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2026:CGHC:33816-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1366 of 2025

Dhaneshwar Kumar Dhritlahare S/o Ashok Kumar Dhritlahare, Aged About 20 Years R/o Village Lutudeeh, Nala Kinare, Police Station Palari, District Balodabazar Bhatapara Chhattisgarh

... Appellant

versus

State of Chhattisgarh Through Police of Police Station Vidhansabha, District Raipur Chhattisgarh

... Respondent

For Appellant	:	Mr. Ajay Kumar Chandra, Advocate
For Respondent/ State	:	Mr. Saumya Rai, Dy. Government Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

JUDGMENT ON BOARD

Per Ramesh Sinha, C.J.

04.08.2026

1. Today, though the matter is listed for hearing on I.A.No.01/2025, which is an application for suspension of sentence and grant of bail to the appellant, but considering the fact that the notice issued to the father of the victim (PW-3) has been duly served upon him

by the State, however, none has appeared on his behalf to contest the present bail application or the appeal in merit and further considering the fact the appellant is in jail since 25.05.2020, with the consent of learned counsel for the parties, the appeal is heard finally.

2. Accordingly, I.A. No. 01/2025 stands disposed of.
3. This criminal appeal under Section 415(2) of the Bhartiya Nagarik Suraksha Sanhita, 2023 is directed against the impugned judgment of conviction and order of sentence dated 24.06.2025 passed by the learned Additional Sessions Judge, Fast Track Special Court (POCSO), Raipur, District – Raipur (C.G.) in Special Criminal Case No. 88/2020, whereby the learned trial Court has convicted and sentenced the appellant with a direction to run all the sentences concurrently in the following manner :

CONVICTION	SENTENCE
U/s 363 of IPC	RI for 03 years and fine of Rs.500/- and in default of payment of fine amount, additional RI for 01 month
U/s 366 of IPC	RI for 10 years and fine of Rs.500/- and in default of payment of fine amount, additional RI for 01 month
U/s 506 Part-II of IPC	RI for 02 years and fine of Rs.500/- and in default of payment of fine amount, additional RI for 01 month
U/s 4(2) of POCSO Act	RI for 20 years and fine of Rs.500/- and in default of payment of fine amount, additional RI for 01 month

4. The prosecution's case, in brief, is that the victim is a 16-year-old girl. On 7/05/2019, at approximately 2:00 p.m., the accused lured the victim onto his motorcycle, claiming he knew a good paralysis medicine provider and that paralysis could be cured. He then took the victim away with him and had made physical relations with her, threatening to kill her father. The next morning at 7:00 a.m., the victim returned home in a taxi and told her mother about the incident. The victim's mother filed a report regarding the incident at the Vidhansabha Police Station. Based on this, a First Information Report (Ex.P-4) was registered against the accused at the Vidhansabha Police Station under Sections 363, 376, and 506 of the Indian Penal Code (for short, 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act (for short, 'POCSO Act'). A site map of the scene (Ex.P-8) was prepared. With the consent of the victim and her parents, applications for examination of the victim's genitals (Ex.P-22) and the clothing seized from her (Ex.P-23) were prepared and sent to the District Hospital, Raipur. Dr. Azra Khan examined the victim and the clothing seized from her and submitted reports (Ex.P-10 and Ex.P-11 respectively). The victim's statement was recorded. Her statement under Section 164 of the CrPC was recorded before the Judicial Magistrate First Class, as Ex.P-30. The statements of the witnesses were recorded.
5. Regarding the age of the victim, the victim's Dakhil Kharij Register was seized and a seizure memo, Ex.P-3, was prepared. The

