



2026:CGHC:3765-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 803 of 2022**

Bhupendra Netam @ Bhumendra S/o Manthir Netam Aged About 19 Years R/o Village - Parsoda, Thana - Balod, District : Balod, Chhattisgarh

... **Appellant**

versus

State Of Chhattisgarh Through Thana - Balod, District : Balod, Chhattisgarh

... **Respondent**

For Appellant : Mr.Sameer Singh, Advocate

For Respondent : Mr.S.S.Baghel, Government Advocate

Hon'ble Shri Justice Ramesh Sinha, Chief Justice

Hon'ble Shri Justice Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, CJ

22/01/2026

1. This criminal appeal arises out of the judgment of conviction and order of sentence dated 30.04.2022 passed by the Special Judge (Protection of Children from Sexual Offences Act 2012), Balod in Special Sessions Case No.30/2019, whereby the appellant has



been convicted for offence under Section 376(2)(i)(j)(l) of the IPC and sentenced to undergo RI for 20 years and fine of Rs.2000/-, in default of payment of fine to further undergo rigorous imprisonment for two months.

2. The prosecution story, in brief, is that the victim's mother lives in village of Parsoda Police Station, District Balod, the victim is her daughter, aged 4 years and 5 months. She has been physically and mentally weak since childhood and is mute. On the evening of 23.03.2019, after putting the victim girl to sleep on a cot, she went outside to wash utensils near the tank in the field. At around 5:30 or 6:00 P.M., her daughter heard the victim girl crying. She ran inside the house and saw that the victim girl was not on the cot. She went to the shade and saw that the accused was lying on top of her daughter and was doing wrong things. She then asked the accused what he was doing to her daughter. The accused, seeing her, ran away holding his lowers in his hand. Half an hour after the above incident, her husband came back home after watching the Phag competition, then she told him about the incident, then her husband went to the house of the accused, then the accused said that he has not done anything wrong with the victim girl, false allegations are being made against him and threatened to kill them, after that she went to Balod police station and lodged an oral report of the incident. As per the statement of the mother of the victim, Sub Inspector Shobha Yadav posted at Police Station Balod registered a case against accused Bhupendra @



Bhumendra Netam under Crime No.132/2019 and First Information Report was registered under Sections 450, 376, 506 of the Indian Penal Code and Sections 4, 5(k)(m) and 6 of the Protection of Children from Sexual Offences Act, 2012 vide Ex.P-1. Spot map was prepared by the investigating officer vide Ex.P-2. Consent for medical examination of the victim was given by her mother vide Ex.P-3. Medico-legal examination report of sexual violence is Ex.P- 4 in which Dr.Soma Ekka (PW-3) has found hymen ragged at 6 o'clock position, slight redness of labia majora on both sides and laceration at posterior fourchette which was not bleeding vide Ex.P-14. Patwari also prepared the spot map vide Ex.P-5. Birth certificate of the victim in which date of birth of the victim has been mentioned as 19.10.2014 was seized vide Ex.P-8. Photocopy of Adhar card of the victim has been seized vide Ex.P-9. Statement of mother of the victim under Section 164 CrPC victim was recorded vide Ex.P-10. Clothes of the appellant was seized vide Ex.P-11. Consent for medical examination was obtained from the appellant vide Ex.P-12. The appellant was arrested on 24.03.2019 vide arrest memo Ex.P-13. MLC of the victim was conducted by Dr.Megha Jha (PW-4) vide Ex.P-15 in which the doctor has found that labia minora damaged, hymen ruptured and no bleeding or discharge. The appellant was examined by Dr.O.P.Gaure (PW-5) where he found that the appellant was capable to perform sexual intercourse vide Ex.P-16. Seized articles were sent to FSL for chemical examination and as



per FSL report (Ex.P-26), semen stains and human sperm were found in Articles A and B slides seized from the victim, Article C underwear seized from the appellant and Article D3 swab vaginal seized from the victim.

