



2026:CGHC:18361-DB



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NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 260 of 2024**

Manish Netam S/o Shri Ghasiram Netam Aged About 20 Years R/o
Village Piparpara Chherkabandha Ps Kota, District - Bilaspur,
Chhattisgarh.

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

State of Chhattisgarh Through District Magistrate, Bilaspur, Distt. -
Bilaspur, Chhattisgarh.

...Respondent(s)

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Vijay Shankar Mishra, Advocate.
For Respondent/State	:	Mr. Nitansh Jaiswal, Deputy Government Advocate.
For Objector	:	Mr. Sumit Singh Rathore, Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****22.04.2026**

1. Heard Mr. Vijay Shankar Mishra, learned counsel for the
appellant. Also heard Mr. Nitansh Jaiswal, learned Deputy Government



Advocate, appearing for the State/respondent and Mr. Sumit Singh Rathore, learned counsel, appearing for the objector.

2. Though the matter is listed today for hearing on I.A. No. 1 of 2024 (application for suspension of sentence and grant of bail), however, considering that the appellant has been in custody since 07.03.2023, and with the consent of learned counsel for the parties, the appeal is taken up for final hearing.

3. This criminal appeal filed by the appellant/accused under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'CrPC') is directed against the impugned judgment of conviction and order of sentence dated 29.12.2023, passed by the learned Special Judge (FTSC) POCSO Act, Bilaspur, District Bilaspur (C.G.) (for short, 'learned trial Court') in Special Criminal Case No. 66 of 2023, whereby the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence
Section 305 of the Indian Penal Code (<i>for short, 'IPC'</i>)	Rigorous imprisonment (<i>for short, 'R.I.'</i>) for 10 years and fine of Rs.1,000/-, in default of payment of fine, 06 months R.I. more.
Section 3/4 of the Protection of Children from Sexual Offences Act, 2012 (<i>for short, 'POCSO Act'</i>)	R.I. for life (for the remainder of the natural life) and fine of Rs.2,000/-, in default of payment of fine, 01 year R.I. more.
<i>All the sentence shall run concurrently</i>	



4. The brief case of the prosecution is that the complainant, i.e., the victim's father (PW-2), appeared at Police Station Kota on 05.03.2023 at about 4:00 p.m. and lodged an oral report stating that his daughter (the victim), aged about 14 years and studying in Class VIII, was at home. On the same day, at around 10:00 a.m., he had asked his daughter to water the vegetable plants in the backyard and instructed his son to sit at the grocery shop, after which he left for Ratanpur. He returned at about 2:00 p.m. and called out to his daughter, but she did not respond. When he did not find her in the backyard or the veranda, he removed the curtain of the room and saw that his daughter was hanging by a rope inside the house and was found dead. He then called his son from the shop and brought his wife, who was working at a factory, back home. Thereafter, he went to the police station and reported the incident.

5. On the basis of the information given by the victim's father, a merg (inquest) No. 37/2023 was registered at Police Station Kota under Section 174 of the CrPC. Panchnama proceedings of the dead body were conducted, and the body of the deceased was sent for medical examination. Statements of witnesses were recorded.

6. After completion of the merg inquiry, and based on the facts that emerged, an FIR bearing Crime No. 209/2023 (Ex.P/23) was registered on 07.03.2023 at Police Station Kota against the appellant under Sections 376, 511, and 305 of the IPC and Sections 8 and 12 of the POCSO Act. After completing seizure and other formalities, the



appellant was arrested.

7. Upon completion of the entire investigation, and finding sufficient evidence against the appellant, a charge-sheet was filed before the learned trial Court on 02.06.2023 under Sections 376 and 305 of the IPC and Section 4 of the POCSO Act for trial.

8. The learned trial Court framed charges against the appellant under Sections 376, 376(3), and 305 of the IPC and Sections 3/4 of the POCSO Act. The charges were read over and explained to the appellant, who denied the same and claimed trial.

9. In order to prove its case, the prosecution examined 15 witnesses and exhibited 29 documents. The statement of the accused/appellant was recorded under Section 313 of the CrPC, wherein he denied all incriminating circumstances put to him and pleaded false implication. Upon appreciation of the oral and documentary evidence on record, the learned trial Court convicted the appellant and sentenced him as mentioned in paragraph 3 of the impugned judgment. Aggrieved thereby, the present appeal has been preferred.

10. Learned counsel for the appellant submits that the impugned judgment of conviction and order of sentence are illegal, perverse, and contrary to the facts and evidence on record. It is contended that the learned trial Court has erred in holding the appellant guilty without there being any cogent or conclusive evidence establishing his involvement in the alleged offences. According to learned counsel, the findings recorded by the learned trial Court are based on conjectures and



surmises, as it has mechanically accepted the prosecution case without properly appreciating the material contradictions and omissions in the evidence of prosecution witnesses. It is further submitted that the prosecution has failed to prove its case beyond reasonable doubt and, therefore, the conviction of the appellant is unsustainable.

11. It is further contended by learned counsel for the appellant that there is no evidence on record to establish that the appellant had any direct contact with the deceased or that he was present at or near the place of occurrence on the date of the incident. It is also submitted that during the inquest proceedings, no allegation was made against the appellant by any family member of the deceased, which creates serious doubt about the prosecution case. Learned counsel further submits that the learned trial Court has failed to properly appreciate the delay in the case and the inconsistencies in the statements of prosecution witnesses, which are fatal to the prosecution case. It is specifically argued that the prosecution has failed to prove the age of the victim by reliable and admissible evidence; therefore, the applicability of the POCSO Act becomes doubtful, and consequently, the conviction and sentence awarded under the said Act are unsustainable. It is also contended that the essential ingredients of abetment, as defined under Section 107 of the IPC, are not made out in the present case. In support of his submissions, reliance has been placed on the judgments of the Hon'ble Supreme Court in ***Gangula Mohan Reddy v. State of Andhra Pradesh (AIR 2010 SC 327)***, ***Mahendra Singh & Another v. State of M.P. (1995 Supp (3) SCC 731)***, and ***State of West Bengal v. Orilal***



Jaiswal ((1994) 1 SCC 73), to contend that mere allegations, in the absence of any positive act of instigation or aiding, are insufficient to sustain a conviction for abetment of suicide. On these grounds, it is prayed that the appellant be acquitted of all the charges.

12. *Per contra*, learned counsel for the State opposes the submissions advanced on behalf of the appellant and contends that the impugned judgment is well-reasoned and based on proper appreciation of the evidence available on record. It is submitted that the testimonies of the prosecution witnesses are reliable, consistent, and inspire confidence, and are duly corroborated by other evidence on record. It is further submitted that the alleged discrepancies pointed out by the appellant are minor in nature and do not affect the core of the prosecution case.

13. Learned counsel appearing for the objector has also supported the impugned judgment and submits that the learned trial Court has rightly appreciated the evidence on record in its proper perspective. It is contended that the prosecution has successfully established the guilt of the appellant beyond reasonable doubt. It is further submitted that the evidence on record clearly proves the age of the victim and the applicability of the POCSO Act has been rightly invoked. According to the learned counsel, appearing for the objector, the conduct of the appellant and the surrounding circumstances clearly establish his involvement in the crime, and no interference is warranted by this Court.

14. We have heard learned counsel for the parties, considered their



rival submissions made hereinabove, and have also perused the entire record of the learned trial Court with due care and circumspection.

15. The first question that arises for consideration before this Court is whether the learned trial Court has rightly held that, on the date of the incident, the victim was a minor.

16. When a person is charged for the offence punishable under the POCSO Act, or for rape punishable in the Indian Penal Code, the age of the victim is significant and essential ingredient 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.

17. In ***Jarnail Singh Vs. State of Haryana, reported in (2013) 7 SCC 263***, the Hon’ble Supreme Court laid down the guiding principles for determining the age of a child, which read as follows:

“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove 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 or 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 appearance 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 7A, 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.”

23. *Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the*



concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion."

18. In the present case, the prosecution has asserted that the date of birth of the victim is 30.08.2009. To establish the same, the prosecution has produced the Admission and Discharge Register (Ex.P/12C) pertaining to Class 1 of Government Primary School, Peepar Para (Cherkabandha), Police Station Kota, District Bilaspur (C.G.). The said document has been duly proved by PW-7, the Headmaster of the said school, who has categorically deposed that the victim was admitted to Class 1 on 23.06.2015 and that her date of birth was recorded in the school register as 30.08.2009. The said register pertains to the first



school attended by the victim and, therefore, squarely falls within the category contemplated under Rule 12(3)(a)(ii) of the 2007 Rules.

19. The testimony of PW-2, the father of the victim, also supports the prosecution case and affirms that the date of birth of the victim is 30.08.2009. His oral testimony stands duly corroborated by the documentary evidence in the form of the Admission and Discharge Register (Ex.P/12C). In view of the law laid down in ***Jarnail Singh*** (supra), once the date of birth recorded in the school first attended is available and duly proved, the same constitutes conclusive proof of age, and no further evidence, including medical opinion, is required to be considered.

20. The defence has neither adduced any oral nor documentary evidence to rebut or discredit the aforesaid document. There is no material on record to suggest that the entry regarding the date of birth in the school register is incorrect or fabricated. In absence of any such challenge, the said document deserves to be accepted as reliable and conclusive proof of age. Accordingly, the date of birth of the victim being 30.08.2009, she was aged about 13 years 06 months and 06 days on the date of the incident, and thus, was clearly a minor at the relevant time. The finding recorded by the learned trial Court in this regard calls for no interference.

21. The next question that arises for consideration is whether the appellant has committed penetrative sexual assault upon the victim, a minor girl, as alleged by the prosecution.



22. In this regard, PW-1, the younger brother of the victim/deceased, aged about 09 years, has deposed that he knew and identified the appellant, who was previously residing in their village and used to drive a tractor. He stated that on the date of the incident, while he was present at their grocery shop, the victim had come there to purchase shampoo. At that time, the appellant arrived at the shop and demanded cigarettes on credit, which PW-1 refused. Thereafter, the appellant asked the victim to provide him cigarettes, but she declined and proceeded towards her house, whereupon the appellant followed her. PW-1 further stated that when the victim closed the door from the lane side, the appellant entered the house from the backyard. Upon hearing a sound as if the door was being broken, he went towards the house and saw the appellant holding a stick and attempting to assault the victim. On being noticed, the victim asked him to run away, failing which the appellant would kill him as well, whereupon he returned to the shop. His testimony further establishes that thereafter, his father came and found the victim hanging in the house. Despite lengthy cross-examination, this witness remained firm and denied all material suggestions put by the defence. His testimony inspires confidence and establishes the presence of the appellant at the place of occurrence and his overt acts.

23. The testimony of PW-1 finds due corroboration from PW-3, neighbour of the victim and PW-6, friend of the victim, both of whom are neighbours of the victim's family. PW-3 has categorically stated that on the date of the incident, she saw the appellant chasing the victim, who



ran towards her house, and the appellant followed her inside. Similarly, PW-6 has also deposed that she saw the appellant running after the victim on the same day. These independent witnesses lend assurance to the version of PW-1 and firmly establish that the appellant had followed the victim from the shop to her house immediately prior to the incident.

24. PW-9, the elder sister of the victim, has also supported the prosecution case. Though she was not present at the time of the incident, she reached the spot upon receiving information from her father and found the victim hanging inside the house. She further deposed that she was informed by her father and brother about the sequence of events, including the appellant following the victim to the house and attempting to assault her with a stick. Significantly, she also stated that 2–3 days prior to the incident, the victim had informed her that the appellant was harassing her and threatening her for refusing to talk to him. This part of the testimony establishes prior conduct and motive on the part of the appellant. Her testimony remained unshaken in cross-examination, and she denied the suggestion of any love affair between the victim and the appellant.

25. Dr. N.K. Gupta (PW-10) and Dr. Richa Tiwari (PW-11), who conducted the postmortem examination, have categorically opined that the cause of death was asphyxia due to hanging. However, the postmortem findings also reveal significant ante-mortem injuries, including scratch marks on the right side of the chest and chin, along



with a ruptured hymen. The Doctors have specifically opined that the scratch marks could have been caused by forceful physical contact or fingernail scratches, thereby indicating resistance on the part of the victim and use of force prior to her death. The presence of a fractured thyroid cartilage further reinforces the nature of the hanging.

26. As per the FSL report (Ex.P/29), human spermatozoa were detected in the vaginal slides of the victim (Exhibit "A"). This scientific evidence conclusively establishes that sexual intercourse had taken place prior to the death of the victim. Thus, the medical and forensic evidence, when read conjointly, clearly demonstrate that the victim was subjected to force and sexual assault immediately prior to the act of hanging.

27. Further, Dr. N.K. Gupta (PW-10) has also examined the appellant on 08.03.2023 and has deposed that no external injuries were found on his body, his secondary sexual characteristics were fully developed, and the cremasteric reflex was present. He has clearly opined that there was nothing to suggest that the appellant was incapable of performing sexual intercourse. The report in this regard is Ex.P/15. Thus, the medical evidence also establishes the capability of the appellant to commit the alleged act, thereby ruling out any defence to the contrary.

28. The prosecution has also proved the memorandum statement of the appellant (Ex.P/19) and the consequent recovery of the bamboo stick (Ex.P/20). PW-15 (Investigating Officer) has deposed that the appellant, in his memorandum, disclosed the place where he had



concealed the stick used during the incident, and the same was recovered at his instance from near the door of the victim's house. This recovery is duly corroborated by PW-13 (Madan Singh Jagat), an independent witness, who has proved both the memorandum and seizure. The recovery of the weapon at the instance of the appellant lends further assurance to the prosecution case and corroborates the testimony of PW-1, who had seen the appellant attempting to assault the victim with a stick.

29. Upon a comprehensive and careful re-appreciation of the entire evidence available on record, this Court finds that the prosecution has succeeded in establishing the presence and active involvement of the appellant in the incident beyond reasonable doubt. The testimony of PW-1, a child witness, is wholly natural, cogent, and free from material contradictions. His presence at the spot is unquestionable, and his account of the appellant following the victim, entering the house, and attempting to assault her is consistent and trustworthy. It is well settled that the testimony of a child witness, if reliable, can form the basis of conviction, and in the present case, the evidence of PW-1 inspires full confidence.

30. The testimony of PW-1 stands duly corroborated by independent witnesses PW-3 and PW-6, who have consistently deposed that they saw the appellant chasing the victim and following her towards her house immediately prior to the incident. Further, PW-9 (elder sister of the victim) has deposed regarding the prior conduct of the appellant,



including harassment and threats extended to the victim shortly before the incident, thereby establishing motive. The defence has failed to discredit these witnesses in any material particular.

31. The medical and scientific evidence lends strong corroboration to the prosecution case. The postmortem findings clearly establish that the death occurred due to asphyxia by hanging; however, the presence of ante-mortem injuries, including scratch marks on the chest and chin, along with a ruptured hymen, clearly indicates that the victim was subjected to force prior to her death. The FSL report (Ex.P/29) conclusively establishes the presence of human spermatozoa in the vaginal slides of the victim, thereby proving that sexual intercourse had taken place prior to her death. This evidence, taken together, unerringly points towards sexual assault preceding the incident.

32. The medical examination of the appellant further establishes that he was capable of performing sexual intercourse. The recovery of the bamboo stick at the instance of the appellant, pursuant to his memorandum statement, also stands duly proved and corroborates the testimony of PW-1. The chain of circumstances is complete and leads to no other hypothesis except the guilt of the appellant.

33. The defence has failed to bring on record any material contradiction or inconsistency so as to create a reasonable doubt. No plausible explanation has been offered by the appellant. The prosecution evidence remains intact and trustworthy.

34. In view of the foregoing discussion, this Court is of the considered



opinion that the prosecution has proved its case beyond reasonable doubt. The findings recorded by the learned trial Court are based on proper appreciation of evidence and do not suffer from any perversity or illegality warranting interference.

35. Consequently, the appeal, being devoid of merit, is hereby **dismissed**. The impugned judgment of conviction and order of sentence passed by the learned trial Court are affirmed.

36. In view of the final disposal of the appeal, I.A. No. 1 of 2024, stands **disposed of** as having become infructuous.

37. It is reported that the appellant is in custody. He shall continue to remain in custody and serve out the remaining part of the sentence as awarded by the learned trial Court.

38. The Registry is directed to transmit the original record to the concerned trial Court for necessary information and compliance. The Registry shall also send a certified copy of this judgment to the Superintendent of the Jail concerned, where the appellant is undergoing sentence, for service upon the appellant, informing him that he is at liberty to challenge the present judgment before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice