



2026:CGHC:6994-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No.1532 of 2023

Bhola Yadav S/o Shatruhan Yadav @ Dhusu Yadav, Aged About 25 Years, R/o Bhata Para Ruabandha Bhilai Nagar, District Durg (Chhattisgarh) ... **Appellant**

versus

State Of Chhattisgarh Through Police Station Bhilai Nagar, District Durg Chhattisgarh. ... **Respondent**

(Cause-title taken from Case Information System)

For Appellants : Mr. Rahil Arun Kochhar along with Leekesh Kumar, Advocates.

For Respondent : Mr. Sourabh Sahu, PL.

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

09.02.2026

1. The present Criminal Appeal has been preferred by the Appellant assailing the judgment of conviction and order of

sentence dated 30.05.2023 passed by the learned Additional Sessions Judge, First Fast Track Court, Special Judge (POCSO Act), Durg in Special Criminal Case No.122/2021, whereby the Appellant has been convicted and sentenced as under:

Conviction	Sentence
Section 363 IPC	R.I. for 1 year and fine of Rs.500/-, in default S.I. for 15 days
Section 366 IPC	R.I. for 3 years and fine of Rs.1,000/-, in default S.I. for 15 days
Section 3 punishable under Section 4(2) of the POCSO Act, 2012	R.I. for 20 years and fine of Rs.2,000/-, in default S.I. for 2 months. All the sentences were directed to run concurrently.

2. The prosecution's case in brief is that the prosecutrix's father filed a report stating that on 01-08-2021, at approximately 8:00 p.m., his younger daughter/prosecutrix, aged 14 years and 03 months, left the house without informing anyone and did not return. He searched for her in the neighborhood and at relatives' homes, but could not find her. He suspects that an unknown person has lured her away and is holding her in his custody. Based on the said report, Crime No.341/2021 was registered by the Bhilai Nagar Police Station under Section 363 of the Indian Penal Code. During the investigation, the prosecutrix was recovered from the custody

of accused Bhola Yadav in the forest of village Bachedi, Sahaspur Lohara police station. Upon questioning, the prosecutrix revealed that the accused took her on his vehicle to his maternal uncle's house in Gandai, forcibly had sexual intercourse with her and then taken her to the Radha Krishna temple in Bachedi, filled her hairline with vermillion and then taken her to the forest in Daihan. Based on aforesaid allegations, Sections 366, 376 of the Indian Penal Code (IPC) and sections 3 and 4 of the POCSO Act were added. The prosecutrix's birth documents were seized. A site map of the crime scene was prepared. The prosecutrix and the Appellant's underwear were seized and they were medically examined. Upon finding evidence of incrimination against the accused, Bhola Yadav was arrested and the prosecutrix's statement was recorded in court under section 164 of the Criminal Procedure Code. After a thorough investigation, a case was filed against accused Bhola Yadav under sections 363, 366, and 376 of the IPC. And charge sheet number 263/2021 under sections 3, 4 of the POCSO Act was presented in the court on 04-10-2021. On perusal of the presented charge sheet and the attached documents, it appears *prima facie* that the accused Bhola Yadav has committed the offence punishable under sections 363, 366, 376(3) of the Indian Penal Code and section 3 of the Protection of Children from Sexual Offences Act, 2012, as well as section 4(2) of

the said Act. Charges were framed under the said Sections and the charges were read out and explained to the accused. The accused denied the crime and claimed innocence and demanded a trial.

3. On the basis of statement of the prosecutrix, offence under Sections 363, 366 of the IPC and under Section 3 punishable under Section 4(2) of the POCSO Act, 2012 were registered against the Appellant and upon completion of investigation, charge-sheet was submitted before the Court concerned.

4. The trial Court has framed charges against the Appellant under Sections 363, 366 and 376(3) of the Indian Penal Code (IPC) as also under Section 3 of the POCSO Act, punishable under Section 4(2) of the POCSO Act. The Appellant abjured his guilt and pleaded innocence.

5. In order to establish the charge against the Appellant, the prosecution examined 12 witnesses. The statement of the Appellant under Section 313 of the CrPC was also recorded in which, he denied the material appearing against him and stated that he is innocent and has been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has convicted the accused/Appellant and sentenced him as mentioned in para-1 of the judgment. Hence, this appeal.

