

CRA No. 550 of 2023

2025:CGHC:50427-DB

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 550 of 2023**

Shani Kumar Chauhan S/o Shri Jethuram Chauhan Aged About 26  
Years R/o Village Saanpandhi, P.S. Saraipali, District Mahasamund  
(C.G.)

**... Appellant(s)****versus**

State Of Chhattisgarh Through Station House Officer, Police Station  
Saraipali, District Mahasamund (C.G.)

**... Respondent(s)****(Cause title is taken from Case Information System)**


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For Appellant : Mr. Anish Tiwari along with Mr. Akash Sharma,  
Advocate

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For Respondent/State : Mr. S.S. Baghel, learned Dy. Govt. Advocate

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**Hon'ble Shri Ramesh Sinha, Chief Justice****Hon'ble Shri Bibhu Datta Guru, Judge****Judgment on Board****Per, Bibhu Datta Guru, J****09/10/2025**

1. Heard Mr. Anish Tiwari along with Mr. Akash Sharma, learned counsel, appearing on behalf of the appellant as well as Mr. S.S. Baghel, learned Dy. Govt. Advocate appearing on behalf of the State/respondent.

2. This appeal is directed against the judgment of conviction and order of sentence dated 13.05.2022 passed by the Special Judge (POCSO Act, 2012) Saraipali, District Mahasmund C.G. in Special Sessions Case No. 04/2020 whereby the appellant has been convicted and sentenced as under:-

<b><u>Conviction</u></b>	<b><u>Sentence</u></b>
Under Section 363 of the IPC	R. I. For 05 years & fine of Rs. 500/- with default stipulations
Under Section 366-A of the IPC	R.I. for 07 years and fine of Rs. 500/- with default stipulations
U/s 376 (3) of IPC	R.I. for 20 years and fine of Rs. 500/- with default stipulations
U/s 376 (2) (n) of IPC	R.I. for 10 years and fine of Rs. 500/- with default stipulations
Under Section 6 of the POCSO Act	Same as punishment awarded u/s 376(3) of IPC as per section 42 of POCSO Act.
All the sentences are to be run concurrently.	

3. Case of the prosecution, in brief, is that the prosecutrix's father, submitted a written report to the Saraipali police station stating that prosecutrix aged about 11 years and having studied up to Class IV, was playing in front of her house on 10/12/2019 at about 12:00 noon and had disappeared. Despite repeated attempts to locate her, she was untraceable. Based on this report, Crime No. 379/2019 was registered at the Saraipali police station, and a First Information Report (Ex.P-18) was filed. During the investigation, a site map of the scene (Ex.P-7) was prepared. The victim's birth

certificate was seized and a seizure memo (EX.P-6) was prepared. During investigation, prosecutrix was recovered from the possession of the appellant and a recovery panchnama (EX.P-1) was prepared.

4. In order to bring home the offence, the prosecution has examined 16 witnesses and exhibited 28 documents in its support. Statement of the accused/appellant under Section 313 Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.
5. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 13.05.2022 convicted and sentenced the appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
6. Learned counsel appearing for the appellant would submit that the statement of the victim is filled with contradictions and omissions, thus not worthy of being given credence. He further submits that the age of prosecutrix is not proved before the trial court and different date of birth is mentioned in the date of birth and the dahil kharij register which creates serious doubt. He further submits that though the 'Birth Certificate' has been seized but it has been issued after 6 years of birth, thus it cannot be taken into consideration as per the provisions of sub-section (3) of Section 13 of Chapter III of the Registration of Births and Deaths Act, 1969. Learned counsel submits that the prosecution could not

prove the case beyond reasonable doubt as all the witness have narrated different versions of the same incident which shows glaring inconsistencies and contradictions that manifest on a bare reading of the evidence which were brushed aside by the Trial court and the impugned order was passed which needs to be set aside. In support of his contention, he placed reliance upon the decision rendered by the Supreme Court in the matter of **Nirmal Premkumar and Another v State Rep. by Inspector of Police (2024 SCC OnLine SC 260)** and the decision of this Court in the matter of **Kundan Kumar v State of Chhattisgarh (2025 SCC OnLine Chh 4363)**.

7. 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. He further submits that the prosecution has duly filed documentary evidence-date of birth of the victim, which is concrete piece of evidence to establish the fact that the victim at the time of incident was minor. 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. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the learned trial Court with utmost circumspection and carefully as well.

9. **The first question for consideration is whether the victim is minor/ below the age of 18 years or not?**
10. From perusal of the evidence on record, it is evident that the prosecutrix was a minor at the time of the incident. The prosecutrix stated her age to the doctor as 11 years, and the same age has also been mentioned in the FIR and the said fact remains totally unchallenged during cross-examination. The Birth Certificate (Ex.P-26) seized during the course of investigation records the date of birth of the prosecutrix as 19.09.2008, which, though issued six years after her birth, but was issued prior to the date of the incident. Further, the Dakhil Kharij (Ex. P-10C) also mentions her date of birth as 18.08.2009. Thus, considering the date of birth certificate, which is a strong proof of age and as there is no evidence of fabrication or forged date of birth as it was issued much prior to the date of incident i.e. 10.12.2019.
11. As far as the reliance placed by the appellant upon the decision of this Court in **Kundan Kumar** (supra) is concerned, this Court held thus at para 20 :

*'20. The birth certificate being a strong proof of age must be taken in to consideration but if there is delay of more than one year in issuing the birth certificate, the same shall be taken into consideration only after complying the provision of Sub section 3 of Section 13*

*of Chapter III of the Registration of Births and Deaths Act, 1969, which provides for order of Magistrate of First Class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee. After considering the facts and circumstance of the case and the evidence with regard to the age of the victim, the finding of the learned trial Court to the effect that the victim on the date of incident was minor, is set aside and the appellant is acquitted from the charge under Section 4 of POCSO.'*

12. Though in the case at hand, the birth certificate was obtained after six years of birth of victim, but the fact remains that on the date of incident the victim was below 16 years and that too the said certificate was obtained much prior to the incident. As far as the date of birth of victim is concerned, there is firm stand from the beginning that she was below 16 years of age. Therefore, only on the basis of technicalities the version of the prosecution with regard to age of victim cannot be disbelieved. A birth certificate's validity cannot be dismissed solely for non-compliance with Section 13(3) of Act 1969, especially in a POCSO case where other compelling evidence of victim's age exists. Thus, it is clearly established that she was below 16 years of age at the time of the incident and, therefore, a minor in terms of law.

**13. The next question for consideration would come, whether the appellant committed such heinous act with the Victim or not?**

14. PW-1 victim stated that she knew the accused, Shani Kumar. About four months prior to the incident, while she was working outside her house applying mud, her mother advised her to rest. During that time, her brother-in-law's three-year-old son, Mohit, gave her a chocolate. After consuming it, she felt dizzy and lost consciousness. When she regained consciousness, she found herself at a brick kiln in Bagoda with the appellant who informed her that he had brought her there. She further stated that the accused compelled her to work at the brick kiln and subjected her to physical assaults whenever she resisted. He kept her confined for about 15 days, during which he repeatedly raped her. The victim further stated that one "Lima Madam" resided nearby, and she managed to borrow a phone from her to call her brother, informing him about her abduction and location. The next morning, her brother and brother-in-law arrived with the police, rescued her from Bagoda, and brought her home.

In cross-examination, the victim stated that she had left her studies long ago and was unable to recall when. She did not know what specific work the accused, Shani Kumar, did in the village or whether he was married, though she admitted he worked as a bricklayer outside the village. She confirmed that her brother-in-law Monu, a scrap dealer, lived in their house and that her

nephew Mohit gave her a chocolate after which she became dizzy and lost consciousness. She admitted she did not know how or with whom she reached Bagoda. The victim stated that when she regained consciousness, the brick kiln was operational, and only the accused Shani Kumar and two unknown elderly men were present. She denied that the appellant helped her reside there and asserted that he forced her to work at the kiln. She further deposed that whenever she refused to go to work, the appellant used to beat her. She informed two co-workers and the landlord about the appellant's acts, but both expressed their inability to intervene. She stated that the appellant resided in a house provided by the brick kiln owner, not in a rented accommodation. She did not know the name of the kiln owner. She admitted she did not know how to wear a saree or mangalsutra, but stated that the accused forced her to wear them and assaulted her. She denied the suggestion that she had never been subjected to "bad things" and maintained that she reported such acts to her co-workers and landlord. She denied the suggestion that there were no injury marks on her body. She stated she had called his brother through "Lima Madam's" phone. She denied the defence suggestion that the accused had asked her to call his home or had obtained her brother's number from her or from Lima Madam.

15. The victim in her statement u/s 164 of Cr.PC has stated that while she was digging soil with her mother, her brother-in-law's 4-year-old son gave her a chocolate, after which she fainted and lost



consciousness. She regained consciousness at night at Samhalpur bus stand, with her hands and legs tied, in the company of the accused. The accused did not explain how she reached there, abused and assaulted her, and took her to Bagoda, where he forced her to work at a brick kiln. Over the next 12–13 days, the accused repeatedly had sexual intercourse with her without her consent. During captivity, she contacted her brother from a neighbor's phone. Five days later, her brother, accompanied by police, rescued her and brought her back to Saraipali, while the accused was taken into custody.

16. PW-2 brother of the victim stated that on the date of the incident, he was in Mahasamund when his parents informed him that the victim was missing from home. Despite extensive searches, she could not be found, and a missing report was lodged at Saraipali Police Station. Later, they learned that the appellant a resident of Padhi, was involved. When they approached his family, they claimed that appellant was also missing and requested eight days to locate him. He further stated that about fifteen days later, the victim called and informed the family that she was in Kendrapada, Kunkur. The witness, along with the police from Saraipali and Vijaywar, went there and recovered the victim from the company of the appellant.

17. PW- 3 father of the prosecutrix stated that he learned the day after the incident that the appellant had fled with her daughter. Upon

visiting the appellant's house, his wife and father requested eight days to locate them but later claimed ignorance and advised reporting to the police. Around 12–15 days after the incident, they received a call from their daughter from Kendrapada, pleading for help. Following this, the Saraipali police went to Kendrapada and brought back both the victim and the appellant.

In cross-examination, the witness stated that he had given only oral information to the police on the night of the incident around 8–9 p.m. as he was illiterate and could not write. He denied having written the report marked as Ex.P-3, stating that the police personnel must have written it. He was unable to say when or by whom the written report was prepared. He further admitted that he came to know on the next day of the incident that the appellant had taken his daughter. He also stated that the wife of appellant requested him to give her eight days to locate the accused and return his daughter, failing which she herself would report the matter to the police. Despite knowing this, the witness lodged a missing report against an unknown person, claiming that he was not aware at that time that the accused had taken his daughter. He further deposed that his grandson was a small child (3–4 years old) and he did not know on whose advice the child gave chocolate to the victim. He was unaware of with whom or how his daughter reached Kendrapada Tunpur.

18. PW- 8 mother of the victim stated that the incident occurred about

a year ago. On the day of the incident, while painting at home with the victim around 9–10 a.m., she rested in the courtyard and later discovered that victim was missing. She further stated that she was informed by her daughter and son-in-law that victim might have gone to the fair. After waiting all night and failing to locate her, she filed a missing person report at the police station. She further stated that nine days later, they received a call from the victim and she along with police and family members, went to Topur Bhagoda village and recovered victim.

19. PW-9, brother-in-law (jija) stated that the incident occurred approximately one year ago, when the appellant ran away with his sister-in-law, victim. The witness, along with his brother-in-law, the driver, and the police, went to Kendrapada village in search of them. The appellant had taken victim by the hand from the fields. They eventually located and apprehended both the appellant and Ahata, after which the police arrested them and brought them to the station. He further in his cross examination has stated that he has given his statement on the basis of what he heard from other people and he has not seen them going.

20. PW-11 Dr. Chandra Kiran stated that on December 23, 2019, Female Constable Chandrakala Verma brought the victim, aged about 11 years, for medical examination. Upon examination, she found her to be physically and mentally healthy, with no visible external injuries. She further stated that victim's breasts

and other secondary sexual characteristics were not fully developed. There were no signs of injury on the genitals, but the hymen was found torn, and redness with pain was observed at the genital opening. She took a vaginal swab and slide, sealed them, and handed them over to the female constable for chemical analysis. She stated that since the victim experienced pain, an internal examination could not be conducted. She further opined, there were signs suggestive of forced sexual intercourse with the victim.

21. Bare perusal of the FSL report (Ex. P-27) clearly reveals that semen stains or human sperm were detected on Ex.-A (vaginal slide) B, C and D. These findings substantially strengthen the prosecution case.
22. It is settled principle that if the testimony of the victim is trustworthy and totality of the circumstances appearing on the record of the case disclose that the victim does not have a strong motive to falsely implicate the person charged, the Court should ordinarily have no hesitation in accepting her/his evidence.
23. It has also become almost settled position of law that conviction can be based on the solitary statement of victim, provided same inspires confidence of the court.
24. The Supreme Court in the matter of **Rai Sandeep alias Deenu v. State (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 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."*

25. Also, the Supreme Court in the matter of **State of Maharashtra vs Chandraprakash Kewal Chand Jain**, 1990 SCC 550 held as under:-

*"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."*

26. Recently the Supreme Court in the matter of ***Nirmal Premkumar*** (supra) has held at para 14 & 15 as under:-

*"14. Krishan Kumar Malik v. State of Haryana, this Court laid down that although the victim's solitary evidence in*

*matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae.. It was held thus:*

*"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.*

*32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not*



*examined and later given up by the public prosecutor on the ground that she has been won over by the appellant."*

*15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, out the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."*

27. In the aforesaid decision, the Supreme Court observed that the Court can rely on the victim as a "sterling witness" without further corroboration, out the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement the oral testimony, without creating any doubt qua the prosecution's case.

28. In the case at hand, particularly from the testimony of the victim, it

is evident that she has remained consistent in her stand from the beginning to the end. PW-1, the victim, has clearly stated that the appellant forcibly took her to Bagoda, confined her, and subjected her to repeated sexual assaults. Her statement under Section 161 & 164 of Cr.P.C. corroborates these facts, including the details of her abduction, confinement, and repeated sexual assault. The medical evidence (Ex.P-12) and FSL report (Ex.P-27) further substantiate her account, showing signs of forced sexual intercourse and detection of human semen on the vaginal swab and other exhibits. While there are minor variations in the statements of other witnesses, such discrepancies are natural given the passage of time and their indirect involvement. There is no evidence to suggest that the victim had any motive to falsely implicate the appellant. Considering the consistent and credible account of the victim, supported by medical and forensic evidence, the appeal filed by the appellant lacks merit and is therefore liable to be dismissed.

29. In view of the above, 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 sentenced as awarded by the trial Court is hereby upheld. The present appeal lacks merit and is accordingly **dismissed**.

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

31. Let a copy of this judgment and the original record be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-

**(Bibhu Datta Guru)**  
**Judge**

Sd/-

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

**Head Note**

An accused cannot claim benefit of minor inconsistencies in the victim's statement when medical and forensic evidence corroborate the prosecution's case, particularly where the victim's version has remained consistent throughout and inspires confidence and her evidence falls under the category of 'sterling witness'.