant has already undergone two years and three months (approximately), the said decision shall not be of any assistance to the accused.

12. In view of the above and for the reasons given above, the present appeal deserves to be dismissed and is accordingly dismissed.

Ankit Gyan

Appeal dismissed.