accused was arrersted, an arrest panchnama (Ex.P-28) was prepared. An application for a genital examination of the accused (Ex.P-24) was prepared and sent to Community Health Centre, Dharsiwa. Dr. Dinesh Kumar Sinha examined the accused and submitted a report (Ex.P-14). An application (Ex.P-17) was sent to the Tehsildar, Raipur, to prepare a site map of the crime scene. Accordingly, Patwari Manoj Singh Thakur prepared a site map (Ex.P-12). After examining the victim, a sealed packet containing her underwear and two slides brought by female constable No.646 was seized and a seizure memo (Ex.P-21) was prepared. The seized items were sent to the State Forensic Science Laboratory, Raipur, through the Superintendent of Police, after which a receipt (Ex.P-26) was received. After examination, a report (Ex.P-27) was obtained. After thorough investigation, the charge sheet under Sections 363, 376, 506 of the IPC and Section 4 of the POCSO Act was presented before the Court of Additional Sessions Judge, Fast Track Special Court (POCSO), Raipur, District – Raipur (C.G.).

6. When the charges under Sections 363, 366, 376(3), 506 Part II of the IPC and Section 4(2) of the POCSO Act were framed and read out to the accused and explained to him, he rejected the charges and requested for trial.
7. On behalf of the prosecution, the victim (PW-1), Smt. Ruchi Soni Principal (PW-2), father of the victim (PW-3), mother of the victim (PW-4), Dr. Aajra Khan (PW-5), Manoj Singh Thakur Patwari

(PW-6), Dr. Dinesh Kumar Sinha (PW-7), Ravi Vishwakarma Tehsildar (PW-8), Sunder Lal Gorle Sub-Inspector (PW-9) have been examined.

8. The accused, on being examined under Section 313 of the Code of Criminal Procedure, pleaded not guilty and did not lead any evidence in his defence.
9. On behalf of the prosecution, seizure memo of the victim's underwear Ex.P-1, statement of the victim under Section 164 CrPC Ex.P-2, seizure memo of the Dakhil Kharij Register Ex.P-3, surrender deed Ex.P-4, attested copy of the Dakhil Kharij Register Ex.P-5C, application written to the Principal for production of the Dakhil Kharij Register Ex.P-6, First Information Report Ex.P-7, spot map of the incident Ex.P-8, Panchnama Ex.P-9, examination report of the victim Ex.P-10, test report of the victim's clothes Ex.P-11, Patwari map Ex.P-12, photocopy of memorandum received from the office of Civil Surgeon District Hospital Ex.P-13, test report of the accused Ex.P-14, memorandum regarding identification proceedings Ex.P-15, Identification form Ex.P-16, Patwari's application sent to Tehsildar for Nazri map Ex.P-17, Notice Ex.P-18, Memorandum statement Ex.P-19, Search Panchnama Ex.P-20, property seizure memo Ex.P-21, Letter from Police Station in-charge Vidhansabha to District Hospital, Raipur regarding examination of private parts of the victim and providing report after examination of clothes taken from her Ex.P-22, MLC form has been filled for the medical examination of the victim

Ex.P-23, letter from the Police Station Incharge Vidhansabha to the District Hospital, Raipur regarding examination of the private parts of the accused Ex.P-24, letter issued from the office of the Superintendent of Police, District Raipur, Chhattisgarh to Joint Director, State Forensic Science Laboratory, Raipur, regarding giving opinion after conducting chemical test of the seized articles Ex.P-25, acknowledgement Ex.P-26, Test Report Ex.P-27, arrest memo Ex.P-28, arrest notice Ex.P-29, Application sent to Judicial Magistrate First Class Raipur for recording statement of the victim under Section 164 Cr.P.C. Ex.P-30 have been submitted.

10. After appreciation of evidence available on record, the learned trial Court has convicted and sentenced the accused/appellant as mentioned in para 3 of this judgment. Hence, this appeal.
11. Mr. Ajay Kumar Chandra, learned counsel for the appellant vehemently argued that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. There is no legally admissible evidence with regard to the age of the victim that on the date of the incident she was minor and less than 18 years of age. In absence of examination of author of the Dakhil Kharij Register, the same cannot be taken into consideration for determination of the age of the victim. Dakhil-kharij register is a weak type of evidence. No any Kotwari register or ossification report are produced by the prosecution to determine the actual age of the victim that on the date of incident she was below 18 years of age. It is further argued by the learned counsel for the

appellant that the father and mother of the victim have not disclosed date of birth of the victim, as such, there is no legally admissible and convincing evidence available on record to establish that the victim was minor on the date of incident. Learned counsel further argued that the victim is a consenting party and she herself had established physical relations with the appellant and she resides with the appellant in a small dhaba for whole night, wherein two women, two men and 3 kids were present, but she never tried to flee nor she had never raised any alarm, therefore, the alleged offences of the IPC and POCSO Act are not made out against the appellant and he is entitled for acquittal.

