



2026:CGHC:9810-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 938 of 2021

1 - Balakram Baghel S/o Sukulram Baghel Aged About 19 Years, Caste Mahara, R/o Vill. Munga Kotawarpara, Thana Darbha, Distt. Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

... Appellant

versus

1 - State of Chhattisgarh Through Aarkshi Kendra - Parpa / AJAK Jagdalpur, Distt. Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

... Respondent

(Cause-title taken from Case Information System)

For Appellant : Mr. Vikas A. Shrivatava, Advocate.

For State : Mr. Sourabh Sahu, Panel Lawyer.

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

Judgment on Board

Per Ramesh Sinha, Chief Justice

25-02-2026

- The present appeal under Section 374(2) of the Cr.P.C. has been filed by the appellant against the judgment of conviction and order of sentence dated 29-07-2021 passed by the learned Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short' the SC/ST Act')/ Special Court (POCSO Act), Bastar place Jagdalpur in Special Criminal Case (POCSO) No.19/2019, whereby the appellant has

been convicted and sentenced in the following manner with a direction to run all the jail sentences concurrently:-

Conviction	Sentence
U/s 376 of the IPC	R.I. for 10 years and fine of Rs.2,000/-, in default of payment of fine additional R.I. for 4 months.
U/s 3(2)(v) of the SC/ST Act	Life Imprisonment and fine of Rs.2,000/-, in default of payment of fine additional R.I. for 4 months.

2. Brief facts of the case are that, on 25-10-2019 the mother of the victim PW-2 lodged a report, Ex.P/1 to police to the effect that on 19-10-2019 when she came back to her house after her work, she could not find her minor daughter there and then they started searching her. On 21-10-2019 the friend of her daughter asked her to talk to the victim in her mobile phone and then she had contacted with her and she disclosed that she is at village Munga Tirathgarh and informed that the appellant took her with him on the pretext of marriage and committed rape upon her. On 22-10-2019 her daughter came back to her house and informed the entire incident. The FIR Ex.-P/10 was registered for the offence under Section 363, 366A and 376 of the IPC and Section 6 of the POCSO Act. The victim was sent to Maharani Hospital Jagdalpur where she was initially medically examined by PW-29 Doctor Manisha Goyal, she gave her report Ex.-P/56. While medically examining the victim she noticed no injury on her body and opined that no definite opinion regarding sexual assault cant be given. Two slides of her vaginal swab were prepared, sealed and

handed over to police for its chemical examination. Her underwear has been seized vide seizure memo Ex.-P/4. Spot map Ex.-P/5 was prepared by Patwari and Ex.-P/11 was prepared by police. The social status certificate of the victim was also seized vide seizure memo Ex.-P/12 and the copy of her social status certificate is Ex.-P/13. With respect to the age and date of birth of the victim police has seized mark sheet of class 5 of the victim vide seizure memo Ex.-P/14 and the mark sheet is Ex.-P/15. As per the mark sheet of class 5, the date of birth of the victim is 07-06-2003. The school register has also been seized by police vide seizure memo Ex.-P/30 and attested true copy of the school register is Ex.-P/31C and Ex.-P/32C. According to the school register the date of birth of the victim is also 07-06-2003. Based on school register a certificate Ex.-P/33 is also obtained from the Head Master of the school. The accused was arrested on 26-10-2019 and he too was sent for his medical examination to Medical College Dimrapal where he was medically examined by PW-17 Doctor Manoj Kumar Chandra who gave his report Ex.-P/36. While medically examining the appellant no external injuries were found on his body and it has been opined that there is no any abnormality which would suggest that he cannot perform sexual intercourse in ordinary course of nature. The underwear of the appellant has also been seized by police vide seizure memo Ex.-P/47. The motorcycle has also been seized vide seizure memo Ex.-P/49. The underwear of the victim, her vaginal slides

and underwear of the appellant were sent for its chemical examination to regional FSL, Jagdalpur, from where report Ex.-P/52 was received and according to the FSL report in the underwear of the victim semen and sperm were found, however, in the vaginal slides and underwear of the appellant no semen and sperm were found. Statement of witnesses under Section 161 of Cr.P.C. and statement of the victim under Section 164 of Cr.P.C. were recorded and after completion of usual investigation, charge-sheet was filed against the appellant before the learned trial Court for the offence under Section 363, 366A, 376 IPC, Section 6 of the POCSO Act and Section 3(2)(v) of the SC/ST Act.

3. The learned trial court framed charge against the appellant for the offence under Section 363, 366A, 376 IPC, Section 6 of the POCSO Act and Section 3(2)(v) of the SC/ST Act. The appellant denied the charge and claimed trial.
4. In order to prove the charge against the appellant, the prosecution has examined as many as 33 witnesses. The statement of the appellant under Section 313 of CrPC has also been recorded in which he denied the circumstances that appears against him, pleaded innocence and has submitted that he has been falsely implicated in the offence.
5. After appreciation of the oral as well as the documentary evidence led by the prosecution, the trial court has convicted and

sentenced the appellant as mentioned in the earlier part of this judgment. Hence this appeal.

6. Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses. There is no cogent and legally admissible evidence available on the record to show that the victim was minor and less than 18 years of age on the date of the incident. The school register has not been proved in accordance with rules. The said school record is of Class-5 whereas there is no record of initial schooling of victim. Therefore, without there being any basis on which entries have been made in the said school record, the same cannot be taken into consideration for determination of the age of victim. He would further argue that the victim was having love affair with the appellant and was a consenting party in making physical relationship with the appellant. There is no birth certificate seized during the course of investigation. Therefore, from the evidence it is proved that victim was not minor, but was a major girl despite that the trial court held her minor which is contrary to facts available on record. Further, no injury was found on the body of the victim during her medical examination and it was opined that no definite opinion can be given about sexual intercourse. From the evidence of the witnesses it is clear that the victim was consenting party and

also that no offence under the SC/ST Act is made out against the appellant and thus he is entitled for acquittal.

7. On the other hand, learned counsel for the state opposes the arguments advanced by the learned counsel for the appellant and submits the the evidence of prosecution witnesses are fully reliable. The age of victim has been proved from school record which is proved by PW-16, who is Head Master of the school. The victim was minor on the date of the incident, and her consent is immaterial. The evidence of the victim need not be required for any corroboration and on the sole testimony of the victim, the conviction can be made. Further, from the evidence of witnesses, the guilt of appellant has duly been proved. Therefore, the impugned judgment of conviction and sentence needs no interference.
8. We have heard learned counsel for the parties and perused the records carefully.
9. The first and foremost question arises for consideration would be the age of victim as to whether she was minor on the date of incident or not?
10. In the present case, the prosecution has mainly relied upon school register, Ex.-P/31C, Ex.-P/32C, certificate Ex.-P/33 and also mark sheet of class 5 of the victim Ex.-P/15. The school register is sought to be proved by PW-16, who is Head Master of the School. He stated in his evidence that with respect to age and date of birth of the victim the police has seized the school register

vide seizure memo Ex.-P/30 and after retaining its attested true copy, the original register was returned back which he brought with him. As per the school register, the date of birth is recorded as 07-06-2003. On the basis of the school register he issued the certificate Ex.-P/33. In cross examination, he admitted that at the time when the victim was admitted in the school he was not posted there. He did not know as to whether at the time of her admission in the school her birth certificate was demanded or not. He further admitted that generally the documents submitted by the student at the time of their admission it is to be recorded in the school register and on that basis the date of birth of the students are recorded in it. He further admitted that with respect to the date of birth of the victim there is no endorsement or note in the school register about any document. From the evidence of this witness it is quite vivid that he is neither author of the school register nor any document has been annexed with the school register on the basis of which the date of birth of victim was recorded.

11. 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 paragraphs 40 and 48 of the judgment in **Alamelu** (Supra), 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.

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."

12. 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 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.”

- 13. In case of P. Yuvaprakash Vs. State represented by Inspector of Police**, reported in 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 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.”

- 14.** Reverting to the facts of the present case, PW-1 the victim did not disclose her date of birth, but has stated that she is aged about 16

years. In cross-examination she stated that she has got admitted in the school by her elder sister and whatever information was recorded in the school register was disclosed by her elder sister. She did not know as to whether her birth certificate was deposited at the time of her admission in the school or not. She further admitted that she acquainted her date of birth on the basis of her school record.

15. PW-2, mother of the victim has also did not disclose her date of birth, but has stated that her daughter is about 16 years of age. In cross-examination she stated that she did not know as to who has taken her to the school for her admission. She further admitted that they have not got prepared her birth certificate.
16. PW-4 is father of the victim. He too has not disclosed any date of birth, but has stated that the age of the victim is about 16 years. In cross-examination he stated that the victim was taken to the school by his elder daughter and she disclosed her date of birth. He did no know the date of birth of the victim and has not prepared her birth certificate.
17. Except the aforesaid evidence with respect to age and date of birth of the victim, no other evidence is available on record. Even there is no birth certificate, Kotwari register or ossification test report of the victim to determine her age. When the author of the school register has not been examined the basis on which the entries have been made in the school register is not produced by the prosecution and there is no other documentary evidence with

respect to her date of birth, it cannot be said that the prosecution has proved the age of the victim that she was minor on the date of incident, rather in absence of any cogent evidence, the victim cannot be considered to be minor on the date of incident as has been held by the Hon'ble Supreme Court in the aforesaid judgments. The parents of the victim who could be the best witness to disclose her date of birth, also did not disclose her date of birth. Therefore, the finding recorded by the learned trial Court that the victim was minor on the date of incident appears to be perverse and is not sustainable.

18. So far as offence of kidnapping and rape is concerned, we again examine the evidence available on record.
19. The victim PW-1, has stated in her evidence that on 19-10-2019 she received telephonic call of the appellant and he proposed her for friendship. On the next day he came to her house and asked her to go to visit places and after visiting Jagdalpur market he took her to village Bilori. At village Bilori in the night he made physical relation with her. On the next morning when she was about to proceed to her house the appellant further dragged her to the same house and thereafter they had their meals. The appellant took her to village Tirathgarh where she met with two male and two female persons who too have stated the appellant that he must leave her to her house. At that time the appellant refused to leave her and in the same night he again made physical relation with her. On the next morning she asked a

shopkeeper to drop her to her house and made a complaint that the appellant did not permit her to go to her house and when they were proceeded, his motorcycle has got break down and then she boarded in a bus. He provided her fare charges and in the bus she borrowed mobile phone from co-passenger and made a telephonic call to her brother-in-law and asked him to come near Krishna Petrol Pump and on the same day her brother-in-law left her to her parents house. Thereafter, she disclosed about the incident to them and lodged the report. At this stage the victim was declared hostile and when she was cross-examined by the prosecution she stated that the appellant made physical relation with her on the pretext of marriage. In cross-examination she stated that at the time when she came out from her house it was about 4:00 p.m. and just a day before elopement with the appellant she talked with him. She admitted that the appellant came to her house by motorcycle and then she went along with him. She admitted that she visited the market and there was crowd in the market. She did not make any complaint to anyone in the market that the appellant is kidnapping her. She was sitting behind the appellant in the motorcycle. Even when she had gone to village Bilori she did not disclose to anyone that the appellant has kidnapped her. She further admitted that at the time when the appellant was making physical relation with her she could not receive any injuries neither on her body nor on her private part. She further admitted that when she was at village Munga

Tirathgarh she had a telephonic call with her friend and her friend informed her parents, but despite that her parents had not come there to bring her back.

20. From the evidence of the victim, the allegation of kidnapping and rape are shaky. When she had gone along with the appellant, they visited market and thereafter the appellant took her to village Bilori upto that time she had not made any complaint to anyone that the appellant has kidnapped her, it cannot be said that the appellant has kidnapped her and kept her away from her lawful guardianship. The offence of kidnapping and eloping with accused have been considered by the Hon'ble Supreme Court in the case of **S. Varadarajan Vs. State of Madras**, AIR 1965 SC 942, where the Hon'ble Supreme Court has considered the taking and allowing a minor to accompany a person and has held in Para 9 and Para 10 of its judgment 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 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".

21. When the appellant made physical relation with the victim, she had not received any external injuries on her body, even there is no evidence that she tried to give teeth bite or nail scratch mark on the body of the appellant. While medically examining by doctor there was no injury found on the body of the victim and no definite opinion was given by the doctor regarding forceful sexual intercourse with the victim. Even there is no evidence by the victim that after alleged offence of forceful physical relation by the appellant at village Bilori she informed about the incident to any other person to whom she met after that time.
22. From perusal of the entire evidence of the victim she cannot be placed as sterling witness as there are various circumstances which make her allegation doubtful about kidnapping and forceful sexual intercourse, rather she appears to be a consenting party in eloping with the appellant and making physical relation with him.
23. PW-2 is mother of the victim and PW-4 is father of the victim. PW-2 has stated in her evidence that when she came back from her work she could not find the victim in the house and they started searching her. After about two days she received a telephonic call through the friend of the victim and then she had

conversation with her. At that time the accused scolded the victim as to why she is talking with her parents and she too have scolded the appellant. Thereafter, her brother-in-law took her back. This witness too has been declared hostile and cross-examined by the prosecution and she disclosed that the victim informed about the incident. In cross-examination she admitted that on the instance of village Sarpanch they have lodged the report. She further admitted that when she had telephonic call with the victim she came to know that she was at village Munga Tirathgarh along with the appellant, but they had not gone to village Tirathgarh to bring her back and also has not lodged any report to police.

24. PW-4 is also a witness to the same fact which PW-2 has stated. He too has disclosed on the basis of the information given by the victim.
25. PW-6 is the friend of the victim. She stated in her evidence that she and the victim were working together at Jagdalpur. At the time of incident the victim made a telephonic call to her and asked to communicate her mother and then she went to her parents house and then her mother had a conversation with her. In cross-examination she stated that she did not know what were the conversation between the victim and her mother.

It is notable here that when the victim has suffered the incident when she made telephonic call to her friend she did not disclose about the incident to her.

After declaring her hostile, though she disclosed about the incident, but in the cross-examination by the prosecution she resiled from her earlier cross-examination by the prosecution and shown her ignorance about the incident, which makes her evidence doubtful and shaky.

26. PW-7 is the witness who stated that it is the victim who called the appellant at Tirathgarh. They had dinner in the house of the appellant at village Tirathgarh and went for sleep. In the next morning the victim asked them to go back to her house, but the appellant took her to his own house.
27. PW-10 is ex-sarpanch of the village who stated in her evidence that at the time of the incident she was informed by the parents of the victim that the appellant kidnapped their minor daughter and committed rape upon her. She asked to bring the victim before her and then the victim came to her and informed about the incident. She accompanied the parents of the victim for lodging of the report. At this stage, she too has been declared hostile and denied her police statement Ex.-P/25.
28. PW-18 is counselor at Child Welfare Committee, Jagdalpur who conducted the counseling of the victim. She stated in her evidence that during counseling the victim disclosed about the incident which she suffered. However, in cross-examination she admitted that at the time of counseling her parents were also there. The victim has not disclosed that two persons came in car, asked water from her and then she was kidnapped by them. She

also did not disclose about her friend. The victim disclosed that she visited various places at Jagdalpur throughout the day along with the appellant.

29. PW-29 Doctor Manisha Goyal medically examined the victim and found no any external and internal injury on the body of the victim and she opined that no definite opinion can be given regarding recent sexual intercourse.
30. From all these evidence it is quite vivid that there is no sufficient, cogent and clinching evidence against the appellant that he kidnapped the victim on the alleged date and time and committed rape upon her, rather it appears that the victim was a consenting party, she herself eloped with him and engaged in making consensual physical relation.
31. So far as offence under Section 3(2)(v) of the SC/ST Act is concerned, if the accused is not convicted and is not found guilty for the offence under the IPC, he cannot be convicted under Section 3(2)(v) of the SC/ST Act. Section 3(2)(v) of the SC/ST Act provides definition as under:-

“3. Punishment for offences of atrocities. - (1)

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe.

xxx xxx xxx

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribes.

xxx xxx xxx

(v) commits any offence under the Indian Penal Code

(45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;”

- 32.** With regard to Section 3(2)(v) and 3(2)(v)(a) SC/ST Act, in the matter of **Shaju Thomas v. Sub Inspector of Police** reported in 2019 SCC OnLine Ker 23039 the High Court of Kerala held that :

“.... Accordingly it is only to be held that since the sexual incidents have happened only on the basis of voluntary and consensual sexual relationship between the petitioner and the 2 respondent, none of the vital ingredients of the offence of rape as per Section 375 of IPC are made out in this case. Since that is the position, the offence as per Section 3(2) (v) of SC/ST (POA) Act, which is not an independent substantive offence will also crumble to the ground. The offence as per Section 3(2)(v) of the SC/ST (POA) Act is relating to commission of an offence as per the IPC, which is included in the schedule to the SC/ST (POA) Act, 1989. Section 3(2)(v) of the SC/ST (POA) Act, 1989 stipulates that whoever not being a member of SC/ST, commits any offence under the IPC punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of SC/ST or such property belongs to such member shall be punishable with imprisonment for life and with fine etc. So in the instant case, the gravamen of the allegation in relation to the offence as per Section 3(2)(v) of the said Act is that as the petitioner has committed the offence of rape as per Section 375 of IPC and that he has also incidentally committed the offence as per Section 3(2) (v) of the above said Act, as R-2 (alleged victim) belongs to SC community. Since the prosecution for the offence of rape has no legs to stand, it goes without saying that equally the offence as per Section 3(2)(v) of the said Act would also fall to the ground.....”

33. In the matter of **Narain Trivedi and others v. State of UP** reported in 2009 SCC OnLine All 30, the Allahabad High Court in para-9 held as under:-

“9. As would appear from the language used by the Legislature in section 3(2)(v) SC/ST Act, it is clear that this section does not constitute any substantive offence and if any person not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of Scheduled Caste or Scheduled Tribe or such property belongs to such member, then enhanced punishment of life imprisonment would be awarded in such case, meaning thereby that conviction and sentence under section 3(2)(v) SC/ST, Act simplicitor is not permissible and in cases where an offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more is committed against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, then in such case the accused will be convicted and sentenced for the offence under Penal Code, 1860 read with Section 3(2)(v) SC/ST Act with imprisonment for life and also with fine. Therefore, in the present case, the appellants could not be convicted and sentenced under section 3(2)(v) SC/ST Act simplicitor.”

34. In light of the aforesaid judgments, since no offence under Section 376 of the IPC is made out against the appellant, offence under Section 3(2)(v) of the SC/ST Act is also not made out against the appellant.
35. 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 may be some contradictions and omissions in the statement of the victim and her parents. The law is well settled that in the case of rape, conviction can be maintained even on the basis of the 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, in which the prosecution has succeeded in doing in the instant case.
36. For the forgoing reasons, we are of the considered opinion that there is no sufficient material to uphold the conviction and sentence of the appellant for the alleged offences.
37. Consequently, the appeal is **allowed**. The impugned judgment of conviction and order of sentence is hereby **set aside**. The

appellant is **acquitted** from all the charges. He is reported to be on bail. His bail bonds shall continue to a further period of six months as provided under Section 481 of BNSS, 2023.

38. The trial court record be sent back to the concerned the trial court.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice