



2026:CGHC:31954-DB



CGHC010031812026

2026:CGHC:31954-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 311 of 2026

Churaman Chandravanshi S/o Narottam Chandravanshi Aged About 24 Years R/o Village Jamsararkhurd, Police Chowki - Tumdibod, Police Station Lalbagh, District - Rajnandgaon (C.G.)

... Appellant

versus

State Of Chhattisgarh Through - Station House Officer, Police Station - Lalbagh, District - Rajnandgaon (C.G.)

... Respondent

For Appellant	:	Mr.Jitendra Gupta, Advocate
For Respondent	:	Ms.Anusha Naik, Deputy Government Advocate

Hon'ble Shri Justice Ramesh Sinha, Chief Justice

Hon'ble Shri Justice Ravindra Kumar Agrawal, Judge

Per Ramesh Sinha, CJ

27/07/2026

1. Notice issued to the father of the victim has been duly served upon him. However, despite service of notice, no one has appeared on his behalf to contest the present application for suspension of sentence and grant of bail or the criminal appeal.



2. Since the appellant is in jail since 06.10.2020, this Court proceeds to hear the appeal finally.
3. The criminal appeal arises out of the judgment of conviction and order of sentence dated 03.01.2026 passed by the Additional Sessions Judge, F.T.S.C. (POCSO), Rajnandgaon in Special Criminal (POCSO) Case No.72/2020, whereby the appellant has been convicted and sentenced in the following manner :

Sl. No.	Conviction	Sentence
1.	Under Section 363 of the IPC	RI for 3 years and fine of Rs.5000/-, in default of payment of fine to further undergo RI for 1 month.
2.	Under Section 366 of Indian Penal Code.	RI for 5 years and fine of Rs.5000/-, in default of payment of fine to further undergo RI for 1 month.
3.	Under Section 6 of Protection of Children from Sexual Offences Act, 2012	RI for 20 years and fine of Rs.10,000/-, in default of payment of fine to further undergo RI for two months.

4. The prosecution story, in brief, is that the complainant namely the victim's father, appeared at Tumdibod Police Chowki and submitted a written complaint (Ex.P-1) stating that he has two daughters and a son. On 29.10.2019, at approximately 10:30 P.M., he and his wife went to Karma Bhavan in the village to watch a dance competition. At approximately 11:30 P.M., his two daughters went some distance away from the venue to urinate



themselves. Fifteen minutes later, his younger daughter returned and told his wife that the victim was missing and had gone somewhere. His wife then searched around for the victim and, upon finding no trace of her, called her relatives, but found no trace. She believes that an unknown person lured her daughter away. On the basis of the written complaint of the complainant, an unnumbered First Information Report (FIR) Ex.P-2 was registered under Sections 363 of the IPC under Crime No. 0/2019 of Police Chowki Tumdibod and for numbering, First Information Report (FIR) Ex.P-19 was registered under Crime No. 521/2019 of Police Station Lalbag and investigation was started.

5. During the investigation, the victim was recovered from the accused's possession and a recovery panchnama (Ex.P-7) was prepared. The Kotwari register (Ex.P-11(C)) relating to the victim's birth was seized and a seizure memo (Ex.P-5) was prepared. The victim was examined and an examination report (Ex.P-12) and an examination report (Ex.P-23(A)) of the accused were obtained. The victim's slides were seized and a seizure memo (Ex.P-20) was prepared. The seized slides of the victim were sent to Raipur for FSL examination and an FSL report (Ex.P-26) was obtained and as per FSL, human sperms were found in Article A slides seized from the victim. The statements of the victim's parents and other witnesses were recorded. The site map of the incident Ex. P-3 was prepared and the Patwari map Ex.P-4 was obtained. On finding evidence of crime against the accused / appellant, the



accused / appellant was arrested and arrest memo Ex.P-21 was prepared. On completion of investigation of the case, after thorough investigation by Police Chowki Tumdibod, Police Station Lalbag, District Rajnandgaon, in Crime No. 521/2019, a charge sheet was presented before the jurisdictional Court against the accused / appellant for offences punishable under Sections 363, 366, 376(2) of the IPC and Sections 4 (d), 6 of the POCSO Act.

6. The trial Court has framed charges against the appellant under Sections 363, 366, 376(2)(n), 376(3) of the IPC and Sections 5(l)/ 6 of the POCSO Act. The appellant abjured his guilt and pleaded innocence.
7. In order to establish the charge against the appellant, the prosecution examined 16 witnesses. The statement of the appellant under Section 313 of the 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. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in para 3 of the judgment. Hence, this appeal.
8. Learned counsel for the appellant contended that the impugned judgment of conviction and order of sentence passed by the learned trial Court are contrary to the facts and evidence available on record and are therefore liable to be set aside. It is submitted that the prosecution has miserably failed to establish its case



against the appellant beyond reasonable doubt. It is further argued that the prosecution has failed to prove that the victim was a minor on the date of the alleged incident. The documents relied upon by the prosecution to establish the age of the victim are neither reliable nor have they been proved in accordance with law. Referring to the evidence of Kotwar Vishram Das (PW-2), learned counsel submitted that the witness has categorically admitted that the entry regarding the date of birth of the victim in the Kotwari Register was made solely on the basis of the oral information furnished by the victim's father. He has further admitted that no birth certificate, hospital record, medical document or any other authentic record relating to the date of birth of the victim was produced before him at the time of making such entry. Therefore, in the absence of any contemporaneous or supporting documentary evidence forming the basis of the Kotwari entry, the evidentiary value of the said entry is weak and it cannot be safely relied upon for determining the age of the victim beyond reasonable doubt.

9. Learned counsel further submitted that though the prosecution has produced the Class VIII marksheet (Ex.P-6), the same has not been proved in accordance with law. Neither the Principal nor any competent authority of the concerned school has been examined to prove the authenticity of the marksheet, the school admission register, or the source on the basis of which the date of birth of the victim was entered in the school records. Mere



production of a marksheet, without examining its author or the custodian of the relevant records, does not constitute legal proof of the date of birth mentioned therein. It is also pointed out that the prosecution has failed to produce the admission register or any other foundational school record to establish the basis of the entry regarding the victim's date of birth. Consequently, the prosecution has failed to adduce any legally admissible and trustworthy evidence to establish that the victim was below 18 years of age on the date of the alleged occurrence. It is next contended that the learned trial Court failed to properly appreciate the conduct of the victim. According to the prosecution itself, the victim remained with the appellant continuously for more than seven months without raising any protest, complaint or alarm and voluntarily accompanied him during the said period. It is submitted that such conduct clearly indicates that the victim was a willing and consenting party. Therefore, the prosecution version does not disclose the commission of the offences alleged against the appellant.

- 10.** Learned counsel lastly argued that even if the entire prosecution case is accepted in its entirety, the essential ingredients of the offences for which the appellant has been convicted are not made out. The findings recorded by the learned trial Court are based on improper appreciation of the evidence and are unsustainable in law. It is, therefore, prayed that the impugned judgment of conviction and order of sentence be set aside and the appellant



be acquitted of all the charges by extending to him the benefit of doubt.

11. On the other hand, learned counsel for the State supported the impugned judgment and submitted that the learned trial Court has rightly appreciated the evidence available on record and convicted the appellant on the basis of cogent and reliable evidence. It is argued that the age of the victim has been duly established from the documents produced by the prosecution, including the Class VIII marksheet (Ex.P-6) and birth-death report card (Ex.P-11(C)), and there is no evidence to discredit the same. It is further submitted that the testimony of the victim (PW-9) is reliable and sufficient to sustain the conviction. The defence plea regarding consent cannot be accepted as the victim was below 18 years of age, and her consent is immaterial in law. The fact that she remained with the appellant for some period does not absolve him of criminal liability. Learned State Counsel lastly submitted that the prosecution has proved the charges beyond reasonable doubt and the findings recorded by the learned trial Court do not call for any interference. Hence, the appeal deserves to be dismissed.
12. We have heard the learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
13. In order to determine the age of the victim, this Court has carefully examined the evidence adduced by the prosecution. The prosecution has primarily relied upon the Class VIII marksheet



(Ex.P-6) and the birth-death report card (Ex.P-11(C)) to establish the date of birth of the victim.

