



2024:CGHC:35520-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 631 of 2021

Rai Singh Markam S/o Lalwa Singh, Aged About 28 Years R/o Village Ranijhap, P.S. Gourela, District Gourela Pendra Marwahi (Chhattisgarh), District : Gaurela-Pendra-Marwahi, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh Through The District Magistrate, District Gourela Pendra Marwahi (Chhattisgarh), District : Gaurela-Pendra-Marwahi, Chhattisgarh

---- Respondent

CRA No. 749 of 2021

Manoj Vakre S/o Gulab Singh Aged About 20 Years R/o Village-Ranijhap, Police Station- Gaurela, District- Gaurela- Pendra- Marwahi (Gpm), Chhattisgarh., District : Gaurela-Pendra-Marwahi, Chhattisgarh

----Appellant

Versus

State of Chhattisgarh Through S.H.O- Police Station- Gaurela, District- Gaurela- Pendra- Marwahi (Gpm), Chhattisgarh., District : Gaurela-

Pendra-Marwahi, Chhattisgarh

---- Respondent

For Appellants : Mr. M.P.S. Bhatia and Mr. Faiz Kazi,
Advocates

For Respondent/State : Mr. R.S. Marhas, Additional A.G.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Bibhu Datta Guru, Judge

11.09.2024

Heard Mr. M.P.S. Bhatia, Advocate appearing for the appellant in CRA No.631/2021 and Mr. Faiz Kazi, Advocate appearing for the appellant in CRA No.749/2021. Also heard Mr. R.S. Marhas, Additional Advocate General for the respondent/State.

This criminal appeal filed by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is directed against the impugned judgment of conviction and order of sentence dated 08.04.2021, passed by the learned Special Additional Sessions Judge, Pendra Road, District: Bilaspur (C.G.) in Special Sessions Case No.03/2020, whereby the appellants/accused have been convicted for the offence and sentenced as under:-

Conviction	Sentence
Under Section 5(G) and 6 of the POCSO Act	Life imprisonment (till natural death) and fine of Rs.10,000/-, in

	default, additional R.I. for four months each
Under 323/34 of the IPC	R.I. for 1 year
Under Section 376(D) of the IPC	No sentence has been awarded for offence under this Section as the appellants have been sentenced under Section Under Section 5(G) and 6 of the POCSO Act

1. The prosecution story, in brief, is that on 01.12.2019, the victim prosecutrix(PW-2) had gone to Banjhorka near Tikri Nala for grazing the cow. At that time, the appellants came to prosecutrix and forced to lay down on the ground. Thereafter, they committed physical sexual intercourse with her and on being objected by the prosecutrix, the appellants abused and beat her mercilessly. On hearing the voice of prosecutrix, sister of maternal grandmother- Shyam Bai (PW-3) came to spot and rescue her from the appellants, thereafter, the appellants fled away from the spot. Consequently, her sister brought the prosecutrix at home, where the prosecutrix narrated the whole incident to her mother(PW-1) and thereafter, on the basis of complaint made by her mother, an FIR(Ex-P/1) has been registered against the appellants for the offence under Section 323/34, 376(D) of the IPC and Section 5(G) & 6 of the POCSO Act. Dakhil-Kharij register of the prosecutrix was seized vide Ex.P-18/C, in which, date of birth of

prosecutrix is mentioned as 05.07.2003. Clothes of the victim/prosecutrix and appellants, vaginal slides were sent for chemical examination to FSL and in FSL report vide Ex.P/13, human sperm were found on the vaginal slide and undergarment of the victim. After due investigation, the appellant was arrested vide Ex.P/24 & 25. After completion of investigation, the charge-sheet was filed before the learned Additional Sessions Judge, Pendra Road, District: Bilaspur Chhattisgarh for trial in accordance with law.

2. The trial court has framed charges against the appellants for the aforementioned offence and the appellants abjured their guilt and pleaded innocence.
3. In order to establish the charge against the appellants, the prosecution examined as many as 22 witnesses and exhibited 36 documents. The statement of the appellants under Section 313 of Cr.P.C. was also recorded in which they denied the material appearing against them and stated that they are innocent and they have been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellants and sentenced them as mentioned in para 1 of the judgment. Hence, this appeal.
4. Learned counsel for both the appellants submit that there is no eye witness in the case and they have falsely implicated in the present case. They further submitted that the impugned judgment and finding of the learned trial Court are illegal,

erroneous and contrary to the provisions of the law. It is further submitted that the entire evidence of the prosecution is full of contradiction and omissions. Even the age of the victim has not been proved by the prosecution as per law. They further submitted that the prosecution has failed to prove the ingredients of the Section 376-D, 323/34 of the IPC and Section 5(G), 6 of the POCSO Act. It is further submitted that due to COVID pandemic, the appellants could not contact their counsel and were not afforded an opportunity to cross-examine the prosecution witnesses. As such, the criminal appeal deserves to be allowed and the impugned judgment deserves to be set aside.

5. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellants and submits that the prosecution has proved its case beyond reasonable doubt the learned trial Court after considering the material available on record has rightly convicted and sentenced the appellants, in which no interference is called for.
6. We have heard the learned counsel for the parties and perused the record with utmost circumspection.
7. The first question arises for consideration in the present appeal is whether the age of victim/deceased was below 18 years at the time of incident i.e. 01.12.2019.
8. Mahendra Kumar Mishra (PW-17) Assistant Teacher of the School, where the prosecutrix was studying, in para 1 of his statement, he has stated that he had given dakhil kharij register

of the victim to Amit Patle (PW-22), A.S.I., in which, the names of the victim and the victim's parents are mentioned and also the date of birth of the victim is mentioned as 05.07.2003. Seizure memo of dakhil kharij register is Ex.P-14. True copy of dakhil kharij register is vide Ex.P-18/C. The original register was returned on delivery note on the same date after matching it with the dakhil kharij register. It is further stated in his evidence that the date of birth of victim/prosecutrix i.e. 05.07.2003 was entered in the Dakhil Kharij register only on the basis of information given by the parents of victim/prosecutrix. Parents of prosecutrix also stated in their evidence that the age of her daughter/victim is 16 years. Accordingly, in view of the evidence of Mahendra Kumar Mishra (PW-17)), Head master of school, where the prosecutrix was studied and also on the basis of Dakhil Kharij register (Ex.P-18/C), it is proved that the age of victim/deceased at the time of incident i.e. 01.12.2019 was 16 years, 4 months and 26 days, which is less than 18 years.

9. Now, the second question which arises for consideration is, what are the circumstances which shows that the victim was raped by the appellants/accused.
10. Prosecutrix has been examined as PW-2, in her evidence, she stated that she has studied till sixth standard and she know the appellants/accused. They are residents of Ranijhap, which is half kilometer away from her village. The incident happened three months ago. She stated that she had gone to graze the cows on the date of incident i.e. 01.12.2019. Appellant-Manoj also came to

graze the cows and he was looking at me, then he came along with co-accused-Rai Singh. Both of them were in drunken condition and were not able to talk properly. Thereafter, accused-Manoj had pressed her chest and dragged her by holding her hand. Accused-Rai Singh pulled her dupatta and removed her undergarment. She further stated in her evidence that she was struggling to escape from the possession of the appellants. She stated that the appellants/accused pulled her hair and took her near the Sarai tree and the appellants put a sarai leaf in her mouth, and thereafter, both the appellants committed sexual intercourse with her by abusing her and threatened her. At that time, her maternal grandmother sister-Shyam bai(PW-3) was coming to the spot, she brought her home and narrated the whole incident to her mother-Geeta Bai(PW-1), thereafter, they went to the police station and reported the matter. She also stated in her evidence that when she was trying to escape, appellants beat her with by means of belt mercilessly, due to which, she got injured. Test Identification Parade of the appellants/accused were conducted in Tehsil office.

11. Shyam Bai (PW-3) stated in her evidence that she knows the appellants present in the court. Victim(PW-2) is her sister's granddaughter. On the day of the incident, she had come to her sister's house in Banorka. At about 12-1:00 p.m., she was going to her maternal uncle's house in Devargaon village for Dashagatra, when victim was screaming/shouting near the drain, she heard her voice and she went to the spot and after seeing

her, the appellants/accused ran away from the spot, thereafter, she brought the victim at home. When she asked her about the incident, victim told her that the appellants/accused committed sexual intercourse with her. She further stated in her evidence that the victim suffered injury at her private part of the body.

12. Dr. Subhadra Paikra (PW-18), has conducted the medical examination of victim/prosecutrix and submitted a report vide Ex.P-19, in which, she found that the victim was conscious and was not answering my questions properly. She was slightly deaf. There was a peeled wound on the left elbow whose size was 1 x 0.2 cm. On Internal examination, she found that her Pubic hair was shaved, perineum was clean, breast was round. She was complaining of pain in hip, hymen was torn. There was redness in the wall of her vagina and two fingers were entering her vagina with pain. She stated in her evidence that she prepared two slides from her vaginal discharge and sealed them and handed them over to the constable, who was present for investigate the matter. After conducting medical examination of the victim, she opined that sexual intercourse had taken place with the prosecutrix but for a definite opinion, she sealed the slide and handed over to the constable for chemical examination.

13. Medical Examination of the appellants/accused were conducted by Dr. S.K. Sinha (PW-20) and submitted a report vide Ex.P/20 to P/21-A and opined that there is no evidence to suggest that the appellants/accused cannot perform sexual intercourse.

14. Amit Patle(PW-22), Inspector of P.S. Gourela, stated in his evidence that he obtained permission from the Court for DNA testing of the vaginal slide of the victim from the blood sample of the accused/appellants and after getting the blood sample duly collected by the Medical Officer in front of the Court, the same was sent to the State Forensic Science Laboratory, Raipur through the Superintendent of Police for DNA testing of the blood sample, semen slide and vaginal slide vide Ex.P-33 (memo for DNA examination report). DNA report has been received vide Ex.P-35, in which, the blood samples of the appellants/accused in the vaginal slider of the victim is found.

15. The Supreme Court in the matter of **Rai Sandeep alias Deenu v. State (NCT of Delhi)**, 2012 (8) SCC 21 held as under:-

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and

howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have correlation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

16. Also, the Supreme Court in the matter of **State of Maharashtra vs Chandraprakash Kewal Chand Jain**, 1990 SCC 550 held as under:-

"A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her

evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence."

17. In the matter of **Alakh Alok Srivastava v. Union of India & Ors.**,

(2018) 17 SCC 291, in paras 14 and 20, it is observed as under:

“14. At the very outset, it has to be stated with authority that the PocsO Act is a gender legislation. This Act has been divided into various chapters and parts therein. Chapter II of the Act titled “Sexual Offences Against Children” is segregated into five parts. Part A of the said Chapter contains two sections, namely, Section 3 and Section 4. Section 3 defines the offence of “Penetrative Sexual Assault” whereas Section 4 lays down the punishment for the said offence. Likewise, Part B of the said Chapter titled “Aggravated Penetrative Sexual Assault and Punishment therefor” contains two sections, namely, Section 5 and Section 6. The various subsections of Section 5 copiously deal with various situations, circumstances and categories of persons where the offence of penetrative sexual assault would take the character of the offence of aggravated penetrative sexual assault. Section 5(k), in particular, while laying emphasis on the mental stability of a child stipulates that where an offender commits penetrative sexual assault on a child, by taking advantage of the child's mental or physical disability, it shall amount to an offence of aggravated penetrative sexual assault.”

“20. Speaking about the child, a three Judge Bench in M.C. Mehta v. State of T.N. (1996) 6 SCC 756 “1. ... “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.”

18. The Supreme Court in the matter of **Nawabuddin v. State of Uttarakhand** (CRIMINAL APPEAL No.144 of 2022), decided on 8.2.2022 has held as under:-

“10. Keeping in mind the aforesaid objects and to achieve what has been provided under Article 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.

Children are precious human resources of our country; they are the country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and

more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. As observed and held by this Court in the case of **State of Rajasthan v. Om Prakash, (2002) 5 SCC 745**, children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. In the case of **Nipun Saxena v. Union of India, (2019) 2 SCC 703**, it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.”

19. The Supreme court in the matter of **State of UP v. Sonu Kushwaha, (2023) 7 SCC 475** has held as under :

“12. The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal

provision uses the phraseology “shall not be less than....”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the victim/child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court.”

20. Reverting to the facts of the present case in light of above principles of law laid down by their Lordships of the Supreme Court, it is quite vivid that from the statement of prosecutrix (PW-2) that when she was going near Tikri Nala for grazing the cows, both the appellants came and committed forcible sexual intercourse with her by abusing and beaten her mercilessly. From the statement of Shyam Bai (PW-3), when she was going to her maternal uncle's house, then on being heard the voice of the victim, she went to the spot and after seeing her when coming to the spot, the appellants fled away from the spot, thereafter, the

victim narrated the whole incident to Shyam Bai(PW-3) and her mother. In the DNA report vide Ex.P-35, blood samples of the appellants/accused in the vaginal slider of the victim were found. Also looking to the statement of Dr.Subhadra Painkra (PW-18), who conducted the medical examination of victim, who have clearly opined forceful sexual intercourse with victim.

21. When we look at the evidence of prosecutrix, we find that she has categorically stated in her evidence about the sexual intercourse that was committed by the appellants and also stated that the appellants beat her mercilessly and sexually assaulted her. Therefore, taking into consideration the evidence of prosecutrix (PW-2), evidence of Shyam Bai(PW-3),who found the victim on the spot where the appellants sexually assaulted and raped her, evidence of Dr. Subhadra Painkra (PW-18), who conducted the medical examination of victim/prosecutrix, the FSL report vide Ex.P/13, in which, human sperm were found on the clothes and vaginal slide of victim; particularly considering the DNA report that blood samples of the appellants/accused in the vaginal slide of the victim were found, we have no hesitation in accepting the evidence of prosecutrix. Thus, the trial Court has rightly convicted the appellants for offence under Sections 376(D), 323/34 of the IPC and Section 5(G), 6 of the POCSO Act.

22. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellants. The conviction and sentence as awarded by the trial court to the appellants is hereby

upheld. The present criminal appeals lacks merit and are accordingly **dismissed**.

23. It is stated at the Bar that the appellants are in jail. They shall serve out the sentence as ordered by the trial Court.

24. The Registry is directed to transmit the certified copy of this judgment along with the record to the trial Court concerned for necessary information and compliance.

SD/-

(Bibhu Datta Guru)
Judge

SD/-

(Ramesh Sinha)
Chief Justice