12. On the other hand, Mr. Saumya Rai, learned Deputy Government Advocate, appearing for the State opposes and contends that the victim was minor and below 18 years of age at the time of incident which is proved by the Dakhil Kharij Register Ex.P-5C which contains the date of birth of the victim as 27.05.2003 and the victim herself has stated that her date of birth is 27.05.2003. He further submitted that though the father and mother have stated that they do not remember the date of birth of the victim, but her mother has specifically stated at the time of incident the victim was 16 years old. He also submitted that the school register is admissible piece of evidence to determine the age of the victim. Therefore there is no legality or infirmity in the findings of the learned trial court. The victim was abducted by the appellant and

kept away from the lawful guardianship. The appellant committed forceful sexual intercourse with her, threatening to kill her father and kept her in illegal confinement for whole night. As such, the impugned judgment of conviction and sentence needs no interference.

13. We have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
14. We have heard the learned counsel for the parties and peruse the record with utmost circumstance.
15. The first question for consideration would be, whether the trial Court is justified in holding that the victim was minor on the date of incident ?
16. In order to consider the age of the victim, we have examined the evidence available on record produced by the prosecution. The prosecution relied upon copy of the Dakhil Kharij Register Ex. P/5C which is sought to be proved by PW-2 Smt. Ruchi Soni, the Headmaster of the concerned school, who has stated in her deposition that she had brought with her the original Dakhil Kharij Reigster maintained since 2016-2017. It contains entries from entry 3271 to entry 3848 as of that day. This register is maintained in my school as a matter of routine duty. She further stated that Entry No. 3538 mentions the student's name along with the parents' name, caste Satnami, resident of xxx, date of

birth 27.05.2003, date of admission 19.06.2017, admission in Class 9th, date of leaving school 26.07.2021, reason 12th pass. In her cross-examination, this witness has admitted that she did not enter the victim's date of birth in Ex.P-05/C. The victim/student's date of birth was based on her Class 8 TC. This witness further admitted that no birth certificate or separate affidavit was obtained while recording the victim/student's date of birth. She also admitted that parents enroll their children in school by providing estimated ages and admissions are also based on age estimates. The witness voluntarily stated, "But as she is the Principal of a Higher Secondary School, so she don't face these problems; they arise when a child is admitted to the first grade." She also admitted that she was not aware of any approximate date of birth of the victim recorded by her parents and no seizure of the eighth grade transfer certificate has been made from her.

17. Thus, it is clear that though the date of birth of the victim has been stated to be written on the basis of eighth grade transfer certificate, but no seizure of the eighth grade transfer certificate has been made by the prosecution. Moreover, PW-3, father of the and mother of the victim have stated that they do not know the date of birth of the victim, though her mother has stated that at the time of incident, the victim was aged about 16 years old. Except dakhil kharij register (Ex.P-5C) no other evidence such as eighth grade transfer certificate on the basis of which the same has been

written, birth certificate, Kotwari register or ossification report are produced by the prosecution to prove the actual age of the victim.

18. 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 victim so as to hold that on the date of incident she was minor and below 18 years of age. Only on the basis of entry made in the Dakhil Kharij Register that too in absence of eighth grade transfer certificate on the basis of which the same has been recorded, it would not be safe to hold that the victim was minor on the date of incident.
19. 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."

20. 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.*⁴ 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."

21. 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.”

22. 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, 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.”

23. Reverting to the facts of the present case and 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 victim 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 victim was minor.
24. The next question for consideration would be, whether the trial Court is justified in convicting the appellant for offence under Section 363 of the IPC ?
25. The appellant has been convicted for offence under Section 363 of the IPC, which is punishable for kidnapping. Kidnapping has been defined under Section 359 of the IPC. According to Section

359 of the IPC, kidnapping is of two kinds: kidnapping from India and kidnapping from lawful guardianship. Section 361 of the IPC defines kidnapping from lawful guardianship which states as under:-

“361. Kidnapping from lawful guardianship.-Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.”

26. The object of Section 359 of the IPC is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons. Section 361 has four ingredients:-

- (1) Taking or enticing away a minor or a person of unsound mind.
- (2) Such minor must be under sixteen years of age, if a male, or under eighteen years or age, if a female.
- (3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.
- (4) Such taking or enticing must be without the consent of such guardian.

So far as kidnapping a minor girl from lawful guardianship is concerned, the ingredients are : (i) that the girl was under 18 years of age; (ii) such minor was in the keeping of a lawful guardian, and (iii) the accused took or induced such person to

leave out of such keeping and such taking was done without the consent of the lawful guardian.

27. The Supreme Court while considering the object of Section 361 of the IPC in the matter of **S.Varadarajan v. State of Madras**¹, took the view that if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so and held that if evidence to establish one of those things is lacking, it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian and held as under:-

“It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. If evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. But that part falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to “taking”.”

28. Reverting to the facts of the present case in light of ingredients of offence under Section 361 of the IPC which is punishable under Section 363 of the IPC & as well as principles of law laid down by the Supreme Court in the matter of **S.Varadarajan** (supra), the

1 AIR 1965 SC 942

prosecution case itself is that the victim with the permission of her father had gone with the appellant for buying the medicine and the alleged act of sexual assault took place thereafter. There is no allegation in the FIR, the statements of the victim, or the evidence adduced before the Trial Court that the appellant removed or enticed the victim from the lawful custody of her guardian so as to attract the offence of kidnapping. The prosecution has not produced any material to establish that the appellant had taken her away from the lawful guardianship of her parents without their consent. In the absence of any cogent evidence proving these foundational ingredients, the conviction of the appellant under Section 363 IPC cannot be sustained. Accordingly, this Court holds that the prosecution has failed to prove the charge under Section 363 IPC beyond reasonable doubt. The appellant is, therefore, acquitted of the said charge.

29. So far as the issue of forceful sexual intercourse by the appellant upon the victim is concerned, we have carefully perused the statement of the victim recorded by the trial Court.
30. In this regard, the victim (PW-1) said that there is a small grocery shop in her house, her mother goes to work, her father is a paralytic patient, she has two younger brothers, on the date of incident 07/05/2019, she was doing stitching work in the grocery shop, her father was inside the house, her brothers were playing behind the house, there is a door of the house from the side of the grocery shop, then the accused came at 2.00 pm and asked

about her father, he went home to meet her father and returned after ten to fifteen minutes. The accused said he knew a good medicine for paralysis. At the same time, her younger brother also came to the shop and said that his father was asking her to go with the accused to get the medicine. The accused asked her to go to village Chhapora to get the medicine. She sat on the motorcycle with the accused and left for Chhapora. The victim further stated that instead of taking her to Chhapora, the accused took her to a side road. Then he drove her around for two to three hours. He took her near a house and told her that her mother had gone to a wedding. Then he took her to a deserted field and told her that he had been taking her around on the bike for so long, how he could left her. The accused started removing her clothes. She also stated that when she refused, the accused said he would cut her with a blade. After that, the accused removed her lower clothes and forcibly had sex with her. The victim also submitted that as it was night, they stayed at a small dhaba and the accused said that he would drop her home the next day. The accused dropped her home the next day in a Tata Magic vehicle. After reaching her home, the victim informed her parents and aunt about the incident.

31. The victim in her cross-examination has admitted that on arrival, her father was calling him brother-in-law, according to which the accused would seem to be her maternal uncle, she has denied that the accused used to come to their house earlier also, she has

accepted that she does not know the accused before, she has accepted that at the place where they stayed for the night, there were two women, two men and children also, she has also accepted that they have no knowledge about the incident, she has also accepted that the people sitting in the magic vehicle have no knowledge about the incident.

32. The victim's father (PW-3) stated that he does not remember the exact date of the incident. He is paralyzed for the last three-four years. On the date of the incident, he was getting a massage done by his sons at home. There is a tailoring shop adjacent to the house, in which the victim was stitching her torn school uniform. At the same time, the victim came to him and said that her uncle had come. Then a boy came inside the room, who had wrapped his face in a towel. He told him that he knew the medicine for paralysis and would bring it for him. After that, he left. The witness said that he did not recognize that boy. On the same day, the victim was at home with that boy. She went with him to Lalpur on a motorcycle in the name of buying medicine. The victim had gone around 12.00 noon and did not return the whole night. The next morning the victim returned home in a hired car. On returning home, the victim told him that the boy had raped her.
33. On being declared hostile by the prosecution and being asked leading questions, this witness has admitted that he came to know later that the name of the boy who had taken the victim from her house and raped her is Dhaneshwar Dhritlahare, the accused.

34. The victim's mother (PW-4) stated that on the date of the incident she had gone to work, her husband is paralyzed, he cannot walk, the victim and her younger son were at home, there is a small tailoring shop in the house itself, in which the victim was sitting to stitch her uniform, at around 2.00 in the afternoon the accused came to her house and told the victim that your father is paralyzed, he will get her the medicine, he is like her maternal uncle, the victim said that she will ask her father and come, the victim asked the accused from where will you get the medicine, he said that he will get it from Chhapora village, then he took the victim with him on his motorcycle. When, the victim did not return till evening, her son came to inform her, she went home and searched for the victim nearby, when she could not find her, she went to the police station to lodge a report, the next day the victim came home on foot and started crying a lot, told that the accused took her to Lutudih forest and raped her, the accused was holding a blade at that time, he threatened that he would kill the victim and her father as well, and took the victim to the police station, her medical examination was done with her consent, the police confiscated the victim's underwear, she lodged a First Information Report (Ex.P-7) at the Vidhansabha police station, the police prepared a site map (Ex.P-8) of the incident site, the patwari prepared a site map (Ex.P-9).
35. Dr. Aajra Khan (PW-5) stated that she had examined the victim on 08/05/2019 when she was brought by constable Shyamali Mishra

of Mahila Thana. The victim was of normal height, was fully conscious, her physical and mental condition was normal, secondary sexual characteristics were fully developed, there were no external injury marks on her body, last menstrual date was 03/05/2019, the genitals of the victim were examined. There was a half cm long scratch in the lower part, her hymen was torn, its edge was red in colour, which was swollen and painful, two slides of the victim's vaginal discharge were prepared and handed over to the concerned lady constable with the advice of chemical test, according to her opinion, sexual intercourse had probably taken place with the victim, for which two slides were prepared and handed over for chemical test and after the test, report of Ex.P-10 was given.

36. On the same date, the victim's underwear was brought for examination in a sealed packet by the lady constable, in which there were spots similar to semen at three places, which were marked with red ink, which was sealed and handed over to the concerned constable for chemical examination, after examination he gave the report of Ex.P-11.
37. In the cross-examination, it has been admitted by Dr. Aajra Khan (PW-5) that there were no injury marks on the body of the victim and it has also been admitted that there were no signs of forcible sexual intercourse on the victim at that time.

