



2026:CGHC:1116-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 280 of 2022**

Dipak Kumar @ Anand Kumar Dhanuhar S/o Lae Panchram Aged About 21 Years Resident Of Village Nawagaon, Thana Nagrada, District Janjgir Champa Chhattisgarh.

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

State Of Chhattisgarh Through Police Station Nagarda, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

... Respondent(s)

For Appellant(s) : Mr. N.K. Malaviya, Advocate

For Respondent(s) : Mr. Nitansh Jaiswal, Dy. G.A.

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Arvind Kumar Verma, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****08.01.2026**

1. Heard Mr. N.K. Malaviya, learned counsel for the appellant. Also heard Mr. Nitansh Jaiswal, learned Deputy Government Advocate for the respondent / State.



2. This criminal appeal under Section 374(2) of the CrPC is directed against the impugned judgment of conviction and order of sentence dated 05.08.2021 passed by the learned Special Judge (Fast Track, Special Court) Sakti, District- Janjgir-Champa (C.G.) in Special Case No. 20/2019, by which the appellant herein has been convicted for offence under Section 342 r/w Section 34 of the IPC and sentenced to undergo R.I. for 06 months and fine of Rs.500/-, in default of payment of fine, to further undergo S.I. for 01 month and under Section 4 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for 20 years and fine of Rs.10,000/-, in default of payment of fine, to further undergo S.I. for 06 months.
3. Notice issued to PW-1 i.e. mother of the victim has been served, but none appeared on her behalf to contest the present appeal.
4. The prosecution story, in brief, is that between 7:00 PM on 02.02.2019, and 8:00 AM on 03.02.2019, the accused, Deepak Kumar Dhanuvar, lured the complainant behind a closed lime kiln in the village, forcibly raped her, and, along with another accused, Jeevan Lal Yadav, kept the complainant inside the lime kiln's bunker overnight. Following the complainant's report to the Nagarda police station, a case was registered against the accused under Sections 376, 34 of the Indian Penal Code, and Section 4 of the POCSO Act. During the investigation, a site map of the crime scene was prepared by the Patwari. The



complainant's mother's consent was obtained and she underwent a medical examination. The accused were arrested upon finding the crime was committed. The victim's slides were confiscated. The statement of the victim was recorded under Section 164 of the Code of Criminal Procedure, the statements of the witnesses were recorded on their behalf It was recorded as stated. After investigation, a charge sheet was prepared against the accused under Section 342 of the Indian Penal Code and presented before the trial Court.

5. On framing of charges against accused Deepak Kumar alias Anand Dhanuhar under Section 04 of the Protection of Children from Sexual Offences Act 2012, sub-section 2 (g) of Section 376 of the IPC and 342/34, its contents were read out and explained to him, the accused denied the charges and claimed trial. On examination of accused Deepak under Section 313 of the Code of Criminal Procedure, when his statement was taken, he declared himself innocent, the accused expressed that he would not give evidence in his defence
6. In order to establish the charge against the appellant, the prosecution examined as many as 11 witnesses and exhibited the documents (Exs.P-1 to P-32). After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in para 1 of the judgment. Hence, this appeal.



7. Learned counsel for the appellant submits that the impugned judgment, conviction and sentence dated 05.08.2021 awarded by the trial Court is bad in law, perverse, thus liable to be set aside. The F.I.R. has not been proved by the victim and her parents themselves. There are contradictions and omissions in the testimony of the victim in respect to allegations made in the F.I.R. He further submits that the learned trial Court has convicted the appellant on the basis of conjecture and surmises, while witnesses of the prosecution were neither appearing natural, nor inspiring confidence. The learned trial Court has also ignored the material contradiction, omission with case diary statements of the prosecution witnesses, therefore, convicting and punishing the appellant with a life imprisonment by the trial Court is erroneous & bad in the eye of law. Also, the independent witnesses have not supported the prosecution case the conviction based only on the basis of the depositions of mother and father of the victim, who are interested witnesses. Lastly, the trial court has not appreciated the evidence on record properly and came into erroneous conclusion while passing the judgment of conviction which is liable to be set aside.
8. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt and the victim (PW-2) has clearly deposed the conduct of the appellant in her statement and in the Court



statement and the learned trial Court after considering the material available on record has rightly convicted and sentenced the appellant, in which no interference is called for.

9. We have heard the learned counsel for the parties and perused the record with utmost circumspection.
10. The issue that arises for consideration in the present appeal is whether the testimony of the victim/prosecutrix deserves acceptance and whether the prosecution has established the case of the appellant beyond reasonable doubt.
11. It is pertinent to observe that the question whether conviction of the accused can be based on the sole testimony of the victim in cases of sexual assault/rape is no longer res integra. The Hon'ble Supreme Court has dealt with the issue in a catena of judgments and has held that the sole testimony of the prosecutrix if found reliable can be the sole ground for convicting the accused and that the creditworthy testimony of the victim in cases of such nature deserves acceptance.
12. The next issue that arises for consideration in the present appeal is whether the age of the victim on the date of commission of the offence concerned, was below 18 years of age.
13. Regarding the age of the victim, the victim (PW-2) stated in her examination-in-chief that her date of birth was 24.10.2003. This witness's statement was uncontroversial in cross-examination.



Similarly, the victim's mother (PW-1) stated that she was turning 16.

14. Regarding the victim's age, the prosecution obtained the testimony of Sampatlal Chauhan (PW-7), the Head Master. He stated that the victim's name is recorded in the Mutation Register (Ex.P.-15) of Naveen Primary School, Navagaon, and her date of birth is recorded as 24.10.2003. This mutation register was seized by the police. He also stated that he had provided a birth certificate (Ex.P.-16) regarding the victim's birth. In such a situation, there is no reason to disbelieve his statement that the plaintiff's date of birth is recorded as 24.10.2003 in the mutation register. A review of the mutation register, Ex.P.-15C, confirms this witness's statement that the victim's date of birth is 24.10.2003.
15. The victim (PW-02) stated that the incident occurred on 03.02.2019. The FIR also states that the incident occurred between 7 p.m. on 02.02.2019 and 8 a.m. on 03.02.2019. In such circumstances, the victim's age on 03.02.2019, based on her date of birth i.e. 24.10.2003, was approximately 15 years and 03 months. This indicates that the victim was under 18 years of age and even less than 16 years of age at the time of the incident.
16. Now, next question for consideration is whether the appellant committed rape with the prosecutrix / victim girl was a minor girl less than 16 years of age on the date of incident.



17. In this regard, the victim (PW-2) stated that on 03/02/2019, at 5:00 p.m., accused Deepak forcibly took her to a lime kiln and forced sexual intercourse with her. He kept her inside the kiln overnight and sent her home the next morning. She told her mother about the incident, and then went to the Nagarda police station to file a report against the accused, which was filed.
18. Thus, it is clear from the evidence of the victim (PW-2) that the accused Deepak forcibly took her to the lime kiln, although no one in the vicinity of the victim's home saw him take her there and when she cried out, no one came to her rescue. Yet, the statement of this witness is undeniable that the accused Deepak forcibly took her to the lime kiln and forcibly had sexual intercourse with her and kept her there overnight and sent her home the next morning. In such a situation, when no one came to her rescue and when the people around did not see the victim being taken away, the statement of the victim cannot be disbelieved.
19. Supporting the victim's statement, her mother (PW-1) also stated that the incident occurred at 5 p.m. That day, she had gone to work in the fields. Upon returning, she discovered that the victim was not at home. A search was conducted in the village but she was nowhere to be found. The next day, the victim returned at 8 a.m. Upon questioning, she stated that the accused, Deepak and Jeevan, had taken her to a lime kiln. Accused Deepak had



engaged in sexual intercourse with her. Upon the victim's reporting of the incident, a report was filed against the accused at the Nagarda police station.

20. Since the incident occurred with the victim and no one saw her being taken away by the accused, the victim's telling her mother about the incident cannot be ruled out. When the accused released her in the morning and she returned home, she told her mother about the incident and immediately filed a report. This corroborates the victim's statement that on the date of the incident, accused Deepak forcibly took her to a lime kiln, forcibly had sexual intercourse with her, and remained with her throughout the night.
21. Ramadhin Sahis (PW-03), an independent witness, has stated that on the night of 02.02.19 at 8.45 pm, the mother of the victim came to her house and told her that the victim was not at home since 7 pm and had gone somewhere. Then they went to the house of the victim's mother and searched for her in the house and in the village but could not find her. At 9 am, it was found that the victim had returned home. Apart from this, she has expressed no knowledge about the incident. She accepted the suggestion that the accused, Deepak, had lured the complainant to a field near a lime kiln at night and raped her. She also accepted the suggestion that, upon learning of the incident, she, along with the complainant, her mother, and the village police inspector, went to



the Nagarda police station to file a report. This witness's statement remains uncontroversial during cross-examination.

22. Similarly, Itwar Singh (PW-4) also stated that the incident occurred at night. The victim's sister informed him that the victim was not at home. He then searched for the victim in the village and surrounding areas, but could not locate her. The victim was found at 9 a.m. on the second day of the incident. When questioned, she stated that the accused had kept her with them overnight, and that she, along with her parents, had filed a report at the police station regarding the incident.
23. Kotwar Sammelal (PW-5) also stated that the victim's grandfather came to him around 8-9 a.m. and told him that Deepak, a boy from the same village, had sexually assaulted his brother's daughter, and that they needed to go to the police station. He also stated that Deepak had lured the victim to a field near a lime kiln and sexually assaulted her. At that time, the plaintiff, her mother, and the three of them went to the Nagarda police station. This witness's statement also remained unconfirmed during cross-examination. This corroborates the victim's statement that accused Deepak forcibly took her to the lime kiln, had sexual relations with her, and kept her with him in the kiln overnight.
24. Similarly, Inspector M.M. Minj (PW-9), supporting the evidence of the victim and witnesses, stated that on 3.02.2019, the victim came to the police station and filed an oral report, on which a



crime was registered against the accused under Sections 376/34 of the Indian Penal Code and Section 4 of the POCSO Act. This witness's statement also remained uncontroversial during cross-examination. This clearly shows that an FIR was registered against the accused after the victim immediately reported the incident to the police station. He also stated that on 03.02.2019, the Sub-Divisional Officer, Sakti, received a report from the victim. Letter (Ex.P.-18) was written for permission for internal examination and after obtaining consent from the victim and her mother for the examination, the complainant was sent to Community Health Centre Sakti with a female constable for physical examination. The complainant has also stated that she had given her consent to the police and the doctor for examination of her genitals.

25. Similarly, Dr. Seema Nandini Chaudhary (PW-10) stated that on 03.02.2019, when the woman constable Sakti brought the victim for examination, she found her mentally sound. During the internal examination, victim's pubic hair was fully developed, both breasts were fully developed, and no external injuries were found on her genitals. The labia minora were distinct, and the vagina was torn and healed. The hymen was present. There were no external injuries on her genitals or thighs. In her opinion, she stated that victim was accustomed to sexual intercourse. She prepared two slides of victim's vaginal discharge, cut off some pubic hair, sealed them, and advised for chemical testing. Similarly, on the



same date, when the woman constable brought a pair of panties, she examined them, marked the white stain inside the panties with blue ink, and recommended sending them for chemical testing.

26. Inspector M.M. Minj (PW-9) stated that he had seized pubic hair and vaginal slides belonging to the victim in a sealed packet and had seized underwear from the accused. The seized property was handed over to the Superintendent of Police. The report, Ex.P.-30, which is of two pages, was sent to the Chemical Science Laboratory, Bilaspur for chemical testing, and the report received from there, Ex.P.-30, which is of two pages. From the chemical test report (Ex.P.-30), submitted by the Senior Scientific Officer and the Officer-in-Charge, it is clear that semen stains and human sperm were found on the victim's panty (Exhibit-A) and the accused's underwear (Exhibit-D). Although it is written that the semen stains are not sufficient for serological testing, it is clear that semen stains and human sperm were found on the victim's panty and the accused's underwear. This confirms the victim's claim that on the date of the incident, the accused forcibly had physical relations with her.
27. From the above statements of independent witnesses and medical evidence, it becomes clear that on the date of incident, accused Deepak forcibly took the victim with him to the lime kiln and forcibly had physical relations with her and wrongfully



confined her by keeping her in the lime kiln for the whole night and sent her home the next morning.

28. The Supreme Court in the matter of **Rai Sandeep @ Deenu v. State of NCT of Delhi, 2012 (8) SCC 21** held as under:-

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of



every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

29. In the matter of **Alakh Alok Srivastava v. Union of India & Ors.**, **(2018) 17 SCC 291**, in paras 14 and 20, it is observed as under:

"14. At the very outset, it has to be stated with authority that the Pocso Act is a gender legislation. This Act has been divided into various chapters and parts therein. Chapter II of the Act titled "Sexual Offences Against Children" is segregated into five parts. Part A of the said Chapter contains two sections, namely, Section 3 and Section 4. Section 3 defines the offence of "Penetrative Sexual Assault" whereas Section 4 lays down the punishment for the said offence. Likewise, Part B of the said Chapter titled "Aggravated Penetrative Sexual Assault and Punishment therefor"



contains two sections, namely, Section 5 and Section 6. The various subsections of Section 5 copiously deal with various situations, circumstances and categories of persons where the offence of penetrative sexual assault would take the character of the offence of aggravated penetrative sexual assault. Section 5(k), in particular, while laying emphasis on the mental stability of a child stipulates that where an offender commits penetrative sexual assault on a child, by taking advantage of the child's mental or physical disability, it shall amount to an offence of aggravated penetrative sexual assault.”

“20. Speaking about the child, a three Judge Bench in *M.C. Mehta v. State of T.N.* (1996) 6 SCC 756 “1. ... “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.”

30. The Supreme Court in the matter of **Nawabuddin v. State of Uttarakhand** (CRIMINAL APPEAL NO.144 OF 2022), decided on 8.2.2022 has held as under:-

“10. Keeping in mind the aforesaid objects and to achieve what has been provided under Article 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual



assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.

Children are precious human resources of our country; they are the country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. As observed and held by this Court in the case of **State of Rajasthan v. Om Prakash, (2002) 5 SCC 745**, children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. In the case of **Nipun Saxena v. Union of India, (2019) 2 SCC 703**, it is observed by this Court that a minor who



is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.”

31. When considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version. In **State of H.P. v. Shree Kant Shekar (2004) 8 SCC 153** the Hon^{ble} Supreme Court held as follows:“

“21. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is



physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice, would suffice.”

32. On these lines, the Hon’ble Supreme Court in **Shivasharanappa and Others v. State of Karnataka, (2013) 5 SCC 705** observed as follows:

“17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable.”

33. The Supreme court in the matter of **State of UP v. Sonu Kushwaha, (2023) 7 SCC 475** has held as under :



“12. The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology “shall not be less than....”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the victim/child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court.”

34. On the basis of analysis of evidence presented by the prosecution, it is evident that date of birth of the victim is 24.10.2003 and on the date of incident i.e. 02.02.2019, it is clear



that the age of the victim was 15 years 03 months i.e. less than 16 years at the time of the incident. It is proved that the victim is a girl child and that the accused, knowing that the victim was a girl child below 16 years of age at the time of the incident, committed the crime of rape, forcible penetration, sexual assault and rape on the girl/victim below 16 years of age. Thus, the said crime of rape, penetrative sexual assault on a minor girl below 16 years of age by the accused falls under the category of aggravated penetrative sexual assault.

35. Lastly, considering the statement of the victim (PW-2) who has specifically stated the act of the present appellant, statement of the mother of the victim (PW-1) and father of the victim (PW-1), statement of medical officer Medical witness Dr. Seema Nandini Choudhary (PW-10) and Dr. P. Singh (PW-11) and FSL report (Ex.P.30) and the material available on record and the principle of law laid down by the Supreme Court in the above-stated judgments, we are of the considered opinion that the learned trial Court has rightly convicted the appellant for offences under under Sections 342/34 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012. We do not find any illegality and irregularity in the findings recorded by the trial Court.
36. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant. The conviction and sentence as awarded by the trial court to the appellant is hereby



upheld. The present criminal appeal lacks merit and is accordingly
dismissed.

37. It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.
38. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the Appellant is undergoing the jail term, 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.

Sd/-

(Arvind Kumar Verma)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Manpreet