



2025:CGHC:4578

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 467 of 2021**

**1 - Parmeshwar Chandravanshi S/o Lilhar Chandravanshi Aged About 20 Years
R/o Village- Aalikhuta, Thana- Tumdibod, Distt- Rajnandgaon, Chhattisgarh
... Appellant**

versus

**1 - State of Chhattisgarh Through Thana- Balod , District- Balod, Chhattisgarh
... Respondent**

For Appellant	:	Ms. Shivali Dubey, Advocate
For State	:	Ms. Vaishali Mahilong, PL

(Hon'ble Shri Justice Arvind Kumar Verma)**Order on Board****24/01/2025**

1. This criminal appeal preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure is directed against the impugned judgment dated 26/03/2021 passed by the Special Sessions Judge, (Charge F.T.C.), District Balod, C.G. in Special S.T. No.18/2019 whereby the appellant has been convicted and sentenced as under:-

Conviction	Sentence
Under Section 363 of the Indian Penal Code, 1860	R.I. for Three Years and fine of Rs.500/- and in default of payment of fine one month additional R.I.

Under Section 366 of the Indian Penal Code, 1860	R.I. for Five years and fine of Rs.500/- and in default of payment of fine one month additional R.I.
Under Section 376 (2) (I) of the Indian Penal Code, 1860	R.I. for Ten years and fine of Rs.1,000 and in default of payment of fine Two months additional R.I.
Under Section 3 (A)/4 of Protection of Children from Sexual Offences Act, 2012	R.I. for Seven years and fine of Rs.1,000 and in default of payment of fine Two months additional R.I.
	All sentences run concurrently and fine amount separately recovered.

2. The case of the prosecution, in brief, is that on 10.02.2019, the prosecutrix lodged a report in the police station Balod that on 09.02.2019 at about 02.30 pm, her granddaughter, aged 15 years 02 months 19 days, went somewhere from her house in village Matiya-P without informing anyone and she could not be found even after searching. Based on the above information, missing person case no. -12/2019 was registered in police station Balod and search was made and crime No. -70/2019 under section 363 IPC was registered against unknown accused in police station Balod and investigation was started. During investigation, the minor victim was recovered from the possession of the appellant on 21.02.2019. The statement of the minor victim was recorded under section 161 and 164 of the Code of Criminal Procedure. Her medical examination was conducted. The victim's underwear was seized and tested. The progress card of class 9th regarding the age of the victim and the admission and Dakhil Kharij Register of the school were seized. The accused was arrested and his underwear was seized and the accused and the underwear were tested. The property received from the hospital were

sent for examination in Forensic Science Laboratory, Raipur. The motorcycle used in the crime along with the documents was seized. A site map of the incident was made and statements of the remaining witnesses were recorded. After all the remaining investigation, a charge sheet against the accused for the offences under Sections 363, 366, 376 IPC, Sections 4, 5 (ः) & 6 of the POCSO Act was presented before the court.

3. The appellant abjured his guilt during trial and claimed to be tried. The prosecution on its behalf examined as many as 10 witnesses. The learned trial Court after evaluating the facts & evidence convicted the accused as aforesaid. Hence this appeal.
4. Learned counsel for the appellant would contend that the appellant has been falsely implicated in this case. She would next contend that the prosecution has failed to prove the age of the victim and the learned trial Court has only relied upon the document mark-sheet which is not proved by its author. She would next contend that the independent witnesses have not supported the case of the prosecution. She would lastly contend that the order of the trial Court requires interference by this Court and the appellant may be acquitted of the charges and he may be released on bail.
5. *Per contra*, learned State counsel would submit that the order of the Court below is well merited which do not call for any interference by this Court.

6. I have heard learned counsel for the parties at length and perused the evidence with utmost circumspection.
7. The primary which falls for consideration before this Court is that whether on the date of incident the prosecutrix was minor or not?
8. The father of the prosecutrix has been examined as PW-3 and he has not stated the exact date of birth of the prosecutrix. Mr. K.N. (PW-4), who is the lecturer in the Government Higher Secondary School, Pondi has admitted in para 3 of his statement that the date of birth of the victim has been entered in the Dakhil Kharij register Exhibit P17 but it has been recorded on the basis of the date of birth written in the previous transfer certificate and mark sheet. He further stated that at the time of entering the date of birth of the victim in the Dakhil Kharij register birth certificate of the victim was not produced.
9. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which operates in the field of presumption and determination of age, is reproduced hereinbelow for ready and reference:-

94. Presumption and determination of age.-(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as

the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

10. Further in case 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. The Hon'ble Supreme court held that the date of birth mentioned in the transfer certificate would have no evidentiary value unless the person who made the entry or who gave the date of birth is examined. In paragraphs 40, 42, 43, 44 and 48 of its judgment in *Alamelu* (Supra), the Supreme Court has 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. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.

42. Considering the manner in which the facts recorded in a document may be proved, this Court in the case of *Birad Mal Singhvi Vs. Anand Purohit*¹, observed as follows:-

"The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined....Merely because the documents Exs. 8, 9,

10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents 1988 (Supp) SCC 604 have no probative value and the dates of birth as mentioned therein could not be accepted."

43. The same proposition of law is reiterated by this Court in the case of *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal*, where this Court observed as follows:-

"The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue".

44. In our opinion, the aforesaid burden of proof has not been discharged by the prosecution. The father says nothing about the transfer certificate in his evidence. The Headmaster has not been examined at all. Therefore, the entry in the transfer certificate can not be relied upon to definitely fix the age of the girl.

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.”

11. The prosecution has failed to produce any birth certificate of the prosecutrix and the prosecution could not conduct the ossification test of the prosecutrix to ascertain the correct age of the prosecutrix. The prosecution has mainly relied upon the Dakhilkharij Register Ex. P/17 in which the date of birth of the prosecutrix was mentioned as 21/11/2003 also the prosecution has filed the class 9th progress card (Ex. P/10) in which also the date of birth of the prosecutrix has been mentioned as

21/11/2003 and the author of the Dakhilkharij Register has not been examined.

12. It is a settled proposition that when 2-3 views came to fore and the victim herself comes out with categorical date of birth, the evidence which favours the accused is required to be admitted. This proposition has been laid down in the matter of *Kali Ram vs. State of H.P. reported in (1973) 2 SCC 808* and has been reiterated in the matter of *Pradeep Kumar vs. State of Chhattisgarh reported in (2023) 5 SCC 350* wherein, relevant para-27 reads as under :-

“27. It is important to note that the cardinal principles in the administration of criminal justice in cases where heavy reliance is placed on circumstantial evidence, is that where two views are possible, one pointing to the guilt of the accused and the other towards his innocence, the one which is favourable to the accused must be adopted.”

13. Applying the aforesaid well settled principles of law and for the reasons stated hereinabove, we allow the appeal and set aside the impugned judgment dated 26/03/2021. Appellant stands acquitted of the charges leveled against him. Appellant is reported to be in jail, he be set at liberty forthwith if not required to be detained in any other case.
14. In the result, the appeal is allowed.

SD/-

(Arvind Kumar Verma)
JUDGE