3. After completion of investigation, charge-sheet was filed before the jurisdictional criminal Court for trial in accordance with law. The trial Court has framed charges against the appellant under. The appellant abjured his guilt and pleaded innocence.
4. In order to establish the charge against the appellant, the prosecution examined as many as 7 witnesses and exhibited the documents (Exs.P-1 to P-26). The statement of the appellant under Section 313 of CrPC was also recorded in which he denied the material appearing against him and stated that he is innocent and he has been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in para 1 of the judgment. Hence, this appeal.
5. Learned counsel for the appellant submits that the impugned judgment of conviction and order of sentence passed by the learned trial Court are contrary to law and the material available on record, and therefore the same are liable to be set aside. He further submits that the learned trial Court has gravely erred in convicting the appellant despite the fact that the independent witnesses examined by the prosecution did not support its case.



The testimony of the victim's mother is not reliable and trustworthy, particularly in view of the material contradictions and inconsistencies appearing in her statements recorded under Sections 161 and 164 of the Code of Criminal Procedure, as well as her deposition before the Court, thereby rendering the case doubtful. He also submits that the learned trial Court has selectively interpreted the statements of the prosecution witnesses in a manner solely aimed at reaching a conclusion of guilt against the appellant. The prosecution case is inherently weak, and the conviction is bad in the eye of law. The learned trial court failed to properly appreciate the material omissions and contradictions in the testimonies of the witnesses and also erred in not giving due weight to the statements and medical reports of the examining doctors. He contended that the learned trial Court failed to appreciate that there is no cogent material on record to establish that the alleged incident ever took place. The conviction of the appellant has been recorded solely on the basis of the uncorroborated statement of mother of the victim, despite the fact that several prosecution witnesses turned hostile and did not support the case of the prosecution. Such a conviction is unsustainable in law. As such, criminal appeal deserves to be allowed and the impugned judgment deserves to be set aside.

6. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellant and submits that the prosecution has proved its case beyond



reasonable doubt and mother of the victim (PW-1) has clearly deposed the conduct of the appellant in her statement recorded under Section 164 CrPC and in the Court statement and the learned trial Court after considering the material available on record has rightly convicted and sentenced the appellant, in which no interference is called for.

7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
8. The first question for consideration before this Court would be, whether the trial Court is rightly held that on the date of incident, the victim was minor?
9. When a person is charged for rape punishable in the Indian Penal Code, the age of the victim is significant and essential ingredients to prove such charge and the gravity of the offence gets changed when the child is below 18 years, 12 years and more than 18 years. Section 2(d) of the POCSO Act defines the "child" which means any person below the age of eighteen years.
10. In the present case, the prosecution has seized birth certificate of the victim (Ex.P-8), in which her date of birth has been mentioned as 19.10.2014 and since defence has not challenged the documentary and oral evidence presented by the prosecution regarding the victim's date of birth being 19.10.2014, it is established that the age of the victim on the date of incident i.e.



23.03.2019 is 4 years 5 months and 4 days. Thus, at the time of the incident, the victim is a minor girl below 12 years of age.

11. The next question for consideration before us is whether the appellant has committed rape on minor victim ?

12. Rape has been defined in Section 375 of the IPC as follows :

"375. Rape.-- A man is said to commit "rape" if he--

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

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:

First. Against her will.

Secondly. Without her consent.



Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under eighteen years of age.

Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not



by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

Thus, according to the above definition, penetration of the penis into the vagina, to the extent, is sufficient to establish the crime of rape i.e., even touching the vagina with the penis to penetrate it would constitute rape. The victim was found to be under 12 years of age and was deemed a "child" under the POCSO Act.

13. In the present case, mother of the victim has been examined as (PW-1). In para 2 of her evidence, she stated that on 23.03.2019, at approximately 5-6 P.M., she went to the courtyard behind her house to clean utensils and had left the victim to sleep on a cot in the room, she heard the victim crying, then she went back to her room from the courtyard. When she returned, she saw that her daughter, the victim, was not on the cot. She was lying on the cot near the room and the accused was sleeping on top of her and was doing wrong things with the victim. She saw that her daughter, the victim, did not have her underwear on her body. At that very moment, she abused the accused and shouted at him, asking him what he was doing. Then the accused ran away from there wearing his lower. In para 3 of her evidence, she stated that



at the time of the incident, no one was at home except the victim and her. Her husband had gone to a festival in the village. He returned home half an hour after the incident, when she informed him about the accused's misdeeds. In para 4 of her evidence, she stated that when the accused and his father were informed of the incident, the accused's father questioned him, stating that he had done nothing wrong and that they were falsely implicating him. The accused's elder mother and sister verbally abused them. While leaving the house, the accused threatened to kill four or five people. On the night of the incident, they were frightened by the threats made by the accused/appellant, so they did not go to the police station that night. In para 11 of her cross-examination, she denied that the victim removes her clothes herself due to her mental condition not being good. She also denied that the victim removed her clothes herself on the date of the incident. She also denied that the accused was taking care of her daughter, the victim, on the date of the incident. She also denied that she is making false allegations against the accused. She voluntarily says that the accused removed his clothes up to his thighs. She admitted that when she shouted the accused ran away from there.

14. Mother of the victim (PW-1) in her 164 CrPC statement before the Judicial Magistrate First Class, Balod has stated that her daughter Shikha is mentally and physically weak and is mute. On 23.03.2019, around 5 to 6 P.M., she was cleaning utensils in the field adjacent to the house and had put her daughter Shikha to



sleep on the cot. When her neighbor Bhupendra Netam came and asked about her husband, she told him that he was not at home and she told him to close the door while going back. Then the accused picked up her daughter and took her inside the room. He laid her on the floor, removed her underwear and was sleeping on her. When she heard her daughter crying, she went to see and the accused was sleeping on her daughter and was wearing his underwear. He had taken off his lower and at the same time she reached there, the accused was trying to rape her daughter, but he could not rape her, then she shouted at him and he ran away holding his clothes. Her daughter was lying in a semi-nude state, then she made her daughter wear another underwear. When her husband came after half an hour, she told him about the incident, then her husband Shatrughan went to Bhupendra Netam's house, Bhupendra Netam said that she has not done anything wrong and threatened them by saying that he will kill them. The accused's elder mother Bhagwati, elder sister Sakina and her aunt abused them, then out of fear her husband and she did not go to the police station at night to lodge a report and the next day on 24.03.19, she went to the police station and lodged a report against the accused.

15. Father of the victim (PW-2) has stated in para 2 of his evidence that he had gone to a Phag competition and when he returned from there in the evening, his wife told him about the incident that had happened with the victim that accused Bhupendra was lying



on top of the victim under the stairs in the middle of their house and was doing wrong things with the victim, which his wife had seen. When his wife saw the accused and shouted, the accused ran away from there. He tried to find the accused but could not find him, then he went to the accused's house and caught him and brought him to his house and questioned the accused about the incident, then the accused denied committing the incident.

16. Dr. Megha Jha (PW-4) in her evidence has stated that on internal examination she found mild inflammation in labia minora, hymen was ruptured and there was no bleeding of any kind.

17. The Supreme Court in the matter of **Rai Sandeep @ Deenu v. State of NCT of Delhi, 2012 (8) SCC 21** held as under:-

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber 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 everyone 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 other similar such tests to be applied, it can 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 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."

18. The Supreme Court in the matter of **Nawabuddin v. State of Uttarakhand, (2022) 5 SCC 419** has held as under:-



“17. Keeping in mind the aforesaid objects and to achieve what has been provided under Article 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.

18. Children are precious human resources of our country; they are the country’s future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas.



19. As observed and held by this Court in **State of Rajasthan v. Om Prakash, (2002) 5 SCC 745**, children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. In **Nipun Saxena v. Union of India, (2019) 2 SCC 703**, it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.”

19. Considering the statement of the mother of the victim (PW-1) who has specifically stated the act of the present appellant, statement of Dr.Megha Jha (PW-4), further considering the FSL report (Ex.P-26), also considering the age of the victim at the time of the incident i.e. 4 years and 6 months, the fact that the victim has been hearing and speech impaired since childhood, further considering the mitigating circumstances of the case and the material available on record we are of the considered opinion that the learned Special Judge has rightly convicted the appellant for



offence under Section 376(2)(i)(j)(l) of the IPC. We do not find any illegality and irregularity in the findings recorded by the trial Court.

20. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant. The conviction and sentence as awarded by the Special Judge to the appellant is hereby upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.

21. It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.

22. Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial court concerned forthwith for necessary information and compliance and also send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court, if so advised, with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice