



2026:CGHC:20809-DB

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 957 of 2017**

Hemant Kumar Deshlahre S/o Vishal Ram Deshlahre, Aged About 24 Years R/o Aawas Para, Ward 24, Daundi, Police Station Daundi, District Balod, Chhattisgarh.

**... Appellant(s)**

**versus**

State Of Chhattisgarh Through Station House Officer Rajhara, District Balod, Chhattisgarh.

**... Respondent(s)**

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For Appellant(s) : Mr. Sandeep Yadav, Advocate

For Respondent(s) : Ms. Vaishali Mahilong, Dy. G.A.

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**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Shri Bibhu Datta Guru, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**05.05.2026**

1. The criminal appeal arises out of the judgment of conviction and order of sentence dated 24.01.2017 passed by the learned Sessions Judge (F.T.C.) Balod, District- Balod (C.G.) in Special Session Case No. 22/2016 whereby, the appellant has been convicted for offences punishable as under:

Conviction under Section	Sentences (to both the appellants)
Section 363 of the IPC	R.I. for 07 years and fine of Rs.1000/-, in default of payment of fine 1 month R.I.
Section 366 of the IPC	R.I. for 07 years and fine of Rs.1000/-, in default of payment of fine 1 month R.I.
Section 376 of the IPC	Life imprisonment & Fine of Rs.1000/-, in default of payment of fine, additional R.I. for 1 month.
All the sentences have been directed to run concurrently.	

2. It transpires from the order-sheet that the appellant after being released on bail did not appear before the Registry for marking his presence during pendency of the appeal, but as the appellant is being represented by his counsel Mr. Sandeep Yadav, we proceed to hear the matter finally.
3. The prosecution story, in brief, is that the date of birth of the victim is stated to be 22.07.1999. It is alleged that she pursued her schooling from Class 1st to 10th in her native village Bitai while residing with her parents, and thereafter was studying in Class 11th while staying in a hostel at village Dundi.
4. As per the prosecution, in the month of August, 2015, the accused contacted the victim and asked her to meet him, during which he expressed his intention to marry her. It is alleged that the victim informed the accused that she was a minor. Thereafter, it is alleged that the accused, on the pretext of marriage, introduced the victim to his family members, who

are also stated to have advised him that the victim was underage.

5. It is further the case of the prosecution that in February, 2016, the accused allegedly took the victim to the market area of village Sambalpur and thereafter to another house situated at Bandhiyapara, Dundi, where it is alleged that he established physical relations with her. Subsequently, the victim went to reside at her maternal grandmother's house in village Belargondi.
6. The prosecution further alleges that thereafter, the accused again contacted the victim and induced her to accompany him to Bhopal. It is alleged that he called her to Rajnandgaon and from there took her to Bhopal by train, where she was kept in a rented accommodation for about 15 days. Thereafter, upon receiving a call from her father, the victim returned and is stated to have gone to the house of the accused. It is further alleged that the accused thereafter took her to his brother's house at village Umarpoti, where she stayed for about 10 days, and subsequently returned to her parental home on 03.05.2016.
7. It is further alleged that on 05.05.2016, the accused came to the house of the victim and took her along with him in the presence of her parents while reiterating his intention to marry her. Thereafter, on the written report submitted by her father,

namely PW-1 Sonu Ram (Exhibit P-1), a First Information Report (Exhibit P-2) came to be registered on the same day.

- 8.** During the course of investigation, the victim was recovered and necessary procedural steps were undertaken, including preparation of spot map (Exhibit P-3), seizure of articles (Exhibit P-5), and recording of statements of witnesses. The statement of the victim was also recorded under Section 164 of the Code of Criminal Procedure. Medical examination of the victim was conducted with due consent, and relevant articles were sent for forensic examination to the State Forensic Science Laboratory. The school records pertaining to the age of the victim were also seized. Upon completion of investigation, charge-sheet came to be filed before the competent Court.
- 9.** The accused abjured guilt and claimed to be tried. The prosecution, in order to substantiate its case, examined as many as 10 witnesses.
- 10.** The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, wherein he admitted certain factual aspects as noted in paragraph 2 of the impugned judgment, however, denied the remaining incriminating circumstances and pleaded innocence. The accused did not lead any evidence in defence.

11. 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.
  
12. Learned counsel for the appellant argued that the prosecution that the appellant is innocent and has been falsely implicated in the present case. It is contended that the learned trial Court has failed to appreciate the evidence on record in its correct perspective and has recorded the conviction in a mechanical manner without due consideration of material infirmities in the prosecution case. It is further submitted that the material available on record, including the statements of the victim, would indicate prior acquaintance between the parties and does not prima facie disclose any element of force, threat, or coercion attributable to the appellant, which aspect has been overlooked by the trial Court. Learned counsel also submits that there are material omissions and contradictions in the statements of prosecution witnesses which go to the root of the matter but have not been properly appreciated. It is further argued that the prosecution has failed to satisfactorily establish the age of the victim in accordance with law, and such deficiency has not been duly considered by the trial Court. On the aforesaid grounds, it is contended that the prosecution has failed to prove its case beyond reasonable doubt, and the impugned judgment of conviction, being unsustainable in law, deserves to be set aside.

- 13.** On the other hand, learned counsel for the State opposes the submissions made by learned counsel for the appellant and submits that
- 14.** We have heard the learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
- 15.** The first and foremost issue which arises for consideration in the present appeal is with regard to the age of the victim at the time of the alleged incident, as the conviction recorded by the learned trial Court is primarily founded on the premise that the victim was below 18 years of age.
- 16.** The prosecution, in order to establish the age of the victim, has relied upon the statement of the victim (PW-2), the testimonies of her parents (PW-1 Sonu Ram and PW-9 Smt. Vimala Purame), and the school records, namely the mark-sheet (Article A) and the admission and withdrawal register (Article B), proved through Dinesh Kumar (PW-4).
- 17.** The victim (PW-2) has stated her date of birth to be 22.07.1999. However, it is noteworthy that her statement is not supported by any contemporaneous birth certificate issued by a competent authority. The prosecution has also not produced any document showing the source of entry of date of birth in the school records.

- 18.** The school register produced through PW-4 reflects the date of birth of the victim as 22.07.1999. However, the said witness has categorically admitted in his cross-examination that the entry was not made by him and that he has no personal knowledge regarding the basis on which such entry was recorded. In the absence of proof regarding the foundational basis of such entry, the evidentiary value of the school register becomes doubtful.
- 19.** The testimonies of the parents also do not inspire complete confidence on the aspect of age. While PW-1 has made a general statement regarding the age of the victim, he has admitted that no birth certificate was produced at the time of her admission in school. PW-9, the mother, has only stated that the victim was born in the year 1999, without specifying the exact date. Thus, their statements are approximate in nature and lack precision.
- 20.** The prosecution has also relied upon the radiological examination (Exhibit P-9), wherein the age of the victim has been assessed to be between 16 to 18 years, with a margin of variation. It is a settled position that such medical opinion is only an estimate and where a margin is provided, the benefit thereof must ordinarily enure to the accused.
- 21.** In the present case, the radiological report indicating an age bracket of 16 to 18 years, coupled with the absence of reliable documentary proof regarding the exact date of birth, creates a reasonable doubt with regard to the minority of the victim. The

learned trial Court, however, appears to have accepted the prosecution version in a routine manner without critically examining the evidentiary deficiencies in proving the age.

**22.** In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has failed to prove, beyond reasonable doubt, that the victim was below 18 years of age at the time of the alleged incident. The benefit of such doubt must necessarily go to the appellant.

