



2026:CGHC:15711-DB
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 1045 of 2024

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24.02.2026	07.04.2026	--	07.04.2026

1 - XYZ (Nil)

Appellant (s)

versus

- 1 - State Of Chhattisgarh Through Police Station Khamtarai, District Raipur, Chhattisgarh.
- 2 - Ramkumar Chelak, S/o Devlal Chelak Aged About 24 Years R/o Ranvabhatha, Satnam Chowk, Ward No.15, Thana Khamtari, Raipur, District - Raipur, Chhattisgarh.

Respondent(s)

For Appellant (s)	:	Mr. Mateen Siddiqui and Mr. Waquar Naiyer, Advocates
For Respondent-State	:	Mr. Atanu Ghosh, Dy. GA
For Respondent No.2	:	Mr. Anchal Matre, Advocate

Hon’ble Smt. Justice Rajani Dubey

Hon’ble Shri Justice Radhakishan Agrawal

CAV Judgment

Per Rajani Dubey. J.

1. The present acquittal appeal has been preferred by the appellant/complainant against the judgment of acquittal dated 02.05.2024 passed by the learned Additional Session Judge, FTC Special Court 'POCSO', Raipur (C.G.) in Special Criminal Case (POCSO) No.180/2022, whereby the respondent No.2 has been acquitted of the charges under Section 376 (3) of IPC and Section 4 (2) of POCSO Act.
2. Brief facts of the case are that appellant/prosecutrix lodged written report at the police station concerned alleging interalia that respondent/accused contacted her through mobile phone in the month of November 2021. The respondent/accused used to contact her through the mobile phone and say I love you and also asked her to come at her old house to meet him however she refused to meet him however on 05.04.2022 around 11 PM, respondent/accused asked the her to come and meet him near her old house upon which she came there and the respondent/accused took her inside old house and committed the rape with her. Thereafter, the appellant haven't got her periods in the month April 2022 however she got scared so she didn't tell about her periods to her parents. Thereafter the appellant belly started increasing so on 31.08.2022 the her parents took her for treatment at Parivar Seva Kendra, Pandari where the appellant parents got to know that she is pregnant and the fetus was stillbirth (intra uterine death) after 7 months of pregnancy. Therefore, she was admitted at Dr. Bhemrao Ambedkar Hospital

and abortion was carried out. Thereafter a case was registered against the accused respondent and he was arrested. After completion of the investigation, the charge-sheet was filed before the Magistrate concerned. The learned Trial Court after appreciating the oral and documentary evidence available on record acquitted the respondent No.2 of the aforesaid charges.

3. Learned counsel for the appellant/complainant submits that the impugned judgment of acquittal passed by the learned Trial Court is illegal. The prosecution witnesses categorically stated against the accused/respondents, but the learned Trial Court only on minor contradictions and omissions acquitted the respondents. He further submits that the prosecutrix clearly deposed against the accused respondent but the same has not been considered by the learned Trial Court. The learned Trial Court also ought to have considered that the age of prosecutrix was below 18 years on the date of incident based on the evidence available on record, but the learned Trial Court did not appreciate the oral and documentary evidence properly, as such the impugned judgment is liable to be set aside and the accused respondent is liable to be convicted. Reliance has been placed on the judgment rendered by the Hon'ble Supreme Court in the matter of **Prasanta Debnath and another vs State of Tripura, reported in 2026 SCC Online Tri 93, Vijay vs State of Madhya Pradesh, passed in CRA No.660/2008, decided on 27.07.2010 and State**

of Madhya Pradesh vs Anoop Singh, passed in CRA No.442/2010, decided on 03.07.2015.

4. Learned State counsel supports the contention made by the learned counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt against the accused/respondent but he has wrongly been acquitted by the learned Trial Court. Therefore, the impugned judgment is liable to be set aside.
5. Learned counsel for the respondent No.2 opposes the submission made by the learned counsel for the appellant/complainant as well as learned State counsel and submits that learned Trial Court has minutely appreciated the oral and documentary evidence available on record and rightly found that the on the date of incident, the prosecutrix was not below 18 years of age and rightly held that the accused respondent did not meet the prosecutrix during the period in which she got pregnant and the prosecutrix herself admitted that she did not meet the accused during the said period and even her father and prosecutrix herself denied consent for DNA Test, as such accused respondent was falsely implicated by the prosecutrix and the prosecution has failed to prove its case beyond reasonable doubt against the accused respondent and the learned Trial Court has rightly acquitted the respondent accused of the aforesaid charges. Therefore, the appeal is liable to be

dismissed. Reliance has been placed on the judgment rendered by the Hon'ble Supreme Court in the matter of **State (GNCT of Delhi) vs Vipin @ Lalla**, reported in 2025 SCC Online SC 78, **Sham Singh vs State of Haryana**, reported in 2018 SCC Online SC 1042, **Dola @ Dolagobinda Pradhan vs State of Odisha**, reported in 2018 SCC Online SC 1224, **Mohd Ali @ Guddu vs State of Uttar Pradesh**, reported in (2015) 7 SCC 272 and **Hem Raj vs State of Haryana**, reported in (2014) 2 SCC 395.

6. Heard learned counsel for the parties and perused the material available on record.
7. It is clear from record of learned Trial Court that the learned Trial Court framed charges under Section 376 (3) of IPC and Section 4 (2) of POCSO Act against the respondent accused and after appreciation of oral and documentary evidence available on record the learned Trial Court acquitted the respondent accused of the aforesaid charges.
8. The learned Trial Court found that the prosecutrix was below 16 years of age on the date of incident.
9. PW-3 principal of school filed memo for seizure of dakhil kharij register of police vide Ex-P/10 and stated that this register was seized by the Police as per seizure memo (Ex-P/11) and original dakhil kharij register is Ex-P/12, whereas attested copy of register is Ex-P/12C and as per this register, name of prosecutrix

was entered at Sr. No.1105 in the school and as per this register, she was admitted in Class 6th on 30.06.2017 and her date of birth mentioned in in the register is 18.04.2006. In the cross-examination, she admitted that entry was not made by her. In para 6, she also admitted that as to who had come to get her admitted in the school she does not know.

10. PW-2 father of the prosecutrix stated that the date of birth of her daughter is 18.04.2006. In the cross-examination, he admitted that birth certificate or any document regarding date of birth of the prosecutrix was not seized by the prosecution and even did not provide photo copy of the same. He also admitted that report card of Class 8th of prosecutrix is also not with him. He denied this suggestion that he did not make birth certificate. He stated in paras 22 & 23 as under:-

“22. “यह कहना गलत है कि पीड़िता का जन्म प्रमाण पत्र नहीं बनवाया हूँ। साक्षी ने स्वतः कथक किया कि गुम गया है। यह कहना सही है कि मैंने जन्म प्रमाण पत्र की द्वितीय प्रति प्राप्त नहीं की है। यह कहना सही है कि जन्म प्रमाण पत्र की फोटो प्रति भी मैंने पुलिस वालों को नहीं दी है। यह कहना सही है कि पीड़िता का कक्षा आठवी का मूल प्रगति पत्रक मेरे पास नहीं है। मैंने पुलिस को दिया था। यह कहना गलत है कि मैंने पुलिस का पीड़िता का कक्षा आठवी की प्रगति पत्रक की केवल फोटो प्रति दी थी। यह कहना सही है कि पीड़िता के जन्म के संबंध में कोटवार पंजी मेरे पास नहीं है।

23. यह कहना सही है कि मैं आज पीड़िता के जन्म के संबंध में कोई भी असल दस्तावेज लेकर नहीं आया हूँ। यह कहना गलत है कि मेरे पास पीड़िता के जन्म के संबंध में प्रमाण पत्र है। मेरे पास आधार कार्ड में पीड़िता की जन्म तिथि अलग दर्ज है जो त्रुटिवश दर्ज है।”

11. Thus, it is clear from the statement of father of prosecutrix (PW-2) and statement of principal (PW-3) that the prosecution only filed discharge register of Class 8th of prosecutrix and no document

was filed regarding her previous classes or birth certificate was not filed by the prosecution and principal admitted this suggestion that entry was not made by her but the learned Trial Court did not appreciate all these aspects of the matter and gave wrong finding regarding the age of the prosecutrix on the date of incident.

12. The Hon'ble Apex Court in the matter of ***Alamelu and another Vs. State, represented by Inspector of Police, (2011) 2 SCC 385*** observed in paras 40 & 48 of its judgment 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.* 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 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.”

13. PW-1 prosecutrix stated in para 3 that when she was studying in Class 10, the accused's sister was connected with her in an online class group. The accused took her number from that online group. He repeatedly used to message her on her number. She used to refuse and told him not to message her, but he did not listen. The accused used to message her and also threatened her to meet him, otherwise he would beat her and slap her. After that, she went to meet the accused at a house near her home and forcibly established physical relations with her. Due to fear, she kept going to the accused and he continued to have physical relations with her. The accused had physical relations with her about two times. She further stated that during the festival of Teeja Pola, her health deteriorated and her father took her to Mekahara Hospital for treatment. Her menstruation had stopped. After examination, the doctor informed her and her father that she got pregnant and the fetus had already been damaged in the womb. Thereafter, the doctor conducted her abortion at Dr. Bhimrao Ambedkar Hospital, and the fetus of the deceased child was kept preserved by the police for DNA testing.

Police prepared Dehati Nalisi (Exhibit P-01) and she admitted her signatures on A to A part of the same. The spot map is Exhibit P-02 was prepared, which also bears her signatures on A to A part. The police gave notice to her for DNA test consent but she and her father denied DNA test. The prosecution declared her hostile and cross-examined her then she admitted this suggestion that because of accused she got pregnant. She admitted this suggestion of defence that while giving her statement before police, she did not tell that the accused committed rape twice with her. She also admitted in para 20 that when her parents came to know that she got pregnant because of accused, even then no report was lodged against the accused. She denied this suggestion that she denied consent for DNA test as the child belongs to someone else. She admitted this suggestion that prior to the date of incident i.e. on 04.05.2022, she never met the accused. She also admitted that when her period cycle got stopped, she did not tell her parents.

14. PW-2 father of the prosecutrix stated the accused committed rape with her daughter. The incident occurred approximately one year ago. His daughter had gone to visit her maternal uncle's house during the season of the 'Pora Tija' festival. At that time, her maternal uncle called to inform him that she was unwell and was experiencing symptoms such as dizziness. Consequently, he went to her maternal uncle's house, brought her back to their home, and subsequently took her to the 'Parivar Seva Kendra'

clinic in Pandri for a medical examination. Upon examining the victim, the doctor informed them that she was 4–5 months pregnant, but the fetus had already died inside the womb. The doctor then advised them to take the girl (the victim) to Mekahara Hospital and thereafter she was admitted in the said hospital. He admitted that he received notice (Ex-P/8) which was with regard to consent for DNA Test but they did not give consent for DNA test. In the cross-examination, he admitted this suggestion that before going to hospital, they did not lodge any report against the accused. In para 16, he denied this suggestion that he had prior knowledge of prosecutrix being pregnant. He stated that he did not give consent for DNA test, as the prosecutrix was already taking the name of accused as such there was no need to waste time. He denied this suggestion that he did not give consent for DNA test for the reason that name of the real father of the child would come out.

15. PW-4 Assistant Professor in Dr. Bhimrao Hospital, Raipur stated that prosecutrix was admitted in hospital on 31.08.2022 and she was pregnant of 28-30 weeks but heartbeat of fetus was not present. The prosecutrix was advised for sonography test. In the sonography report, the prosecutrix was 27 weeks and 3 days pregnant and heartbeat of child was not present. Thereafter parents of prosecutrix gave consent for abortion. After abortion, dead fetus of 1 kg was born and sample of dead fetus for DNA test was preserved. She admitted this suggestion that looking to

the situation of pregnancy of prosecutrix, it appears that prosecutrix might have got pregnant prior to 7 months i.e. in February, 2022. In para 19 she admitted that as per fetus, the prosecutrix can be pregnant if physical relation was made with her prior to 27 weeks and 3 days.

16. The learned Trial Court minutely appreciated the oral and documentary evidence available on record and found that statement and conduct of prosecutrix and her father recorded as PW/1 & PW/2 are suspicious and they did not give consent for DNA test and also as per doctor's report date of rape should be February, 2022 but as per prosecutrix prior to April, 2020 she did not meet the accused.
17. The Hon'ble Apex Court in **Dola @ Dolagobinda Pradhan** (supra) held in paras 7, 8 & 36 as under:-

"7. In this regard it would be useful to quote certain observations of this Court in *Bharwada Bhoginbhai Hirjibhai vs State of Gujarat* wherein it is observed that:-

"10. By and large thesesfietors are not relevant to India, and the Indian conditions. Without the fear of making too wide a a statement, or of overstating the case, it can be said that rarely will girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban asjulso fural society It's also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very cardly can one conceivably.come across an exception or two and that too possibly from amongst the urban elites. Because: (1) 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 oecüfred. (2) She

would be conscious of the danger of being ostracised by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would free the risk of losing the love and respect of her own husband and hear relatives, and of her matrimonial home and happiness being shattered. (5) if she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy, (10) The parents of an unmarried girl as also the husband and members, of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved acts as a deterrent.

11. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated On principle, the evidence of a victim of sexual assault stands on a par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted, the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence corroboration notwithstanding. And while corroboration in the form of eyewitness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would

therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the western world (obedience to which has perhaps become a habit presumably on account of the colonial hangover). We are therefore of the opinion that if the evidence of the victim does not suffer from any intrinsic infirmity, and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case medical evidence can be expected to be forthcoming, subject to the following qualification: Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the "probabilities factors found to be out of tune." (emphasis supplied)

8. In *Sadashiv Ramrao Radbe v. State of Maharashtra*³, this Court reiterated that the sole testimony of the prosecutrix could be relied upon if it inspires the confidence of the Court: (SCC p. 95, para 9)

"9. 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. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when, the entire case is improbable and unlikely to happen.

36. In our considered opinion, the trial court as well as the High Court have convicted the appellants without considering the aforementioned factors in their proper perspective. The testimony of the Victim is full of inconsistencies and does not find support from any other evidence whatsoever. Moreover, the evidence of the informant/victim is inconsistent and self-destructive at different places. It is noticeable that the medical record and the doctor's evidence do not specify whether there were any signs of forcible sexual intercourse. It seems that the first information report was lodged with false allegations to extract revenge from the appellants, who had uncovered the theft of

forest produce by the informant and her husband, The High Court has, in our considered opinion, brushed aside the various inconsistencies pointed out by us only on the ground That the victim could not have deposed falsely before the Court. The High Court has proceeded on the basis of assumptions, conjectures and surmises, inasmuch as such assumptions are not corroborated by any reliable evidence. The medical evidence does not support the case of the prosecution relating to the offence of rape.”

18. The Hon'ble Apex Court in **Vipin @ Lalla** (supra) held in paras 10, 11 & 12 as under:-

“10. Although it is absolutely true that in the case of rape, conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness which is given a very high value by the Courts. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the Court. The testimony of the prosecutrix in the present case thus has failed to inspire absolute confidence of the Trial Court, the High Court and this Court as well.

11. It is not believable that when the prosecutrix was caught by the accused who is known to the prosecutrix, she went with him quite a distance in the Bazaar and then to a shop, she never raised any alarm. The only reason she gave is that there was a knife with accused and he had threatened her that if she raises an alarm her brother and father would be killed.

12. In any case as we have already stated above that the testimony of the prosecutrix does not inspire confidence, under these circumstances, we are not inclined to interfere with the well considered order of the Trial Court and the High Court.”

19. The Hon'ble Apex Court in **Sham Singh** (supra) held in para 23 as under:-

“23. The evidence of the victim/prosecutrix and the aunt PW10 are unreliable, untrustworthy inasmuch as

they are not credible witnesses. Their evidence bristles with contradictions and is full of improbabilities. We cannot resist ourselves to place on record that the prosecution has tried to tope in the appellant merely on assumptions, surmises and conjectures. The story of the prosecution is built on the materials placed on record, which seems to be neither the truth, nor wholly the truth. The findings of the court below, though concurrent, do not desire the merit of acceptance or approval in our hands with regard to the glaring infirmities and illegalities vitiating them, and the patent errors apparent on the face of record resulting in serious and grave miscarriage of justice to the appellant.”

20. In light of the above, it is clear that the statement of the prosecutrix and her father are not reliable and her father also did not give consent for DNA test and the date of incident is not matched with the medical report of the prosecutrix, during which the prosecutrix got pregnant. Thus, the learned Trial Court has rightly found that the prosecution has failed to prove its case beyond reasonable doubt against the respondent accused.

21. The Hon’ble Apex Court in its **judgment dated 12.02.2024** passed in **Criminal Appeal No.1162 of 2011**) in case of **Mallappa and Ors. Versus State of Karnataka**, has held in para 36 as under:-

“36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

“(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive

inclusive of all evidence, oral and documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”

22. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in **Mallappa** (supra) and the view which has been taken by the learned trial Court appears to be plausible and possible view and in the absence of any patent illegality or perversity, as such this Court is not inclined to interfere with the impugned judgment.

23. Accordingly, the appeal is dismissed.

Sd/-
Rajani Dubey
Judge

Sd/-
Radhakishan Agrawal
Judge