



2026:CGHC:18914-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1055 of 2024**

Ajay Sahu S/o Shri Panchram @ Bablu Sahu Aged About 24 Years R/o
Village - Pisid, Thana - Kasdol, Distt - Balodabazar-Bhatapara, Chhattisgarh.

... Appellant**versus**

State Of Chhattisgarh Through The District Magistrate Balodbazar, Distt -
Balodbazar-Bhatapara, Chhattisgarh.

... Respondent

(Cause title taken from Case Information System)

For Appellant : Mr. Sunil Sahu, Advocate

For Respondent/State : Mr. Nitansh Kumar Jaiswal, Deputy G.A.

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

Judgement on Board**Per Ramesh Sinha, Chief Justice****24/04/2026**

1. This Criminal Appeal under Section 374(2) of the Code of Criminal Procedure has been preferred by the appellant – Ajay Sahu (in jail), assailing the judgment of conviction and order of sentence dated 16.05.2024 passed by the learned Special Judge, Fast Track Special Court (POCSO), Balodabazar (C.G.) in Special Criminal Case



(POCSO) No. 86/2023, whereby the appellant has been convicted under Sections 363 and 366 of the Indian Penal Code and Section 4(2) of the Protection of Children from Sexual Offences Act, 2012, and sentenced as under:

Conviction	Sentence
Under Section 363 of the Indian Penal Code	Rigorous imprisonment for 7 years and fine of Rs. 5,000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of six months.
Under Section 366 of the Indian Penal Code	Rigorous imprisonment for 10 years and fine of Rs. 7,000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of six months.
Under Section 4(2) of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act')	Life Imprisonment (meaning imprisonment for the remainder of natural life) and fine of Rs. 10,000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of one year.
All the sentences have been directed to run concurrently.	

2. By the impugned judgment, the appellant has also been held guilty of the offence punishable under Section 376(3) of the Indian Penal Code; however, no separate sentence has been awarded for the said offence in view of Section 42 of the Protection of Children from Sexual Offences Act, 2012, as the punishment prescribed under the POCSO Act is equally stringent, and has accordingly been applied by the learned trial Court.
3. As per the case of the prosecution, on 31.10.2023, the complainant, who is the father of the victim, submitted a written report (Ex. D-01) at



Police Station Kasdol, District Balodabazar (C.G.), alleging that on 09.07.2023 at about 9:00 PM, while the victim was sitting outside her house, the present appellant approached her and enticed her to accompany him to a dhaba on the pretext of offering her a chicken meal. The victim thereafter accompanied the appellant on his motorcycle to a dhaba near village Chhanchi, where the appellant allegedly took her inside a room and committed forcible sexual intercourse against her will.

4. On the basis of the said written report, a First Information Report bearing Crime No. 561/2023 was registered on 01.11.2023 at Police Station Kasdol under Section 376 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 against the present appellant.
5. The victim was sent for her medical examination to C.H.C. Kasdol, where she was being medically examined by doctor, who gave her medical report (exhibit P-12). According to the MLC report of the victim, no sign of struggle or injuries on her private part were noticed and the doctor opined that after examination of victim, no definite opinion can be given about recent sexual intercourse. Spot Map (exhibit P-2) was prepared by the police.
6. With respect to the age and date of birth of the victim, the police has seized school register vide seizure memo (exhibit P-6) and after retaining its attested true copy (exhibit P-8C and P-9C), the same was returned back to the school and as per the school register, the date of birth of the victim is 20.04.2008. The vaginal slides of the victim were



sent for its chemical examination to FSL Raipur. However, there is no FSL report submitted by the prosecution.

7. Statement of the victim under Section 164 of CRPC and the statement of the witnesses under Section 161 of CRPC have been recorded and after completion of usual investigation, charge sheet has been filed before the learned trial Court for the offence under Sections 376, 363, 366 of the IPC and Sections 4 and 6 of POCSO Act.
8. In order to bring home the charges, the prosecution examined four witnesses, namely, the father of the victim (PW-1), the victim (PW-2), the Headmaster (PW-3), and the Investigating Officer (PW-4). The defence examined one witness, namely Head Constable Dinesh Kumar Kurre (DW-1), to prove contradictions arising from the earlier accident case. The statement of the appellant under Section 313 Cr.P.C. was also recorded, wherein he denied the allegations and pleaded innocence.
9. Upon appreciation of the oral and documentary evidence, the learned trial Court held that the prosecution had proved its case beyond reasonable doubt, primarily relying upon the consistent testimony of the victim and the school records regarding her age. Consequently, the appellant was convicted and sentenced as mentioned hereinabove. Hence, this appeal.
10. Learned counsel for the appellant contended that the impugned judgment of conviction is unsustainable in law and on facts, as the prosecution has failed to establish the essential ingredients of the



alleged offences beyond reasonable doubt. It was submitted that the conduct of the victim, as reflected from the earlier proceedings in Crime No. 398/2023, indicates that she had initially narrated a version of a simple road accident while taking a lift to fetch a school dress, and no allegation of sexual assault was made at that stage, thereby rendering the subsequent allegations doubtful and an afterthought.

11. It was further argued that there is an inordinate delay of more than three months in lodging the FIR, which has not been satisfactorily explained. The victim, in her cross-examination, admitted that she did not inform her maternal uncle, who was present in the house at the relevant time, before leaving with the appellant. This conduct, according to learned counsel, renders the allegation of inducement or enticement highly improbable.
12. Learned counsel for the appellant further contended that the medical evidence in the present case is inconclusive, as the prosecution failed to examine the Medical Officer who conducted the examination of the victim. It was submitted that in the absence of the doctor's testimony and any definite medical opinion regarding recent sexual intercourse, the prosecution case rests solely on the uncorroborated testimony of the victim, which ought to be scrutinized with greater caution. It was also argued that the prosecution failed to produce any forensic evidence, as the FSL report was not brought on record, and no DNA profiling or scientific material was adduced to connect the appellant with the alleged offence.



13. It was also urged that the age of the victim has not been proved in accordance with law. Learned counsel submitted that the prosecution relied upon school records, the entries of which were not proved by the author thereof, as the Headmaster (PW-3) admitted that the relevant entries were not in his handwriting. It was further contended that no birth certificate or ossification test was produced, and the testimony of the father regarding the age of the victim suffers from inconsistencies, thereby creating doubt regarding the minority of the victim. It was also argued that the present case has been falsely implicated due to a dispute relating to payment of medical expenses arising out of the accident, wherein a demand of Rs. 5,00,000/- was allegedly made by the victim's family. Accordingly, it was prayed that the appeal be allowed and the appellant be acquitted.
14. Per contra, learned counsel appearing for the State supported the impugned judgment and submitted that the prosecution has proved the guilt of the appellant beyond reasonable doubt. It was argued that the testimony of the prosecutrix (PW-2) is cogent, consistent, and trustworthy on material particulars, particularly with regard to the fact that the appellant took her to a dhaba at night on the pretext of offering food and committed forcible sexual intercourse.
15. It was further submitted that the delay in lodging the FIR stands sufficiently explained by the fact that immediately after the incident, the victim met with a road accident while returning with the appellant, resulting in serious injuries, including fracture and bodily trauma, due



to which she remained under medical treatment for a considerable period.

16. Learned counsel for the State further contended that the age of the victim stood duly proved on the basis of school records, namely the admission register and affidavit register, which record her date of birth as 20.04.2008. It was argued that the said documentary evidence, coupled with the testimony of the father and the victim herself, establishes that she was below 16 years of age at the time of the incident, and once minority is established, the question of consent becomes legally irrelevant.
17. It was also submitted that the presence of the appellant with the victim at about 5:00 AM, leading to the accident, lends assurance to the prosecution case that the victim was in the company of the appellant throughout the night. The defence version that the victim was proceeding early in the morning to fetch a school dress was argued to be inherently improbable.
18. Lastly, it was contended that non-examination of the doctor or absence of the FSL report is not fatal to the prosecution case, as the conviction can be based on the sole testimony of the prosecutrix, if it is found reliable and inspires confidence. It was further argued that the statutory presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012 operates against the appellant, and he has failed to rebut the same. Therefore, it was prayed that the appeal be dismissed.



19. We have heard learned counsel for the parties and considered their rival submissions made herein above and also gone through the records of the trial court with utmost circumspection.
20. The first and foremost question arises for consideration would be the age of the victim as to whether on the date of incident she was minor or not ?
21. The prosecution is required to establish that the victim was below 18 years of age on the date of the incident so as to attract the provisions of the Protection of Children from Sexual Offences Act, 2012. In the present case, the trial Court has recorded the date of birth of the victim as 20.04.2008 and concluded that she was approximately 15 years and 2 months old on the date of the incident i.e. 09.07.2023. However, a careful scrutiny of the record indicates that such finding is primarily based on school records, namely the admission register and affidavit register of the Government Primary School, Chharched, without any material indicating the foundational basis on which the said date of birth was recorded at the time of admission.
22. PW-3 is the headmaster of the school. He stated in his evidence that the police has seized the school register vide seizure memo (exhibit P-6) and after retaining the attested to copy of the school register (exhibit P-8C and P-9C), the original register was returned back to him, which he brought today. As per the entries made in the school register, the date of birth of the victim is 20.04.2008. In cross examination, he admitted that the entries made in the school register and affidavit register are not in his own handwriting and the victim has not been



admitted in the school in his presence. He could not tell as to on what basis the date of birth of the victim was recorded in the school register. He also did not tell as to on what basis the relevant entries have been made in the school record. From the evidence of this witness, admittedly he is not the author of the school register and further, the basis on which the entries have been made in the school register has also not been proved by this witness.

23. 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."

24. 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."

25. 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."

26. Reverting to the facts of the present case, when we examined the evidence of other witnesses, from the victim/PW-2 has stated in her evidence that her date of birth is 20.04.2008. Her father/PW-1 has stated that the victim is presently aged about 16 years. However, he could not tell about her date of birth. In cross examination, he admitted that he has not produced the birth certificate of the victim at the time of her admission in the school. He also did not tell as to in which year the victim has got admitted in the school. He has married since 20 years back and after about 2-3 years of marriage the victim born. Except this evidence, there is no evidence with respect to the date of birth or age of the victim produced by the prosecution. In the facts of the present case, the self-served statement could not be sufficient to establish that the victim was minor and less than 18 years of age. The school register (exhibit P-8C and P-9C) has not been proved in accordance with law and thus, we are of the opinion that the finding recorded by the learned trial Court that the victim was minor and less than 18 years of age on the date of incident appears to be perverse and we set aside the said finding.
27. With respect to the offence of kidnapping and rape upon the victim, we again examined the evidence of the victim.
28. PW-2 is the victim who stated in her evidence that on 09.07.2023



when she was sitting outside of her house after having her dinner, the appellant came there and asked to accompany him up to the dhaba to have chicken, then she accompanied him up to dhaba at village Chhanchi. He asked to remain sit in a room and he left away for bringing chicken. After sometime when he came back, he bolted the door from inside and committed sexual intercourse with her. He kept her there for whole of the night and at about 4-5 a.m. when they were coming to village Chharched, on the way, they met with an accident by a truck. She was being taken to hospital and after discharge, she informed the accident to her father and then lodged the report. In cross-examination, she admitted that at the time when she accompanied the appellant, her maternal uncle was there in her house, but she has not disclosed to him that she is going with the appellant. In the dhaba, there were 2-3 persons working there. The appellant has not tied her mouth and hands. There are certain omissions and contradictions with her 161 CRPC statement brought out by the defence in her cross-examination. She also shown her ignorance as to whether any claim case has been filed at Bilaspur court or not.

29. From the evidence of this witness, it reveals that on the date of incident, she herself accompanied the appellant up to dhaba for having chicken. She stayed in the night there at dhaba without raising any alarm or without making any complaint to the persons who were present in the dhaba. Unfortunately, in the morning when they were returning on the way, they met with an accident. The accident was reported to the police and investigation was done. In the said



proceeding, with respect to the accident, the statement of the victim was recorded by the police. However, at that time she has not disclosed about any incident of rape by the appellant. It is only when she discharged from the hospital, she informed the incident to her parents and then the FIR with respect to the incident allegedly committed on 09.07.2023, was lodged on 31.10.2023 i.e. after about 3 months. The entire conduct of the victim goes to show that she was the consenting party in accompanying the appellant and making physical relation with her at dhaba. When the victim was not found to be minor, she herself had gone with the appellant to dhaba where she made physical relation without raising any objection and without any protest. It cannot be said that the appellant committed rape upon her. Rather, it can be said that it was a consensual physical relation made between them.

30. 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".

31. 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.

32. Recently in the matter of **Tilaku alias Tilak Singh Vs. the State of Uttarakhand**, the judgment passed in the matter of **S. Varadarajan** (supra) has been relied upon by the Hon'ble Supreme Court in CRA No. 183 of 2014 decided on 06-02-2025.
33. From all these evidences, it cannot be said that the victim is having a status of the witness of that sterling quality on which the appellant can be convicted. The sterling witness has been considered by the Hon'ble Supreme Court in the matter of **Santosh Prasad @ Santosh Kumar v. State of Bihar**, 2020 (3) SCC 443, which is reproduced herein below:

“5.4.2 In the case of Rai Sandeep alias Deepu (supra), this Court had an occasion to consider who can be said to be a “sterling witness”. In paragraph 22, it is observed and held as under:

“22 In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the



truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the



guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

34. 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 levelled against the appellant beyond any reasonable doubt, which the prosecution has failed to do in the instant case.
35. From the overall evidence produced by the prosecution, it can safely be said that the evidence produced by the prosecution are not sufficient to hold conviction of the appellant for the alleged offence, as there are sufficient material available in their evidence to disbelieve



them under the facts and circumstances of the case. When the evidence of the victim is not found credible and there is reasonable suspicion on her evidence, then the conviction cannot be made solely on the basis of the statement of the victim. Therefore, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt against the appellant to convict him for the offence under the IPC or under the POCSO Act.

36. In the result, the appeal filed by the appellant is **allowed**. The impugned judgment of conviction and order of sentence dated 16.05.2024 passed by the learned Special Judge (POCSO Act), Fast Track Special Court, Balodabazar (C.G.) is hereby **set aside**. The appellant, Ajay Sahu, is **acquitted** of the charges under Sections 363, 366 and 376(3) of the Indian Penal Code and Section 4(2) of the Protection of Children from Sexual Offences Act, 2012.
37. The appellant is in custody since 01.11.2023. He shall be released forthwith, if not required in any other case.
38. Keeping in view the provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the appellant- **Ajay Sahu** 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.



39. Registry is directed to transmit the trial Court record along with a copy of this order to the Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

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