



2026:CGHC:19498

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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on : 08.04.2026

Judgment delivered on : 28.04.2026

**CRA No. 994 of 2008**

1 - Umesh Sinha, S/o Indal Ram Sinha, Aged about 37 years, R/o  
Quarter No.1 B/25, Amrapali Society, Tehsil & District- Raipur (C.G.)

... Appellant

versus

1 - State of Chhattisgarh through P.S. Mahila Thana, District- Raipur  
(C.G.)

... Respondent(s)

|                         |   |                                                                      |
|-------------------------|---|----------------------------------------------------------------------|
| For Appellant           | : | Ms. Anshu Ratre appears on behalf of<br>Mr. Maneesh Sharma, Advocate |
| For Respondent(s)/State | : | Mr. Kanhaiya Ram Yadav, P.L.                                         |

**Hon'ble Smt. Justice Rajani Dubey**

**CAV Judgment**

1. This appeal preferred under Section 374(2) of the Code of Criminal Procedure, has been preferred by the appellant challenging the judgment of conviction and order of sentence dated 30.09.2008 passed by the learned VII Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No. 32/2007, whereby the learned trial Court has convicted and sentenced the appellant as follows:-

| <b>Conviction</b>        | <b>Sentence</b>                                                                                                           |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Under Section 376 of IPC | R.I. for 7 years and to pay fine of Rs. 5,000/- and in default of payment of fine to undergo additional R.I. for 3 months |

2. The prosecution case, in brief, is that the complainant, aged about 17 years and 1½ months, has allegedly been subjected to continuous physical abuse for the past 1½ years by one Umesh Sinha, purportedly with the tacit support and protection of her mother and her maternal relative. It is alleged that whenever the complainant raised objections or disclosed such acts to her mother and said relative, instead of providing protection, they supported the accused person and dismissed her allegations on the pretext that he was financially supporting the household, thereby suppressing her grievances. Being aggrieved and mentally distressed by such conduct, the complainant was compelled to leave her parental home and has been residing at

the house of an acquaintance for the past one month for her safety and well-being. It is further alleged that her father has also supported the actions of the aforesaid persons, thereby subjecting the complainant to continued harassment and making her life unbearable. On the basis of the complaint lodged by the complainant, the Women Police Station, Raipur, registered a criminal case and upon completion of investigation, filed a First Information Report before the Court of the learned Judicial Magistrate First Class, Raipur. Subsequently, the case has been committed/transferred to this Court for trial in accordance with law. Learned trial Court framed the charge against the appellant under Section 376 of IPC, to which appellant abjured his guilt and claimed to be tried.

3. In order to substantiate the charge levelled against the accused/appellant, the prosecution examined as many as 10 witnesses. Thereafter, the statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, wherein all incriminating circumstances emerging from the prosecution evidence were put to him for explanation. The accused/appellant denied all such circumstances in toto, pleaded innocence and stated that he has been falsely implicated in the present case. In support of his defence, the accused/appellant examined Savitri Verma as D.W.-1, Shivkaran Singh as D.W.-2, Smt. Droupati Tiwari as D.W.-3, Mona Upadhyay as D.W.-4, Rajjak Khan as D.W.-5, Santosh Dubey as D.W. -6 and Manju

Rathore as D.W.-7.

4. The learned trial Court, upon appreciation of the entire oral as well as documentary evidence available on record, found the prosecution case to be credible and trustworthy. Accordingly, vide judgment dated 30.09.2008, the trial Court convicted and sentenced the accused/appellant as detailed in para 1 of the said judgment. Hence, this appeal.
5. Learned counsel for the appellant submits that the impugned judgment is contrary to law, facts and the circumstances of the case and is therefore unsustainable. It is contended that the learned Trial Court failed to appreciate that the prosecution case is inherently improbable, unreliable and unsupported by any cogent and admissible evidence. The testimony of the prosecutrix is not corroborated by any independent witness and is riddled with material contradictions, rendering it unsafe to rely upon for conviction. The conviction has been recorded on the basis of conjectures, surmises, and inadmissible evidence. Even the medical evidence does not support the prosecution case as the doctor (PW-4) has clearly opined that there were no signs of forceful intercourse. Further, the prosecution has failed to conclusively prove the age of the prosecutrix. It is further submitted that the appellant has been falsely implicated due to extraneous reasons, which is supported by the defence evidence on record. The prosecution has failed to establish the charge

under Section 376 IPC beyond reasonable doubt. The findings recorded by the learned Trial Court are perverse, contrary to settled principles of law and suffer from material illegality, and thus, the impugned judgment deserves to be set aside.

Reliance has been placed on the judgment of the Hon'ble Supreme Court in ***Manak Chand @ Mani vs. State of Haryana***, reported in **AIR 2023 SC 5600** as well as on the judgment dated **20.02.2025** passed by this Hon'ble Court in **CRA No. 2364 of 2023 and other connected matters in *Chiranjeet Dholai vs. State of Chhattisgarh***.

6. On the other hand, learned State counsel submits that the impugned judgment is well-reasoned, based on proper appreciation of evidence and in accordance with law. The testimony of the prosecutrix is cogent, credible and sufficient to sustain conviction and has been duly supported by the surrounding circumstances on record. The Trial Court has rightly appreciated both oral and medical evidence and recorded a finding of guilt. The prosecution has successfully proved the charge under Section 376 IPC beyond reasonable doubt and the conviction warrants no interference by this Court.
7. Heard counsel for the parties and perused the material available on record.
8. A perusal of the record of the learned Trial Court reveals that charge was framed against the appellant, Umesh Sinha, under

Section 376 of the Indian Penal Code, while the co-accused persons were charged under Section 109 of the Indian Penal Code. Upon appreciation of the oral as well as documentary evidence adduced during trial, the learned Trial Court acquitted the co-accused persons of the charges levelled against them but found the appellant guilty of the offence punishable under Section 376 IPC. The conviction of the appellant was primarily based on the finding that although the prosecutrix was a consenting party, she was below 16 years of age at the time of the incident, rendering her consent legally immaterial.

9. As per the prosecution case, the prosecutrix was approximately 15 years of age at the time of the alleged incident. It is further evident from the First Information Report (Ex.P/15) that the incident is stated to have occurred about one and a half years prior to the date of lodging of the FIR, i.e. on 18.08.2006.
10. Kishore Kumar Choudhary (P.W.-5), Assistant Grade-I, deposed that he had produced the tabulation chart of the Chhattisgarh Board of Secondary Education, Raipur before the Court. He further stated that the said tabulation record was seized by the police in accordance with the seizure memo (Ex.P/4). He also deposed that as per the tabulation chart, the date of birth of the prosecutrix was recorded as 22.07.1989.
11. Kunj Bihari Yadav (P.W.-6), Peon of the Municipal Corporation, Raipur, deposed that he had produced the birth register

maintained by the Municipal Corporation before the Court. He further stated that the said register was seized by the police in accordance with the seizure memo (Ex.P/7) and the same was exhibited as Article 'C'.

In his cross-examination, he admitted that he had not made the relevant entry in the birth register. He further stated that, as per the record, the name of the child was mentioned merely as "Soni" at page 28, Serial No. 425.

12. Sunita Kanwar (P.W.-7), Head Constable, deposed that she had seized the marksheet of the prosecutrix vide seizure memo (Ex.P/9).

13. In the case of **Chiranjeet Dholai** (*supra*), this Hon'ble Court has observed and held in paras 21 to 24 as follows:-

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

"26. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact, and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section

35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded."

22. In the matter of **Alamelu and Another Vs. State, represented by Inspector of Police, 2011(2) SCC 385**, the Hon'ble Supreme Court has held that the transfer certificate which is issued by government school and is duly signed by the Headmaster would be admissible in evidence under Section 35 of the Evidence Act 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the prosecutrix in the absence of any material on the basis of which the age was recorded. It was observed as under:

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

age was recorded.

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

"The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment, for contesting election, registration of marriage, obtaining a separate unit under the ceiling laws, and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a (2006) 5 SCC 584 party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the

accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted."

23. In the matter of **Rishipal Singh Solanki Vs. State of Uttar Pradesh & Others, 2022 (8) SCC 602**, while considering various judgments, the Hon'ble Supreme Court has observed in para 33 as under:

"33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.2.2. If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

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XXXX

XXXX

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a) (i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or

sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a

person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7 This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate,

could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

33.11 Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015."

24. Recently, in the matter of **P. Yuvaprakash Vs. State represented by Inspector of Police, 2023 SCC Online SC 846**, Hon'ble Supreme Court has held in para 14 to 17 as under

"14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the

concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex C1 i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, ie, CW-1. The burden is always upon the prosecution to establish what it alleges, therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. In a recent decision, in *Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors*, this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in *pari materia*) with Section 94 of the JJ Act, and held as follows:

20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining (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. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or Juvenile by considering the age on lower side within the margin of one year".

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94 (2) of the JJ Act, this court held in *Sanjeev Kumar Gupta vs. The State of Uttar Pradesh & Ors* that:

"Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or

equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

17. In *Abuzar Hossain Gulam Hossain Vs. State of West Bengal*, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference."

14. In light of the foregoing, it is evident that the prosecution relied upon the tabulation chart of the Chhattisgarh Board of Secondary Education, the birth register of the Municipal Corporation and the marksheet of the prosecutrix to establish her age. However, the witnesses have admitted that the admission register of Class I was not produced by the prosecution. It has further come on record that the name of the prosecutrix was not duly entered in the birth register of the Municipal Corporation. In such circumstances, it was incumbent upon the prosecution to establish, beyond reasonable doubt that the name reflected in the relevant entry was subsequently identified with and pertained to the prosecutrix. Therefore, it is clear that no clinching and legally admissible evidence has been brought on record by the prosecution to prove that the victim was a minor on the date of the incident. Yet, the learned Trial Court, in the impugned judgment, has held her to be a minor. Hence, the findings recorded by the learned Trial Court regarding the age of the prosecutrix are not sustainable.
15. The defence placed on record various documents and the prosecutrix also admitted Ex. D/1 and D/2 which indicate that she was in a love affair with another person namely Rajendra Sahu.
16. The prosecutrix (P.W.-8) deposed in her examination-in-chief that the accused had committed forcible sexual intercourse with her.

In her cross-examination, particularly in paras 12 and 13, she admitted the letter (Ex.D/2) and acknowledged that the same was in her handwriting; however, she stated that the said letter was written by her in a joking manner. She denied the suggestion that on 13.07.2006 she had informed her mother about her intention to leave the house on 14.07.2006 along with Rajendra Sahu.

She admitted the suggestion that her mother had lodged a report against her at the concerned police station, pursuant to which an investigation was carried out. However, she expressed lack of knowledge as to whether Constable Rajendra Sahu was examined in connection with the said investigation.

She also admitted that she had resided in Nari Niketan. However, she denied the suggestion that she had left Nari Niketan and gone to the house of Suresh Tiwari. She further denied the suggestion that she, in connivance with Constable Rekhil Meshram and Rajendra Sahu, had prepared a forged marksheet showing that she had passed Class 10th.

17. In her examination-in-chief, she, on several occasions, stated that the contents attributed to her in her police statement (Ex.D/3) were not recorded as per what she had actually stated.

In para 44, she stated that, "यह सही है कि मेरी माँ ने इस रिपोर्ट के पहले मेरे विरुद्ध शिकायत की थी। यह भी सही है कि उस शिकायत पर मुझे महिला थाने में बुलाया गया था। यह सही है कि वहाँ पर मैंने कहा कि मैं अपने मां-बाप के साथ

नहीं रहना चाहती अलग रहना चाहती हूँ। सही है कि तब मुझे महिला थाना वालों ने कहा कि मैं उन्हें लिखकर दूँ कि मैं अपने घरवालों से वास्ता तोड़ती हूँ और अपने घरवालों के साथ नहीं रहना चाहती यह सही है कि तब मैंने ऐसा लिखकर दिया था। सही है कि महिलाथाने में लिखकर देने के बाद मैं मनोज साहू के मकान में जाकर रहने लगी।"

In para 48 of her testimony, she stated that her parents had not refused to keep her with them; rather, it was she who declined to reside with them.

Further, she denied the suggestion that she was having a love affair with Rajendra Sahu. Upon being confronted with the note "I Love You" written in the register (Ex.D/1), she stated that the said writing had been made under force. She also denied the suggestion that Constable Rajendra Sahu and Constable Rakhilal had used her as a pawn and concocted the entire story with the intention of falsely implicating the accused.

18. Dr. Supriti Sharma (P.W.-4), who medically examined the prosecutrix, did not find any external or internal injuries on her body. The doctor further opined that the prosecutrix appeared to be habituated to sexual intercourse; hence, no definite opinion could be given regarding the occurrence of recent sexual intercourse. She gave her report vide Ex.P/3 in this regard.

19. Inspector Sandhya Dwivedi (P.W.-10), in her cross-examination, admitted that the prosecutrix, Sonia, had initially refused to undergo medical examination. She further stated that she

subsequently took her personally for medical examination on 20.08.2006.

20. A close scrutiny of the statements of the prosecutrix and other witnesses clearly reveals that the conduct and testimony of the prosecutrix are highly doubtful. In this context, the Hon'ble Supreme Court, in the case of ***Manak Chand alias Mani*** (*supra*), has held in paras 5, 6, 7, and 8 as under:-

“5. The evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness. It is again true that conviction can be made on the basis of the sole testimony of the prosecutrix. All the same, when a conviction can be based on the sole testimony of the prosecutrix, the courts also have to be extremely careful while examining this sole testimony as cautioned in *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384: (AIR 1996 SC 1393):

"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 was reiterated by this Court in *Sadashiv Ramrao Hadbe v. State of Maharashtra and Another* (2006) 10 SCC 92: (AIROnline 2006 SC 679):

"It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix."

Both the prosecutrix as well as the accused have a right for a fair trial, and therefore when the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence. Relying upon the case of *Gurmit Singh* (supra) this court in *Raju and others v. State of Madhya Pradesh* (2008) 15 SCC 133 : (AIR 2009 SC 858) held as under:

"10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable,

no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

6. Does the testimony of the prosecutrix in the present case inspire confidence? We are afraid it does not. Let us appreciate the facts once again. Although, the first incident of rape is alleged to be of 12.09.2000, the prosecutrix does not disclose this to anyone immediately. She then alleges

rape again on two or three different occasions later, though no date and time are disclosed. She only discloses it to her mother after one and half months. It has then come in the evidence led by none other but the prosecution (in the school register submitted in the court by PW-2 i.e Ram Sahay), that the prosecutrix had attended her classes in the school on 12.09.2000 at Dabwali, where she resides with her parents. We must note that she has alleged rape on the same day at village Sanwat Khera, where she was staying at the relevant time with her sister in her matrimonial house. This seems improbable, if not impossible. The other aspect is the admitted position of the prosecution itself that the FIR was ultimately filed as the initial proposal of marriage was then turned down. All these facts do cast a doubt on the story of the prosecution.

7. The prosecution then has also relied upon the medical report of the prosecutrix given by Dr. Kulwinder Kaur as PW-1 which states that the hymen of the prosecutrix was ruptured, and therefore she was raped. To the contrary when we examine the same medical report in detail an entirely different picture emerges. The Trial Court, however relied upon the evidence placed by the prosecution regarding the date of birth of the prosecutrix, which was recorded in the school register as 04.04.1987 and therefore at the time of the alleged offence she was only thirteen and

half years of age and thus the finding of the Trial Court is that, even if it is assumed for the sake of argument that the prosecutrix was a consenting party to the sexual intercourse, her consent would be immaterial since she was less than sixteen years of age and therefore the offence of rape stands proved. The High Court in the appeal, however, even discards the presumption of the prosecutrix being a consenting party and has completely relied upon the testimony of the prosecutrix regarding rape and has dismissed the appeal.

The evidence, as to the age or even rape has not been examined properly by the Trial Court as well as the High Court. Courts must examine each evidence with open mind dispassionately as an accused is to be presumed innocent till proved guilty. In our adversarial system of criminal jurisprudence, the guiding principle shall always be the Blackstone ratio which holds that it is better that ten guilty persons escape than one innocent be punished.

8. There are two aspects which ought to have been considered by the Trial Court and the High Court in greater detail than what has been done. The first is the age of the prosecutrix. The age of the prosecutrix has an extremely crucial bearing in the case. The only evidence relied by the court for holding the prosecutrix as a minor (less than

sixteen years of age), is the school register of Government Girls High School, which was placed in the Court by the clerk of the school, Ram Sahay (PW-2). Undoubtedly, the date of birth in the school register is 04.04.1987 which makes the prosecutrix less than sixteen years of age at the time of the incident. But it has also come in the evidence of Ram Sahay (PW-2) that this date of birth was recorded not on the statement of the parents of the prosecutrix, but by some other person and more importantly, it was based on the transfer certificate of Government Primary School where the date of birth was recorded as 04.04.1987. All the same, this transfer certificate, on the basis of which the date of birth was recorded, was never produced in the Court. Yet, both the Trial Court and the High Court have relied upon the veracity of the school register. It is the same school register which marks the presence of the prosecutrix on 12.09.2000 in the school. This is also the date when the prosecutrix was allegedly raped for the first time, in the house of the appellant in village Sanwat Khera, whereas the school is at another place called Dabwali Mandi. The Trial Court discards the evidence in the same school register, as not being authentic, when the defence had raised the apparent contradictions on the prosecutrix being in school and at the Sanwat Khera village at the same time. This is not a fair appreciation of evidence, to say the least,

as same school register is the only basis for the determination of the age of the prosecutrix!”

21. In light of above, in the present case, it is evident that the conviction recorded by the learned Trial Court rests primarily on the assumption that the prosecutrix was below 16 years of age at the time of the alleged incident, thereby rendering her consent immaterial. However, as discussed hereinabove, the prosecution has failed to produce any cogent, reliable and legally admissible evidence to conclusively establish the age of the prosecutrix. The documentary evidence relied upon suffers from material inconsistencies and lacks proper proof in accordance with law. Consequently, the finding of the Trial Court holding the prosecutrix to be a minor is unsustainable.

22. Further, the testimony of the prosecutrix does not inspire confidence so as to form the sole basis of conviction. Her evidence is riddled with material contradictions and improvements, and she has resiled from significant portions of her earlier statement. Her admissions regarding prior disputes with her family, her independent conduct in leaving the parental home, and the defence evidence indicating her relationship with another person create serious doubt about the prosecution story. The medical evidence also does not support the case of forcible sexual intercourse. The doctor has categorically stated that no external or internal injuries were found on the body of the

prosecutrix and that she was habituated to sexual intercourse. No definite opinion regarding recent sexual assault has been given. This further weakens the prosecution case. It is also noteworthy that there was a delay of approximately one and a half years in lodging the FIR, for which no satisfactory explanation has been offered by the prosecution. Such unexplained delay casts a serious shadow on the veracity of the allegations. In criminal jurisprudence, it is a settled principle that suspicion, however strong, cannot take the place of proof. The prosecution is required to prove its case beyond reasonable doubt, and the benefit of doubt must necessarily go to the accused.

23. In the present case, the combined effect of failure to prove the prosecutrix's minority, her unreliable testimony, absence of medical corroboration and the defence evidence gives rise to reasonable doubt in the prosecution case.
24. Accordingly, this Court is of the considered opinion that the conviction of the appellant under Section 376 of the Indian Penal Code is not sustainable in the eyes of law.
25. In the result, the appeal is **allowed**. The impugned judgment dated 30.09.2008 passed by the learned Trial Court is hereby set aside. The appellant is acquitted of the charge under Section 376 of the Indian Penal Code.
26. The accused/appellant is reported to be on bail, therefore, keeping in view the provisions of Section 437-A of CrPC (481 of

the B.N.S.S.), appellant is directed to furnish a personal bond in terms of form No.45 prescribed in the Code of Criminal Procedure for a sum of Rs.25,000/- with one reliable surety in the like amount before the Court concerned which shall be effective for a period of six months alongwith an undertaking that in the event of filing of special leave petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereon shall appear before the Hon'ble Supreme Court.

**27.**The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

**Sd/-**

(Rajani Dubey)

**JUDGE**

Ruchi

RUCHI YADAV

Digitally signed by  
RUCHI YADAV