



2025:CGHC:8605-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1023 of 2024**

Abhishek Ratre S/o Sonchand Ratre Aged About 25 Years R/o Village-
Nevaspur Satnami Para, Post- Kurda, P.S.- Dadhi, District- Bemetara,
C.G. At Present Resident Of Janbhare Basti Chowk, Rasin Gram
Panchayat, Police Station- Karjat, District : Ahmadnagar, Maharashtra

... Appellant**versus**

State Of Chhattisgarh Through The Station House Officer, Police
Station, Khamtarai, District : Raipur, Chhattisgarh

... Respondent

For Appellant : Mr.H.S.Patel, Advocate

For Respondent : Mr.Shailendra Sharma, Panel Lawyer

Hon'ble Shri Justice Ramesh Sinha, Chief Justice**Hon'ble Shri Justice Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, CJ****19/02/2025**

1. This criminal appeal arises out of the judgment of conviction and order of sentence dated 14.05.2024 passed by the Additional Sessions Judge, F.T.S.C. (POCSO), Raipur in Special Criminal Case (POCSO) No.163/2022, whereby the appellant has been



convicted for offence under Sections 363, 366, 376(3) of the Indian Penal Code (hereinafter called as “IPC”) and Sections 4 (2) & 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter called as ‘POCSO’) and sentenced to undergo RI for 7 years and fine of Rs.500/-, in default of payment of fine to further undergo imprisonment for 2 months under Section 363 of the IPC, RI for 7 years and fine of Rs.500/-, in default of payment of fine to further undergo imprisonment for 2 months under Section 366 of the IPC, RI for 20 years and fine of Rs.2000/-, in default of payment of fine to further undergo imprisonment for 6 months under Section 376(3) of the IPC and Section 4(2) of the POCSO Act and RI for 20 years and fine of Rs.2000/-, in default of payment of fine to further undergo imprisonment for 6 months under Section 6 of the POCSO Act.

2. Notice issued to mother of the prosecutrix (PW-2) has been served to her but none has appeared on her behalf to contest the present appeal.
3. The prosecution story, in brief, is that on 14.03.2021, a report was lodged by the mother of the victim (PW-2) at Police Station Khamtarai, District Raipur to the effect that her daughter / victim aged 14 years 07 months 11 days, left the house without informing anyone on 19.02.2021 at 4 P.M. and she was not found even after searching among the relatives. On the report of the mother of the prosecutrix, FIR in Crime No.167/2021 was



registered against an unknown person at Police Station Khamtarai for offence under Section 363 of the IPC and wheels of investigation started.

4. During the investigation proceedings, spot map was prepared. The second class progress report of the victim was seized and attached to the case. On sending the report to the Principal of the School presented the school's dakhil kharij register, which was seized in front of the witnesses. The victim was recovered in presence of the witnesses and a recovery panchnama was prepared. The victim's statement was recorded under Section 161 of the CrPC. The victim's statement was recorded before the Child Welfare Committee and she was handed over to her mother. On finding that the appellant had abducted the victim from her lawful guardianship for illicit sex and had repeatedly raped her and committed penetrative and penetrative sexual assault, the appellant was arrested and his family was informed about the arrest. Medical examination of the appellant and the prosecutrix was conducted. Notice was served to the appellant and the prosecutrix for DNA test, on which both of them refused to undergo DNA test. The victim's panty, vaginal slide and the appellant's underwear were seized and sent to the FSL for chemical examination and as per FSL report (Ex.P-26), human sperms were found on underwear seized from the appellant.



5. After completion of investigation, the charge-sheet was filed before the Additional Sessions Judge F.T.S.C., POCSO, Raipur for trial in accordance with law.
6. The trial Court has framed charges against the appellant under Sections 363, 366 & 376(2)(n) of the IPC and Sections 6 & 4(2) of the POCSO Act. The appellant abjured his guilt and pleaded innocence.
7. In order to establish the charge against the appellant, the prosecution examined as many as 8 witnesses and exhibited the documents (Exs.P-1 to P-30) . 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.
8. Learned counsel for the appellant submits that the impugned judgment dated 14.05.2024 is perverse, erroneous, contrary to law, facts and circumstances of the case, therefore, it is liable to be set aside. The appellant and the victim were well acquainted with each other and they have developed physical relation and looking to the conduct of the victim and material collected by the prosecution, it is evident that the victim is willing and consenting party, therefore, the alleged offences are not made out against the



appellant. He further submits that the appellant and the victim lived together for a considerable period of about 1½ years, which itself revealed the consent and will on the part of the victim. The prosecution has not proved the actual age of the victim and the person who has entered the date of birth of the victim in her school record was not examined. Even if the prosecution is taken as it is then also the impugned conviction of the appellant is not sustainable in the eyes of law and deserves to be quashed. He also submits that learned trial Court has failed to appreciate that there is no corroborative or clinching material adduced by the prosecution to hold the conviction of the appellant under the alleged offences, therefore, the impugned conviction of the appellant deserves to be quashed. As such, the criminal appeal deserves to be allowed and the impugned judgment deserves to be set aside.

