



2026:CGHC:18912-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 684 of 2024

Rupesh Kumar Yadav S/o Akshya Yadav Aged About 19 Years R/o Village-
Dhurvakari, Police Station- Pachpedi, District- Bilaspur, Chhattisgarh

... Appellant

versus

State Of Chhattisgarh Through Station House Officer, Police Station-
Mulmula, District- Janjgir-Champa, Chhattisgarh

... Respondent

(Cause title taken from Case Information System)

For Appellant	:	Mr. U.K.S. Chandel, Advocate
For Respondent/State	:	Mr. Sourabh Sahu, Panel Lawyer

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

24/04/2026

1. Heard Mr. U.K.S. Chandel, learned counsel for the appellant and Mr. Sourabh Sahu, learned Panel Lawyer for the Respondent/State.
2. This appeal arises out of the judgment of conviction and sentence dated 05.09.2023, passed by the learned 1st Additional Sessions Judge (POCSO Act), Janjgir, District Janjgir-Champa (C.G.), in



Special Session Case No. 17/2022, whereby the appellant has been convicted and sentenced as under:

Conviction	Sentence
Under Section 363 of IPC	R.I. for 03 years and fine of Rs. 10,000/- in default of fine additional S.I. for 3 months.
Under Section 366 of IPC	R.I. for 05 years and fine of Rs. 20,000/- in default of fine additional S.I. for 6 months.
Under Section 376 (3) of IPC	R.I. for 20 years and fine of Rs. 2,50,000/- in default of fine additional S.I. for 2 year.
Under Section 6 of Protection of Children from Sexual Offences Act, 2012	No separate sentence is awarded.
All the sentences shall run concurrently.	

3. The brief facts of the case are that on 03.02.2022, a written complaint (Ex.P-6) was lodged by the father of the victim (PW-02) at Police Station Mulmula stating therein that on the intervening night of 30–31.01.2022, his minor daughter went missing from the house and despite search, her whereabouts could not be traced, and later it was suspected that the appellant had taken her away. On the basis of the said complaint, First Information Report (Ex.P-7) was registered for the offence under Sections 363, 366 and 376 of the IPC and Sections 4 and 6 of the POCSO Act against the appellant, and the police started investigation.
4. During the investigation, the victim was recovered on 05.02.2022 from the possession of the appellant at Village Douna (U.P.) and recovery panchnama (Ex.P-11) was prepared in presence of



witnesses. Thereafter, the victim was sent for her medical examination, where PW-13/Dr. Katyayani Singh medically examined her and gave report (Ex.P-13). While examining the victim, the doctor did not notice any external or internal injury on her private parts and opined that she was habitual to sexual intercourse. Vaginal slides and undergarments were collected, sealed and handed over to the police for chemical examination. The appellant was also medically examined by PW-14/Dr. Saurabh Yadav, who opined that the appellant was capable of performing sexual intercourse. The seized articles were sent to the Forensic Science Laboratory, Bilaspur, and as per FSL report (Ex.P-23), semen and human spermatozoa were found on the vaginal slides and undergarments.

5. With respect to the age and date of birth of the victim, the police seized the school admission register from the concerned Primary School vide seizure memo (Ex.P-1), wherein the date of birth of the victim is recorded. After retaining the relevant extract, the school record was relied upon during investigation. The spot map (Ex.P-8) was prepared by the investigating officer and the Nazari Naksha (Ex.P-9) was prepared by the Patwari.
6. The statements of the witnesses under Section 161 Cr.P.C. and the statement of the victim under Section 164 Cr.P.C. were recorded during the course of investigation, and after completion of usual investigation, charge-sheet was filed before the learned trial Court for the offences under Sections 363, 34, 366 and 376 of the IPC and Sections 4 and 6 of the POCSO Act. The case being triable by the Court of Sessions, it was committed accordingly and thereafter



transferred to the Court of learned 1st Additional Sessions Judge (POCSO Act), Janjgir, District Janjgir-Champa for trial.

7. The learned trial Court has framed charges against the appellant for the offences under Sections 363, 366 and 376(3) of the IPC and Section 6 of the POCSO Act. The appellant denied the charges and claimed trial.
8. In order to prove the charges against the appellant, the prosecution has examined as many as 14 witnesses. Statement of the appellant under Section 313 Cr.P.C. was also recorded, in which he denied the incriminating circumstances appearing against him, pleaded innocence and stated that he has been falsely implicated in the case.
9. After appreciating the evidence available on record, the learned trial Court has convicted and sentenced the appellant as mentioned in the preceding paragraphs of this judgment. Hence, this appeal.
10. Learned counsel for the appellant has argued that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. It is contended that there is no legally admissible evidence to establish that the victim was minor on the date of the incident, as the school admission register has not been duly proved in accordance with law and the person who made the entry has not been examined. It is further argued that no ossification test or any other reliable document has been produced to conclusively determine the age of the victim. Learned counsel further submits that the evidence on record clearly demonstrates that the victim was in a consensual



relationship with the appellant and had voluntarily accompanied him, which is also evident from her statement under Section 164 Cr.P.C., wherein she admitted that she went with the appellant of her own free will and had physical relations with him with consent. It is also argued that there are material contradictions in her statements, and the medical evidence does not support the allegation of forcible sexual intercourse. Therefore, it is submitted that the essential ingredients of the offences under Sections 363, 366 and 376(3) of the IPC are not made out and the appellant is entitled to be acquitted.

11. On the other hand, the learned counsel for the State opposes and contended that the victim was minor and approximately 14 years of age at the time of incident, which is proved by the prosecution through the relevant school records and documentation. Such evidence is an admissible piece of evidence to determine the age of the victim and to establish her status as a minor under the law. Therefore, there is no illegality or infirmity in the findings of the learned trial court. The victim was enticed and kept away from the lawful guardianship of her parents by the accused, who conveyed her to various locations including Allahabad and committed sexual intercourse with her. Consequently, the impugned judgment of conviction and sentence needs no interference.
12. We have heard the learned counsel for the parties and perused the records and evidence adduced.
13. PW-1 is the Headmaster of the school, who appeared to prove the school register (exhibit P-2). He stated in his evidence that the police



had seized the school register with respect to the age and date of birth of the victim vide seizure memo (exhibit P-3) and after retaining its attested copy (exhibit P-2C), the original school register was returned back to the school. The original school register is brought today with him. As per the school register, the date of birth of the victim is 10.11.2007. He also brought the Tatimma Form (exhibit P-4).

In cross-examination, he stated that he could not remember as to whether the parents of the victim had produced any document with respect to her birth certificate or not. He also admitted that if the parents of the victim would have produced the birth certificate or any document with respect to the date of birth of the victim, the school record would maintain one copy of the said certificate with the school register. He admitted that in the school register, there is no such document annexed.

From the evidence of this witness, it transpires that though he is working as Headmaster of the school since 2008, but there is no such document annexed with the school register on the basis of which the entries have been made in it with respect to the age or date of birth of the victim.

14. In order to consider the age of the victim, we have examined the evidence available on record produced by the prosecution. The prosecution has relied upon the school admission register (Ex.P-2C), which has been seized during investigation and contains the date of birth of the victim. The investigating officer has stated that the said document was obtained from the concerned school and taken into



possession vide seizure memo. However, the prosecution has not examined the person who had made the relevant entries in the school register or any competent authority to prove the basis on which the date of birth was recorded. From the evidence of PW-02 (father of the victim), it is clear that he was unaware of the exact date of birth of the victim and also could not state as to on what basis the date of birth was entered in the school records. There is no material on record to show that the date of birth mentioned in the school register was based on any authentic document such as a birth certificate issued by a competent authority. In absence of such foundational evidence and proper proof of the entry, the evidentiary value of the school record becomes doubtful. Thus, the prosecution has failed to conclusively establish the age of the victim on the date of the incident beyond reasonable doubt.

15. The admissibility and evidentiary value of the school register has been considered by the Hon'ble Supreme Court in the matter of **Alamelu and Another Vs. State, represented by Inspector of Police**, 2011(2) SCC 385. In Para 40, 42, 43, 44 and 48 of its judgment, the Hon'ble Supreme Court has 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. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.

42. Considering the manner in which the facts recorded in a document may be proved, this Court in the case of *Birad Mal Singhvi Vs. Anand Purohit*, observed as follows:-

"The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined....Merely because the documents Exs. 8, 9, 10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as



mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents 1988 (Supp) SCC 604 have no probative value and the dates of birth as mentioned therein could not be accepted."

43. The same proposition of law is reiterated by this Court in the case of *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal*, where this Court observed as follows:-

"The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue".

44. In our opinion, the aforesaid burden of proof has not been discharged by the prosecution. The father says nothing about the transfer certificate in his evidence. The Headmaster has not been examined at all. Therefore, the entry in the transfer certificate can not be relied upon to definitely fix the age of the girl.

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."



16. In case 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.

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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 hyper-technical 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 33 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."

17. Recently, in case of **P. Yuvaprakash Vs. State represented by Inspector of Police, 2023 (SCC Online) SC 846**, Hon'ble Supreme



Court has held in para 14 to 17 as under:

"14, Section 94 (2)(iii) of the 33 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: (1) 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)(1) 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."

18. Reverting to the facts of the present case, it is quite apparent that the prosecution has relied upon the school admission register (Ex.P-2C) to determine the age of the victim; however, neither the author of the said document nor the person who made the relevant entries has been examined before the Court. The basis on which the date of birth was recorded in the said register has also not been established by the prosecution through any cogent or reliable evidence. In absence of proof regarding the source of such entry and the manner in which it came to be recorded, the said document cannot be treated as conclusive proof of age. Under these circumstances, and in light of the settled legal position, determination of the age of the victim solely on the basis of such unproved school record would not be proper, as the same has not been proved in accordance with law.
19. PW-04, the victim, has stated in her evidence that her date of birth is 11.09.2006; however, it is evident from the record that the said statement is not supported by any reliable documentary evidence. Though she has disclosed her date of birth in her deposition, there is material inconsistency between the date of birth stated by her and the date of birth mentioned in the school records. Further, there is no independent proof to substantiate the said date of birth as correct. Thus, her statement regarding age remains uncorroborated by any cogent evidence and cannot be accepted as conclusive for determination of her age on the date of incident.



20. PW-02, who is the father of the victim, has stated in his evidence that the victim was studying in Class IX at the time of the incident; however, he has categorically admitted that he is unable to disclose her exact date of birth. In his cross-examination, he has further admitted that he does not know on what basis the date of birth of the victim was recorded in the school register. Thus, his statement regarding the age of the victim is not based on any definite knowledge but appears to be on assumption. In absence of any reliable supporting document or personal knowledge, the evidence of this witness is not sufficient to conclusively determine that the victim was minor on the date of the incident.
21. PW-05, who is the brother of the victim, has stated in his evidence that the victim is his younger sister and has referred to her as a minor at the time of the incident; however, he has not disclosed her exact date of birth. In his cross-examination, he has not stated any specific basis or document on which he could assert her age. There is no material on record to show that he had any personal knowledge regarding the exact date of birth of the victim or that he relied upon any authentic record. Thus, his statement regarding the age of the victim appears to be based on assumption and is not supported by any documentary evidence. Therefore, the testimony of this witness is also not sufficient to conclusively determine that the victim was minor on the date of the incident.
22. From the aforesaid evidence, it is clear that the prosecution has failed to conclusively establish that the victim was minor on the date



of the incident. None of the material witnesses have reliably proved her exact date of birth, and the statements made by them regarding her age are either vague or based on assumption. There are material inconsistencies in the version of the victim herself as well as in the documentary record relating to her age. In absence of any cogent, reliable and legally admissible evidence to prove her date of birth, it cannot be safely held that the victim was minor on the date of the incident. Despite such deficiencies in the evidence, the learned trial Court has treated her as minor, which, in the considered opinion of this Court, is not sustainable in law.

23. So far as the offence of kidnapping and rape is concerned, we have again examined the evidence of the victim (PW-04). She has stated in her evidence that she was acquainted with the appellant as their families were related and that they used to talk to each other on mobile phone. She has further deposed that on the date of incident, the appellant called her during night and, on his asking, she came out of her house, whereafter she went along with him on a motorcycle towards Mulmula and thereafter to other places including Allahabad. She has stated that during her stay with the appellant, he committed sexual intercourse with her. However, it is also evident from her cross-examination as well as her statement recorded under Section 164 Cr.P.C. that she had voluntarily accompanied the appellant and was in regular contact with him prior to the incident. She has also admitted that her family members had scolded her on account of such conversations, after which she left the house. Thus, her own version reflects prior acquaintance, voluntary departure and



continued stay with the appellant for several days.

24. In her cross-examination, the victim has admitted that she was in regular telephonic contact with the appellant prior to the incident and that her family members had scolded her on that account. She has further admitted that due to such scolding, she left her house and went with the appellant. She has also admitted that she had stated before the police that she had gone with the appellant on her own will. However, she denied certain suggestions regarding voluntariness and attempted to state that the appellant had taken her along. She further admitted that in her statement under Section 164 Cr.P.C., she had disclosed that she went with the appellant voluntarily and that physical relations were established with her consent, but she could not explain the reason for such statement if the same was not correct. She also could not satisfactorily explain the omissions and improvements made in her court statement as compared to her earlier statements. Thus, her cross-examination reveals material contradictions and inconsistencies regarding the manner in which she accompanied the appellant and the nature of the relationship between them.
25. From the evidence of the victim, it appears that when she left her house and accompanied the appellant, she did not raise any alarm or make any attempt to resist. Even during the period she remained with the appellant at different places including his house and thereafter at Allahabad for several days, she did not make any complaint to any person, including the family members of the appellant or any person of the locality. There is no material on record to show that she made



any effort to escape or to inform anyone about any alleged coercion. Further, the medical examination does not indicate any sign of struggle or use of force on her person. In her earlier statement under Section 164 Cr.P.C., she has admitted that she had gone with the appellant of her own free will and had established physical relations with him with consent, and she has not been able to satisfactorily explain such admission. Her admitted prior acquaintance and continuous telephonic contact with the appellant also probalilise the defence version that she had voluntarily accompanied him. The overall conduct of the victim, therefore, creates a serious doubt regarding the allegation of force or coercion and rather indicates that she had willingly gone with the appellant and stayed with him, thereby rendering the prosecution version of kidnapping and forcible sexual intercourse doubtful.

26. In the case of **S. Varadarajan Vs. State of Madras**, AIR 1965 SC 942, the Hon'ble Supreme Court has held that:

"9. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full



import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

10. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

27. From the conduct of the victim and in view of the aforesaid judgment of **S. Vardarajan** (supra), it cannot be said that the appellant has



kidnapped the victim and procured the minor girl, as the victim is not found to be minor and no offence of either kidnapping or procuring a minor girl is made out against the appellant.

28. Recently, the Hon'ble Supreme Court in the matter of **Tilku @ Tilak Singh v. State of Uttarakhand**, Criminal Appeal No. 183 of 2014, decided on 06.02.2025, has considered the aforesaid judgment of **S. Varadarajan** (supra) and hold that when the victim herself voluntarily gone along with the appellant, traveled to various places and also resided with him without raising any objection, no offence of kidnapping is made out.
29. PW-02, the father and PW-03, the mother of the victim have stated in their evidence that on the night of the incident when the victim was not found in the house, they searched for her and thereafter lodged a report. They have further stated that after a few days, the victim was recovered from the company of the appellant and, thereafter, she disclosed the incident to them. However, their statements are not based on personal knowledge of the alleged occurrence and are only hearsay in nature. From the evidence of the victim herself, it is not established that she was forcibly taken away; rather, it appears that she had voluntarily accompanied the appellant and remained with him for several days. Thus, the evidence on record indicates that the victim had left her house of her own accord and the element of kidnapping or forcible taking is not proved beyond reasonable doubt.
30. PW-13, Dr. Katyayani Singh, who medically examined the victim, has not found any external or internal injuries on her body and has opined



that the victim was habitual to sexual intercourse. In such circumstances, when the evidence on record indicates that the victim had voluntarily accompanied the appellant and was in a consensual relationship with him, the mere presence of semen and spermatozoa on the vaginal slides and undergarments, as reported in the FSL report, would not by itself be of much significance. The said medical and forensic findings, in the facts and circumstances of the case, do not conclusively establish forcible sexual intercourse and are consistent with the defence version of consensual physical relations between the parties.

31. 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 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 leveled against the appellant beyond any reasonable doubt, which the prosecution has failed to do in the instant case.
32. Considering the aforesaid facts and circumstances of the case as well as the law laid down by the Hon'ble Supreme Court, we are of



the opinion that the prosecution has failed to prove the alleged offence against the appellant beyond reasonable doubt and the appellant is entitled for benefit of doubt.

33. In the result, the appeal filed by the appellant is **allowed**, the impugned judgment of conviction and sentence is hereby **set aside**, the appellant is **acquitted** from all the offences.
34. The appellant is reported to be in custody since 07.02.2022. He be released forthwith, if not required in any other case.
35. Keeping in view the provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the appellant- **Rupesh Kumar Yadav** is directed to furnish a personal bond for a sum of Rs. 25,000/- with one surety in the like amount before the Court concerned, which shall be effective for a period of six months along with 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 thereof, shall appear before the Hon'ble Supreme Court.
36. The trial court record along with a 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