6. Learned counsel for the Appellant submits that the learned trial Court has committed a grave error in law as well as on facts in convicting the Appellant for the alleged offences and the impugned conviction is wholly illegal, improper, and unsustainable in the absence of cogent, reliable, and legally admissible evidence. It is submitted that the prosecution has failed to prove the essential ingredients of the offence of rape beyond reasonable doubt. The testimony of the prosecutrix and other prosecution witnesses is replete with material contradictions, omissions, and improvements, and therefore, does not inspire confidence or warrant implicit reliance. The solitary testimony of the prosecutrix, in the peculiar facts and circumstances of the case, cannot form the basis of conviction, particularly when her conduct appears unnatural and improbable, she being a major and well-educated woman. It is further submitted that the medical evidence does not corroborate the ocular version inasmuch as no external or internal injuries were found on her person, the hymen was found to be old ruptured, and no definite medical opinion regarding commission of rape attributable to the Appellant was given in Ex.-P/18, as deposed by PW-7 Dr. Babita Saxena. The alleged place of occurrence has not been clearly established, no independent witness or material corroboration supports the prosecution story, and the FIR was lodged with unexplained delay, thereby creating serious doubt

about the genuineness of the prosecution case. According to learned Counsel, these circumstances cumulatively demolish the prosecution case and render the finding of guilt perverse and unsustainable in law.

7. Learned counsel further submits that the learned trial Court failed to properly appreciate material evidence indicating a consensual relationship between the Appellant and the prosecutrix, including their admitted love affair and alleged temple marriage. It is contended that the prosecution has also failed to conclusively establish that the prosecutrix was a minor at the time of the incident. The reliance placed upon the school Dakhil-Kharij register (Ex.-P/20/20C) to determine age is legally untenable, as the entry regarding date of birth was neither proved by the person who made it nor supported by foundational evidence and even PW-8, the Headmaster, admitted ignorance regarding the basis of such entry. PW-4, the father of the prosecutrix, also failed to produce any authentic birth document and admitted that the age mentioned at the time of school admission was approximate. In view of the settled legal principles laid down by the Hon'ble Supreme Court in *Alamelu v. State* (AIR 2011 SC 715) and *Narbada Devi Gupta v. Birendra Kumar Jaiswal* (2003) 8 SCC 745, mere marking of such documents as exhibits does not amount to proof of age. It is therefore submitted that the prosecution having failed to prove

minority or absence of consent, the conviction of the Appellant has resulted in grave miscarriage of justice; the defence version deserved acceptance and in any event, the sentence imposed is excessively harsh and liable to be set aside.

8. Learned State Counsel, per contra, submits that the impugned judgment of conviction passed by the learned Trial Court is well-reasoned, legally sound and based upon proper appreciation of oral as well as documentary evidence on record and therefore, calls for no interference in Appeal. It is contended that the testimony of the prosecutrix is natural, trustworthy and consistent on material particulars and it is a settled principle of criminal jurisprudence that conviction can safely be based on the sole testimony of the prosecutrix if the same inspires confidence. Minor discrepancies or omissions in the statements of prosecution witnesses are bound to occur due to lapse of time and do not go to the root of the prosecution case. Learned State counsel further submits that the medical evidence does not negate the prosecution story, as absence of injuries or an old ruptured hymen is not decisive to disbelieve the charge of rape, particularly when the testimony of the prosecutrix is otherwise reliable. The delay in lodging the FIR is also duly explained by the surrounding circumstances and cannot be treated as fatal to the prosecution. It is thus urged that the learned trial Court has rightly recorded a

finding of guilt after comprehensive evaluation of the entire evidence and the same does not suffer from perversity or illegality.

9. Learned State counsel further submits that the plea of consent and alleged love affair set up by the Appellant is wholly misconceived and unsupported by reliable evidence. It is argued that the prosecution has duly established the minority of the prosecutrix through documentary evidence including the school records, which are admissible under law and mere inability of the Headmaster to state the basis of entry does not demolish the evidentiary value of such official records when read in conjunction with other evidence on record. Even otherwise, once the prosecutrix is proved to be below eighteen years of age, the question of consent becomes legally irrelevant. The defence version of temple marriage and false implication is an afterthought and has rightly been disbelieved by the learned trial Court. It is therefore, submitted that the conviction recorded and the sentence imposed are proportionate to the gravity of the offence and do not warrant interference by the appellate court. Accordingly, the Appeal, being devoid of merit, deserves to be dismissed.

10. We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.

11. For the purpose of determining the age of the prosecutrix, we have examined the evidence available on record. The

prosecution has primarily relied upon the entry in the Admission–Discharge Register (Ex.P/20C) and the testimony of the prosecutrix (PW-1). According to the Admission–Discharge Register, the victim's date of birth is recorded as 09.10.2006.

12. In her deposition, the prosecutrix (PW-1) stated that her date of birth is 09.09.2006 and she is 16 years old. She also deposed that she had studied up to Class VIII. The victim's father (PW-4), in his testimony, deposed that date of birth of victim was 09.10.2006 and she was 7 years old when she was admitted in Class-1.

13. The Headmaster (PW-8), Naveen Primary School, Ruabandha, Bhilai, deposed that the particulars of the victim were recorded at Sl. No.437 in the Admission–Discharge Register (Ex.P/20C). She stated that the victim was admitted to Class-3 on 25.06.2015. According to the said register, the victim's date of birth was recorded as 09.10.2006. However, in her cross-examination, she admitted that the entries regarding the victim were based solely on an old transfer certificate and that no other document was obtained from the victim's parents to verify her age.

14. After considering the entire facts and circumstances of the case and evidence available on record, it emerges that the prosecution could not produce the clinching and legally admissible evidence with respect to the date of birth or age of the prosecutrix

so as to hold that on the date of incident she was minor and below 18 years of age. Only on the basis of school dakhil-khajir register it would not be safe to hold that the prosecutrix was minor on the date of incident. The statement of the prosecutrix, as also the statement of PW-8 Smt Rukhmani Sahu, Headmaster of the Naveen Primary School, Ruabandha, Bhilai are contradictory to each other and does not inspire confidence upon this Court to hold that the date of birth of the prosecutrix is 09.10.2006.

15. 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."

16. 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.** 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."

17. 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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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.”

18. Recently, in the matter of **P. Yuvaprakash Vs. State represented by Inspector of Police, 2023 SCC Online SC 846**, the 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, i.e., 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."

19. Reverting to the facts of the present case and on due consideration of the prosecution evidence, we find that no any clinching and legally admissible evidence have been brought by the prosecution to prove the fact that the prosecutrix was minor on the date of incident, yet the trial Court in the impugned judgment has held her minor, hence, we set aside the finding given by the trial Court that on the date of incident the prosecutrix was minor.

20. Minute scrutiny of the deposition of the prosecutrix (PW-1), goes to show that her testimony suffers from material inconsistencies, improvements and circumstances creating serious doubt regarding the prosecution version. Though she alleged that the accused forcibly took her and committed sexual intercourse against her will, her cross-examination reveals that she was acquainted with the accused as a neighbour and relative, travelled with him on a motorcycle without making any effective attempt to escape and remained with him for several days at his relative's house where other family members were present, yet no immediate complaint was raised. She admitted that certain crucial allegations—such as the presence of the accused's brother, the accused being intoxicated, and threats allegedly extended to her

father and brother—may not have been recorded in her police statement, thereby amounting to material omissions and subsequent improvements. The circumstances relating to the alleged marriage ceremony, stay at the relative's house, and recovery from the forest also appear inconsistent and improbable. Her admission that she had not read her police statement, that her parents were present at the time of recording statements, and that meetings occurred between both families after the incident further weaken the reliability and spontaneity of her allegations. In the absence of wholly trustworthy, consistent, and confidence-inspiring testimony of the prosecutrix, and considering the rule that conviction in serious criminal charges must rest on proof beyond reasonable doubt, the benefit of doubt necessarily accrues to the accused.

21. The law is well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the prosecutrix. However, there is an important caveat which is that the testimony of the prosecutrix must inspire confidence. Even though the testimony of the prosecutrix is not required to be corroborated, if her statement is not believable, then the accused cannot be convicted. The prosecution has to bring home the charges levelled against the Appellant beyond reasonable doubt, which the prosecution has failed to do in the instant case.

22. Considering the entire evidence available on record and the conduct of the prosecutrix, we are of the opinion that the prosecutrix was more than 18 years of age at the time of incident, further she was a consenting party with the Appellant. Therefore, in the above facts and circumstances of the case, offence under Sections 363, 366 of the IPC and under Section 3 punishable under Section 4(2) of the POCSO Act, 2012 would not be made out against the Appellant.

23. For the foregoing reasons, the criminal Appeal is **allowed** and the impugned judgment and conviction and order of sentence dated 30.05.2023 is set aside. The Appellant stands acquitted from all the charges. The Appellant is in jail. He be released forthwith, if not required in any other case.

24. Keeping in view of the provisions of Section 437-A CrPC (Now Section 481 of the Bhartiya Nagrik Suraksha Sanhita, 2023), the appellant is directed to furnish a personal bonds in terms of from No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25000/- with 2 reliable sureties 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.

25. The trial Court record alongwith the copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

Sd/-

(Ravindra Kumar Agrawal)
Judge

(Ramesh Sinha)
Chief Justice

Priya