



2026:CGHC:797

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 530 of 2022

1 - Pradeep Uike S/o Rajkumar Uike Aged About 19 Years R/o Nagtarai Bazar Chowk Ward No. 6, Police Station Dongargarh, District Rajnandgaon Chhattisgarh.

... Appellant

versus

State Of Chhattisgarh Through Station House Officer, Police Station, Dongargarh, District Rajnandgaon Chhattisgarh.

... Respondent

For appellant	: Mr. Vidyabhushan Soni, Adv.
For Respondent	: Mr. Prateek Tiwari, Panel Lawyer.

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

Judgment on Board

6/1/2026

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 4-3-2022 passed by learned Upper Sessions Judge, Dongargarh, Distt. Rajnandgaon (CG) (henceforth referred to as ‘the Trial Court’) in Special Criminal Case No. 02/2020, whereby appellant / accused has been convicted and sentenced as under :-

Conviction u/S.	Sentence
354-D of IPC	-
8 of POCSO Act	RI for 3 years and fine of Rs. 1,000/-, in default

	of payment of fine, additional RI for 2 months.
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It is pertinent to mention here that appellant has also been convicted for the offence under Section 354-D of the IPC, but since punishment under Section 8 of the POCSO Act, is greater in degree, therefore, in view of provisions of Section 42 of the Protection of Children from Sexual offences Act, 2012 (henceforth referred to as 'POCSO Act'), the appellant has been sentenced only for the offence under Section 8 of the POCSO Act.

- 2 Facts of the case, in nutshell, are that, on 23-12-2019 the minor victim (PW 1) lodged an oral report stating that accused Pradeep Mandavi frequently stalks her in the village. A year ago, while she was bathing in the village pond with her friend Amisha, accused told her, "I love you, tell me, do you love me?" She rejected his proposal. Since that day, he has been taunting her and making obscene remarks whenever she goes out with her friends. She did not tell about it at home out of fear. On 21.12.2019 at 17.30 pm, the victim along with her friends Khushboo Gaikwad and Yuvrani Khunte had gone to the village market to eat Gup Chup and was eating Gup Chup with her friends, the accused came to her and said that she does not love him, he started pulling her towards himself by holding her hair tightly and said that if she doesn't love him then he would kill her. He would not leave her anywhere. When the accused was stopped from doing obscene acts by her friends then he abused and threatened them. Based on the oral report of the victim against the accused, Police registered an FIR (Ex. P-1) for offence under Sections 294, 506, 354-A (1) of the IPC and section 12 of the

POCSO Act. Statement of the victim (Ex. D-2) under Section 164 of the Cr.P.C. was recorded by the Judicial Magistrate First Class, Dongargarh. During the investigation, the Admission register was seized from the Sarashwati Shishu/ Vidya Mandir, Nagtarai, Distt. Rajnandgaon to determine the age of the victim. Site maps were prepared by the police and Patwari. The statements of the witnesses were recorded. The accused was arrested.

- 3 After usual investigation, charge sheet against the appellant was filed for the offence 294, 506 and 354(A)(1)(D) of the IPC and Section 8 of the POCSO Act.
- 4 Charges under Sections 294, 506-II, 354-D of the IPC and Section 8 of the POCSO Act were framed against appellant, who abjurd his guilt and entered into trial.
- 5 In order to prove the guilt of appellant/accused, the prosecution exhibited 13 documents and examined following witnesses :-

PW 1	Victim	PW 8	Santram
PW 2	Yuvrani Khutel	PW9	Anjordas
PW 3	Dukh Haran Ratre	PW10	Teacher of school of victim
P.W. 4	Asharam Patel	PW11	A. P. Sheela
P.W. 5	Ameesha Bandhe	PW 12	Yogita Yadav
P.W. 6	Hemant Kumar	PW 13	Indiara Vaishnav,
PW 7	Khushboo Gaikwad	PW 14	Deepmala Gajbhiye

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 4 documents, but not examined any witness in his defence.

- 6 Learned Trial Court after appreciating the evidence adduced by the prosecution, acquitted the appellant of the offence under Sections 294 and 506-II of the IPC but convicted & sentenced him 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 13 years, 8 months and 11 days by the Trial Court, but no cogent evidence has been adduced by the prosecution except Dakhil Kharij register. It has not been proved that on the basis of which document, the date of birth of the victim has been recorded in the school record as 10-4-2006. Therefore, he prays that the finding recorded by learned Trial Court that the victim was minor on the date of incident, is perverse to the evidence available on record and law. He further submits that, the prosecution has also failed to prove that the appellant repeatedly stalked the victim despite her disinterest, which is necessary ingredient of Section 354-D of the IPC. It has also failed to prove that the appellant is guilty of offence under Section 8 of the POCSO Act Therefore, the appellant may be acquitted of all the charges by allowing this appeal. In alternate, he submits that, at the most the appellant may be held guilty of the offence under Section 354-A(1) (iv) of the IPC and sentenced to the period already undergone by him as he has already remained in jail for 15 days during

trial.

- 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 trial Court.
- 10 As per the case of the prosecution, date of birth of minor victim was 10-4-2006 and date of incident was 21-12-2019, as such, on the date of incident, age of the minor victim was 13 years, 8 months and 11 days.
- 11 Victim (P.W. 1) has stated in her deposition her date of birth as 10-4-2005. Her father (P.W. 5) has stated in his deposition that her date of birth is 10-4-2006. Asharam Patel, Principal (P.W. 4) of Sarashwati Shishu Mandir, Nagtarai, has stated that as per Dakhil Kharij register, date of birth of victim is 10-4-2006. P.W. 10 Teacher and Yogita Yadav (P.W. 12), the then Teacher, of victim's school have not stated about the date of birth of the victim, they have proved seizure memo Ex. P-8 by which Dakhil Kharij register (Article A) was seized.
- 12 In the statement of the victim recorded under Section 164 of the Cr.P.C. (Ex. D-2), on 26-12-2019, the concerned Judicial Magistrate First Class has noted her apparent age as 14 years. The Trial Court, also noted her apparent age while recording her statement on 6-2-2020 as 14 years. Date of birth of victim has also been mentioned as 10-4-2006 in Dakhil Kharij register (Article A).

- 13 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, Asharam Patel (P.W. 4), Principal of the Sarashwati Shishu Mandir 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 said entry was not made by him, but on the basis of statements of Victim (PW-1), father of Victim (P.W. 6), and further the age noted by the Judicial Magistrate First Class, Dongargarh while recording the statement of the victim under Section 164 of the Cr.P.C. and the age noted by learned Trial Court, 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 of victim, therefore, having considered the tender age of the victim i.e. about 14 years, and the evidence available on record, the finding recorded by the Trial Court that the victim was minor on the date of incident is affirmed.
- 14 So far as offence committed by the appellant under Section 354-D of the IPC and Section 8 of the POCSO Act is concerned, the victim (P.W. 1) has stated that one year prior to the date of incident, in the noon, when she along with her friend Amisha were returning from their village Haransinghi after taking bath, the accused met them on the way and said, 'मैं तुझसे प्यार करता हूँ, तू मुझसे प्यार करती है की नहीं बता'. She replied that she does not love her. Since then, the accused used to tease her whenever, she went anywhere on the road and used to abuse her

obscenely. She has further stated that due to fear she did not tell her family about the incident. On 21-12-2019, while returning from a morning bath at the pond with her friends Khushboo Gaikwad and Yuvrani Khunte, accused met her on the way and said, "Send the middle person, send the side person." She has further deposed that, on the same day i.e. 21-12-2019, in the evening, she went to eat 'gup chup' with her friends Khushboo Gaikwad and Yuvrani Khunte. After eating the 'gup chup', the accused came and he caught hold of her hair and pulled her towards him and said that, if she would not be of him, then he would not leave her. She shouted and called vegetable vendors and Kotwar, then village Kotwar Dukhharan (P.W. 3) and Santram (P.W. 8) came. Accused abused the Kotwar. She has admitted in para 8 of cross-examination that till 1 year, she did not tell about the incident to her parents due to fear. She has also replied to a question, that one year prior, when she had gone for jogging, the accused threatened to kill her by showing a knife.

- 15 To attract the provisions of Section 354-D of the IPC, repeated stalking of a victim by the accused is a necessary ingredient. Section 354-D of the IPC is reproduced hereinbelow for ready reference :-

“Section 354D. Stalking. - (1) Any man who—

- 1.** follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- 2.** monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

1. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
2. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
3. in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.”

16 From perusal of above provision, it is vivid that to prove its case against the accused for the offence under Section 354-D, IPC, prosecution is required to prove repeated following, monitoring or contacting a woman despite her clear disinterest.

17 In the instant case, the victim has stated about 3 incidents (1) incident of one year ago, (2) incident of morning of 21-12-2019 and (3) the incident of evening of 21-12-20219. About 1st incident, the victim has stated that she along with her friend Amisha (P.W. 5) was returning after taking bath, the accused met them and said her that he loves her. Thereafter, the accused used to molest her on way, but Ameesha Bandhe (P.W. 5) has not stated anything about this incident, rather she has stated that 2 months prior, the accused told the victim 'I love You' and abused on her refusal. Thus the victim' statement about this incident has not been supported by her friend Ameesha Bandhe (P.W.

5). So far as 2nd incident i.e. incident of morning of 21-12-2019 is concerned, the victim has stated that at that time, she was along with her friend Khushboo Gaikwad (P.W. 7) and Yuvrani Khutel (P.W. 2), but Khushbook Gaikwad (P.W. 7) has not supported the evidence of victim about this incident and has not stated anything about it. Though P.W. 2 Yuvrani Khutel has supported the evidence of victim, in view of evidence of P.W. 7, her evidence regarding incident of morning of 21-12-2019 becomes doubtful. In the FIR (Ex. P-1) and in the statement of victim recorded under Section 164 of the Cr.P.C. also, there is no mention about the 1st incident of 21-12-2019. In view of above evidence, the prosecution has failed to prove that any such incident occurred in the evening of 21-12-2019. Thus, no repeated stalking of victim by the accused, as required under Section 354-D of the IPC has been proved, as no specific incident of stalking has been stated by the victim, except the incident of evening of 21-12-2019. Thus, the finding recorded by learned Trial Court holding guilty of the appellant under Section 354-D is not sustainable, in absence of evidence of repeated stalking by the accused, rather, the act committed by the appellant attracts the provisions of Section 354A(1)(iv) of the IPC.

18 Further, the allegation against the appellant is that in the evening of 21-12-2019, he caught hold of hair of the victim and pulled her towards him. The victim (P.W. 1) has stated that at the time of incident, she along with her friend Khushboo Gaikwad(P.W. 7) and Yuvrani Khutel (P.W. 2) went to eat Gup Chup, the accused came and pulled her towards him by catching hold of her hair and abused her. On being called by her, when Dukhharan (P.W. 3), Santram (P.W. 8), her friends

came, he also abused them. This fact has been supported by Yuvrani Khutel (P.W. 2), Khushboo Gaikwad (P.W. 7), Dhkhharan (P.W. 3) and Santram (P.W. 8). Hemant Kumar Chandne (P.W. 6) who is father of victim, has stated that his cousin Anjor Das informed him that accused was molesting the victim. He further stated that, vegetable vendor Santram told him that accused was abusing his daughter. In cross-examination, he has stated that since his father and elder brother were not at home, therefore, he reported the matter on 23-12-2019. Anjor Das (P.W. 9) is hearsay witness witness and has that vegetable vendor and Kotwar told him that accused was molesting the victim. Dukhharan Ratre, Kotwar (P.W. 3) has stated that Santram called him and told that accused pulled hair of the victim.

- 19 The accused has been convicted under Section 8 of the POCSO Act. Here Section 7 and 8 of the POCSO Act are relevant, which reads thus

“7. Sexual assault.-

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

8. Punishment for sexual assault .-

Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.”

- 20 If we peruse the evidence of the victim, in the light of above provision, then it is quite vivid that allegation against the appellant is that he

caught hold of the hair of victim and pulled her towards him and said that if she would not be of him, then he would not leave him, but there is no evidence on record to hold that, aforesaid act was committed by the appellant with any sexual intent, rather from aforesaid version of the appellant, he only communicated his attachment with the victim. As such, offence under Section 7 punishable under Section 8 of the POCSO Act is not found to be attracted in the instant case. Therefore, finding of the Trial Court holding guilty the accused under Section 8 of the POCSO Act is not sustainable. However, as has been discussed in preceding paragraphs, offence committed by the appellant falls under Section 354A(1)(iv) of the IPC.

- 21 In view of above discussion, conviction and sentence of the appellant for offence under Section 8 of the POCSO Act is set aside. His conviction under Section 354-D of the IPC is also set aside. Instead thereof, he is convicted for the offence under Section 354A(1)(iv) of the IPC.
- 22 So far as sentence part is concerned, the appellant is a young boy of 19 years and no criminal antecedent has been proved against him by the prosecution, he has remained in jail since 24-12-2019 to 7-1-2020 total 15 days. Therefore, looking to the age of the appellant and the nature of offence committed by him, sending him jail again would not serve any fruitful purpose. Rather, ends of justice would be served if he is sentenced for the period already undergone by him, therefore, he is sentenced to the period already undergone by him as mentioned above, for the offence under Section 354A(1)(iv) of the IPC.
- 23 In view of above, the appeal is **allowed in part** to the extent indicated

herein-above.

- 24 The appellant is reported to be on bail. He needs not surrender. The bail bonds furnished by him shall remain in operation for a further period of 6 months from today in view of the provisions contained under Section 481 of the Bhartiya Nagrik Suraksha Sanhita, 2023.
- 25 Record of the concerned Trial Court along with a copy of this judgment be sent back forthwith for compliance and necessary action, if any.

Sd/-
(Naresh Kumar Chandravanshi)
JUDGE

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