



2025:CGHC:42783

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 29 of 2022

Yogesh Patel S/o Shri Babulal Patel Aged About 23 Years R/o Village -
Ranwahi, Thana - Bhanupratappur, District - North Bastar Kanker
(Chhattisgarh), District : Kanker, Chhattisgarh

... Appellant(s)

versus

State Of Chhattisgarh Through The District Magistrate, Kanker, District -
North Bastar Kanker (Chhattisgarh), District : Kanker, Chhattisgarh

... Respondent(s)

For Appellant(s) : Mr. Sumit Shrivastava, Advocate.

For Respondent(s) : Ms. Smriti Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Ramesh Sinha, Chief Justice

Judgment on Board

22/08/2025

1. Though the matter is listed today for appearance of the appellant/accused before the Registry of this Court, and the appellant was granted bail by the co-ordinate Bench of this Court on 18.02.2025, it is submitted by the counsel for the appellant that the appellant could not be released as he was unable to arrange surety and continues to remain in custody. However, considering that the appellant has been sentenced to the maximum term of 10 years and has already undergone incarceration for more than 4

years, with the consent of the parties, the Court proceeds to hear the matter finally.

2. This criminal appeal arises out of the judgment of conviction and order of sentence dated 31.12.2021 passed by the Special Judge POCSO Act, 2012, Bhanupratappur, District – North Bastar Kanker (C.G.) in Special Criminal Case (POCSO) Act No.25 of 2021, whereby the appellant has been convicted for the offence under Section 376 (2)(n) of the Indian Penal Code (for short 'IPC') and sentenced to undergo RI for 10 years with fine of Rs.25,000/-, in default of payment of fine to further undergo RI for 1 year.
3. The prosecution story, in brief, is that the on 09.06.2019, the victim lodged a written report at Police Station Bhanupratappur stating that the accused, Yogesh Patel, a resident of her village, had been expressing love to her for the last two years and promising marriage. She further stated that in February 2018, when she was a minor, the accused, under the pretext of marriage, took her behind his house near the river and committed forcible sexual intercourse with her. Again, on 05.06.2019, while she was at her elder aunt's house in Chichgaon, the accused came there and said that his family would not agree to their marriage and that they should die together. Thereafter, he took her on his motorcycle near the river behind his house and again committed forcible sexual intercourse with her. On the same night, he dropped her back at Chichgaon but refused to marry her. Out

of distress, she consumed insecticide poison that night and was treated at the Government Hospital, Bhanupratappur. Upon being questioned by her parents, she narrated the entire incident. Based on her written report, Crime No. 103/19 was registered at Police Station Bhanupratappur under Section 376(2)(b) IPC and Section 4 of the POCSO Act. The victim, with the consent of her parents, was medically examined by a lady doctor. Statements of witnesses were recorded, and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act was later added. The accused Yogesh Patel was arrested on 10.06.2019 at 12:05 P.M., medically examined, and sent to judicial custody.

4. During investigation, the written report of the victim was taken as Ex. P-1 and on its basis, FIR (Ex. P-2) was registered. A site map of the incident place (Ex. P-4) and another spot map prepared by the Patwari (Ex. P-19) along with a Panchanama (Ex. P-20) were prepared in presence of witnesses. From the Headmaster of Primary School Ranwahi, the original admission register of the victim was seized, and after making a copy (Ex. P-17C), the original was returned. The caste certificate of the victim (Article A-3), her progress report of Class V (Article A-1), and mark sheet of Class X (Article A-2) were seized through seizure memos (Ex. P-10 and Ex. P-5) and certified copies were obtained. The accused was medically examined and the report (Ex. P-23) was received. Consent of the parents of the victim (Ex. P-3) was obtained for her medical examination, which was conducted by a lady doctor, and

the report (Ex. P-22) was received. Her statement under Section 164 Cr.P.C. (Ex. P-7) was also recorded. The statement of the victim was further recorded by the lady Inspector (Ex. P-8). The seized articles were sent for chemical examination to the Regional Forensic Science Laboratory, Jagdalpur, through the Superintendent of Police, Kanker, under requisition (Ex. P-30). Acknowledgment (Ex. P-32) and FSL report (Ex. P-31) were received. Statements of the victim and other witnesses were recorded. On completion of investigation, charge-sheet was filed against the accused Yogesh Patel under Section 376(2)(n) IPC, Section 4 of the Protection of Children from Sexual Offences Act, 2012, and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act. Charges were framed against the accused under Section 376(2)(n) of the IPC, Section 4 of the POCSO Act, 2012, and Section 3(2)(v) of the SC/ST Act. The charges were read over and explained to him. The accused denied the charges and sought to be tried.

5. In order to establish the charge against the appellant, the prosecution examined as many as 20 witnesses. The statement of the appellant under Section 313 of CrPC was also recorded in which he denied all allegations, stated that he is innocent and has been falsely implicated, and did not examine any defence witness. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as aforementioned. Hence, this appeal.

6. Learned counsel for the appellant submits that the impugned judgment of conviction and sentence is contrary to law and evidence on record. The prosecution has failed to prove the age of the victim beyond reasonable doubt as the school register was not properly proved and no author of the entry was examined. The medical evidence (Ex. P-22) does not support the prosecution case, as no opinion of recent intercourse was given and the victim was found habitual of sexual intercourse. The evidence clearly shows that both the victim and the appellant were in a long relationship and on 05.06.2019 had decided to commit suicide due to opposition of family members for marriage. The victim has made statements contrary to her earlier versions under Sections 161 and 164 Cr.P.C., yet the trial Court ignored the material contradictions and omissions. The parents of the victim, as well as other independent witnesses, did not support the prosecution case and were declared hostile. Conviction solely on the statement of the victim and the Investigating Officer, without proper corroboration from medical or independent evidence, is unsustainable. The trial Court erred in presuming her age below 18 years despite her own admission of being above 18 years at the time of FIR. Hence, the impugned judgment deserves to be set-aside.
7. On the other hand, learned counsel for the State opposes the submissions made by 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 statement recorded under Section 164 CrPC and in the Court statement and the learned trial Court after considering the material available on record has rightly convicted and sentenced the appellant, in which no interference is called for.

8. I have heard the learned counsel for the parties and perused the record with utmost circumspection.
9. **Now the question for consideration before this Court would be, whether the trial Court has rightly held that on the date of incident, the victim was minor?**
10. When a person is charged for the offence punishable under the POCSO Act, or for rape punishable in the Indian Penal Code, the age of the victim is significant and essential ingredient 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.
11. In ***Jarnail Singh Vs. State of Haryana, reported in (2013) 7 SCC 263***, the Hon’ble Supreme Court laid down the guiding principles for determining the age of a child, which read as follows
:

“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the

Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :

“12. Procedure to be followed in determination of Age.”

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the

reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a

victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.”

12. In the present case, from the evidence on record, including the

school admission register, progress report of Class Vth, and High School mark-sheet, all reflecting the date of birth of the victim as 29.05.2001, and supported by the consistent testimony of her parents, it stands proved that on the date of the incident in February 2018, the victim was about 16 years and 9 months old. Accordingly, it is conclusively established that she was a minor, i.e., below 18 years of age, at the time of the occurrence.

13. The issue that arises for consideration in the present appeal is whether the testimony of the victim deserves acceptance and whether the prosecution has established the case of the appellant beyond reasonable doubt.
14. It is pertinent to observe that the question whether conviction of the appellant can be based on the sole testimony of the victim in cases of sexual assault 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 victim if found reliable can be the sole ground for convicting the appellant and that the creditworthy testimony of the victim in cases of such nature deserves acceptance.
15. The victim in her statement recorded under Section 164 CrPC (Exhibit P-07) has stated that in February 2018, the accused took her near the river situated behind his house and established physical relations with her by saying that he would marry her. She further stated that since she believed the accused would marry

her, she did not disclose the incident to anyone at home. From her statement (Exhibit P-07), it also stands confirmed that on 05 June 2019, the accused again took her on his motorcycle near the river behind his house and, on the pretext of marriage, established physical relations with her. These statements of the victim remained unshaken in cross-examination, thereby confirming her version.

- 16.** Further, the victim (PW-1), in her Court statement deposed against the appellant, she stated that the appellant, under the guise of love and with a promise of marriage, forcibly engaged in sexual acts with her on multiple occasions in February 2018 and June 2019 at locations near his residence. Relying on his assurances of marriage, she did not initially disclose the incidents to her family. Following the second incident, the victim, mentally and emotionally distressed, consumed poison, necessitating hospitalization at the Government Hospital, Bhanupratappur. Thereafter, she apprised her family of the incidents and lodged a written report at Police Station Bhanupratappur (Ex. P-01, FIR Ex. P-02). Her consent for medical examination (Ex. P-03) was duly recorded, and her statement was recorded under Section 164 CrPC before the Judicial Magistrate (Ex. P-07).
- 17.** Supporting the statement of the victim, her father (PW-02) and mother (PW-03) also stated that their daughter (the victim) used to live at her elder maternal aunt's house in village Chichgaon and work as a laborer. They further stated that they were informed by

their nephew that the victim had consumed pesticide and was admitted to the Community Health Centre, Bhanupratappur. On receiving this information, they went to the health centre and, upon questioning the victim later, she disclosed that the accused Yogesh Patel had forcibly committed rape on her, due to which she consumed poison. The witnesses also stated that they had called the village Sarpanch, Patel, Chaman, Nathu and others to their house, and when those persons questioned the victim, she narrated the incident to them as well. Thereafter, along with the Sarpanch and Patel of the village, they went to Police Station Bhanupratappur and lodged a report against the accused. The said statements of the witnesses, reflecting the conduct of the victim after the incident and the manner in which she disclosed the occurrence to her parents, are consistent and admissible in evidence under Section 8 of the Indian Evidence Act.

- 18.** The sister of the victim (PW-06) also confirmed that her brother had called her on the phone and informed that the victim had consumed poison. On receiving this information, she went to the Community Health Centre, Bhanupratappur, where, after regaining consciousness, the victim told her that Yogesh Patel of the village had, for the past two years, been saying that he loves her, but later refused to marry her and took her near the river and committed rape on her. From this statement of the witness, it is also confirmed that the victim had narrated the incident to her elder sister.

- 19.** To prove the incident of rape committed on the victim, the prosecution also got her genital examination conducted. In this regard, Sub-Inspector Mankunwar Sidar (PW-20) stated that he had sent the victim to the Civil Hospital, Bhanupratappur, for genital examination through a requisition (Exhibit P-35). This fact is also supported by the evidence of Woman Constable Ramila Gawde (PW-17) and Dr. Sonam Kunjam (PW-12).
- 20.** Dr. Sonam Kunjam (PW-12) deposed that on 09.06.2019, the victim was brought before her for genital examination by Woman Constable Ramila Gawde. On general examination, the pulse of the victim was found to be 98 per minute, blood pressure 110/70, weight 34 kg, abdomen normal. The victim stated that her menstruation had started at the age of 14 and her last menstruation was on 29.05.2019. Her secondary sexual characteristics were fully developed armpit and pubic hair were fully grown, breasts were fully developed, and no external injury was found on her body. On genital examination, no injury marks were found on the labia minora, majora, or vagina. The hymen was old torn at positions 3, 4, 5, 6, 8, and 9 o'clock, and a white discharge was present from the vagina. The doctor prepared two vaginal slides and two swabs from the vaginal discharge, sealed them, and handed them over to the same constable for chemical analysis. According to the witness, whether sexual intercourse had taken place with the victim could be confirmed only after chemical examination of the vaginal slides. The medical

examination report is Exhibit P-22, which she proved by identifying her signature. Thus, the medical witness did not give a definite opinion regarding sexual intercourse with the victim and advised chemical analysis.

21. According to the chemical examination report (Exhibit P-31), semen stains and human spermatozoa were found on Exhibit C-1 (semen slide of the accused). However, no semen stains or human spermatozoa were found on Exhibit A-1 (vaginal swab of the victim) and Exhibit B-1 (vaginal slide of the victim). Therefore, from the chemical examination report, sexual intercourse with the victim by the accused is not confirmed. However, this does not affect the prosecution case, because in cross-examination, the statement of the victim that the accused had established physical relations (rape) with her in the year 2018 and again in 2019 was not challenged by the defence. On the contrary, the defence took a stand suggesting that the incident occurred with her consent. Thus, it remains undisputed and proved that the accused established physical relations with the victim in the year 2018 when she was a minor, and again in 2019. Since at the time of the first incident the victim was found to be below 18 years of age, her consent or lack of consent has no legal significance.
22. 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."

23. Considering the testimony of the victim (PW-1), both in her statement under Section 164 CrPC as well as before the Court, has remained consistent and unshaken in material particulars, her version finds corroboration from the statements of her parents (PW-2 and PW-3) and sister (PW-6), which are admissible under Section 8 of the Indian Evidence Act, the material available on record and the principle of law laid down by the Supreme Court in the above-stated judgments, I am of the considered opinion that the learned Special Judge has rightly convicted the appellant for offence under Section 376(2)(n) of the IPC. I do not find any illegality and irregularity in the findings recorded by the trial Court.
24. 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**.

- 25.** It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.
- 26.** 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.
- 27.** 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/-

(Ramesh Sinha)
Chief Justice

Akhil

Head Note

"Where the matriculation or equivalent certificate is available and authentic, the same shall be treated as the conclusive evidence for determination of the age of the victim/child. In such cases, no other material whether medical, documentary, or oral shall be considered for the purpose of age determination, and any deviation therefrom would be impermissible in law."