**23.** In the matter of **Ravinder Singh Gorkhi Vs. State of UP, (2006) 5 SCC 584**, relying upon its earlier judgment in case of **Birad Mal Singhvi Vs. Anand Purohit, 1988 supp. SCC 604**, the Hon'ble Supreme Court has held as under :

"26. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded."

**24.** In the matter of **Alamelu and Another Vs. State, represented by Inspector of Police, (2011) 2 SCC 385**, the Hon'ble Supreme

Court has held that the transfer certificate which is issued by government school and is duly signed by the Headmaster would be admissible in evidence under Section 35 of the Evidence Act 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the prosecutrix in the absence of any material on the basis of which the age was recorded. It was observed as under

“40. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded.

48. We may further notice that even with reference to Section 35 of the Indian Evidence Act, a public document has to be tested by applying the same standard in civil as well as criminal proceedings. In this context, it would be appropriate to notice the observations made by this Court in the case of Ravinder Singh Gorkhi Vs. State of U.P.<sup>4</sup> held as follows:-

"The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a (2006) 5 SCC 584 party to the lis, having regard to the provisions of Section 35 of

the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted."

- 25.** In view of the findings recorded hereinabove with regard to the age of the victim, the next question which arises for consideration before this Court is whether the prosecution has been able to establish, beyond reasonable doubt, that the alleged acts attributed to the appellant were committed under circumstances attracting criminal liability, and whether the evidence of the victim (PW-2) and supporting witnesses inspires confidence so as to sustain the conviction recorded by the learned trial Court.
- 26.** In this context, it becomes necessary to examine the testimony of the and other material witnesses, along with the surrounding circumstances and documentary evidence, in order to assess the credibility, consistency, and overall probative value of the prosecution case.
- 27.** The prosecution case primarily rests upon the testimony of the victim (PW-2), supported by her parents, Sonu Ram (PW-1) and Smt. Vimala Purame (PW-9), as well as certain documentary and medical evidence exhibited during trial. It is,

therefore, incumbent upon this Court to undertake a careful and comprehensive scrutiny of their testimonies in light of the entire material on record.

- 28.** The victim (PW-2), in her examination-in-chief, has alleged that the appellant had established physical relations with her on multiple occasions against her will at different places, including at Bandhiyapara, Dundi, and subsequently at Bhopal. Her statement under Section 164 Cr.P.C. (Exhibit P-10) broadly reiterates the version given before the Court. However, upon a close examination of her cross-examination, several material aspects emerge which have a direct bearing on the credibility of the prosecution case.
- 29.** The victim has admitted that she was in continuous telephonic contact with the appellant prior to the alleged incidents and that she had voluntarily met him on several occasions. She further admitted that she had accompanied the appellant to different places, including Sambalpur and thereafter to locations associated with the appellant, and had stayed there for varying durations. She has also admitted that she travelled with the appellant to Rajnandgaon and thereafter to Bhopal, where she resided in a rented accommodation for several days.
- 30.** It is significant to note that the victim has admitted that during the period she remained with the appellant at different places, including Bhopal and Umarpoti, she did not raise any alarm or

complaint to any person, despite having opportunities to do so. She has further admitted that she remained in contact with her family members during this period, yet did not disclose the alleged acts to them.

- 31.** The victim has also admitted that prior to lodging of the present FIR (Exhibit P-2), she along with her father had approached the police station in the month of March, where both parties were counselled and advised not to associate with each other, and were thereafter allowed to go. This prior intervention assumes significance, as despite such warning, the victim again accompanied the appellant thereafter.
- 32.** Further, in her cross-examination, the victim has admitted that she had left her parental home along with the appellant in public view and had travelled with him willingly. She has also admitted that she did not lodge any complaint against the appellant during the entire period she remained with him. These admissions materially affect the prosecution case, particularly on the aspect of absence of resistance or immediate disclosure.
- 33.** The testimony of PW-1 (father of the victim) also assumes considerable importance. He has deposed that he became aware of the association between the victim and the appellant prior to the lodging of the FIR. He has admitted that the victim remained away from home from 14.02.2016 to 15.03.2016 and

that despite his efforts to persuade her, she expressed her intention to remain with the appellant. He has further admitted that the victim had left with the appellant in his presence and that she had insisted on accompanying him.

- 34.** PW-1 has also acknowledged that earlier, when the matter was taken to the police station, both parties were counselled and no formal case was registered at that stage. This admission indicates that the association between the parties was known and had been addressed earlier, thereby casting doubt on the sudden escalation of allegations at a later stage.
- 35.** Similarly, PW-9 (mother of the victim) has admitted in her cross-examination that the victim had left the house along with the appellant carrying her belongings, including clothes. She has further admitted that the victim did not make any complaint to her regarding any alleged misconduct by the appellant during the relevant period. She has also stated that despite efforts made by the family members to dissuade her, the victim continued to accompany the appellant.
- 36.** The evidence of the victim and her parents, when read conjointly, indicates that the victim had remained in the company of the appellant for a considerable duration, had travelled with him to different places, and had opportunities to return or disclose the alleged acts, but did not do so. The

conduct emerging from the record assumes significance while assessing the overall probability of the prosecution case.

- 37.** As regards the medical evidence, PW-7 (Dr. Rashmi Glad) has proved the medical examination report of the victim (Exhibit P-14) and the examination of her garments (Exhibit P-15). The report indicates that the hymen was found ruptured and healed, and samples were collected for forensic examination. However, the doctor has opined that a definite conclusion regarding sexual intercourse could only be drawn after chemical analysis.
- 38.** The report of the State Forensic Science Laboratory (Exhibit P-25), admissible under Section 293 Cr.P.C., indicates the presence of seminal stains and spermatozoa on the samples examined. Similarly, the medical examination of the appellant conducted by PW-3 (Exhibit P-11) indicates that he was capable of performing sexual intercourse, and the examination of his garments (Exhibit P-12) revealed presence of stains.
- 39.** However, it is well settled that medical and forensic evidence indicating physical relations, by itself, is not determinative of culpability unless it is corroborated by clear and cogent evidence establishing the circumstances in which such acts occurred. In the present case, the surrounding circumstances, conduct of the parties, and admissions in the testimony create doubt regarding the prosecution version.

- 40.** It is also pertinent to note that there are material omissions and inconsistencies between the statements of the victim under Section 164 Cr.P.C. (Exhibit P-10) and her deposition before the Court, particularly with regard to the sequence of events and the manner in which she accompanied the appellant. These inconsistencies have not been satisfactorily explained by the prosecution.
- 41.** The learned trial Court, while recording conviction, has placed reliance on the testimony of the victim without adequately considering the aforesaid material aspects, including her conduct, the admissions made during cross-examination, and the inconsistencies in her version.
- 42.** Upon cumulative consideration of the evidence of PW-2, PW-1, and PW-9, along with the documentary and medical evidence on record, this Court finds that the prosecution version does not inspire such confidence as would warrant sustaining the conviction. The evidence, at best, gives rise to a situation where two views are possible.
- 43.** In such circumstances, the settled principle of criminal jurisprudence requires that the view favourable to the accused be adopted. Accordingly, the appellant is entitled to the benefit of doubt

- 44.** For the foregoing reasons, the criminal appeal is **allowed** and the impugned judgment of conviction and order of sentence dated 24.01.2017 is set aside.
- 45.** The appellant is reported to be on bail. He need not surrender, however, keeping in view of the provisions of Section 437-A CrPC (now Section 481 of BNSS), his bail bonds are not discharged at this stage and shall remain effective for a period of six months from today along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.
- 46.** The trial Court record alongwith the copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

(Bibhu Datta Guru)  
**Judge**

Sd/-

(Ramesh Sinha)  
**Chief Justice**