



2026:CGHC:16810-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 53 of 2024**

Rajesh Kumar Hidko S/o Itwaru Ram Aged About 24 Years R/o Schoolpara Duva, Police Chowki-Kacche, Thana- Bhanupratappur, Distt- Uttar Batar Kanker (CG)

... Appellant**versus**

State Of Chhattisgarh Through Police Station-Bhanupratappur, Distt- Uttar Bastar, Kanker (CG)

... Respondent

For Appellant : Mr.C.K.Sahu, Advocate

For Respondent : Mr.Saurabh Sahu, Panel Lawyer

Hon'ble Shri Justice Ramesh Sinha, Chief Justice and**Hon'ble Shri Justice Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, CJ****13/04/2026**

1. Today, the matter is listed for hearing on I.A.No.01/2023 application for suspension of sentence and grant of bail to the appellant. However, with the consent of learned counsel for the parties, the appeal itself is heard finally as the appellant is in jail since 13.03.2023.

2. The mother of the victim (PW-9) has appeared through DLSA, Kanker and objected for grant of bail to the appellant.
3. This criminal appeal arises out of the judgment of conviction and order of sentence dated 26.09.2023 passed by the Special Judge (Protection of Children from Sexual Offences Act 2012), Bhanupratappur in Special Criminal Case (POCSO Act) No.17/2023, whereby the appellant has been convicted for offence under Sections 450, 363 and 376AB of the Indian Penal Code (hereinafter called as "IPC") and sentenced to undergo RI for ten years and fine of Rs.1000/-, in default of payment of fine to further undergo RI for two months, RI for seven years and fine of Rs.500/-, in default of payment of fine to further undergo RI for one month and RI for life till natural death and fine of Rs.10,000/-, in default of payment of fine to further undergo RI for six months.
4. The prosecution story, in brief, is that on 13.03.2023, the complainant (the victim's grandmother) appeared at Kachha police post and provided oral information stating that she was a resident of Duwa village and worked as a daily wage laborer. They owned two houses. On 12.03.2023, after dinner, the family went to sleep in their designated areas. She and her nine-year-old granddaughter slept on the edge of the veranda (shade), and her three-year-old granddaughter, PW-1, slept in the middle. The victim's parents had gone to sleep in their new house. Both exit doors to their house were locked from the inside. She woke up at

4:00 A.M. to go to the bathroom and noticed that her granddaughter was not in bed. She searched the house, both inside and outside, but could not find her. She then gathered her daughter-in-law, son and other family members and told them that her granddaughter, the victim, had slept with her and she was missing. All the members of her family gathered together and searched all the places in the house once again and also asked the victim's parents who were sleeping in the new house, but the victim was nowhere to be found. Her granddaughter, the victim, is a 3-year-old girl, who has gone away somewhere without informing her. She fears that some unknown person has kidnapped her minor granddaughter, the victim.

5. On the basis of the above oral information of the complainant (grandmother of the victim), an unnumbered First Information Report (FIR) Ex.P.-7 was registered against an unknown person under Section 363 IPC under unnumbered crime number 0/2023 at Police Post Kachha and the case was taken into investigation. On appearing at Police Station Bhanupratappur for registration of numbered crime, FIR No. 34/2023 Ex.P.-39 was registered under Section 363 IPC and the case was taken into investigation. During the investigation, after the recovery of the victim, her statement was recorded by a female police officer and as per her statement, on prima facie the accused / appellant being found to have committed the said crime, after completing all the necessary formalities and investigation work related to the investigation, a

case was registered against the accused / appellant under Sections 363, 450, 376AB IPC and Section 5 (d), 6 of the Protection of Children from Sexual Offences Act, 2012 and filed the charge-sheet before the competent jurisdictional Criminal Court, which is registered as Special Criminal Case No. 17/2023.

6. On the basis of the charge sheet presented before the Court, charges under Sections 450, 363, 376AB) of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 have been framed against the accused / appellant and read out. The accused denied the alleged offence and in his statement, he claimed innocence and said that he was falsely implicated, but on the question of evidence, he expressed no intention of giving any evidence in his defence.
7. A total of 23 witnesses were called in support of the case from the side of the prosecution – the victim (PW-1), victim's father (PW-2), Patwari Ashwani Sai (PW-3), victim's grandmother (PW-4), victim's elder mother (PW-5), Dr. Nisha Vatti (PW-6), Muraha Ram Dugga (PW-7), Dr. S.S. Nag (PW-8), victim's mother (PW-9), victim's elder father (PW-10), Dr. Madhuri Gaur (PW-11), Constable Revati Poya (PW-12), Dr. Ragini Mandavi (PW-13), Head Constable Umitra Mandavi (PW-14). Outpost in-charge Santosh Kumar Sahu (PW-15, Inspector Shashikala Uike (PW-16), Constable Umendra Kumar Yadav (PW-17, Constable Deepak Vadde (PW-18), Sub-Inspector Akhilesh Dhiwar (PW-19,

Dr. Akanksha Gupta (PW-20, Milobai Dugga (PW-21), Constable Nirmotin Katakwar (PW-22) and Ashok Kumar Uike (PW-23) have been examined.

8. As documentary evidence in the case by the prosecution, consent letter for examination of private parts of the victim Ex.P.-1, Patwari Sightseeing Map Ex.P.-2, Panchnama Ex.P.-3, seizure of birth certificate of the victim Ex.P.-4, Patwari Sightseeing Map Ex.P.-5, Sightseeing Map and Panchnama prepared and sent report to the Tehsildar Ex.P.-6, unnumbered First Information Report Ex.P.-7, Spot Map Ex.P.-8 and Ex.P.-9, report of examination of private parts of the victim Ex. P.-10. Private examination report of Anukha's clothes/lower underwear, Ex. P-12. Curie report of Anukha's underwear, Ex. P.-13. Surrender receipt of the victim , Ex. P. 14. Private examination report of Anukha's private part, Ex. P.-15, Curie report of documents related to the examination and treatment of the victim, Ex. P.-16. Seizure memo of the victim's shirt, dock and underwear, Ex. P.-17. Complaint for private part examination of the victim, Ex. P.-18. CD of the audio statement recording of the victim, Seizure memo, Ex. P.-19 and original diary, Sanha register, Ex. P.-20 have been marked as exhibits in evidence.
9. Similarly, the prosecution has prepared the seizure panchnama of the victim Ex.P.-21, recovery panchnama Ex.P.-22, arrest panchnama of the accused Ex.P.-23, information regarding arrest

Ex.P.-24, written complaint for examination of private parts of the accused Ex.P.-25, report sent to the Tehsildar for preparation of Patwari Nazri-Naksha Ex.P.-26, report regarding providing Curie report Ex.P.-27, seizure memo of underwear and semen slide of the accused Ex.P.-28, report sent regarding curie of documents related to the treatment and diagnosis of the victim Ex.P.-29, report sent for chemical examination of the seized articles Ex.P.-30, receipt Ex.P.-31, chemical test report Ex.P.-32. Report sent regarding providing bed head ticket of the victim Ex.P.-33. Seizure note of two pieces vaginal smear and swab of the victim Ex.P.-34. Seizure note of nail clippings and vaginal slide of the victim Ex.P.-35. Seizure note of bed head ticket of the victim Ex.P.-36, First Information Report Ex.P.-37 and genital examination report of the prosecutrix Ex.P.-38 have been marked.

- 10.** After appreciation of evidence available on record, learned trial Court has convicted and sentenced the appellant as mentioned in para 1 of the judgment. Hence, this appeal.
- 11.** Learned counsel for the appellant submits that the impugned judgment of conviction and the order of sentence passed by the learned trial court are bad in law and on facts. There is no evidence against the appellant, and the case of the prosecution is based on surmises; hence, the appeal deserves to be allowed and the appellant acquitted. He further submits that the learned trial court has erred in believing the statement of the complainant, as

there are a large number of contradictions among the statements of the prosecution witnesses. He also contends that the appellant has been falsely implicated in the crime in question and that the trial court has stretched its imagination to a great extent beyond what is permissible under the law in convicting the appellant. Lastly, it is submitted that the sentence imposed on the appellant is too harsh and cannot be sustained in law.

- 12.** On the other hand, learned counsel for the State opposes the submissions made by learned counsel for the appellant and submits that the trial Court has rightly convicted and sentenced the appellant, in which no interference is called for by this Court.
- 13.** We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
- 14.** 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?
- 15.** When a person is charged for offence punishable under the POCSO Act, or 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.

16. In the present case, the prosecution has seized birth certificate of the victim (Ex.P-4), in which her date of birth is mentioned as 11.11.2019 and since defence has not challenged the documentary and oral evidence presented by the prosecution regarding the victim's date of birth being 11.11.2019, it is established that the age of the victim on the date of incident i.e. 12.03.2023 is 3 years, 4 months, and 1 day. Thus, at the time of the incident, the victim is a minor girl below 12 years of age.

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

18. 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.”

- 19.** The victim has been examined as PW-1. In para 2 of her statement, the victim remains silent when asked about her age. She stated that accused Rajesh took her to the fields. Accused Rajesh took her to the fields and raped her. In para 3 the victim replied that someone did something to you. What did you tell her after that? The victim said that the accused, Rajesh, raped me. In para 4 of her cross-examination, she stated that she has a brother. His name is Babu. He admitted that she know her parents' names. The victim revealed her parents' names. She do not not go to Anganwadi, she go to school. She know how to study. She slept in the forest that night. When asked where she slept before going to the forest, she said she slept with her grandmother. In para 5 of her cross-examination, she admitted that it is dark at night. She also admitted that she slept with her grandmother and was asleep. When the victim was asked that you were asleep, then who took you away at night, you do not know, in reply to which the victim pointed towards the accused.

She admitted that she did not know who took her away from the house. The witness voluntarily said that she had to go after going towards the fields and points towards the accused. In para 6 of her cross-examination, she denied that she was alone in the forest and crying. The victim points to the accused and explains. She also denied that the accused, Rajesh, brought her while she was crying alone in the forest.

20. Dr.Nisha Vatti (PW-6) has stated in her evidence that the victim had a visible bruise on her back near the waist. The doctor has opined that upon conducting the physical and genital examination of the victim, she found that force was used to commit sexual intercourse, but a definite opinion whether sexual intercourse took place with her can be given only after the FSL report.

21. Dr.Madhuri Gour (PW-11) has stated in her evidence that the victim had 2-3 scratches on her back. On internal examination, she found that there were two small cuts on labia minora. There was swelling on and above labia majora. The upper part of the hymen was reddened. While answering question 1, she stated that force found to have been applied to the private parts of the victim, but it is not possible to say with certainty whether the force was applied through the penis only. While answering question 3 she stated that his examination revealed cuts to the labia minora and redness over the fossa and introitus. Her examination

indicates that all of the above indicated force was applied to the victim's genitals.

22. Dr. Akansha Gupta (PW-20) has stated in her evidence that there was two or three abrasions on the victim's back, measuring approximately 5x0.5cm, 0.5x0.5 cm, 1x0.5cm and 2x0.5cm. The labia majora were swollen. The external urinary tract was swollen. There were two cuts on the labia minora, measuring 1x0.5 cm. The foreskin and introitus were swollen and red. The hymen was swollen and had cuts at the 1:00 and 6:00 positions.

23. As per FSL report (Ex.P-32), semen stains and human sperm were found in Article 'G' underwear and Article 'H' semen slide seized from the appellant.

24. In the Indian society refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence

is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in **Rameshwar v. The State of Rajasthan (AIR 1952 SC 54)** were:

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...”.

25. A victim 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 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 victim. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short '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 victim 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 victim must necessarily depend on the facts and circumstances of each case. But if a victim is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the victim does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

26. The Supreme Court in the matter of **Ranjit Hazarika v. State of Assam, AIR 1998 SC 635** has held that the evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice.

27. 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.”

28. 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.”

- 29.** Considering the statement of the victim (PW-1), FSL report (Ex.P-32), material available on record, statements of Dr.Nisha Vatti (PW-6), Dr.Madhuri Gour (PW-11) and Dr.Akansha Gupta (PW-20) and the law laid down by the Supreme Court in the above-stated judgments, we are of the considered opinion that learned Special Judge has rightly convicted and sentenced the appellant for the above-mentioned offences. We do not find any illegality and irregularity in the findings recorded by the trial Court.
- 30.** 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**.
- 31.** In view of above, I.A.No.01/2023 stands disposed of.
- 32.** It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.
- 33.** 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 appellant is undergoing his jail sentence to serve the

same on the appellant informing him that he is 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