



2026:CGHC:1644-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR
CRA No. 1156 of 2022

Omprakash Netam S/o Shri Abhiraj Singh Netam Aged About 21 Years
 R/o Chilhantola, Gullidand, Police Station Marwahi, District Gaurela-
 Pendra Marwahi Chhattisgarh

... Appellant

versus

State of Chhattisgarh Through Station House Officer, Police Station
 Marwahi, District Gaurela- Pendra Marwahi Chhattisgarh

... Respondent

For Appellant : Ms. Maya Chaturvijani, Advocate

For State/Respondent : Mr. Priyank Rathi, Government Advocate

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

Per Ramesh Sinha, CJ

12.01.2026

1. Today, though the matter is listed for disposal of I.A. No. 2 of 2026 filed by the appellant seeking temporary bail, but on a pointed query being made from learned counsel for the appellant that since how long the present appellant is in jail, she stated that the appellant is in jail since 05.01.2021, hence, with the consent of learned counsel for the parties, we proceed to decide the present appeal finally which is ripe for final hearing.

2. This appeal arise out of the judgment of conviction and order of sentence dated 15.06.2022 passed by the Special Additional Sessions Judge, Pendraroad, District Bilaspur (C.G.) in Special Sessions Case No.03/2021, whereby the appellant has been convicted and sentenced with a direction to run all the sentences concurrently in the following manner :

| Sl. No. | Conviction | Sentence |
|--------------------|---|--|
| 1. | Under Section 363 of the IPC | Rigorous Imprisonment for 03 years and fine of Rs.500/- in default of payment of fine further rigorous imprisonment for 03 months. |
| 2. | Under Section 366 of Indian Penal Code. | Rigorous Imprisonment for 05 years and fine of Rs.500/- in default of payment of fine further rigorous imprisonment for 03 months. |
| 3. | Under Section 6 of the POCSO Act | Rigorous Imprisonment for 20 years and fine of Rs.1,000/- in default of payment of fine further rigorous imprisonment for 03 months. |

3. The prosecution case in brief is that on 27.12.2020, the father of the victim appeared at the police station and lodged a report that his daughter, aged 16 years, had gone away from home on 21.12.2020 at around 11-12 pm without informing anyone and has not returned home till date, and some unknown person had lured her away and taken her away. Police station Marwahi registered FIR bearing Crime No. 157/2020 under section 363 of IPC vide

Ex.P-1 against unknown accused. After visiting the spot of incident, a site map of the spot was prepared vide Ex.P-2. During investigation, the victim was recovered on 05.01.2021 and recovery panchnama Ex.P-8 was prepared and as per the surrender letter of Ex.P-3, she was handed over to her father.

4. After obtaining the consent vide Exs.P. 4, 9 and 15 for the medical examination of the victim, application Ex.P-10A was prepared and sent to the District Hospital, Gaurela Pendra Marwahi, where the medical officer, after examination, gave a report as Ex.P.10. When the victim's underwear and vaginal slide were brought from the hospital in a sealed packet by female constable Ishwari Maravi, they were seized as per seizure memo Ex.P-17. The statements of the victim and witnesses were recorded. Regarding the victim's age, her admission registration register Ex.P-20/C was seized as per seizure memo Ex.P-18. The accused was arrested as per the arrest panchnama of Ex.P-21. His family was informed about the arrest as per Ex.P-22. He was also medically examined. After completion of investigation, charge-sheet was submitted against the accused under sections 363, 366, 376 of the IPC and Section 6 of the POCSO Act before the Court of Special Additional Sessions Judge, Pendraroad, District Bilaspur (C.G.).
5. After framing of charges against the accused under sections 363, 366, 376 (2- \overline{c}) of the IPC and Section 5 \overline{c} /6 of the POCSO Act and reading them out and explaining to him, the accused has denied

having committed the crime and a request has been made for trial.

6. The accused has pleaded innocence in his trial under Section 313 of the CrPC and has stated that he has been falsely implicated and no defence evidence has been presented on behalf of the accused.
7. In this case, on behalf of the prosecution, statements of the victim's father (PW1), the victim (PW2), Dr. Subhadra Paikra (PW3), Ramratan Panika (PW4), Tulsiram (PW5), the victim's sister (PW6), the victim's mother (PW7), Ishwari Maravi (PW8), Ramcharan Markam (PW9), Sunny Kosle (PW10), Inspector Usha Sondhiya (PW11), Rai Singh (PW12), Sub-Inspector Rohit Khute (PW13), Dr. Devendra (PW14) have been recorded.
8. 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.
9. Learned counsel for the appellant argued that the prosecution has failed to prove the case against the appellant beyond reasonable doubts. 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 school admission and discharge 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 went alongwith the appellant to Bilaspur wherein she resides with the appellant for 12-13 days, 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.

10. On the other hand, learned counsel 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 School admission and discharge register Ex.P/20C which contains the date of birth of the victim as 13.04.2004. Though the father and mother have stated that they do not remember the date of birth of the victim, but have specifically stated that she was 16 years of age. 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 kept her in illegal confinement for a considerable period and forcefully committed sexual intercourse with her. As such, the impugned judgment of conviction and sentence needs no interference.

11. We have heard the learned counsel for the parties and peruse the record with utmost circumstance.
12. **The first question for consideration before this Court would be, whether the trial Court has rightly held that on the date of incident, the victim was minor ?**
13. When a person is charged for the offence punishable under the POCSO Act, or for rape punishable in the Indian Penal Code, the age of the victim is significant and essential ingredient to prove such charge and the gravity of the offence gets changed when the child is below 18 years, 12 years and more than 18 years. Section 2(d) of the POCSO Act defines the “child” which means any person below the age of eighteen years.
14. In ***Jarnail Singh Vs. State of Haryana, reported in (2013) 7 SCC 263***, the Hon’ble Supreme Court laid down the guiding principles for determining the age of a child, which read as follows :

“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforesigned 2007 Rules have been framed under

Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :

"12. Procedure to be followed in determination of Age.? (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, *prima facie* on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(a) (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;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

*(5) Save and except where, further inquiry or otherwise is required, *inter alia*, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.*

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

23. *Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-*

PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion."

15. In this regard, victim (PW-02) in her statement has specifically stated that her date of birth is 13.04.2004 and on the date of incident, she was studying in Class 10th. The father of the victim

(PW-01) though has expressed that he does not know the date of birth of his daughter, but he has specifically stated that the age of the victim is about 16 years. Similarly, the mother of the victim (PW-07) has also expressed that she does not know the date of birth of his daughter, but she has also specifically stated that the age of the victim is about 16 years. Further, PW-6, sister of the victim has also specifically stated that the victim is 16 years old.

16. The prosecution has also presented a certified copy of dakhil kharij register Ex.P-20/C, in which also the date of birth of the victim has been mentioned as 13.04.2004. The defence has not presented any oral or documentary evidence to refuse the said date of birth, therefore, there is no reason to disbelieve the date of birth of the victim, as 13.04.2004 hence, we are of the considered opinion that the learned Special Judge has rightly held that the date of birth of the victim is 13.04.2004 and her age on the date of incident i.e. on 21.12.2020 was 16 years 08 months and 08 days, which is less than 18 years and if consent was given for sexual intercourse on the date of incident, it does not amount to an offence under the POCSO Act.
17. In the matter of **Jaya Mala v. Home Secretary, Govt. of Jammu & Kashmir and others**¹, 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:-

1 AIR 1982 SC 1297

"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, 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."

18. In ***Alamelu and Another Vs. State, represented by Inspector of Police, 2011(2) SCC 385***, 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.

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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.”

19. 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 enticing 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."*

20. 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 under Section 164 CrPC. In her 164 CrPC statement, the victim has stated that the accused is a resident of her village, with whom she used to communicate. On 23.12.2020, accused met her and said, "He will marry her. Come with him to Bilaspur." She then went to accused's house on 24.12.2020, at 5:00 a.m., and from there, they both took a bus to Bilaspur. Accused had booked a room in Bilaspur, where she stayed with accused for 12-13 days. She further stated that while living in Bilaspur, accused had physical relations with her, promising to marry her. Accused's father called him and told him that the police were calling him, so he should come home. Then accused brought her from Bilaspur to Marwahi police station on 04-05.01.2021. Accused's family members and her family members came to Marwahi police station. A report was filed at Marwahi police station by her family members.

21. In her 164 CrPC statement, she has not stated that the appellant allured or threaten her or used any force while travelling along with him and while making physical relationship with her against her will or consent.
22. Further, in her Court statement also, the victim (PW-2) has stated that was studying in Class 10th in 2020. The incident occurred approximately a month ago. The accused asked her to go to Bilaspur, so she went by bus with him. They stayed in Bilaspur for 12-13 days. She stayed in his room for 12-13 days. The accused promised to make her as his wife and he sexually assaulted her. The accused sexually assaulted her for two-three days. She further stated that she came to the police station from Bilaspur with the accused after being called by the police. She had no previous relationship with the accused. In her cross-examination, the victim (PW-2) has admitted that she know the accused. The accused's sister is her aunt. She further admitted that she have a maternal uncle-niece relationship with the accused and the accused is always out working. She also admitted that the accused visits their house frequently. She met the accused at home, who told her that he was going to Bilaspur for work, she would also visit Bilaspur. She admitted that she traveled with the accused to various places in Bilaspur for 12-13 days. She further admitted that the accused told her in Bilaspur that if they call each other husband and wife, we would find a house quickly. After finding a house, they visited malls, cinemas, etc. in Bilaspur. On

close scrutiny of the evidence of the victim, it is clear that the victim was a consenting party.

23. 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.
24. 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 of the IPC and Section 6 of the POCSO Act would not be made out against the appellant.
25. For the foregoing reasons, the appeal is **allowed** and the impugned judgment of conviction and order of sentence dated 15.06.2022 passed by the Special Additional Sessions Judge, Pendarroad, District Bilaspur (C.G.) in Special Sessions Case No.03/2021 is set aside. The appellant stands acquitted from all the charges. The appellant is reported to be in jail since

05.01.2021. He be released forthwith if not required in any other case.

26. Keeping in view of the provisions of Section 437-A CrPC (now Section 481 of Bhartiya Nagarik Suraksha Sanhita) the appellant is directed to furnish a personal bond in terms of from No.45 prescribed in the CrPC for a 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.
27. 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

Chandra