



2026:CGHC:3776-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 299 of 2017

State of Chhattisgarh, through Station House Officer, Police Station Pamgarh,
District Janjgir Champa (C.G.)

... Appellant

Versus

Saadhram S/o Dashrath Kashyap, aged about 20 years, R/o Village- Khaira,
Police Station Pamgarh, District Janjgir- Champa, (C.G.)

... Respondent

For State/Appellant : Ms. Nandkumari Kashyap, P.L.

For Respondent : Mr. Sahil Sahu, Advocate on behalf of Mr.
Ravindra Sharma, Advocate.

Hon'ble Smt. Justice Rajani Dubey, J.

Hon'ble Shri Justice Radhakishan Agrawal, J.

Judgment on Board

Per, Rajani Dubey, J.

22/01/2026

1. This acquittal appeal has been preferred by the State/appellant against the impugned judgment of acquittal dated 27.06.2017 passed by learned Additional Sessions Judge (F.T.C), District-Janjgir Champa (C.G.) in Sessions Trial No. 42/2016, whereby the accused/respondent



has been acquitted of the charge under Sections 363, 366 and Section 6 of the Protection of Children from Sexual Offences Act, 2012 in alternate Section 376 of IPC. Hence, this appeal.

2. Brief facts of the case as adumbrated are that on 24.07.2016 at about 10.00 pm, the complainant after completion of his dinner was sleeping at home with his family, At that time, his middle daughter, the prosecutrix/victim aged about 16 years was also sleeping on a separate cot in the same room. When the complainant woke up at 5:00 am, he saw that his daughter/prosecutrix was not at home and he understood that some individual enticed the minor and unlawfully removed her from her guardian's custody. As such, the complainant reported the incident to the concerned police station and on the basis of the written complaint, the crime was found to have occurred and hence the crime was registered and the matter was taken up for investigation. During the investigation, it was found that the accused Sadharam Kashyap lured the prosecutrix along with co-accused/juvenile on juvenile's motorcycle and took her away with him to Bilaspur. Before this, in the year 2014, the accused/respondent kept sexually exploiting the prosecutrix/victim by alluring her on the pretext of marriage. Thereafter, it was found that the accused/respondent Sadharam had sexually exploited the prosecutrix/victim on the pretext of marriage and juvenile had helped him in enticing away the minor girl on his motorcycle bearing registration No. C.G. 11-C-8743. The accused were subsequently arrested on 26.07.2016 and remanded to judicial custody. The co-accused in the case, was found to be a juvenile and as he was found driving a motorcycle without a license, Section 3/181 of Motor Vehicles



Act, 1988 was added against the juvenile and Section 146/196 of the Motor Vehicles Act, 1988 was added against the owner of the vehicle Arjun for driving the vehicle without insurance and Section 3,4 were found to be in violation of Section 5/180 of Motor Vehicles Act, 1988.

3. After completion of due and necessary investigation, charge-sheet was filed against the present accused/respondent before the concerned Jurisdictional Magistrate, who, in turn, committed the case for trial. On the basis of the material contained in the charge-sheet, learned trial Court acquitted the accused/respondent of the offence under Sections 363, 366 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 in alternate of Section 376 of IPC against which the present appeal has been filed by the State/appellant.
4. Learned counsel for the State/appellant submits that the learned trial Court failed to appreciate the fact that the submission of the body under the fear or terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 of IPC requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but after having fully exercised the choice between resistance and assent. The learned trial Court failed to consider this fact that there was no consent of the prosecutrix and as per Section 114-A of the Indian Evidence Act, 1872 it is for the accused to rebut the charge of rape by producing proof to the satisfaction of the Court that he had obtained the consent of the prosecutrix/victim. The impugned judgment of acquittal passed by the learned trial Court is illegal, improper and incorrect and is liable to be set aside. The learned trial Court has committed error of law in



not relying upon the statement of the prosecution witnesses. The learned trial Court has misappreciated the findings on record and has arrived to an erroneous findings. The learned Trial Court has failed to appreciate the fact that the accused have committed the offence as alleged by the prosecution witnesses and the learned trial Court has committed error of law in acquitting the accused. Prima facie from the perusal of the statement of the prosecutrix under Section 164 of Cr.P.C. it clearly reveals that the instant crime has been committed by the accused persons, but the learned trial Court has wrongly held that a victim has not disclosed the incident to neighbour, therefore, it cannot be believed and is not acceptable under the law. The learned trial Court has failed to take into account the gravity of the offence and the conduct of the accused. The learned trial Court has wrongly held that there is a delay in lodging of the F.I.R, which is against the facts on record. Therefore, looking to the facts and circumstances of the case, the judgment and finding of the learned trial Court is perverse and is liable to be set aside.

5. *Per contra*, learned counsel for accused/respondent supported the impugned judgment and submits that the learned trial Court upon due appreciation of oral and documentary evidence rightly acquitted the respondent of the aforesaid charges levelled against him and the prosecution has failed to prove the age of the prosecutrix/victim as below 18 years at the time of the incident, as such, there is no need to interfere with the impugned judgment. He places reliance on the decision of Hon'ble Apex Court in the matter of **Alamelu and another Vs. State, represented by Inspector of Police, (2011) 2 SCC 385.**



6. We have heard learned counsel for the parties and perused the material available on record.
7. It is clear from the record of the learned Trial Court that it framed charges against the accused/respondent under Sections 363, 366 and Section 6 of Protection of Children from Sexual Offences Act, 2012 in alternate of Section 376 of IPC and after appreciation of oral and documentary evidence available on record, the learned Trial Court acquitted the respondent of all charges, finding the testimony of the prosecutrix to be unreliable.
8. As per the prosecution case, the prosecutrix was aged about 15 years and 10 months at the time of incident. PW-02, the prosecutrix/victim testified that she was approximately 16 years old at the time of the incident, though she could not recall her specific date of birth. This testimony regarding her age was subsequently corroborated by her father PW-03.
9. PW-01, Vishwanath Kashyap, Assistant Teacher of Primary School, Khaira has stated that the police seized School Admission Register/Dakhil Kharij Register vide Ex. P/01 and he gave certificate vide Ex. P/2 on the basis of the School Admission Register and as per this Register, the date of birth of the prosecutrix/victim was registered as 24.09.2000 and her name was entered in serial No. 716. In para 3 of his cross-examination, he admitted the suggestion of the defence that he did not make the entry, consequently stating he cannot confirm the basis for the date of birth entered for the prosecutrix/victim.
10. The Hon'ble Apex Court in the matter of **Alamelu (Supra)** observed in paras 40 & 48 of its judgment as under:



"40. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded.

48. We may further notice that even with reference to Section 35 of the Indian Evidence Act, a public document has to be tested by applying the same standard in civil as well as criminal proceedings. In this context, it would be appropriate to notice the observations made by this Court in the case of Ravinder Singh Gorkhi Vs. State of U.P. held as follows:-

"The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted."

11. It is clear the learned trial Court did not appreciate the aforesaid fact of the Assistant Teacher Vishwanath Kashyap (PW-01) and wrongly finds that the prosecutrix was below 18 years of age. The learned Trial Court did not appreciate this fact that in criminal case burden of proof is on the prosecution to prove the same. It should be proved beyond reasonable doubt by the prosecution that on the date of incident, the prosecutrix was below 18 years of age, but in this case the prosecution has utterly failed to prove this fact that on the date of incident, the prosecutrix was below 18 years of age.



12. PW-02, the prosecutrix stated that the incident is of 24.07.2016, and prior to the incident, she was a student in Class VIII, where she met the accused and eventually developed a love relationship with him. She further stated that they used to meet at her friend's house where the accused/respondent on the pretext of marriage, established sexual relationship with her and that too without her consent. Thereafter, the accused/respondent at her friend's house committed forcible sexual intercourse with her for 4-5 times. As the prosecutrix's parents came to know about her relationship with the accused/respondent, they scolded the prosecutrix and dropped her out of studies. She further stated that the co-accused/juvenile gave her the phone number of the accused/respondent and she used to talk with the accused/respondent. On the night of 24.07.2016, she left her house with her belongings from the backyard at the instance of the accused/respondent and there he was waiting for her and then she further stated that they were caught in Bilaspur because co-accused/juvenile forgot the way to Bilaspur from the motorcycle.
13. PW-08 Dr. R. Dahire, examined the prosecutrix, but she did not find any external or internal injuries, as such, no definite opinion can be given regarding recent sexual intercourse, her report is Ex. P/14. In F.S.L. report vide Ex. P/25, it is mentioned that no semen was found in the vaginal slide of the prosecutrix.
14. It is evident that the learned trial Court also minutely appreciated the oral and documentary evidence and rightly finds that the statement of the prosecutrix as unreliable and acquitted the accused. It is further clear from Ex. P/03 Recovery Panchanama that the prosecutrix was not recovered from the custody of the present accused/respondent, so



the learned trial Court rightly finds that the prosecution has failed to prove its case beyond reasonable doubt against the accused/respondent.

15. The Hon'ble Apex Court in its **judgment dated 12.02.2024** passed in **Criminal Appeal No.1162 of 2011**) in case of **Mallappa and Ors. Versus State of Karnataka**, has held in para 36 as under:-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral and documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

16. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in **Mallappa** (supra) and the view which has been taken by the learned trial Court appears to be plausible



and possible view and in the absence of any patent illegality or perversity this Court is not inclined to interfere with the impugned judgment.

17. Accordingly, the acquittal appeal is devoid of any merit and the same is liable to be and is hereby **dismissed**.

Sd/-
(Rajani Dubey)
JUDGE

Sd/-
(Radhakishan Agrawal)
JUDGE