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



10. We have heard the learned counsel for the parties and perused the record with utmost circumspection.
11. The issue that arises for consideration in the present appeal is whether the testimony of the victim/prosecutrix deserves acceptance and whether the prosecution has established the case of the appellant beyond reasonable doubt.
12. It is pertinent to observe that the question whether conviction of the accused can be based on the sole testimony of the victim in cases of sexual assault/rape is no longer res integra. The Hon'ble Supreme Court has dealt with the issue in a catena of judgments and has held that the sole testimony of the prosecutrix if found reliable can be the sole ground for convicting the accused and that the creditworthy testimony of the victim in cases of such nature deserves acceptance.
13. Insofar as, age of the victim on the date of the commission of the offence is concerned, she was admittedly 14 years, 07 months and 11 days old at the time of the unsavory incident.
14. PW-3 is Headmaster of the School where the prosecutrix was studying. In para 3 of his evidence, he has stated that on 01.08.2022 the Station House Officer of Police Station Khamtarai, Raipur had given an application to the Principal to provide dakhil kharij register in relation to the age of the prosecutrix. The said letter is Ex.P-14, on which he had signed and acknowledged the parts A to C and in the context of the said memorandum, he had



provided the verified copy of dakhil kharij register to the Station House officer regarding the date of birth of the victim recorded in No.274 of dakhil kharij register of the victim's school. The original dakhil kharij register is Ex.P-15 and its verified copy is Ex.P-15C. In para 5 of his evidence, he has stated that in entry No.274 of dakhil kharij register, the victim's date of birth is mentioned as 03.08.2006 and date of admission as 01.07.2012 in class 1. The original dakhil kharij register was handed over to him on Supurdnama.

- 15.** The prosecutrix has been examined as (PW-1). She has alleged in cross-examination that the appellant had taken her from Raipur to Maharashtra and she was delivered in Maharashtra itself and has also admitted that the police had brought her back from Maharashtra to Raipur. Therefore, the statement of Sub-Inspector Varun Devta (PW-7) is corroborated by the statement of the victim that the victim was recovered from Maharashtra from the possession of the appellant and photography Article A-1 attached in the case also corroborates the allegation of the investigating officer, hence the prosecution has proved beyond doubt that the prosecutrix was recovered from the possession of the appellant from District Ahmednagar, Maharashtra on 19.07.2022.
- 16.** The statement of the prosecutrix (PW-1) is that she used to work in Swastick Company, her mother was sleeping and her elder sister was massaging her mother's feet, she was sitting outside,



then the appellant came and told her, let's go for a walk, he took her to Banjari temple and then took her by bus to a village where he was kept in a hut. They stayed there for five-six days. After two-three days, her mother and the appellant's father came to take her and went to the house of the appellant's middle brother. At that time, the appellant and her friend took her very far away on a motorcycle. Later, her mother came with the appellant's middle brother but as lockdown was about to happen in Raipur, she came back. The victim has also stated that the appellant took her to Lord Shankar's temple, filled her hair parting with sindoor and said that now they are married. No one can do anything. Once she has children, her parents will agree and the police will not take any action. The victim also alleged that she did not want to have a child, but the appellant forcibly had sexual relations with her in order to have a child, due to which she became pregnant, she gave birth to a girl.

17. The mother of the prosecutrix (PW-2) had lodged a missing person report of the victim at Khamtarai Police Station on 14.03.2021, on the basis of which the First Information Report (Ex.P-8) was registered against an unknown person. According to the First Information Report (Ex.P-8), the victim had left the house without informing anyone on 19.02.2021 and the victim alleges that her mother came to pick her up after two-three days. The mother of the prosecutrix (PW-2) has also alleged in cross-examination that she had gone to Pune with the father of the



appellant to pick up the victim three-four days later, where she met the victim and the appellant.

18. The crime of kidnapping is complete only when a person takes the child away from the custody of his guardian without permission. Therefore, as soon as the appellant took the victim away from the custody of her parents without informing them, the crime of kidnapping was complete, even though the mother of the victim may have come to know later that the victim was with the appellant. The allegation of the victim (PW-1) has also been reiterated by the mother of the victim (PW-2) in her allegations and it has also been alleged that the victim had told her that she had tried very hard to come back but the appellant used to threaten her, therefore, she could not come back and the victim had also told her that the child was born due to the sexual relation between her and the appellant.

19. From the above stated evidence, it is established that on the date of incident the victim, a minor below below the age of 16 years, was abducted by the appellant from her lawful guardianship and kept her in his custody and committed sexual intercourse with her by having repeated sexual intercourse with her and committed rape and aggravated penetrative sexual assault as a result of which the victim became pregnant and gave birth to a girl child and when asked for DNA test, the appellant has refused for DNA.



20. 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."

21. In the matter of **Alakh Alok Srivastava v. Union of India & Ors.**,

(2018) 17 SCC 291, in paras 14 and 20, it is observed as under:

"14. At the very outset, it has to be stated with authority that the Pocso Act is a gender legislation. This Act has been divided into various chapters and parts therein. Chapter II of the Act titled "Sexual Offences Against Children" is segregated into five parts. Part A of the said Chapter contains two sections, namely, Section 3 and Section 4. Section 3 defines the offence of "Penetrative Sexual Assault" whereas Section 4 lays down the punishment for the said offence. Likewise, Part B of the said Chapter titled "Aggravated Penetrative Sexual Assault and Punishment therefor" contains two sections, namely, Section 5 and Section 6. The various subsections of Section 5 copiously deal with various situations, circumstances and categories of persons where the offence of penetrative sexual



assault would take the character of the offence of aggravated penetrative sexual assault. Section 5(k), in particular, while laying emphasis on the mental stability of a child stipulates that where an offender commits penetrative sexual assault on a child, by taking advantage of the child's mental or physical disability, it shall amount to an offence of aggravated penetrative sexual assault.”

“20. Speaking about the child, a three Judge Bench in M.C. Mehta v. State of T.N. (1996) 6 SCC 756 “1. ... “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.”

22.The Supreme Court in the matter of **Nawabuddin v. State of Uttarakhand** (CRIMINAL APPEAL NO.144 OF 2022), decided on 8.2.2022 has held as under:-

“10. 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.

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. As observed and held by this Court in the case of **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 the case of **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.”

23. When considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version. In **State of H.P. v. Shree Kant Shekar (2004) 8 SCC 153** the Hon[”]ble Supreme Court held as follows:“

“21. 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 without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on 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. Assurance, short of corroboration, as understood in the context of an accomplice, would suffice.”

24. On these lines, the Hon’ble Supreme Court in **Shivasharanappa and Others v. State of Karnataka, (2013) 5 SCC 705** observed as follows:

“17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable.”

25. The Supreme court in the matter of **State of UP v. Sonu Kushwaha, (2023) 7 SCC 475** has held as under :

“12. The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the



POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology “shall not be less than....”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the victim/child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court.”

- 26.** The allegation of the prosecutrix (PW-1) has been reiterated by the mother of the prosecutrix (PW-2) in her allegations and it has also been alleged that the prosecutrix had told her that she had tried very hard to come back but the appellant used to threaten her, therefore, she could not come back and the prosecutrix had also told her that the child was born due to the sexual relation



between her and the appellant and the appellant has also denied for DNA test.

27. Considering the statement of the prosecutrix (PW-1) who has specifically stated the act of the appellant, the statement of her mother (PW-2), statement of the Headmaster (PW-3), the material available on record and the principle of 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 as mentioned above. We do not find any illegality and irregularity in the findings recorded by the trial Court.

28. 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**.

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

30. The Registry is directed to transmit the certified copy of this judgment along with the record to the trial Court concerned for necessary information and compliance.

31. Registry is also directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is



undergoing his jail term, 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 with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Bablu



The Court can rely upon the testimony of a minor witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record.

न्यायालय किसी नाबालिग गवाह की गवाही पर भरोसा कर सकता है और यदि वह विश्वसनीय, सत्य है तथा रिकार्ड पर लाए गए अन्य साक्ष्यों से उसकी पुष्टि होती है तो वह दोषसिद्धि का आधार बन सकता है।