38. Dr. Dinesh Kumar Soni (PW-7) has testified regarding the examination of the accused conducted by Dr. O.P. Tandon on 25/05/2020. The report Ex.P-14 has been certified, in which it was found that there was no injury in the genitals of the accused, secondary sexual characteristics were fully developed and pubic hair and arm hair were fully developed and climactic reflex was present, according to the test report there is no such fact that the accused is incapable of having sexual intercourse.
39. As per FSL report, Ex.P-27, human sperm were found in the slide of the vaginal discharge and the victim's underwear. This fact also clearly shows that the victim had sexual intercourse. Thus, the State Forensic Science Laboratory report, Exhibit P-27, also corroborates the victim's statement.
40. In the matter of **Jaya Mala v. Home Secretary, Govt. of Jammu & Kashmir and others**², the Supreme Court has held that a judicial notice can be taken that the margin of error in age ascertained by Radiological examination is two years on either side. Relevant para of the said judgment states as under:-

“9. Detenu was arrested and detained on Oct. 18, 1981. The report by the expert is dated May 3, 1982, that is nearly seven months after the date of detention. Growing in age day by day is an involuntary process and the anatomical changes in the structure of the body continuously occur. Even on normal calculation, if seven months are deducted from the approximate age opined by the expert, in

2 AIR 1982 SC 1297

Oct., 1981 detenu was around 17 years of age, consequently the statement made in the petition turns out to be wholly true. However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side. Undoubtedly, therefore, the detenu was a young school going boy. It equally appears that there was some upheaval in the educational institutions. This young school going boy may be enthusiastic about the students' rights and on two different dates he marginally crossed the bounds of law. It passes comprehension to believe that he can be visited with drastic measure of preventive detention. One cannot treat young people, may be immature, may be even slightly misdirected, may be a little more enthusiastic, with a sledge hammer. In our opinion, in the facts and circumstances of this case the detention order was wholly unwarranted and deserved to be quashed."

41. In **Alamelu and Another Vs. State, represented by Inspector of Police**³, where the facts and circumstances were similar to that of this case, the Supreme Court observed as under:

"51. This Court in Rameshwar v. State of Rajasthan {AIR 1952 SC 54} declared that corroboration is not the sine qua non for a conviction in a rape case. In the aforesaid case, Vivian Bose, J. speaking for the Court observed as follows:-

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the

3 2011(2) SCC 385

mind of the judge, ... The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

52. The aforesaid proposition of law has been reiterated by this Court in numerous judgments subsequently. These observations leave no manner of doubt that a conviction can be recorded on the sole, uncorroborated testimony of a victim provided it does not suffer from any basic infirmities or improbabilities which render it unworthy of credence.

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54. Even PW5, Thiru Thirunavukarasu stated that Sekar (A1) had brought the girl with him to his house and told him that he had married her. They had come to see Trichy and requested a house to stay. This witness categorically stated that he thought that they were newly married couple. He had made them stay in Door No. 86 of the Police Colony, which was under his responsibility. On 10th August, 1993, the police inspector, who arrived there at 10.00 p.m. told this witness that Sekar (A1) had married the girl by threatening her and "spoiled her". The girl, according to the prosecution, was recovered from the aforesaid premises. Therefore, for six days, this girl was staying with Sekar (A1). She did not raise any protest. She did not even complain to this witness or any other residents in the locality. Her behavior of not complaining to anybody at any of the stages after being allegedly abducted would be wholly unnatural.

55. Earlier also, she had many opportunities to complain or to run away, but she made no such effort. It is noteworthy that she made no protest on seeing some known persons near the car, after her alleged abduction. She did not make any complaint at the residence of Selvi, sister of Sekar (A1) at Pudupatti. Again, there was no complaint on seeing her relatives allegedly assembled at the temple. Her relatives apparently took no steps at the time when mangalsutra was forcibly tied around her neck by Sekar (A1). No

one sent for police help even though a car was available. She made no complaint when she was taken to the house of PW5, Thiru Thirunavukarasu and stayed at his place. Again, there was no protest when Sekar (A1) took her to the police station on 5th day of the alleged abduction and told at the Tiruchi Police Station that they had already been married. The above behaviour would not be natural for a girl who had been compelled to marry and subjected to illicit sexual intercourse.

56. In view of the aforesaid, we are of the considered opinion that the prosecution has failed to prove beyond reasonable doubt any of the offences with which the appellants had been charged. It appears that the entire prosecution story has been concocted for reasons best known to the prosecution.”

42. In the matter of **Tilku Alias Tilak Singh V. The State Of Uttarakhand⁴**, the Supreme Court has held that he victim, who is between 16 to 18 years of age is very much in the age of understanding as to what was right and wrong for her. Relevant para of the said judgment states as under:-

“16. Even if the finding of the learned Single Judge of the High Court that the prosecutrix was between 16 to 18 years of age is to be accepted, in our view, the offence under Sections 363 and 366 IPC would still not be made out.

17. This Court in the case of S. Vardarajan v. State of Madras, reported in 1964 SCC OnLine SC 36 had an occasion to consider almost similar facts that arise for consideration in the present case. This Court has observed thus:

“7.It will thus be seen that taking or enticiting away a minor out of the keeping of a lawful guardian

4 2025 INSC 226

is an essential ingredient of the offence of kidnapping. Here, we are not concerned with enticement but what we have to find out is whether the part played by the appellant amounts to "taking" out of the keeping of the lawful guardian of Savitri. We have no doubt that though Savitri had been left by S. Natarajan at the house of his relative K. Natarajan she still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law "taking". There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K. Natarajan at the instance or even a suggestion of the appellant. In fact she candidly admits that on the morning of October 1st, she herself telephoned to the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided to marry the appellant. There is no suggestion that the appellant took her to the Sub-Registrar's office and got the agreement of marriage registered there (thinking that this was sufficient in law to make them man and wife) by force or blandishments or anything like that. On the other hand the evidence of the girl leaves no doubt that the insistence of marriage came from her side. The appellant, by complying with her wishes can by no stretch of imagination be said to have taken her out of the keeping of her lawful guardian. After the registration of the agreement both

the appellant and Savitri lived as man and wife and visited different places. There is no suggestion in Savitri's evidence, who, it may be mentioned had attained the age of discretion and was on the verge of attaining majority that she was made by the appellant to accompany him by administering any threat to her or by any blandishments. The fact of her accompanying the appellant all along is quite consistent with Savitri's own desire to be the wife of the appellant in which the desire of accompanying him wherever he went was course implicit. In these circumstances we find nothing from which an inference could be drawn that the appellant had been guilty of taking away Savitri out of the keeping of her father. She willingly accompanied him and the law did not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him. She was not a child of tender years who was unable to think for herself but, as already stated, was on the verge of attaining majority and was capable of knowing what was good and what was bad for her.....”

18. It is thus clear that the prosecutrix, who according to the learned Single Judge of the High Court, was between 16 to 18 years of age was very much in the age of understanding as to what was right and wrong for her.

19. From the evidence of the prosecutrix itself, it will be clear that she had voluntarily gone along with the appellant herein, travelled to various places and also resided as husband and wife at Dehradun.”

43. The law is well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the victim.

However, there is an important caveat which is that the testimony of the victim must inspire confidence. Even though the testimony of the victim 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.

44. Considering the entire evidence available on record and the conduct of the victim, we are of the opinion that the victim 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, 506-II of the IPC and Section 4(2) of the POCSO Act would not be made out against the appellant.
45. For the foregoing reasons, the appeal is **allowed** and the impugned judgment of conviction and order of sentence dated 24.06.2025 passed by the learned Additional Sessions Judge, Fast Track Special Court (POCSO), Raipur, District – Raipur (C.G.) in Special Criminal Case No. 88/2020 is set aside. The appellant stands acquitted from all the charges. The appellant is reported to be in jail since 25.05.2020. He be released forthwith if not required in any other case.
46. Keeping in view the provisions of Section 437-A of the Code of Criminal Procedure, 1973 (Now Section 481 of the Bhartiya

Nagarik Suraksha Sanhita, 2023), the appellant is directed forthwith furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- with two reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months along with 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 thereof shall appear before the Hon'ble Supreme Court.

47. 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/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice