



2026:CGHC:1646-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 614 of 2025**

X S/o Y (Details Of Accused Not Disclosed Because He Is Elder Brother Of Her Father)

... Appellant**versus**

State Of Chhattisgarh Through - Police Protection Center C.S.E.B. PS Kotwali Korba, District - Korba, Chhattisgarh

... Respondent

For Appellant : Mr.Pawan Kesharwani, Advocate

For Respondent : Mr.S.S.Baghel, Government Advocate

Hon'ble Shri Justice Ramesh Sinha, Chief Justice and**Hon'ble Shri Justice Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, CJ****12/1/2026**

1. This criminal appeal arises out of the judgment of conviction and order of sentence dated 4.2.2025 passed by the Additional Sessions Judge, F.T.S.C. (POCSO), Korba in Special Case (POCSO) No.06/2022, whereby the appellant has been convicted for offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter called as "POCSO Act")

and sentence to undergo RI for 25 years and fine of Rs.2000/-, in default of payment of fine to further undergo RI for 6 months.

2. The prosecution story, in brief, is that on 7.1.2022 mother of the victim (PW-1) appeared with the victim at the outpost CSEB, Police Station Kotwali, Korba and submitted a written complaint Ex.P-1 and unnumbered First Information Report Ex.P-2 that her elder daughter/victim, who has been living in Korba with her elder father and elder mother since childhood, called her on 6.1.2022 and told her that on 5.1.2022 at around 5 A.M. when the victim was sleeping in her room, at that time her elder father/accused came inside her room and taking advantage of the opportunity when there was no one in the house, forcibly raped the victim. Spot map was prepared by the investigating officer vide Ex.P-3. Consent for medical examination of the victim was given by her mother vide Ex.P-4. Progress report of class 5th of the victim was seized vide Ex.P-5. Payjama and underwear of the victim were seized vide Ex.P-6. Patwari also prepared the spot map vide Ex.P-7. Dakhil kharij register of the victim in which date of birth was mentioned as 2.7.2008 was seized vide Ex.P-8. Certified copy of dakhil kharij register was seized vide Ex.P-10C. Semen slide and public hair of the accused / appellant were seized vide Ex.P-11. Two vaginal slides and pubic hair of the victim was seized vide Ex.P-12. MLC of the victim was done by Dr.Jyoti Sahu (PW-6) vide Ex.P13 where injuries external and internal genitals are within 48 hours duration. FIR in Crime No.0026/2022 was

registered vide Ex.P-15. MLC of the appellant was conducted by Dr.B.K.Jhalaria (PW-10) vide Ex.P-16 and he was found capable to perform sexual intercourse. The appellant was arrested on 8.1.2022 vide arrest memo Ex.P-21. Seized articles were sent to FSL for chemical examination and as per FSL report (Ex.P-26), semen stains and human sperm were found in Article A1 Pygama, Article A2 underwear and Article B slide seized from the victim and Article D slide seized from the appellant. Radiological test of the victim was done vide Ex.P-27 in which it has been opined that the age of candidate is approximately between 14-16 years.

- 3.** During the investigation and on the basis of the evidence collected, the accused / appellant found to have committed an offence under Section 506 of the IPC and Section 506 of the IPC was added against him. After completion of investigation, charge-sheet was submitted before the jurisdictional criminal Court.
- 4.** Charges were framed against the accused / appellant under Sections 376(2)(c), 376(3), 506 Part-II of the IPC and Section 6 of the POCSO Act and contents of the same were read out and explained to him. The accused / appellant denied the charges and claimed trial.
- 5.** In order to establish the charge against the appellant, the prosecution examined as many as 13 witnesses and exhibited 27 documents. The statement of the appellant under Section 313 of CrPC was also recorded in which he denied the material

appearing against him and stated that he is innocent and he has been falsely implicated in the case. In his defence, Pralhad Singh (DW-1) was examined

6. After appreciation of evidence available on record, learned trial Court has convicted and sentenced the appellant as mentioned in para 1 of the judgment. Hence, this appeal.
7. Learned counsel for the appellant submits that the learned Trial Court has failed to appreciate the material fact that the present appellant has been falsely implicated in the alleged offence due to a pre-existing family dispute between the appellant and the complainant. The genesis of the prosecution case itself is doubtful and motivated. Learned Trial Court erred in placing reliance upon the testimony of prosecution witnesses who are admittedly interested and partisan witnesses, and who had a clear motive to falsely implicate the present appellant. Their evidence ought to have been scrutinized with greater caution. He further submits that the learned Trial Court failed to properly appreciate the defence version that the complainant had forcefully involved the victim in a dance party, which was objected to by the present appellant. Owing to this objection, a dispute arose between the complainant and the appellant, leading to the filing of a false and fabricated complaint. The appreciation of evidence by the learned Trial Court is manifestly erroneous and the reasoning adopted is perverse and unsustainable in law. The findings are based on

conjectures and surmises rather than on settled principles of criminal jurisprudence. He also submits that there are material contradictions and inconsistencies in the testimony of the prosecution witnesses, which go to the root of the case. The learned Trial Court has completely overlooked these contradictions, which clearly create serious doubt regarding the prosecution version and point towards false implication. The learned Trial Court failed to extend the benefit of doubt to the appellant, despite the prosecution having failed to prove its case beyond reasonable doubt. The appellant was therefore entitled to acquittal. He contended that the learned Trial Court did not properly consider the fact that the victim's statements recorded before the Police, and the Court were made under the influence and instructions of her mother, and not out of her own free will, thereby rendering such statements unreliable. The learned Trial Court further failed to appreciate that the age of the victim has not been conclusively established by reliable and cogent evidence as required under law, which is fatal to the prosecution case. In view of the aforesaid submissions, it is humbly prayed that this Court may be pleased to allow the present appeal and set aside the impugned judgment, thereby acquitting the appellant of all the charges.

8. On the other hand, learned counsel for the State opposes the submissions made by learned counsel for the appellant and

submits that the trial Court has rightly convicted and sentenced the appellant, in which no interference is called for by this Court.

9. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
10. The first question for consideration before this Court would be, whether the trial Court is rightly held that on the date of incident, the victim was minor?
11. When a person is charged for offence punishable under the POCSO Act, or for rape punishable in the Indian Penal Code, the age of the victim is significant and essential ingredients 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.
12. In the present case, the prosecution has seized dakhil-kharij register of the victim (Ex.P-10C), on which her date of birth is mentioned as 2.7.2008 and since defence has not challenged the documentary and oral evidence presented by the prosecution regarding the victim's date of birth being 2.7.2008, it is established that the age of the victim on the date of incident i.e. 5.1.2022 is 13 years, 6 months and 3 days. Thus, at the time of the incident, the victim is a minor girl below 18 years of age.

13. The next question for consideration before us is whether the appellant has committed rape on minor victim ?

14. Rape has been defined in Section 375 of the IPC as follows :

“375. Rape.-- A man is said to commit "rape" if he--

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:

First. Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in

whom she is interested, in fear of death or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under eighteen years of age.

Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

15. The victim has been examined as PW-2. In para 3 of her statement, she has stated that she was sleeping in her room and then she felt someone hiding, she woke up, she saw the accused, she called out of her mother (badi mummy), but the accused choked her, rendering her speechless. He then raped her. He forbade her from telling anyone about this incident. He threatened to kill her if her mother found out. In para 4 of her statement, she has stated that she told her teacher about the incident and she asked her to inform her mother. Her mother works as a tailor in Mirzapur, Varanasi and she lived at her grandparents house. On 6.1.2022, she informed her mother about the incident via phone. Her mother arrived here by train on 7.1.2022 and they filed a report at the CSEB outpost. In para 6 of her statement, she has stated that due to rape by the accused/appellant, blood came out from her vagina which got on her panties and pajamas which were seized by the police. In para 27 of her cross-examination, she has denied that after her mother and she met on 7.1.2022, she made up a story and filed a false complaint against the appellant based on her mother's instructions. She has denied that she is making statements based on what she was instructed to do. In para 31 of her cross-examination, she has denied that she

has given the statement before the Magistrate as per the instructions given by her mother and the police. In para 34 of her cross-examination, she has denied that she was fabricating these facts to get rid of her elder father/the accused and not live with him.

16. Dr. Jyoti Sahu (PW-6) has stated in 5 of her examination-in-chief that on external examination, she found that the victim was fully conscious and had 28 teeth. Both of her breasts were developed and her public hair was developed and not clumped together. Her hymen was ruptured and she was bleeding from her vagina. A 3 x 1 mm incision was present on her left labia minora with redness. On internal examination, she found a 1.5 x 0.5 x 0.5 mm abrasion on the victim's posterior vaginal wall, located in the upper third of the vagina, where she was complaining of pain. Blood was being drawn from the victim's cervix. The doctor has opined that the victim's hymen was already damaged. The internal and external injuries to the victim occurred within 48 hours of the time of examination. Her report is Ex.P-13.

17. In the Indian society refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being

ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in **Rameshwar v. The State of Rajasthan (AIR 1952 SC 54)** were:

“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...”.

- 18.** A victim 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 victim. 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 victim 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 victim must necessarily depend on the facts and circumstances of each case. But if a victim 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 victim does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

19. The Supreme Court in the matter of **Ranjit Hazarika v. State of Assam, AIR 1998 SC 635** has held that the evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. 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.

20. The Supreme Court in the matter of **Rai Sandeep @ Deenu v. State of 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."

21. The Supreme Court in the matter of **Nawabuddin v. State of Uttarakhand, (2022) 5 SCC 419** has held as under:-

"17. 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.

18. 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.

19. As observed and held by this Court in **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 **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.”

22. Considering the evidence of the victim (PW-2) who has specifically stated the act of the appellant, the statement of Dr.Jyoti Sahu (PW-6), further considering the examination report of the victim (Ex.P-13), FSL report (Ex.P-26), material available on record and the law laid down by the Supreme Court in the above-stated judgments, we are of the considered opinion that learned Special Judge has rightly convicted and sentenced the appellant for the above-mentioned offences. We do not find any illegality and irregularity in the findings recorded by the trial Court.

23. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant. The conviction and sentence as awarded by the Special Judge to the appellant is hereby upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.

24. It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.

25. Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial court concerned forthwith for necessary information and compliance and also send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court, if so advised, with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Bablu