CGHC010404972022 2026:CGHC:45419-DB

AFR

Reserved on : 06.10.2026

Delivered on : 28.10.2026

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1945 of 2022

1 - Rajesh Hemla S/o Sukku Hemla Aged About 26 Years R/o Chinnakodepal Nayapara, Police Station Modakpal, District Bijapur Chhattisgarh

... Appellant(s)

versus

1 - State Of Chhattisgarh Through - Police Station - Modakpal District Bijapur Chhattisgarh

... Respondent(s)

For Appellant	:	Mr. Parth Kumar Jha and Mr. Palaash Jha, Advocates
For State	:	Mr. Saumya Rai, Dy. Govt. Advocate

Hon'ble Shri Justice Narendra Kumar Vyas, Judge and
Hon'ble Shri Sudhir Kumar, Judge

C.A.V. JUDGMENT

***Per* Narendra Kumar Vyas,J.**

1. The appellant by way of this appeal has challenged the judgment dated 01.12.2022 passed by the Additional Sessions Judge (FTC) South Bastar Dantewada (CG) in Special Sessions (POCSO) Case No. 17/2021 whereby and whereunder, he has

convicted and sentenced the appellant as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
6 of the Protection of Children from Sexual Offences Act read with Section 376(3) of IPC	20 Years	Rs.1000/-	Additional RI for one year

2. In brief, the prosecution story is that the victim filed written complaint (Ex.P/1) at Police Station – Modakpal, District – Bijapur (C.G.) on 01.02.2021 alleging that after Holi, in the month of March, on 24.03.2020 her mother and father had gone out for some work and she was sitting outside the home of her maternal aunt, at about 7:00–8:00 p.m., accused who is related to her as maternal uncle, came to her. He took her forcefully to a nearby secluded place in forest, tore her clothes, and forcibly committed rape upon her. He also told her that he would marry her and thereafter left. She returned home, but out of fear, she did not disclose the incident to anyone. Two or three days later, the accused again came to the house when the other family members were asleep. He started harassing her and pulling her clothes, however, somehow she succeeded to escape. Subsequently, on several occasions, he forcibly established physical relations with her against her will from 24.03.2020 to 01.02.2021 due to which she became pregnant. On the basis of the said report, the police registered a named First Information

Report (FIR) (Ex.P/02) against the accused for offences punishable under Sections 376 of the Indian Penal Code and Sections 4 & 6 of the he Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The investigation was thereafter commenced. After usual investigation, a charge-sheet was filed against the accused for offences punishable under Sections 376(2)(n) of the Indian Penal Code, as well as Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) before the Additional Sessions Judge (FTC). Learned trial Court framed charges under Section 376(3), 376(2)(n), 506(ii) of the IPC and Section 6 of the POCSO Act. After appreciating the facts and materials available on record vide judgment dated 01.12.2022 acquitted the appellant of charges punishable under Sections 376(2)(n) and 506(ii) of the IPC and convicted him under Section 376(3) and Section 6 of the POCSO Act.

4. The appellant remained in jail during trial from 03.02.2021 to 17.08.2021. After conviction on 01.12.2022, he is in jail. As such, he remained in jail for about 4 years and 5 months.

5. Learned counsel for the appellant would submit that the prosecution has failed to establish the age of the victim. Although the Dakhil Kharij Register was exhibited (Ex.P/15) before the learned trial Court, the person at whose instance the entry regarding the date of birth of the victim was recorded has not been examined, nor the foundational record supporting such

entry has been produced. It is contended that, in absence of proper proof and corroboration of the entry by the underlying record, the same can not be relied upon to conclusively establish the age of the victim. Learned counsel would further submit that the victim herself has admitted that she was born in the year 2001, whereas the alleged incident pertains to the year 2020. The father of the victim has stated that she was aged about 18–19 years, while her mother expressed her inability to recollect her age. Thus, the evidence adduced by the prosecution does not establish conclusively that the victim was a minor at the time of the alleged incident. Still, the learned trial Court has erroneously convicted the appellant by invoking the provisions of the POCSO Act.

6. Learned counsel would further submit that the medical evidence does not lend support to the prosecution's case. It is further submitted that, despite having found the relationship between the appellant and the victim to be consensual, the learned trial Court has erroneously convicted the appellant without properly appreciating the evidence relating to the victim's age. Thus, the impugned judgment of conviction suffers from perversity, illegality and improper appreciation of the evidence on record, therefore, he prays that the impugned judgment of conviction be set aside and the appellant be acquitted of the charges levelled against him. To substantiate his submission he has relied upon judgment of the Hon’ble Supreme Court in case of **Manak Chand @ Mani vs The State Of Haryana {2024 (20) SCC 571}**

and judgment of Hon'ble High Court of Kernataka in case of **State of Karnataka vs. Sri. Nagesh {Crl. A. No. 100570 of 2022}.**

7. The aforesaid submission has been vehemently objected by the learned counsel for the State and he would submit that the learned trial Court after appreciating the evidence and material on record rightly convicted the appellant, which does not warrant interference by this Court. He refuted the submission of the learned counsel for the appellant and would submit that the prosecution has proved the age of the victim. From perusal of the Dakhil Kharij Register, it is quite vivid that the date of birth of the victim is 07.05.2006, as such she was minor at the time of incident. Learned State counsel would further submit that, once the victim is established to be a minor within the meaning of the POCSO Act, her consent, even if the relationship is alleged to be consensual, is immaterial in law. It is further contended that the medical evidence is not the sole determinant for establishing the commission of the offence. Further, the DNA Report (Ex. P/26), establishes that the accused the biological father of the child and said evidence is undoubtedly significant for establishing the fact of sexual assault. As such, even if the appellant succeeds in proving the age of the victim to be major, even then the offence under Section 376 of the IPC is made out against the appellant and he would be convicted for commission of the offence under Section 376 of the IPC on the basis of material brought on record by the prosecution in absence of any formal charge

framed by the trial Court and he would pray for dismissal of the appeal.

8. We have heard learned counsel for the appellant and the State and perused the record of the trial Court with utmost satisfaction.

9. From perusal of the record and submission of the learned counsel for the parties, the principal questions that arise for consideration in the present appeal are :-

1. Whether the prosecution has established beyond reasonable doubt that the victim was a minor at the time of the alleged incident as such his conviction under Section 6 of the POCSO Act and Section 376(3) of the Indian Penal Code, are sustainable?"

2. Alternatively, whether the accused can be convicted under Section 376 of the IPC on the basis of evidence and material on record?

Discussion and findings on Point No.1

10. The determination of the age of the victim assumes significance in the facts of the case, as the applicability of the provisions of the POCSO Act as well as conviction of the appellant under Section 376(3) of depends upon proof that the victim was a child within the meaning of Section 2(1)(d) of the POCSO Act at the relevant time as well as whether the victim is below 16 years to attract the conviction of the appellant under Section 376(3) of the IPC.

11. Rule 12 of the Juvenile Justice (Care and Protection of Children)

Rules, 2007 deals with the determination of age of a minor which 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, 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 appearances 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 7-A, 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.

12. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 deals with presumption and determination of age which reads as under :-

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.

13. The prosecution to prove the age of the Victim has examined PW/6 the Head Master of the School who has exhibited the Dakhil Kharij Register (Ex.P/15) wherein the date of birth of the victim has been recorded as 07.05.2006 and who in cross has admitted that neither he was posted at the time of admission of the victim nor on what basis the date of birth has been recorded is known to him. He has also admitted that he has not admitted the victim in the school.

14. The Father of the victim (PW/3) has not supported the case of the prosecution and denied that the appellant has committed illegal act upon the victim but admitted that the victim has given birth to a child and DNA was conducted. He has also admitted that he has recorded the date of the birth of the victim on guessing. Similarly, victim's mother (PW/4) has not supported the case of the prosecution and denied that the appellant has committed forceful act upon the victim by which she became

pregnant and now he is refusing to marry her daughter. She has also denied her statement (Ex.P/13) recorded before the Police.

15. The victim (PW/02) in her examination-in-chief has stated that she was born in year 2001 and has not supported the case of the prosecution, as such she turned hostile therefore, the prosecution was allowed to put leading questions to her. But, again in paragraph 10 she has denied that on 24.03.2020 the accused has forcefully taken her to the forest, where after tearing her clothes, he committed rape on her and when she asked for marriage, then he told that he will perform the marriage subsequently and in the house itself after threatening her has committed illegal act 3-4 times. She has denied about her pregnancy also with the accused and also denied recording of biological father of the deceased child as accused.

16. From the appreciation of these evidences it is quite vivid that the prosecution has not adduced cogent evidence to prove the age of victim as the author of the document was not examined before the trial Court nor any document which is required to prove the age has been produced by the prosecution. Thus, the finding of the learned trial Court at paragraph 19, 22 and 23 that the date of birth of the victim is 07.05.2006 relying upon the Dakhil Kharij Register on the pretext that the said document was produced by the prosecution from the custody of the government servant which has been maintained by the school in due course of business while running of the school and there is no evidence brought on record by the accused regarding fabrication and

manipulation in the records, as such the entry made in the Dakhil Kharij Register is relevant for determination of age of the victim as per Section 35 of the Evidence Act are perverse, contrary to the evidence, material and against the law laid down by the Hon'ble Supreme Court in case of **Manak Chand @ Mani vs The State Of Haryana {2024 (20) SCC 561}** wherein the Hon'ble Supreme Court has examined how date of birth has to be proved and held as under:-

18. This Court in Birad Mal Singhvi v. Anand Purohit (1988) Supp SCC 604 had observed that the date of birth in the register of a school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth.

"14. …The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value."

19. In our opinion, the proof submitted by the prosecution with regard to the age of the prosecutrix in the form of the school register was not sufficient to arrive at a finding that the prosecutrix was less than sixteen years of age, especially when there were contradictory evidences before the Trial Court as to the age of the prosecutrix. It was neither safe nor fair to convict the accused, particularly when the age of the prosecutrix was such a crucial factor in the case.

17. The further finding at paragraph 20 that as per Section 94 of the Juvenile Justice Act, the Dakhil Kharij Register is primary document to prove the age of the victim and there is no reason

to disbelieve the same as well as the finding in paragraph 21 that the accused has failed to prove the age of the victim is above 18 years is also erroneous finding in view of Section 34(1) of the POCSO Act as Section 34(1) provides that where any offence under this Act is committed by a child, such child be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Section 94 of the JJ Act, 2015 which has already been extracted above by this Court, provides presumption and determination of the age, thus evident from conjoint reading of Section 34 POCSO Act and Section 94 of the JJ Act, 2015, it is clear that wherever the dispute with respect to the age of the person arises in context of her or him, being a victim, under the POCSO Act the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. This view of this Court is fortified by the judgment of the Hon'ble Supreme Court in case of **Jarnail Singh vs. State of Haryana {2013 (3) SCC 263}** as well as its judgment in case of **P. Yuvaprakash v. State Rep. by Inspector of Police** {**(2024) 17 SCC 684}.**

18. From the said provision, it is crystal clear that the finding of the learned trial Court victim was a child as per the POCSO Act is erroneous finding and contrary to the law laid down by the Hon'ble Supreme Court in its latest judgment in case of **Pynchemalangaki Bareh vs. State of Meghalaya {2026 SCC Online SC 1821}** wherein the Hon'ble Supreme Court has held as under :-

> 36. In the case at hand, the Investigating Officer did not obtain the birth certificate from the school where the victim had studied or the matriculation or equivalent certificate from the examination Board concerned or birth certificate given by a corporation, a municipal authority or a panchayat, to prove that the victim was a minor on the date of offence. The victim was also not sent for any age determination test as provided under Rule 12 of the 2007 Rules or under Section 94(2)(iii) of the JJ Act which is in pari materia with Rule 12 of the 2007 Rules. The said provision prescribes that in the absence of the date of birth certificate from the school or the matriculation or equivalent certificate from the examination Board concerned, or birth certificate given by a corporation, a municipal authority or a panchayat, the 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. Admittedly, the victim was not subjected to any ossification test or any other latest medical age determination test. The only document available on the record for proving the age of the victim is the Baptismal Certificate issued by the Khasi Jaintia Presbyterian Assembly. Although the date of birth in the Baptismal Certificate finds corroboration in the deposition of P.W.-2, the mother of the victim girl, stating the girl was born on 05.03.2006, yet since the document itself is not the one prescribed under Section 94 of the JJ Act, we are of the considered view that the prosecution has failed to prove the age of the victim in the manner required under Section 94 of the JJ Act.

19. Thus, the minority of the victim has not been established by the prosecution as no statutory document as required has been produced nor age determination by an ossification test or any other latest medical age determination test has been conducted by the prosecution to prove the age of the victim. Therefore, the conviction of the appellant under Section 6 of the POCSO Act as well as offence under Section 376(3) of the IPC deserves to be set aside and accordingly it is set aside by granting benefit of doubt. Consequently, the point for determination No. 1 is answered in favour of the appellant.

Discussion and findings on Point No. 2:-

20. The submission of the learned counsel for the State that even if the offence under the POCSO Act has not been established still the offence under Section 376 of the IPC is proved by the prosecution beyond reasonable doubt, therefore, the appellant can be convicted under Section 376 of the IPC is being considered by this Court now.

21. The learned counsel for the appellant would submit that since no charge has been framed against the appellant for commission of offence under Section 376 of the IPC, therefore, conviction cannot be altered by this Court. He would further submit that the victim was consenting party and she has not supported the case of the prosecution as such, he deserves to be acquitted from the offence under Section 376 of the IPC also.

22. The submission by the learned counsel for the appellant that in absence of charges framed under Section 376 of the IPC the conviction cannot be ordered by this Court is misconceived, as the Section 464 (1) of the Cr.P.C. clearly provides that effect of omission to frame or absence of or error in charges, the finding, sentence or order by a court of competent jurisdiction cannot be held to be invalid. Further, the powers of the appellate Court are not curtailed due to error by the trial Court in framing necessary charges under Section 376 of the IPC as the power of the appellate Court is wide enough in such cases to alter the finding and nature and extent of sentence awarded by the trial Court. Therefore, this Court can very well examine the issue whether

the appellant can be convicted upon the evidence already produced by the prosecution for commission of offence under Section 376 of the IPC.

23. From the evidence of the victim, it is quite vivid that PW/2 victim has not supported the case of the prosecution and denied that the accused has taken her forcefully to the forest on 24.03.2020 where after tearing the clothes he has committed rape or he has committed the same incident thrice-four times and also denied that in the hospital he has recorded the name of father of the deceased child as the appellant.

24. The victim was examined by the Doctor (PW/7) who in her examination in chief has stated at paragraph 4 of the evidence that there is no injury on the body or private part of the victim regarding struggle or forceful commission of offence and even there is no any medical evidence to indicate force or resistance by the victim for conviction of the appellant under Section 376 of the IPC. Further, the prosecution in this case has failed to offer any reasonable explanation for delay in lodging the FIR though it is well settled position of law that delay in lodging the FIR in offence related to women is always not fatal but it is equally well settled position of law that the delay in registration not only dilute the inherent credibility of the prosecution story but also result in loss of valuable forensic and medical evidence, which, if collected promptly, could either substantiate or contradict the allegation. The Hon'ble Supreme Court in case of **Parkash Chand vs. State of Himachal Pradesh {(2019) 5 SCC 628}**

has held as under :-

> 20. There is admittedly a delay of 7 months in lodging the FIR in the case of alleged rape. If the case is reported immediately apart from the inherent strength of the case flowing from genuineness attributable to such promptitude, the perceptible advantage would be the medical examination to which the prosecutrix can be subjected and the result of such examination in a case where there is a resistance. It is the case of the prosecution that she raised hue and cry and therefore apparently she would have resisted. Possibly, a medical examination may have revealed signs of any resistance or injuries. In this case the High Court has proceeded on the basis of testimony of the prosecutrix and sought to fortify it by the extra judicial confession made before PW4 and PW5.

25. Further there is no dispute that the DNA Report Ex. P/26, establishes that the accused was the biological father of the child born to the victim. The said evidence is undoubtedly significant as it establishes the fact of sexual intercourse between the parties. However, from the evidence of the victim, the Doctor (PW/7) and the DNA report by themselves do not establish the circumstances whether the physical relationship was forceful nor does it determine whether the relationship was consensual. It is trite law that offence under Section 376 of the IPC hinges in absence of consent. Mere proof of sexual relationship even if resulting in pregnancy, is insufficient to prove rape unless it is also shown that the act was non-consensual. Considering the fact that the victim's statement does not inspire confidence or trustworthy or unblemished and of sterling quality, it will not be safe for this Court to convict the appellant for commission of offence under Section 376 of the IPC. The view of this Court is fortified by judgment of the Hon'ble Supreme Court

in case of **Santosh Prasad Vs. State of Bihar {2020 (3) SCC 443}** and case of **Nirmal Premkumar vs. State Represented by Inspector of Police {(2024) 20 SCC 293}.**

26. Consequently, the point No. 2 is answered in favour of the appellant.

27. Considering the evidence that the victim's evidence is not of sterling quality, medical evidence has not corroborated the commission of offence of rape and also considering that prosecution has failed to prove that the age of victim is below 18 years to attract the offence of POCSO Act and further considering that the victim has denied the factum of commission of offence of rape and not supported the case of the prosecution, the judgment of conviction passed by the learned trial Court against the present appellant deserves to be set aside and accordingly, it is set aside.

28. Consequently, the instant appeal is allowed. The appellant be released from jail forthwith, if not required in any other case.

Sd/-

(Narendra Kumar Vyas)
JUDGE

Sd/-

(Sudhir Kumar)
JUDGE

KISHORE KUMAR DESHMUKH
Digitally signed by KISHORE KUMAR DESHMUKH
Date: 2026.10.28 18:31:37 +0530
Deshmukh