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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 1528 of 2021**

X

... Appellant

versus

State Of Chhattisgarh Through Police Of Police Station Bortalab, District  
Rajnandgaon Chhattisgarh

... Respondent

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For Appellant : Mr.Govind Dewangan, Advocate  
For Respondent : Mr.Nitansh Jaiswal, Panel Lawyer

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

**Hon'ble Shri Justice Ravindra Kumar Agrawal, Judge**

**Judgment on Board**

**Per Ramesh Sinha, CJ**

**18/02/2025**

1. This criminal appeal arises out of the judgment of conviction and order of sentence dated 11.10.2021 passed by the Additional Sessions Judge, Dongargarh, District Rajnandgaon in Special Criminal Case No.04/2019, whereby the appellant has been

convicted for offence under Section 376(3) of the IPC and sentenced to undergo rigorous imprisonment for life till natural death and fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for one month.

2. The prosecution story, in brief, is that complainant Jyoti Gupta who is working as a member in NGO of Railway Child Help Line, Raipur, submitted a written complaint (Ex.P-13) to the Station House Officer, Police Station Mana Camp, Raipur that the victim (PW-6) (name and village omitted) is a resident of Police Station Dongargarh. The girl was physically abused by the father of the victim on 19.02.2019, due to which the girl came to Raipur from her home, who was received by Railway Child Line, Raipur from Railway Station Raipur in a guardianless condition. The girl was counseled and presented before the Child Welfare Committee on 01.03.2019, in which an order was received from the Child Welfare Committee to register an FIR in respect of the girl in Police Station Mana Camp. After the said order, the complainant made a written complaint in Police Station Mana Camp, Raipur. On the written complaint of the complainant, FIR No.0/2019 under Section 376 of the Indian Penal Code (for short 'IPC' and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO') was registered against appellant at Police Station Mana Camp, Raipur. Since the incident was related to Bortalab Police Station, FIR No.06/19 under Section 376 of the

IPC and Sections 4 & 6 of the POCSO Act was registered at Bortalab Police Station vide Ex.P-14.

3. During the investigation, birth information register from the Kotwar, mark sheet of class 5<sup>th</sup> and 6<sup>th</sup> of the victim and admission register from the concerned school were seized to determine the age of the victim. A map of the place of incident was prepared. A site map of the incident was obtained from patwari. The victim (PW-6) was examined. The statements of the witnesses were recorded. The statement of the victim was recorded under Section 164 CrPC vide Ex.P-7. The appellant was arrested on 4.3.2019 vide Ex.P-26. Panty worn by the victim and her vaginal slide were seized. The seized panty and vaginal slide of the victim were sent to State Forensic Science Laboratory, Raipur for chemical examination.
4. After completion of investigation, charge-sheet was filed before the jurisdictional Court under Section 376 of the IPC and Sections 4 and 6 of the POCSO Act.
5. The trial Court has framed the charges under Section 376(3) of the IPC and Sections 4 & 6 of the POCSO Act against the appellant.
6. In order to establish the charge against the appellant, the prosecution examined as many as 18 witnesses and exhibited 31 documents. 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.

7. Learned counsel for the appellant submits that the impugned judgment of conviction and order of sentence passed by the learned trial Court is bad in law. There is no evidence against the appellant and the case of the prosecution is based on surmises, so the appeal be allowed and the appellant be acquitted. He further submits that the learned trial Court has erred in believing the statement of the prosecutrix because there is large large number of contradictions amongst the statement of the prosecution witnesses. There is no legally admissible evidence in support of age of the prosecutrix showing her to be minor on the date of incident. Even the document i.e. birth certificate has not been taken on record which can prove the prosecutrix to be minor on the date of incident. He also submits that no ossification test of the prosecutrix was conducted to ascertain her exact age. Thus, there is no authentic proof of age of the prosecutrix. There is delay in lodging the FIR and no plausible explanation was offered by the prosecutrix for delay in lodging the FIR. He lastly submits that the trial Court has awarded the sentence of life imprisonment which would mean imprisonment for rest of the natural life which is too harsh considering the evidence available on record and the

same may be converted to rigorous imprisonment for 20 years. As such, the appeal deserves to be allowed in full or in part.

8. On the other hand, learned counsel for the State opposes the submissions made by the 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.
9. We have heard the learned counsel for the parties and perused the record with utmost circumspection.
10. The prosecutrix in her 164 CrPC statement (Ex.P-7) has stated that she has studied till class 7<sup>th</sup>. Her mother has passed away. She live with her father Birju. Her father always abuses and beats her over petty matters. She earn money by working as a labourer, but her father takes that too and drink alcohol. Her father also fights with the people around. On the night of 19<sup>th</sup> February this year, she slept her room, her father was sleeping in the hall. At around 10 P.M. her father came to her room, took off her clothes and raped her forcefully and told her not to tell anyone. She was scared of the above incident. On the day of 21<sup>st</sup> February, her father beat her up, due to which she got scared and came to Dongargarh. From Dongargarh, she boarded the train to Rajnandgaon, from Rajnandgaon she went to Durg, Bhilai, Raipur where she used to eat by begging and slept in the Railway waiting room. About 05-06 days ago, she sat in the Railway waiting room in Raipur, where Railway Child Line people came and inquired

about the incident to whom she had told. They made her stay in Mana Ashram. Child Line people took her to the police station the next day and reported the incident.

- 11.** The victim has been examined as PW-6. In para 1 of her statement, she has stated that her mother died in her childhood. She used to live with her father. The incident of 19<sup>th</sup> February, 2019. She was sleeping at home at night when the accused came and started removing her undergarments and started touching her body and when she asked him why he was doing this, he said that he would kill her, bury her alive, after that the accused forcefully had physical relations with her.
- 12.** Medhuras Verma (PW-2) (Incharge Headmaster) has stated that the police of Bortalav Police Station had seized the dakhil kharij register of the Government Primary School, Diprapara from the year 1996-97 till date and after taking a photocopy, the original was handed over to him. Today he has brought the original dakhil kharij register of the school with him, which is Article A-2 in Serial No.146 of the year 2010-11, Kumari Usha father Birju Caste Gond, occupation Labourer, date of birth 21.02.2004 is mentioned.
- 13.** 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...”.

- 14.** Crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious

psychological as well as physical harm in the process. Rape is not merely a physical assault -- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulders a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. This position was highlighted in **State of Punjab v. Gurmeet Singh (1996 (2) SCC 384)**.

15. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a



competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the 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 prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

16. The Supreme Court in the matter of **Ranjit Hazarika v. State of Assam** reported in **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.

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

“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 correlation 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.** As per the statement of the prosecutrix (PW-1), her mother died in her childhood. She used to live with her father. The incident of 19<sup>th</sup> February, 2019. She was sleeping at home at night when the accused came and started removing her undergarments and started touching her body and when she asked him why he was

doing this, he said that he would kill her, bury her alive, after that the accused forcefully had physical relations with her.

19. Considering the aforesaid facts and circumstances of the case, particularly the evidence of the victim (PW-6), it is quite clear from the documentary and oral evidence presented by the prosecution on record and its analysis that the accused/appellant has forcefully committed rape the victim, who was his minor daughter. The prosecution has also been successful in proving beyond reasonable doubt that on the date of the incident the victim was minor. Thus, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant.
20. Consequently, the conviction as awarded by the trial Court under Section 376(3) of the IPC is hereby upheld, however, considering the submission advanced by learned counsel for the appellant, also considering the evidence of the victim (PW-6) and the material available on record, this Court is of the view that the sentence of life imprisonment which would mean imprisonment for rest of the natural life, is too harsh and instead, the same is converted to rigorous imprisonment for 20 years. The imposition of fine amount and the default sentence is upheld.
21. The appellant is stated to be in jail since 4.3.2019 being the date of arrest. He is directed to serve out the sentence as modified above.
22. The criminal appeal is **partly allowed** to the extent indicated hereinabove.

**23.** Registry is directed to 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 with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

**24.** Let a certified copy of this judgment along with the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-

**(Ravindra Kumar Agrawal)**  
**Judge**

Sd/-

**(Ramesh Sinha)**  
**Chief Justice**

If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

यदि मामले के अभिलेख में प्रदर्शित परिस्थितियों की समग्रता से यह पता चलता है कि अभियोक्ता के पास आरोपित व्यक्ति को झूठा फंसाने का कोई मजबूत मकसद नहीं है, तो न्यायालय को सामान्यतः उसके साक्ष्य को स्वीकार करने में कोई हिचकिचाहट नहीं होनी चाहिए।