



2026:CGHC:18937-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 976 of 2024

Deepak Dewangan S/o Bhagwat Dewangan Aged About 31 Years R/o
Rikando Basti Atal Aawas, Chingrajpara Police Station Sarkanda,
District : Bilaspur, Chhattisgarh

...Appellant

versus

State Of Chhattisgarh Through Police Station, Sarkanda, District :
Bilaspur, Chhattisgarh

... Respondent

For Appellant	:	Mr.Rajesh Roshan Singh, Advocate
For Respondent	:	Mr.Saumya Rai, Deputy Government Advocate
For Objector	:	None present

Hon'ble Shri Justice Ramesh Sinha, Chief Justice

Hon'ble Shri Justice Ravindra Kumar Agrawal, Judge

Per Ramesh Sinha, CJ

24/04/2026

1. Mr. Amit Kumar Sharma, learned counsel appearing for the objector in the present case, has not appeared despite repeated calls.
2. Though the matter is listed for hearing on I.A.No.02/2024 application for suspension of sentence and grant of bail, but

considering the fact that the appellant is in jail since 3.4.2022, this Court proceeds to hear the appeal finally.

3. The criminal appeal arises out of the judgment of conviction and order of sentence dated 12.01.2024 passed by the Additional Sessions Judge/First F.T.S.C, Bilaspur in Special Sessions Case (POCSO Act) No.62/2022, whereby the appellant has been convicted and sentenced in the following manner :

Sl. No.	Conviction	Sentence
1.	Under Section 363 of the IPC	RI for 3 years and fine of Rs.100/-, in default of payment of fine to further undergo imprisonment for 10 days.
2.	Under Section 366 of the IPC	RI for 5 years and fine of Rs.200/-, in default of payment of fine to further undergo imprisonment for 20 days.
3.	Under Section 376(3) of the IPC	RI for 20 years and fine of Rs.500/-, in default of payment of fine to further undergo imprisonment for 50 days.
4.	Under Section 5(l) / 6 of Protection of Children from Sexual Offences Act, 2012	RI for 20 years and fine of Rs.500/-, in default of payment of fine to further undergo imprisonment for 50 days.

4. The prosecution story, in brief, is that on the night of 16.01.2022 the complainant and her family members had dinner and went to sleep. At approximately 12 A.M., the complainant woke up to go to the bathroom and saw that her daughter/victim was not at home. When the victim was not found after searching everywhere in the

house, in the neighbourhood and among relatives and nearby, the complainant/mother of the victim lodged the FIR in Crime No.66/2022 for offence under Section 363 of the IPC at Police Station Sarkanda, District Bilaspur vide Ex.P-1 on the basis of missing report vide Ex.P-37. Spot map was prepared by the investigating officer vide Ex.P-2. Recovery panchnama was prepared vide Ex.P-3. Statement of the victim was recorded under Section 161 CrPC vide Ex.P-4. Consent for medical examination was obtained vide Ex.P-5. Statement of the victim under Section 164 CrPC was recorded by the Judicial Magistrate First Class, Bilaspur vide Ex.P-7 and P-7A. MLC of the victim was conducted vide Ex.P-11 in which the doctor has found no injury. Patwari also prepared the spot map vide Ex.P-14. The appellant was arrested on 02.04.2022 vide arrest memo Ex.P-16. The appellant was also examined by the doctor vide Ex.P-18 in which the appellant was found capable to commit intercourse. Underwear and vaginal slides of the victim were seized vide Ex.P-19. Certified copy of dakhil kharij register was seized vide Ex.P-27C. Entry form of the victim was seized vide Ex.P-30C. Underwear of the appellant was seized vide Ex.P-36. Seized articles were sent to FSL for chemical examination and as per FSL report (Ex.P-42), semen stains and human sperm were found on underwear Article A seized from the victim and underwear Article C seized from the appellant. After completion of investigation, the charge-sheet was filed before the jurisdictional criminal Court.

5. The trial Court has framed charges against the appellant under Sections 363, 366, 376(3), 376(2)(n) of the IPC and Section 5(l)/6 of POCSO Act. The appellant abjured his guilt and pleaded innocence.
6. In order to establish the charge against the appellant, the prosecution examined 18 witnesses. The statement of the appellant under Section 313 of the CrPC was also recorded in which he denied the material appearing against him and stated that he is innocent and he has been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in para 3 of the judgment. Hence, this appeal.
7. Learned counsel for the appellant argued that the prosecution has failed to prove the case against the appellant beyond reasonable doubts. There is no legally admissible evidence with regard to the age of the victim that on the date of incident she was minor and less than 18 years of age. In absence of examination of author of the dakhil-kharij register, the same cannot be taken into consideration for determination of age of the victim. Dakhil-kharij register is a weak type of evidence. No any Kotwari register or ossification report are produced by the prosecution to determine the actual age of the victim that on the date of incident she was below 18 years of age. It is further argued by the learned counsel for the appellant that the learned trial Court has failed to

appreciate that the victim (PW-2) lived with the appellant without any protest for the period of more than one month and looking to her conduct, it is clearly evident that she has willing and consenting party, therefore, the impugned conviction of the appellant being unsustainable in law, deserves to be quashed. He also submits that if the entire case of the prosecution is taken as it is, then also the alleged offences are not made out against the appellant and he is entitled for acquittal.

8. On the other hand, learned counsel for the State opposes the submissions made by learned counsel for the appellant and submits that the victim was minor and below 18 years of age at the time of incident, which is proved by the School dakhil-kharij register Ex.P-27(c) which contains the date of birth of the victim as 6.6.2006. The dakhil-kharij register is admissible piece of evidence to determine the age of the victim. Therefore, there is no illegality or infirmity in the findings of the learned trial Court. The victim was abducted by the appellant and kept away from the lawful guardianship. The appellant kept her in illegal confinement for a considerable period and forcefully committed sexual intercourse with her. As such, the impugned judgment needs no interference.
9. We have heard the learned counsel for the parties and perused the record of the trial Court with utmost circumspection.

10. In order to consider the age of the victim, we have examined the evidence available on record produced by the prosecution. The prosecution relied upon the School dakhil-kharij register Ex.P-17(c) which is sought to be proved by PW-9 Retired Headmistress Smt.Ratna Tiwari. Smt.Ratna Tiwari (PW-9) has stated in para 2 of her deposition that on 28.02.22, in Crime No. 66/22 of Police Station Sarkanda under Sections 363, 366, 376(2) IPC and Sections 4 and 6 of the POCSO Act, the original dakhil kharij register demand letter Ex.P. 25 was sent, on which her signature is as recipient as part A. On 21.03.22, when the original dakhil kharij register related to the victim was produced by her, it was seized in front of witnesses and seizure memo Ex.P.-26 was prepared, on which her signature is on part A. In para 3 of her deposition, she stated that in the dakhil kharij register, number 843, the victim's name, parents' names, caste, address, and the victim's date of birth (06.06.2006) are written in words and figures. The date of admission is 23.05.18, in the sixth grade. In para 5 of her cross-examination, she admitted that she has not entered the entry regarding the victim in the Dakhil Kharij register. She denied she cannot tell on the basis of which document the entry regarding the victim has been made. She voluntarily said that it has been entered on the basis of the admission application which she has brought today. In para 6 of her cross-examination, she admitted that she cannot disclose what documents the victim's parents provided regarding her birth. She admitted that Ex.P-30

does not mention the victim's birth documents. She admitted that she cannot explain the basis on which the victim's parents recorded her date of birth at the primary school. She denied that the police did not seize anything from her.

11. At the time of admission of the victim in the school, the birth certificate or Kotwari Panji have not been produced by her father and on the oral information given by father of the victim the entry was made in the School dakhil kharij register. No other evidence of birth certificate or Kotwari register or ossification report are produced by the prosecution to prove the actual age of the victim.

12. After considering the entire facts and circumstances of the case and evidence available on record, it emerges that the prosecution could not produce the clinching and legally admissible evidence with respect to the date of birth or age of the victim so as to hold that on the date of incident she was minor and below 18 years of age. Only on the basis of school dakhil-kharij register it would not be safe to hold that the victim was minor on the date of incident. The statement of the victim, as also the statement of Smt. Ratna Tiwari (PW-9) are contradictory to each other and does not inspire confidence upon this Court to hold that the date of birth of the victim is 06.06.2006.

13. In the matter of **Ravinder Singh Gorkhi Vs. State of UP, (2006) 5 SCC 584**, relying upon its earlier judgment in case of **Birad Mal**

Singhvi Vs. Anand Purohit, 1988 supp. SCC 604, the Hon'ble Supreme Court has held as under :

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

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

"40. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it

would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded.

48. We may further notice that even with reference to Section 35 of the Indian Evidence Act, a public document has to be tested by applying the same standard in civil as well as criminal proceedings. In this context, it would be appropriate to notice the observations made by this Court in the case of *Ravinder Singh Gorkhi Vs. State of U.P.*⁴ held as follows:-

"The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a (2006) 5 SCC 584 party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted."

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

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

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

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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 hypertechnical approach should not be adopted when evidence is adduced

on behalf of the accused in support of the plea that he was a juvenile.

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

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

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

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

16. Recently, in the matter of P. Yuvaprakash Vs. State represented by Inspector of Police, 2023 SCC Online SC 846, the Hon’ble Supreme Court has held in para 14 to 17 as under :

“14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test”

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

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

“20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by

considering the age on lower side within the margin of one year.”

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

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

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

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

18. So far as the issue of forceful sexual intercourse by the appellant upon the victim is concerned, we have carefully perused the statement of the victim recorded under Section 164 CrPC (Ex.P-7). In her 164 CrPC statement (Ex.P-7), the victim has stated that she is studying in Class 10. She has known Deepak Dewangan for the past two years. He used to visit his friend in their neighborhood. They met during that time. They used to talk and like each other. Deepak used to tell her that they would get married, and she started believing him. Deepak used to come to visit her and they would meet outside. On the night of 16.01.2022 at 12 o'clock, he came to her house and lured her, promising to marry her and take her to Shahdol, Madhya Pradesh. She went with him. He took her on a train from Bilaspur Railway Station to Shahdol, Madhya Pradesh. In Shahdol, he took her to Birsinghpur Pali, and they rented a house in Birsinghpur Pali village. They lived like husband and wife. During this time Deepak had physical relations with her and they stayed there for about 1 month, during this time he continued to have physical relations with her. Then

they had a fight, she told the accused that she want to get married, then he told her that she is not of marriageable age yet. Then he refused to marry her and said that come, he will drop her at her home. After which, on 24.02.2022, he took her with him to Bilaspur station and left her there and ran away. Then at the station, she called her mother from someone else's phone and at the railway station her mother came to pick me up, and she told her about the incident.

19. In her 164 CrPC statement, she has not stated that the appellant allured or threatened her or used any force while travelling along with him and while making physical relationship with her against her will or consent.

20. In para 2 of her evidence, the victim (PW-2) has stated that they used to live in Sarkanda police station area earlier. Next to their house was the house of the accused's friend Akash Gandharva. She has known him for two years because of his frequent visits to his house. Due to their frequent visits to his house, she used to talk to the accused and after that, due to their frequent conversations, they fell in love with each other. Her family was not aware of all these things. Later, the accused called her on her mobile phone and asked her to marry him. The accused's mobile number is 6264244536. She do not have a phone at present, earlier she used to have phones with her. In para 3 of her deposition, she stated that on 16.01.22, at around 11 P.M., the

accused called her and told her he was under the shed and that she should come. She went downstairs without informing her family. She then accompanied the accused in his car to his home at Bahtarai Chowk and then took an auto-rickshaw with him to Bilaspur Railway Station and from there, they went to Birasingpurpali and lived in a rented house. They stayed there for about a month. They lived there as husband and wife and had physical relations. They were not married because she was under the legal age. She told the accused about this, and he told her to take care of everything. In para 4 of her deposition, she deposed that the accused and she had a fight and he had said that he would drop her at Bilaspur and they came to Bilaspur by train. After reaching Bilaspur, she called her mother from the accused's phone and told her that she was at the railway station and she would come to pick her up, then her mother and father came to pick her up. Before her mother and father could arrive, the accused left her there and went away. Her mother and father brought her home and took her to Sarkanda police station. There the police prepared the recovery panchnama Ex.P-3 after doing the paperwork.

- 21.** In para 9 of cross-examination, the victim (PW-2) admitted that there were other people on the train while traveling to Shahdol. She admitted that she did not complain to anyone on the train about the accused kidnapping her. In para 11 of her cross-examination, she admitted that after the accused had sex with her

for the first time, she did not inform the landlord or anyone around her. She denied that she did not go to Birsinghpurpali with the accused, nor that he had sex with her. In para 12 of her cross-examination, she admitted that the accused / appellant often left the house when she was alone and even then, she did not try to escape or tell anyone.

22. The law is well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the victim. However, there is an important caveat which is that the testimony of the victim must inspire confidence. Even though the testimony of the victim is not required to be corroborated, if her statement is not believable, then the accused cannot be convicted. The prosecution has to bring home the charges levelled against the appellant beyond reasonable doubt, which the prosecution has failed to do in the instant case.

23. Considering the entire evidence available on record and the conduct of the victim, we are of the opinion that the victim was more than 18 years of age at the time of incident, further she was a consenting party with the appellant. Therefore, in the above facts and circumstances of the case, offence under Sections 363, 366 & 376(3) of the IPC and Section 5(I)/6 of the POCSO Act would not be made out against the appellant.

24. For the foregoing reasons, the criminal appeal is **allowed** and the impugned judgment of conviction and order of sentence dated

12.01.2024 is **set aside**. The appellant stands acquitted from all the charges. The appellant is in jail. He be released forthwith, if not required in any other case.

25. In view of above, I.A.No.02/2024, application for suspension of sentence and grant of bail stands disposed of.

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

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

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice