



2026:CGHC:3741



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 281 of 2022

Reserved on 8-1-2026

Pronouncement on 22-1-2026

1 - Mohammad Ikram S/o Late Mohammad Ismail Aged About 23 Years (At Present 25 Years) , Permanent R/o Vinoba Nagar Pathak Gali, Police Station Tarbahar, District Bilaspur Chhattisgarh.

... Appellant

versus

1 - The State Of Chhattisgarh Through Police Station Tarbahar District Bilaspur Chhattisgarh.

... Respondent

For appellant : Mr. U.N.S. Deo, Adv.

For Respondent : Mr. Prateek Tiwari, Panel Lawyer.

(Hon'ble Mr. Naresh Kumar Chandravanshi, J)

CAV Judgment

1 This criminal appeal has been preferred by appellant/accused under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity 'Cr.P.C.') challenging the judgment of conviction and order of sentence dated 21-1-2022 passed by learned Upper Sessions Judge, 2nd Fast Track Special Court, Bilaspur (CG) (henceforth referred to as 'Special Court') in Special Criminal Case (POCSO) No. 34/2020, whereby appellant / accused has been convicted and sentenced as under :-



Conviction u/S.	Jail Sentence	Fine sentence	Default stipulation
354 of IPC	RI for 3 years	Rs. 1,000/-	Additional Imprisonment for 6 months.
7/8 of POCSO Act	RI for 3 years,	Rs. 1,000/-	Additional Imprisonment for 6 months.

All the jail sentences have been directed to run concurrently.

- 2 Facts of the case, in nutshell, are that, on 5-2-2020, brother of minor victim, aged about 13 years, made a written complaint (Ex. P-4) to Police Station Tarbahar, Distt. Bilaspur alleging therein that, his minor sister (victim aged about 13 years) was introduced with the appellant by her friend Rajni Yadav (P.W. 7), therefore, appellant used to take minor victim for roaming in his auto rickshaw. On the date of making complaint, minor victim told her family members that, on account of roaming, the appellant took her to Hanuman Mandir Garden, Bilaspur and molested her repeatedly and despite her protest, he did not stop and used to sexually harass her by touching her chest and kissing her. Based on aforesaid written complaint, the FIR (Ex. P-5) was registered against the appellant in PS Tarbahar, Distt. Bilaspur. Statement of prosecutrix under Section 164 of the Cr.P.C. was recorded. Progress report (Article A) of Class 4th of the victim was seized from her brother (P.W. 6) vide seizure memo Ex. P-1. Spot map (Ex. P-3) was got prepared by Patwari Nikhil Kumar Jha (P.W. 2). Police also prepared spot map (Ex. P-6). Statement of witnesses were recorded under Section 161 of the Cr.P.C. Dakhil Kharij register (Article A repeat) pertaining to the victim was seized from Sister Helan (P.W. 8). Accused



was arrested.

- 3 After usual investigation, a charge sheet for the offence under Section 354 of the IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (henceforth referred to as 'POCSO Act') was filed against the appellant.
- 4 Charges under Section 354 of the IPC and Section 7/8 of the POCSO Act were framed against appellant, who abjured his guilt and entered into trial.
- 5 In order to prove the guilt of appellant/accused, the prosecution exhibited 15 documents from Ex. P-1 to P-13 as well as two articles and examined following witnesses :-

PW 1	Father of victim	PW 7	Victim's friend
PW 2	Nikhil Kumar Jha	PW 8	Sister Helan
PW 3	Dujram Patel	PW9	Victim's uncle (Chacha)
P.W. 4	Mother of victim	PW10	Sunita Nag, Banjare,
P.W. 5	Victim	PW11	Suresh Swarnkar
P.W. 6	Victim's brother	PW 12	Vimla Manhar

Statement of the accused under Section 313 of the Cr.P.C. was recorded, in which, he denied all the incriminating circumstances appearing against him, pleaded innocence and his false implication. He also exhibited 5 documents and examined Shahida Parveen (DW 1)



and Naveen Manikpuri (DW 2) in his defence.

- 6 Learned Special Court after appreciating the evidence adduced by the prosecution, convicted and sentenced the appellant as mentioned in opening paragraph of this judgment. Hence, this appeal.
- 7 Learned counsel for the appellant/accused would submit that, the victim has been held to be minor aged about 12 years, 8 months and 2 days by the Special Court, but no cogent evidence has been adduced by the prosecution except Dakhil Kharij register and mark sheet of class 4th of victim, however it has not been proved that on the basis of which document, the date of birth has been recorded in the school record as 28-5-2007. Therefore, he prays that the finding recorded by learned Special Court is perverse to the evidence available on record and law. He further submits that, there are material contradictions and omissions in the deposition of the victim as well as her mother and her brother from their police statement. Victim's friend has not supported the case of the prosecution. He next submits that, the appellant is an auto rickshaw driver, he was engaged to drop and pick up the victim and her friend to their school. Since Rs. 2,500/- was remaining to be paid as outstanding dues of fare of auto rickshaw of the appellant, which was demanded by him, therefore, the appellant has been falsely implicated in the instant case. Hence, he prays that, the appeal may be allowed and the appellant may be acquitted of the said charges.
- 8 *Per contra*, learned counsel appearing for the State, while supporting the impugned judgment, opposed the argument advanced by counsel



for the appellant/accused and submitted that no interference is called for in the impugned judgment.

- 9 I have heard the arguments advanced by learned counsel for the parties and perused the material available on record of the Special Court.
- 10 As per the case of the prosecution, date of birth of minor victim was 28-5-2007 and date of incident was 30-1-2020, as such, on the date of incident, age of the minor victim was 12 years, 8 months and 2 days.
- 11 Victim (P.W. 5) has stated in her deposition that her age was 12 years at the time of incident. Father of the Victim (P.W. 1) has stated in his deposition that at the time of recording of evidence (11-1-2021), age of victim was 13 years, which was recorded after about 1 year of the incident. Mother of the victim (P.W. 4) has deposed that at the time of incident, the victim was aged about 13 years. Brother of the victim (P.W. 6) has deposed that at the time of incident, victim was aged about 13 years. In the statement of the victim recorded under Section 164 of the Cr.P.C., on 10-2-2020, the concerned Judicial Magistrate First Class has noted her apparent age as 13 years. The Special Court, also noted her apparent age while recording her statement on 15-3-2021 as 13 years. Date of birth of victim has also been mentioned as 28-5-2007 in Dakhil Kharij register (Article A), which has been proved by Sister Helan (PW-8) who is Principal of St. Joseph School, Hindi Medium, PS Tarbahar, Distt. Bilaspur.
- 12 Though, it is settled proposition of law that date of birth mentioned in



Dakhil kharij register is not a conclusive proof in this regard and in the instant case, Sister Helan (P.W. 8) has not stated that on the basis of which document, the date of birth of the victim has been recorded in the Dakhil Kharij register and the entry was not made by her, but on the basis of statements of Victim (PW-5), father of Victim (P.W. 1), mother of the victim (P.W. 4), brother of the victim (P.W. 6), and further the age noted by the Judicial Magistrate First Class, Bilaspur while recording the statement of the victim under Section 164 of the Cr.P.C. and the age noted by learned Special Judge, while recording her deposition, which also gets support from the Dakhil Kharij register to the extent that the victim was minor and nothing has been brought in cross-examination of above witnesses to discard aforesaid facts regarding age, therefore, having considered the tender age i.e. about 13 years of the victim and the evidence available on record, the finding of learned Special Court that the victim was minor on the date of incident is affirmed.

- 13 So far as offence committed by the appellant under Section 354 of the IPC and Section 7/8 of the POCSO Act is concerned, the victim (PW-5) stated that accused lived in her neighbourhood, her friend introduced her to the accused. She has further deposed in her court statement that, on the date of the incident, she was on her way to the store when the accused met her and said her to take a ride. She then went with him. The accused took her to Hanuman Mandir, Kranti Nagar Garden. He stopped the auto-rickshaw and came in the back seat, kissed her face and lips, put his hand on her chest, and began kissing her chest.



He grabbed her waist and began putting his hand inside her pant. She felt uneasy, so she ran away and returned home. She did not tell anyone about the incident that day because she was scared. She has further deposed that, accused used to demand money and threaten her. She secretly gave him money, unbeknownst to her parents. Her parents did not find some money in her cupboard and found the same in her bag, they asked her about it, then they reported it. The accused had committed obscene acts with her with wrong intentions. In cross-examination, this witness denied that she, her friend and other children from their neighborhood used to go to school in the accused's auto-rickshaw. She has admitted that earlier also, the accused took her to a ride. She further stated that the garden is inside the Mandir, since she was scared therefore, she did not call anyone. She has also denied that, her father has not given fare of 4 – 5 months of auto-rickshaw to the accused, which he demanded. In her defence, the prosecution has not been able to elicit anything to discard her statement that the accused kissed her lips, touched her chest, caught her waist and put her hand inside her pant.

- 14 PW-9 is the victim's uncle. He has stated that on the date of incident when he returned home from work at 1:00 pm to take lunch, then found his niece (the victim) sitting in the house, frightened. He questioned her, but she did not explain anything. Three or four days later, he asked her again what had happened, then, she explained that on 30-1-2020, at 7:30 pm, the accused had taken her in his auto-rickshaw to Hanuman Mandir Garden, Kranti Nagar and had committed indecent



acts with her. He has further stated that, the victim also stated that the accused had kissed her on her mouth, placed his hands on her chest and waist. She then ran home in fear.

- 15 Complainant (P.W. 6), P.W. 1 and P.W. 4 are brother, father and mother of the victim respectively, to whom, the victim has told about the incident. While supporting the deposition of the victim, they have categorically stated that the victim has informed them that the accused had taken her in his auto rickshaw to Hanuman Mandir Garden, kissed on her lips and chest and put his hands around her waist, thereafter, P.W. 6, brother of complainant, lodged report. In cross-examination, these witnesses have denied the negative suggestion taken by the defence counsel that the victim used to go to school in auto-rickshaw of the accused and 4 – 5 month fare of auto-rickshaw was remained to be paid to the accused and since he demanded the same, therefore, they have falsely implicated him. Though their statements are based on the information given by the victim to them, but only on this count, being family members of the victim, their statements cannot be brushed aside.
- 16 PW-7 is friend of the victim. Though she has not supported the act of molestation of victim by the accused but she has admitted in cross-examination that, six months' prior to March 2019, the accused took her and the victim in his auto-rickshaw to Vyapar Vihar. She has clearly denied that she and the victim used to go to school in the accused's auto.



- 17 Other witnesses examined by the prosecution are formal witnesses and not related to the substantive facts.
- 18 As stated above, the victim (PW-5) stated that the accused took her to Hanuman Mandir, Kranti Nagar Garden, kissed her face and lips, placed his hand on her chest, held her waist, and placed his hand inside her pant. This statement has been corroborated by the victim's brother (PW-6), the victim's father (PW-1) and the victim's mother (PW-4). The cross-examination of the aforementioned witnesses revealed no contradictions or inconsistencies that would render their statements unreliable. Thus, the statements of the aforementioned witnesses reveals that the accused used criminal force on the victim by touching her indecently with the intent to outrage her modesty, and that he sexually assaulted her by touching her private parts.
- 19 Learned counsel for the appellant argued that the accused used to take the victim to school and that the victim's father did not pay him four months' auto fare. Upon demand, the victim's father filed a false complaint against the accused. Regarding the above grounds of defense, Shahida Parveen (D.W. 1) and Naveen Manikpuri (DW-2) were examined, who stated that the accused took children of school in his auto rickshaw and among those children, the victim also used to go to school in the accused's auto. The accused owed four months' auto fare, which he had been demanding from the victim's father, therefore, he had been falsely implicated. During cross-examination, the defence witnesses accepted the prosecution's suggestion that this was the first time they had disclosed the above facts in court, and had not disclosed



them to anyone before. No reason for not disclosing these facts previously to anyone makes their statements unnatural and unreliable.

- 20 From perusal of the aforesaid evidence, it clearly reveals that statement of the victim that, the appellant has molested her, has been supported by her uncle and her parents. In cross-examination, defence taken by the accused that since fare of auto rickshaw was not paid by the parents of victim despite demand made by the appellant, therefore, he has been falsely implicated, is not found reliable as the same has not only been denied by the victim, her parents and brother, but her friend (P.W. 7) has also denied the same. Even otherwise, it is highly improbable that, to avoid payment of fare of 4-5 months only of auto rickshaw, the victim or her parents would fabricate such allegation of sexual assault against the appellant, which is harmful to the victim's own reputation and future. Therefore, aforesaid defence is found to be completely unreliable.
- 21 In view of above discussion, I do not find any illegality or infirmity in the finding recorded by the Special Court holding the appellant guilty under Section 354 of the IPC and Section 7/8 of the POCSO Act.
- 22 Accordingly, the criminal appeal is dismissed. Conviction and sentence awarded by the Special Court under Section 354 of the IPC and Section 7/8 of the POCSO Act is affirmed.
- 23 The appellant is reported to be on bail. His bail bonds are canceled. He is directed to surrender immediately before the concerned Special Court for undergoing the remaining jail sentence.



- 24 Let a copy of this judgment and original record be transmitted to the Special Court concerned forthwith for necessary information and compliance.

Sd/-

(Naresh Kumar Chandravanshi)

JUDGE

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