



2025:CGHC:2609

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 436 of 2021**

1 - Ramnath Yadav S/o Jhurru Yadav Aged About 50 Years R/o Village Lakhasaar, P.S. Sakri District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

...Appellant(s)**versus**

1 - State Of Chhattisgarh Through Police Station Sakri District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

... Respondent(s)

For Appellant(s)	:	Shri Suresh Kumar Verma, Advocate
For Respondent/State	:	Ms. Pushplata Khalko, PL

(Hon'ble Shri Justice Arvind Kumar Verma)**Judgment on Board****15/01/2025**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 23.12.2020 passed by the Learned Special Judge, (POCSO Act), Bilaspur District Bilaspur in Special Criminal Case No. 30/2018 whereby the appellant has been held guilty for commission of the offence under Section 6 of the Protection of Children from Sexual Offences Act and sentenced

to undergo imprisonment for 10 years and to pay fine of Rs. 10,000/-, in default of payment of fine to further undergo RI for three months.

2. Prosecution case in brief is that on the date of incident ie. 07.03.2018, when the complainant had gone to daily wage work, the minor victim aged about 4 years went to play along with the grandson of the appellant. When complainant came in the evening, after taking meals were going to sleep, at that time, victim informed her about the incident and was crying with pain whereupon she scolded her and asked her to sleep. On the next day, at about 8-9.00 am, mother of the victim went to the house of her sister-in-law where the victim again started crying, on being asked, she narrated about the incident that grandfather of Anshu ie. the appellant herein took her in a room, closed the door and thereafter disrobed her, laid down with her and put off his clothes and committed bad work with her. His grandson also objected to the act of the appellant and the victim was also crying with pain and to make her calm, the appellant offered her food. Thereafter, aunt of the victim applied boroplus on her private part and fomented. Complainant/mother of the victim went to the Health Centre and narrated about the incident to the health worker (*Mitanin*) and her husband, Sarpanch. FIR was lodged at police station Sakri vide Ex.P-3. On the basis of the said report, spot map Ex.P-2 was prepared. Victim was medically examined vide Ex.P-11 by Dr. Suresh Tiwari. During investigation, statement of the victim was recorded under Section 164 Cr.P.C. before the Judicial Magistrate First Class, Bilaspur vide Ex.P-4 and offence under Section

376 IPC and Section 4 of the POCSO Act was registered against the appellant and he was arrested after information Ex.P-10. After completion of investigation, the trial court framed charges against the appellant under Sections 376 IPC and Sections 5 (੩)/6 of the POCSO Act. The appellant abjured his guilt and pleaded innocence.

3. Statement of accused was recorded under Section 313 of the Cr.P.C. in which he denied all the circumstances appearing against him and stated that he is innocent and has been falsely implicated. The prosecution examined as many as 10 witnesses to bring home the charges.

4. The trial Court upon appreciation of oral and documentary evidence on record and considering that it is the appellant who have committed aforesaid offence, convicted and sentenced him in the aforementioned manner, against which the appeal under Section 374(2) of the Cr.P.C has been preferred by the appellant.

5. It has been argued by the learned counsel for the accused/appellant that as per case of the prosecution, the report has been lodged by a delay of 6 days and that too, when the complaint and her sister-in-law were knowing this fact had kept quiet for six days and this creates a doubt. It is submitted that from the statements of the aunt (PW-7), mother (PW-3), health worker of village (*Mitanin*) (PW-2) and Sarpanch husband (PW-1), it appears that on the date of incident, the appellant was not present in his house and there is nothing on evidence to prove his presence in the house. He further submits that except victim, there is no credible evidence in support of her statement and therefore, only on the basis of deposition of victim holding the appellant

guilty by the learned trial Court is not sustainable and the alleged offence of the IPC and the POCSO Act are not made out against the appellant, hence, he is entitled for acquittal.

6. Per contra, learned State counsel submits that the victim was minor and there is no reason to disbelieve her testimony since there was no reason for her to falsely implicate the appellant. She submits that when her mother came in the evening from work, after taking meals when they were going to sleep, she narrated about the incident to her mother and kept weeping with pain. She further submits that the law enunciated with regard to the conviction of the accused for the offence as mentioned above on the basis of the sole testimony of the victim is a well settled proposition in view of the various decisions of the Hon'ble Supreme Court. Lastly, he submits that the clear creditworthy and unshattered testimony of the victim/prosecutrix is sufficient to establish the case of the prosecution and the same is reliable. The contradictions pointed out on behalf of the appellant are stated to be immaterial to discredit the testimony of witnesses. Therefore, the judgment passed by the learned trial court was sound and did not warrant any interference.

7. Heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the trial Court with utmost circumspection and carefully as well.

8. From the statements of the complainant/mother of the victim who has stated that on the date of incident ie. 07.03.2018, in the afternoon when she returned from the field, on seeing her mother, the victim cried aloud and due to fear she did not said anything and slept. On the next day, she narrated about the incident to her aunt and thereafter they

went to inform the Sarpanch and report was lodged at police station Sakri. She has stated that due to fear from the appellant and that there might be settlement between them, she did not disclose about the incident to anyone in the village. Thereafter she lodged the report Ex.P-3 against the appellant. Dr. P.C. Banerjee (PW-5) is the Medical Officer, District Hospital, Bilaspur who had medically examined the appellant and gave the report Ex.P-5. He has opined that the appellant is capable of performing sexual intercourse. Dr. Vandana Kumari Choudhari (PW-6) has given her report Ex.P-6 wherein she has stated that the hymen was intact and redness on vulva and vagina, the child was minor, aged about 4 years and has incompletely developed secondary sexual characters. She has further referred to the radiologist for age determination. Dr., Suresh Kumar Tiwari (PW-9) is the Radiologist, at Community Health Centre, Kawardha who has opined that the victim as aged between 3 to 5 years and the report is Ex.P-11. On perusal of impugned judgment and the statements of the above witnesses, it reflects that there is no dispute as to the age of the victim which has been duly proved on record and, as such, the findings of the learned Trial Court that victim was aged about 4 years on the basis of the report of the Radiologist, requires no interference.

9. The position of law on the question, whether absence of injuries found on the person of the prosecutrix, in a case of rape, would result in a finding of acquittal, is well settled. Dealing with this issue in a case of a child rape, and relying on earlier decisions of the Apex Court, while upholding the conviction under Section 376 IPC, made the following observations:

"38. ...In the case of Ranjit Hazarika Vs.

State of Assam, reported in (1998) 8 SCC 635, the opinion of the doctor was that no rape appeared to have committed because of the absence of rupture of hymen and injuries on the private part of the prosecutrix, the Apex Court took a view that the medical opinion cannot throw overboard an otherwise cogent and trustworthy evidence of the prosecutrix.”

10. The Hon'ble Supreme Court, in **State of Rajasthan Vs. Om Prakash**, reported in **(2002) 5 SCC 745**, dealt with a similar question in the case of a child rape, while upholding the conviction of the appellant therein and reversing the decision of the High Court in that behalf, relied upon earlier decisions and made the following observations:

"13. The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim is a well-settled proposition. In *State of Punjab Vs. Gurmit Singh* [(1996) 2 SCC384], referring to *State of Maharashtra v. Chandra Prakash Kewalchand Jain* [(1990) 1 SCC 550] this Court held that it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. It has also been observed in the said decision by Dr Justice A.S. Anand (as His Lordship then was), speaking for the Court that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons

which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

14. In State of H.P. Vs. Gian Chand[(2001) 6 SCC] Justice Lahoti speaking for the Bench observed that the court has first to assess the trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted on though there may be other witnesses available who could have been examined but were not examined."

11. Thus, it is needless to state that, corroboration of the testimony of the prosecutrix, is not an essential requirement in a case of rape, and the same is not a *sine qua non* to bring home the guilt of the accused. The testimony of the prosecutrix, if well founded & trustworthy, is by itself sufficient to convict the accused.

12. It is trite to state that it is necessary for the Courts to have a sensitive approach when dealing with cases of child rape. The prosecution meticulously laid out the charges against the man, invoking the stringent provisions of the Protection of Children from Sexual Offences (POCSO) Act, 2012 for aggravated penetrative sexual assault. Additionally, he was also charged under the penal laws for rape, reflecting the severity and gravity of his actions.

13. In the case of **Alakh Alok Srivastava Vs. Union of India & Ors. (2018) 17 SCC 291**, in para 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 neutral 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.”

14. It has been further held that “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.”

15. 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 Vs. 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.

16. Further it has laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant.”

17. The Supreme court in the matter of **State of UP Vs. 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'.

18. When considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version.

19. On these lines, the Hon'ble Supreme Court in **Shivasharanappa and Others vs. State of Karnataka, (2013) 5 SCC 705** observed as follows:

““17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable.”

20. In the instant case, the victim was consistent in her statement and has asserted that the appellant after taking her inside the room, disrobed her and slept alongside her and after putting off trouser committed sexual assault on her. At that time, his grandson was present who also objected saying “दादा क्या कर रहे हो”. The statement of the prosecutrix has been consistent from the beginning to the end, from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. Thus, in the case in hand, there was no doubt that being in a position of authority and trust, the accused had committed rape on the victim who is a minor aged about 4 years. The oral testimonies of the minor victim and her mother on the culpability of the convict got credence unerringly pointing to his guilt. On appreciating the evidence on record and coming to the conclusion that the guilt of the appellant under Section 6 of the POCSO has been conclusively proved.

21. In view of the foregoing discussion, in the considered view of this Court, the prosecution has established the guilt of the appellant beyond reasonable doubt. There is no contravention in the position of law and there can be no dispute with the proposition that when the testimony of the prosecutrix is creditworthy, trustworthy, unimpeached and inspires confidence; the conviction of the appellant can be sustained based solely on it.

22. Considering the evidence of the victim, who had to bear the brunt of the depravity **POCSO Act** is a Special Act where the

legislature has made stringent provisions to protect the interests of victims who are minors.

23. In the present case it is to be noted that the accused who was ravished a minor who was aged about 4 years which demonstrates the mental state or mindset of the accused. Therefore, the accused as such does not deserve any sympathy and/or any leniency.

24. The prosecution presented compelling evidence to establish beyond doubt the culpability of the accused, leaving no room for ambiguity regarding his guilt. Consequently, the sentence awarded to the appellant by the Learned Trial Court also does not warrant any interference. Therefore, the judgment and order of conviction dated 23.12.2020 is hereby upheld. The trial court has awarded minimum sentence to the appellant, ie. 10 years therefore no interference is called. The appeal accordingly, stands **dismissed**.

25. The appellant is reported to be in jail since 13.03.2019 being the date of arrest. He is directed to serve out the sentence as awarded to him by the trial court.

26. Let the trial court record and copy of this judgment be sent to the trial court forthwith for necessary information and its compliance.

Sd/-
(Arvind Kumar Verma)
Judge