



CGHC010029512026



2026:CGHC:31430-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 272 of 2026

1 - ABC

...Appellant

versus

1 - State of Chhattisgarh Through The S.H.O. at Police Station
Bhatapara City, District Balodabazar - Bhatapara (C.G.)

... Respondent

(Cause-title taken from Case Information System)

For Appellant : Mr. Rajkumar Pali, Advocate.

For State : Ms. Anusha Naik, Deputy Govt. Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

Per Ramesh Sinha , Chief Justice

23-07-2026

1. Learned counsel for the State would submit that the notice issued to PW-1, mother of the victim/complainant has been served upon her, however, no one appears on her behalf either in person or through virtual mode to make submission on the application for suspension of sentence and grant of bail (I.A. No.1/2026) as well as on appeal. Therefore, we proceed in appeal.
2. Although the appeal has been listed for consideration on I.A. No.1/2026, application for suspension of sentence and grant of

bail, however, considering the fact that the appellant is in jail since 19.08.2024, with the consent of the parties the appeal is being heard finally and therefore, I.A. No.1/2026 is disposed of.

3. The present criminal appeal has been filed by the appellant under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short ‘BNSS’) against the impugned judgment of conviction and sentence dated 09.01.2026 passed by the learned Additional Sessions Judge, Bhatapara, District Balodabazar-Bhatapara, in Special Criminal Case No. 46 of 2023, whereby the appellant has been convicted and sentenced in the following manner with a direction to run all the jail sentences concurrently:-

Conviction	Sentence
Sec. 376(2)(f) and 376(2)(n) of IPC	No separate sentence has been awarded.
Sec. 506 Part II of IPC	R.I. for 01 year with fine of Rs. 500/-, in default of payment of fine, further R.I. for 10 days.
Sec. 5(l)/6 of Protection of Children from Sexual Offences Act, 2012 (in short ‘POCSO Act’)	Life Imprisonment till the natural death with fine of Rs. 500/- in default of payment of fine, further R.I. for 50 days.

4. Brief facts of the case are that, the appellant is the father of the minor victim. On 14.09.2023, the mother of the victim PW-1 lodged a written report to the police with the allegation that when she felt that her daughter is scared by some reason he asked her about the reason and then she disclosed that the appellant sexually exploited her and when she asked from her husband/appellant, he threatened her with dire consequences. When she disclosed the incident to her parents, the advised her to

lodge report and then the report has been lodged by her. On the basis of written complaint Ex.-P/1, the FIR Ex.-P/2 for the offence under Section 376(2)(f), 376AB, 506 of IPC and Section 4 and 6 of Protection of Children from Sexual Offences, Act, 2012 against the appellant. The victim was sent for her medical examination to Community Health Center Bhatapara, where PW-6 Dr. Nidhi Patanwar medically examined her and gave report Ex.-P/4. While medically examining the victim the doctor noticed irregular hymen present, no sign of inflammation seen. Two slides of vaginal swab were prepared, sealed and handed over to police for chemical analysis. The doctor opined that no definite opinion can be given regarding recent sexual intercourse. Spot Map Ex.-P/6 was prepared by the police and P/9 was prepared by the Patwari. The Adhar Card of the victim has been seized vide seizure memo Ex.-P/7 and her birth certificate has also been seized vide seizure memo Ex.-P/8. According to the birth certificate, the date of birth of the victim is 21.03.2014. The vaginal slide of the victim was sent for its chemical analysis to State FSL Raipur from where report Ex.-P/22 was received and no sperm and semen were found in the vaginal slides. The statement of the victim under Section 164 of Cr.P.C. and the statement of other witnesses under Section 161 of Cr.P.C. have been recorded and since the appellant was absconding, charge sheet was filed against him before the learned trial Court showing the appellant absconding for the offence under Section 376(2)(f), 376AB, 506 of IPC and

Section 4 and 6 of POCSO Act. The learned trial Court issued permanent warrant of arrest on 10.11.2023. Pursuant to the permanent warrant of arrest, the appellant was arrested on 19.08.2024 and he too was sent for his medical examination to Community Health Center, Bhatapara where he was also examined by doctor who found him capable to perform sexual intercourse and gave his report Ex.-P/26. Thereafter, he was produced in the case and sent in judicial custody.

5. The learned trial court has framed the charge under Sections 376(2)(f), 376(2)(n), 506 Part II (on two counts) of the IPC and Section 5(l)/6 of the POCSO Act. The appellant denied the charge and claimed trial.
6. In order to bring home the charge, the prosecution has examined as many as 09 witnesses. The statement under section 313 of CrPC of the appellant was also recorded in which he denied the material appears against him, pleaded innocence and has submitted that he has been falsely implicated in the offence.
7. After appreciation of the oral as well as documentary evidence available on record, the learned trial court has convicted the appellant and sentenced him as mentioned in the earlier para of this judgment. Hence this appeal.
8. Learned counsel for the appellant would argue that the appellant is innocent and has been falsely implicated in the offence. No offence is made out against the appellant as alleged. The prosecution has failed to prove its case beyond reasonable doubt.

There are material omissions and contradictions in the evidence of prosecution witnesses. The appellant is the father of the victim and he cannot even imagine to commit any offence with her. It is the dispute between the husband and wife and the appellant used to reside at Maharashtra for his employment and due to the personal vendetta, the complainant PW-1 made her minor daughter instrumental and lodged the report against him. The victim PW-2 is a tutored witness who deposed on the instance of her mother. There is delay in lodging the report for which there is no explanation. He would also submit that no injuries have been found on the body of the victim and the FSL report is also negative which further supports the defence. The evidence produced by the prosecution is not sufficient to hold the appellant guilty for the alleged offence. Therefore, the impugned order suffers from perversity and illegality and the same is liable to be set aside and the appellant is entitled for acquittal.

9. On the other hand, the learned counsel for the State opposes the arguments advanced by the learned counsel for the appellant and has submitted that the victim who was minor daughter of the appellant has deposed against her own father and alleged that he committed rape upon her. Without there being any incident, daughter cannot raise such allegation against her father if there was no incident. The natural affection between them would certainly stop her by making allegation against him as she might have affection with both of them, i.e., mother and father, therefore,

the submission made by learned counsel for the appellant that the complainant/mother of the victim made her instrumental is unfounded. She would further submit that though no external injuries have been found on the body of the victim, but her hymen was found irregular. Even otherwise, the injuries are always not necessary to be noticed on the body of rape victim, particularly when the appellant is her own father and overpowered upon a 09 year old minor girl. Even if no semen or sperm were found on the vaginal swab of the victim, that itself cannot dilute the prosecution case as the alleged date of incident is on or about 26.04.2023 whereas the victim was medically examined on 15.09.2023 and vaginal slide were also prepared on that very day. It is also submitted by her that, but for minor omissions or contradictions the evidence of prosecution witnesses are reliable and sufficient to hold the appellant guilty for the alleged offence. The appellant is the father of the victim, but he remained absconding for a considerable period and could be arrested only on 19.08.2024. Therefore, all these evidences available on record unerringly pointing towards guilt of the appellant and the learned trial Court has rightly convicted and sentenced him.

10. We have heard the learned counsel for the parties and perused the record of the trial Court carefully.
11. The victim is aged about 9 years and her date of birth is 21.03.2014 which has been proved by the prosecution through the statutory document of her birth certificate Article A/2 issued by

the Registrar, Birth and Deaths, Municipal Council Bhatapara. The appellant being the father of the victim very well know about the age and date of birth of the victim and he has not specifically challenged the age and date of birth of the victim in the cross-examination of the victim and other witnesses. The learned trial Court after considering the evidence available on record, the birth certificate Article A/2, Adhar Card Article A/1 and in view of the provisions under Section 35 of Indian Evidence Act, 1872, Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and also in the light of the judgment passed by the Hon'ble Supreme Court in the case of **Jarnail Singh Vs. State of Haryana**, 2013 (7) SCC 263 has held that the victim was minor and 9 year 01 month and 6 days of age which is based on proper evidence and does not suffers from any infirmity or perversity and also affirm the said finding.

12. So far as the allegation of rape upon the minor victim is concerned, we again examine the evidence of the victim PW-2. After examining her IQ, the learned trial Court has recorded her evidence. She stated in her evidence that about two years back her father committed rape upon her and threatened her that if she disclosed the incident to anyone he would not forgive her. She informed the incident to her mother and then report has been lodged and she was sent for her medical examination. Her statement was also recorded before the Magistrate at Simga which is Ex.-P/10. In cross-examination she stated that she is

residing with her mother and her father does not have any regular job. She denied that due to the unemployment of her father, there was a frequent quarrel between her father and mother. There are four rooms in her maternal grand-parents' house. She admitted that she taught in the school about good touch and bad touch. She further admitted that her mother and maternal grand-parents forced her father to go to Nagpur and to work there. She firmly denied that her father has not committed rape upon her and has not threatened her. Though on some part of her statement Ex.-D/2 and P/10 she contradicts her statement, but that itself is not sufficient to disbelieve the entire evidence of the victim. The said contradictions are with respect to the threatening given by the appellant to the victim. From the entire evidence of the victim the defence could not be able to abstract any material so that she could be held to be the tutored witness or her evidence is doubtful regarding rape upon her by the appellant. There is no reason for false implication of the appellant by the victim. Her evidence have duly supported the allegation against the appellant that he committed rape upon her.

13. In the case of **Appabhai and Another vs. State of Gujarat**, 1998 (Supp) Supreme Court Cases 241, the Hon'ble Supreme Court has held that the minor discrepancies in the evidence are not sufficient to demolish the entire case of the prosecution if her evidence is otherwise sufficient. It has been held that:

“The court while appreciating the evidence must not attach

undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses may go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.”

14. In the case of **State of Himachal Pradesh Vs. Sanjay Kumar alias Sunny**, (2017) 2 SCC 51, the Hon’ble Supreme Court has held that the evidence of the victim can be the sole basis for conviction unless there are cogent reasons for the Court to hesitate in believing the evidence at its face value or seek corroboration. It has been held that:-

“**30.**We have already discussed above the manner in which testimony of the prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. ...

31.By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for

corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance {See Bhupinder Sharma v. State of Himachal Pradesh[(2003) 8 SCC 551 : 2004 SCC (Cri) 31]}. Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.”

15. PW-1 is the mother of the victim. She stated in her evidence that when the victim informed her that her father has committed rape upon her, she informed it to her parents. Since they were at

Firozabad, U.P., she waited for their return. After a day of informing the incident by the victim, the appellant was again taking her minor daughter with him and when the victim raised alarm she protested and then also victim informed her that the appellant is taking her for bad work. When she scolded the appellant he asked for forgive. In the next early morning he left for Nagpur. Thereafter, she lodged the report Ex.-P/1 and then her minor daughter was sent for her medical examination. In cross-examination she admitted that she married with the appellant in the year 2009 where she resided for about two months and since the appellant was unemployed, she along with her husband came to Bhatapara. Her husband used to go outside for her work, however, she denied that they were not having cordial relation. In the year 2017-18 her husband took her to Bangalore to earn their livelihood, during that period due to excessive consumption of liquor by her husband dispute arose between them and he suspected her fidelity. The appellant left her to her parents' house at Hyderabad. He used to come to meet her with an interval of one year and stayed four-five months. She denied that she wanted divorce from her husband. From her detailed cross-examination she remained firm in the allegation leveled by the victim and witnessing the appellant taking the victim with him and when the victim raised alarm. But for minor omissions or contradictions, the defence could not be able to abstract any material for his false implication. In such a close relation, if a minor daughter and wife is raising

allegation against the appellant, who is the father of the victim, the defence must have brought the probable reason for his false implication, but in the present case the appellant failed to do so.

16. PW-4 is the maternal grand-mother of the victim. She stated in her evidence that the age of the victim is 9 years and her daughter is married with the appellant since 14-15 years back. The appellant is the resident of District Nagpur. Two years back when they were at Firozabad, U.P. her daughter informed about the incident through telephone and when they came back they came to know about the entire incident. Till that time the appellant fled away. In cross-examination nothing substantive could be abstracted by the defence and the defence tried to impute that there was a dispute between the appellant and his wife/PW-1 with respect to fidelity of her daughter and for that reason he has been falsely implicated in the offence.
17. PW-5 maternal grand-father of the victim. He too has stated that at the time when they were at Firozabad, U.P. they came to know about the incident and when they returned the entire incident was disclosed by the victim and her mother, thereafter, they lodged the report. This witness has also admitted that the appellant was married with his daughter in the year 2009. After two-three months of marriage they came to Bhatapara and used to reside in his house. The appellant was not having regular work and there was frequent quarrel between the appellant and his daughter. He too has stated that both of them had gone to Bangalore for work where

dispute arose between them and then he left his daughter to Hyderabad. Though this witness also stated on the information given by the victim and her mother, but the substantive allegation could not be rebutted by the defence in his evidence also.

18. PW-6 Doctor Nidhi Patanwar medically examined the victim and found her hymen was irregular. Though no external injuries were found on the body of the victim, however, the dates are also relevant in the case that the victim was allegedly subjected to rape by the appellant on or about 26.04.2023 and she was medically examined on 15.09.2023. Even otherwise, the presence of injuries on the body of the victim is always not determinative regarding allegation of rape.
19. In the case of **Satyapal Vs. State of Haryana**, (2009) 6 SCC 635 the Hon'ble Supreme Court has held that it is not necessary that there has to be some injury on the genetalia or other part of the victim's body. It has been observed that

“18. In Modi's Medical Jurisprudence, 23rd Edn., at pp. 897 and 928, it is stated:

"To constitute the offence of rape, it is not necessary that there would be complete penetration of the penis with emission of semen and the rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of law. It is, therefore, quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains.....

* * *

In small children, the hymen is not usually ruptured, but may become red and congested along with the inflammation and bruising of the labia. If considerable violence is used, there is often laceration of the fourchette and perineum.”

20. The version of the victim commands great respect and acceptability, but if there are some circumstances which cast some doubt in the mind of the court on the veracity of the victim's evidence, then it will not be safe to rely on the said version of the victim. There is no material contradiction and omissions in the statement of the victim and her parents. The law is well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the victim. However, there is an important caveat which is that the testimony of the victim must inspire confidence. Even though the testimony of the victim is not required to be corroborated, if her statement is not believable, then the accused cannot be convicted. The prosecution has to bring home the charges levelled against the appellant beyond any reasonable doubt, in which the prosecution has succeeded in the instant case.
21. After having considered the entire evidence available on record and rival submissions of the parties, we are of the considered opinion that the learned trial Court has rightly appreciated the evidence available on record and has convicted and sentence the appellant for the alleged offences. The judgment of conviction and

sentence passed by the learned trial Court does not suffer from any perversity and illegality and we do not find any reason for interference in the same.

22. Accordingly, the appeal filed by the appellant fails and is hereby **dismissed**. The appellant is reported to be in jail since 19.08.2024. He shall serve the entire sentence awarded by the learned trial Court.
23. Registry is directed to 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 with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
24. Record of the trial Court be sent back along with copy of this judgment.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice