



CGHC010383752024



2026:CGHC:28392-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 2050 of 2024

Laxminarayan Alias Laxman S/o Moolchand Aged About 30 Years R/o Village Kheechan Ward No. 07, Police Station- Falodi, District- Jodhpur, Rajasthan.

... Appellant

versus

State of Chhattisgarh Through Station House Officer D.D. Nagar Raipur, District- Raipur, Chhattisgarh.

... Respondent

For Appellant	:	Mr. B.P. Singh, Advocate
For Respondent/ State	:	Mr. Ashish Shukla, Additional Advocate General

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, C.J.

09.07.2026

1. Though the matter is listed for hearing on I.A.No.01/2024, 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 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 01.06.2022, with the consent of learned counsel for the parties, the appeal is heard finally.

2. 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 27.09.2024 passed by the learned Additional Sessions Judge, First Fast Track Special Court (POCSO), Raipur (C.G.) in Special Criminal Case No. 117/2022, 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	Rigorous imprisonment for 7 years and fine of Rs. 500/- and in default of payment of fine amount, additional RI for 02 months
U/s 366 of IPC	Rigorous imprisonment for 7 years and fine of Rs. 500/- and in default of payment of fine amount, additional RI for 02 months
U/s 6 of the POCSO Act	Rigorous imprisonment for 20 years and fine of Rs. 2,000/- and in default of payment of fine amount, additional RI for 02 months

3. Case of the prosecution, if brief, is that on 25.05.2022, a report was lodged by the father of the victim at Police Station-DD Nagar,

District-Raipur that his daughter/victim, aged 17 years 03 months, had left the house on 24.05.2022 at around 12:00 pm, telling her mother that she was going to school to fill the supplementary form for class XII, taking ₹200/- with her and did not return home, and despite searching in the neighbourhood and among relatives, she was not found. Thereafter, on the report of the father of the victim, FIR No. 291/2022 was registered against unknown persons under Section 363 of the Indian Penal Code at Police Station-DD Nagar, District-Raipur, and the crime was taken up for investigation.

4. During the investigation, a site map of the incident was prepared. A report was sent to the Tehsildar, District Raipur, and a site map of the incident was prepared. The victim's Class 1 progress report card was seized from her father. Upon sending the report to the Principal of the victim's school, the Principal presented the school's admission and rejection register, which was seized in the presence of witnesses. After matching the attested copy of the said register with the original, attaching the attested copy to the case, the original register was returned in the surrender deed.
5. The victim was recovered in the presence of witnesses and a recovery panchnama was prepared. The statement of the victim was recorded under Section 161 of the CrPC and the statement of the victim was recorded before the Magistrate under Section 164 of the CrPC and the statement of the victim was also recorded before the Child Welfare Committee. The statements of the witnesses were recorded as per their statement. After obtaining

the consent of the victim and her father, the victim was medically examined and the seizure proceedings were carried out and on finding in the investigation that the accused had lured the victim away from her lawful guardianship, abducted her by luring her with the promise of marriage and had committed aggravated penetrative sexual assault by raping her repeatedly, the accused was arrested and information about the arrest was given to his family, the accused was also medically examined, the memorandum statement of the accused was recorded, the receipt and ticket of the guest house were recovered from the accused and electronic reservation slip and vehicle Airtex number CG-04-NM-0185 were seized, the seized slides, underwear, swab of the victim and the seized underwear of the accused were sent to the State Forensic Science Laboratory for chemical test, the report received was attached to the case and after abortion of the victim, the fetus seized and the navel, blood of the victim and the blood and swab, pubic hair of the accused were seized and sent for DNA test and after completion of all the investigation proceedings, a charge sheet was prepared against the accused under Sections 363, 366, 376(2) (d) of the Indian Penal Code (IPC) and Section 6 of the Protection of Children from Sexual Offences Act 2012 (POCSO Act) and presented before the Court of Additional Sessions Judge, First Fast Track Special Court (POCSO), Raipur (C.G.) and during the trial of the case, the chemical test report and DNA test report were produced.

6. On framing of charges against the accused under Sections 363, 366, 376(2)(n) of the IPC and Section 6 of the POCSO Act, the accused denied the alleged offences.
7. On behalf of the prosecution, statements of the victim PW-01, victim's father PW-02, Assistant Teacher of the victim's school PW-03, Dr. Rumi Kumari PW-04, Neeraj Pratap Singh PW-05, Dr. Uttkal Kesari Suna PW-06 and Amit Adani have been recorded in the case and 46 documents have been presented and exhibited.
8. When the accused was examined under Section 313 of the CrPC, the accused declared himself innocent, falsely implicated and wanted to give evidence in his defence, but no witness was made to testify in his defence.
9. After appreciation of evidence available on record, the learned trial Court has convicted and sentenced the accused/appellant as mentioned in para 2 of this judgment. Hence, this appeal.
10. Learned counsel for the appellant vehemently argued that the impugned judgment passed by the learned trial Court is wholly contrary to the settled principles of law, as well as the facts and circumstances of the present case, and therefore deserves to be set aside. He submitted the father of the victim (PW-2) in his cross-examination has specifically stated that he doesn't know on what basis the date of birth of the victim has been entered in the school records and further the Assistant Teacher (PW-3) in her cross-examination has also deposed that she has not entered the

date of birth of the victim into the Dakhil Kharij (Ex.P-12), as such, the age of the victim is not proved by the prosecution. Learned counsel further submitted that the learned trial Court has failed to properly appreciate the evidence available on record in its correct perspective. Even if the entire prosecution case is taken at its face value and accepted in its entirety, no offence under Sections 363 and 366 of the IPC, nor under Section 6 of the POCSO Act, is made out against the present appellant. Learned counsel further contended that the conduct and statements of the victim, as reflected in her own deposition, clearly demolish the prosecution story. The victim herself has categorically stated that she had established physical relationship with the appellant in his rented house and on 24.05.2022, upon calling by the accused she had voluntarily gone to meet him at railway station, though she alleged that due to threat given by the accused that if she did not accompany him, he will kill her brother, but the fact remains that the victim accompanied the appellant and travelled with him upto Nagpur and thereafter proceeded alongwith him by bus up to Jodhpur, wherein they stayed for one day and thereafter proceeded by a bus to Chindwada, wherein also they stayed for one day. Learned counsel emphasized that during the said period, the victim remained in the company of the appellant without any resistance or complaint and voluntarily established physical relations with him. This continuous and voluntary companionship, as borne out from the victim's own version, clearly indicates

absence of force, inducement, or coercion on the part of the appellant. He further submitted that it is clear from the DNA report (Ex.P-41) that the accused is not the biological father of the fetus in the womb of the victim, which was sent for DNA testing after the abortion, as such, he submitted that the appellant be acquitted.

11. Per contra, learned counsel for the State strongly opposed the submissions advanced on behalf of the appellant and supported the impugned judgment passed by the learned trial Court. He contended that the learned trial Court has rightly appreciated the oral as well as documentary evidence available on record and has arrived at a well-reasoned and legally sustainable finding, which does not call for any interference by this Hon'ble Court. Learned State counsel submitted that the victim was a minor at the time of the incident, and therefore, her alleged consent, if any, is wholly immaterial in the eyes of law. It was further argued that once the age of the victim is established to be below 18 years, the question of consent loses all significance, particularly in view of the stringent provisions of the POCSO Act. He further contended that the evidence on record clearly establishes that the appellant had taken the victim away from the lawful guardianship of her parents, thereby attracting the offence under Section 363 of the IPC. The subsequent acts of taking her to different places including Nagpur, Jodhpur and Chindwada and keeping her in his company for a prolonged period, clearly demonstrate the element of inducement and enticement, thereby constituting an offence under Section

366 of the IPC. Learned counsel for the State further submitted that the victim, in her statement, has categorically stated that she had established physical relations with the appellant during the said period. In view of her minority, such physical relationship squarely falls within the ambit of penetrative sexual assault as defined under the POCSO Act, and the aggravated nature of the offence has been rightly considered by the learned trial Court while convicting the appellant under Section 6 of the POCSO Act.

12. We have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
13. The first question for consideration would be, whether the trial Court is justified in convicting the appellant for offence under Section 363 of the IPC ?
14. 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.”

15. 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.

16. 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

1 AIR 1965 SC 942

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”.”

17. 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), it is evident that the victim is acquainted with the appellant as he used to live in a rented house near the house of the victim and the victim herself has specifically stated that the appellant had established physical relationship with her in his rented house and thereafter on 24.05.2022, upon calling by the accused she had

gone to meet him at railway station, though she alleged that due to threat given by the accused that if she did not accompany him, he will kill her brother, but she herself has stated that she accompanied the appellant and travelled with him upto Nagpur and thereafter proceeded alongwith him by bus up to Jodhpur, wherein they stayed for one day and thereafter proceeded by a bus to Chindwada, wherein also they stayed for one day. The victim remained in the company of the appellant without any resistance or complaint and voluntarily established physical relations with him. As such, there is no inducement to the victim by the appellant to leave the lawful guardianship. Therefore, in the considered opinion of this Court, the act/omission of the appellant, if any, would not tantamount to “taking” within the meaning of Section 361 of the IPC in light of judgment of the Supreme Court in S.Varadarajan (supra). Similarly, there is no evidence of enticing the minor victim by the appellant. As such, the trial Court is absolutely unjustified in convicting the appellant for offence under Section 363 of the IPC.

18. The next question for consideration would be, whether the trial Court is justified in convicting the appellant for offence under Section 366 of the IPC ?
19. The victim was recovered on 31.05.2022 at Chhindwara and on the same day at 23:28 hrs., she was medically examined by a team of three doctors at Raipur. The victim was examined by Dr.Rumi Kumari (PW-4), Dr. Utkal Kesari Suna (PW-6) and

Dr.Swapnil Akhara. Dr. Rumi Kumari (PW-4) and Dr. Utkal Kesari Suna (PW-6) allege that the victim told them that she had been sexually assaulted and that she had been given a U.P.T. Her test report came positive and she was pregnant and she also told that the accused Laxminarayan, who is her boyfriend, had physical relations with her for the last time on 29.05.2022 in a hotel in Jodhpur and also told that between 27.05.2022 to 29.05.2022 (2023 mentioned instead of 2022 in the erroneous statement) they had physical relations thrice, their report is Ex.P-14.

20. Investigating officer Amit Andani (PW-07) has alleged that on 13.06.2022, the AIIMS Gynaecology Department informed through Ex.P-34 that the victim was admitted for MTP and on 10.06.2022, the victim was aborted, on which on 14.06.2022, the victim's aborted fetus along with the placenta was sealed and seized for DNA test and seizure memo Ex.P-35 was prepared and the blood of the accused was taken and sent to the State Forensic Science Laboratory, Raipur for DNA test.
21. The report obtained after DNA test in the case is Ex.P-41. According to the said report, the alleles found at each marker in the DNA profile obtained from the fetus of the victim and the DNA profile obtained from the blood of the victim are the same, but the alleles found at each marker in the DNA profile obtained from the fetus of the victim were not the same as the alleles found at each marker in the DNA profile obtained from the blood of the accused and it was held that the victim is the biological mother of the fetus,

but the accused is not the biological father of the fetus. Thus, It is clear from the said report that the accused is not the biological father of the fetus in the womb of the victim, which was sent for DNA testing after the abortion.

22. From perusal of the evidence of the victim, it appears that victim was simply accompanied the accused without being enticed or influenced. Mere accompanying a person without being induced does not constitute an offence under Section 366 of the IPC. Though, the learned State counsel vehemently contended that age of the victim girl has been proved by the prosecution that she is minor as on the date of incident, nevertheless, in order to convict the accused for the offence under Section 366 of the IPC, other two essential ingredients i.e. the victim girl must be induced by the accused and she must be induced by the accused person to go from a place or to do any act with an intent that such girl may be knowing that it is likely that she will be forced or seduced to illicit intercourse by another person. As such, the prosecution has failed to prove the ingredients of offence under Section 366 of the IPC.
23. So far as the age of victim is concerned, the victim (PW-1) and her father (PW-2) have stated her date of birth as 15.02.2005. The victim's school documents, including certified copy of Dakhil Kharij register (Ex.P-12C), and her Class 1 progress report card (Ex. P-5), show her date of birth as 15.02.2005. The victim's father (PW-2) has categorically stated that he had enrolled her in school.

The dakhil kharij register is a document prepared in the course of duty and unless it is contradicted or the defence proves that the victim has a different date of birth than the one mentioned in the said document, the date of birth mentioned in the said document cannot be disbelieved and the said date of birth has also been confirmed by the victim and the father of the victim in their evidence, hence the prosecution has proved beyond doubt that the actual date of birth of the victim is 15.02.2005 and hence, the age of the victim (PW-3) is proved to be around 17 years 03 months and if consent was given for sexual intercourse on the date of incident i.e. 24.05.2022, it does not amount to an offence under the POCSO Act.

24. 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 Oct., 1981 detenu was around 17 years of age,

2 AIR 1982 SC 1297

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."

25. In ***Alamelu & Another*** (supra), 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 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.

xxx xxx xxx

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.”

26. In the matter of ***Tilku Alias Tilak Singh V. The State Of Uttarakhand***, reported in 2025 INSC 226, the Supreme Court has held that the 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 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.”

27. The scrutiny of entire evidence goes to show that there is no evidence on record that at any point of time the appellant solicited

or persuaded the victim to leave her home forcefully. On the other hand, it is clearly established from the statement of the victim that she had established physical relationship with the appellant in his rented house and on 24.05.2022, upon calling by the accused she had voluntarily gone to meet him at railway station, though she alleged that due to threat given by the accused that if she did not accompany him, he will kill her brother, but the fact remains that the victim accompanied the appellant and travelled with him upto Nagpur and thereafter proceeded alongwith him by bus up to Jodhpur, wherein they stayed for one day and thereafter proceeded by a bus to Chindwada, wherein also they stayed for one day. This continuous and voluntary companionship, as borne out from the victim's own version, clearly indicates absence of force, inducement, or coercion on the part of the appellant. Further from the DNA report (Ex.P-41) it is clear that the accused is not the biological father of the fetus in the womb of the victim, which was sent for DNA testing after the abortion.

28. Applying the principle of law laid down by the Supreme Court in the above-stated judgment (supra) to the facts of the present case and considering the opinion of Dr. Rumi Kumari (PW-4) and Dr.Utkal Kesari Suna (PW-6) and their report Ex.P-14 and DNA report Ex.P-41 coupled with the testimony of the victim herself creates a serious lacuna in the prosecution story, the benefit of which should be granted to the appellant. Thus, on the basis of material available on record and evidence collected by the

prosecution, it cannot be held that the prosecution has been able to bring home the offences under Sections 363, 366 of the IPC and Sections 6 of the POCSO Act beyond reasonable doubt as evidence brought on record is not sufficient to bring home the offences against the appellant / accused herein.

29. As a fallout and consequence of the aforesaid legal analysis, the criminal appeal is **allowed** and the impugned judgment of conviction and order of sentence dated 27.09.2024 passed by the learned Additional Sessions Judge, First Fast Track Special Court (POCSO), Raipur (C.G.) in Special Criminal Case No. 117/2022 is hereby set aside. The accused / appellant is acquitted of the said charges levelled against him. He is in jail since 01.06.2022. He shall be set at liberty forthwith if no longer required in any other criminal case.
30. 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.

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

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Chandra