- 14.** On scrutiny of the evidence, it is found that the prosecution has failed to prove these documents in accordance with law. Kotwar Vishram Das (PW-2), who made the relevant entry in the Kotwari Register, has categorically admitted during his cross-examination that the date of birth of the victim was entered in the register solely on the oral information furnished by the victim's father. He has further admitted that at the time of making such entry, no birth certificate, hospital record, medical document, or any other contemporaneous record evidencing the date of birth of the victim was produced before him. Thus, the entry in the Kotwari Register was not based on any primary or authentic record but merely on the unverified oral statement of the victim's father.
- 15.** It is a settled principle that an entry regarding the date of birth recorded on the basis of hearsay or oral information, without verification from any reliable contemporaneous document, does not by itself constitute conclusive proof of age. In the absence of any supporting documentary evidence forming the basis of such entry, the evidentiary value of the Kotwari Register remains weak and cannot be safely relied upon for determining the age of the victim beyond reasonable doubt. Similarly, although the prosecution has produced the Class VIII marksheet (Ex.P-6), the same has not been duly proved in accordance with law. The



Principal or the competent authority of the concerned school, who could have proved the school admission register, the basis on which the date of birth was recorded, and the procedure adopted at the time of admission, has not been examined. Mere production of a marksheet, without examining its author or the custodian of the relevant school records, does not establish the correctness of the date of birth mentioned therein. Furthermore, no admission register or other foundational school record has been brought on record to demonstrate the source from which the date of birth was originally entered in the school records.

- 16.** In these circumstances, neither the Class VIII marksheet (Ex.P-6) nor the birth-death report card (Ex.P-11(C)) can be treated as reliable and conclusive evidence regarding the age of the victim. The prosecution has also failed to produce any birth certificate issued by the competent statutory authority, hospital record, or any medical evidence, including ossification or radiological examination, to corroborate the alleged date of birth.
- 17.** After considering the entire facts and circumstances of the case and evidence available on record, it emerges that the prosecution could not produce the clinching and legally admissible evidence with respect to the date of birth or age of the victim so as to hold that on the date of incident she was minor and below 18 years of age. Only on the basis of birth-death report card (Ex.P-11(C)) it would not be safe to hold that the victim was minor on the date of



incident. The statement of the victim does not inspire confidence upon this Court to hold that the date of birth of the victim is 20.02.2005.

18. In the matter of **Ravinder Singh Gorkhi Vs. State of UP, (2006) 5 SCC 584**, relying upon its earlier judgment in case of **Birad Mal Singhvi Vs. Anand Purohit, 1988 supp. SCC 604**, the Hon'ble Supreme Court has held as under :

"26. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded."

19. In the matter of **Alamelu and Another Vs. State, represented by Inspector of Police, (2011) 2 SCC 385**, the Hon'ble Supreme Court has held that the transfer certificate which is issued by government school and is duly signed by the Headmaster would be admissible in evidence under Section 35 of the Evidence Act 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the prosecutrix in



the absence of any material on the basis of which the age was recorded. It was observed 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.⁴ 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 (2006) 5 SCC 584 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."

20. In the matter of **Rishipal Singh Solanki Vs. State of Uttar Pradesh & Others, (2022) 8 SCC 602**, while considering various judgments, the Hon'ble Supreme Court has observed in para 33 as under :

"33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.2.2. If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

XXXX

XXXX

XXX

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the



basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7 This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

33.11 Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”



**21. Recently, in the matter of P. Yuvaprakash Vs. State represented
by Inspector of Police, 2023 SCC Online SC 846, the Hon'ble**

Supreme Court has held in para 14 to 17 as under :

“14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. In a recent decision, in Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors. this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in pari materia) with Section 94 of the JJ Act, and held as follows:

“20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an



inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (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. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year.”

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94 (2) of the JJ Act, this court held in *Sanjeev Kumar Gupta vs. The State of Uttar Pradesh & Ors* that:

“Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could



be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

17. In *Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal*, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.”

22. Reverting to the facts of the present case and due consideration of the prosecution evidence, we find that no any clinching and legally admissible evidence have been brought by the prosecution to prove the fact that the victim was minor on the date of incident, yet the trial Court in the impugned judgment has held her minor, hence, we set aside the finding given by the trail Court that on the date of incident the victim was minor.

23. So far as the issue of forceful sexual intercourse by the appellant upon the victim is concerned, we have carefully perused the statement of the victim recorded before the trial Court. The victim (PW-9) in para 2 of her deposition has stated that the incident occurred in 2019. She met the accused, Churaman Chandravanshi, at the weekly village market. He gave her his mobile phone number. She occasionally spoke to him from her home mobile phone. During their mobile phone conversations, he would say he loved her. He would tell her that he worked and earned a living in Hyderabad, and that she should come with him



to Hyderabad. In para 3 of her deposition, she stated that on Bhai Dooj, the day of Diwali in 2019, she went with her mother and sister to attend a program celebrating the Mata festival. The accused came to their village that same day. She left the venue to urinate. The accused then approached her and said, "This is a good opportunity. Come with him." At the accused's request, he rode his motorcycle from her village to Rajnandgaon. From Rajnandgaon railway station, she boarded a train to Hyderabad with the accused and got off at Secunderabad station. The accused kept her with him in his house in Secunderabad, where he worked, and raped her. She became pregnant as a result of their physical relationship. From Secunderabad, the accused and she traveled to Nagpur and stayed there for a few days. In para 4 of her deposition, she stated that approximately seven months after the incident, when the police interrogated the parents of the accused, Churaman Chandravanshi, the accused brought her to Tumdibod police chowki. The recovery panchnama is Ex.P.-7, which bears her signature from B to B. In para 9 of her cross-examination, she denied the suggestion that she had not gone to Hyderabad with the accused. She further denied that she had gone with her friends to earn a living and was staying with them. She admitted that she had not disclosed to the police the mobile phone number through which the accused used to communicate with her. She denied the suggestion that she was making a false



statement against the accused before the Court at the instance of her family.

24. Close scrutiny of the evidence of the victim (PW-9), it is clear that the victim was a consenting party.
25. 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 reasonable doubt, which the prosecution has failed to do in the instant case.
26. Considering the entire evidence available on record and the conduct of the victim, we are of the opinion that the victim was more than 18 years of age at the time of incident, further she was a consenting party with the appellant. Therefore, in the above facts and circumstances of the case, offence under Sections 363 & 366 of the IPC and Section 6 of the POCSO Act would not be made out against the appellant.
27. For the foregoing reasons, the criminal appeal is allowed and the impugned judgment and conviction and order of sentence dated 03.01.2026 is set aside. The appellant stands acquitted from all



the charges. The appellant is in jail. He be released forthwith if not required in any other case.

28. Keeping in view of the provisions of Section 437-A CrPC (Now Section 481 of the Bhartiya Nagrik Suraksha Sanhita, 2023), the appellant is directed to furnish a personal bonds in terms of from No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25000/- with 2 reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months alongwith an undertaking that in the event of filing of special leave petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereon shall appear before the Hon'ble Supreme Court.

29. The Trial Court record alongwith the copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice