



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 876 of 2015

Sunil Kumar Singh S/o Vijay Kumar Bargah aged about 25 years
R/o Gram Junadih, P.S. Lakhanpur, District Surguja,
Chhattisgarh

... Appellant

versus

State of Chhattisgarh, through District Magistrate Surguja,
Chhattisgarh

... Respondent

For Appellant	: Mr. Shakti Raj Sinha, Advocate
For Respondent/State	: Mr. Sharad Mishra, Panel Lawyer

Division Bench

Hon'ble Shri Justice Sanjay K. Agrawal

Hon'ble Shri Justice Sanjay Kumar Jaiswal

Judgment On Board

(01.07.2026)

Sanjay Kumar Jaiswal, J.

1. Invoking criminal jurisdiction of this Court under Section 374(2) of the Cr.P.C., the sole appellant herein has preferred this criminal appeal calling in question legality, validity and correctness of the judgment of conviction and order of sentence dated 14.05.2015 passed by the learned Special Sessions Judge (POCSO Act, 2012), Surguja (C.G.), in

Sessions Trial No.30/2014, by which the appellant has been convicted and sentenced as under:-

Conviction	Sentence & Fine
U/s 450 of IPC	Imprisonment for 10 years and fine of Rs.1,000/-; in default of payment of fine, R.I. for 1 month
U/s 376 of IPC	R.I. for Life Imprisonment and fine of Rs.1,000/-; in default of payment of fine, R.I. for 1 month
U/s 4 of POCSO Act	R.I. for Life Imprisonment and fine of Rs.1,000/-; in default of payment of fine, R.I. for 1 month
All the sentences are directed to run concurrently	

Prosecution story

- The prosecution case in brief is that on the intervening night of 12-13th April 2014, between 1:00 to 2:00 a.m., the victim was sleeping on the roof of her house at Gram Junadih, P.S. Lakhanpur, District. Surguja, along with her brother. The appellant is alleged to have entered the house and committed sexual assault on the victim. On raising an alarm, the appellant was apprehended by the brother and later handed over to the police. On 13.04.2014, the victim lodged a report at P.S. Lakhanpur and Crime No. 79/2014 was registered under Sections 376, 450 IPC and Section 4 of POCSO Act, 2012. The victim was sent for medical

examination at District Hospital, Ambikapur and her undergarment was seized. The appellant was also medically examined and his undergarment was seized. Both were sent for chemical examination. A site map was prepared and statements of witnesses were recorded. To prove age, the prosecution relied upon DOB certificate Ex. P/11 issued by Govt. Kanya Uchch Madhyamik Vidyalaya, Lakhanpur, showing DOB as 05.10.1997. On completion of whole investigation, charge sheet was filed.

3. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 7 witnesses and exhibited 19 documents. Statement of the appellant was recorded under Section 313 of Cr.P.C. in which he denied circumstances appearing against him in prosecution case, pleaded innocence and false implication.
4. After hearing both the parties, the trial Court passed the impugned judgment of conviction and order of sentence.

Submission of the Parties

5. Learned counsel for the appellant submits that the victim (PW-4) was a consenting party and there was a love affair between the appellant the victim. The prosecution has failed to prove through valid evidence that the victim was a minor and below 18 years of age at the time of the alleged

incident. The date of birth of the victim could not be proved. It has not been proved as to on what basis the date of birth was recorded in her school's register. The teacher who made the entry in the Dakhil Kharij register has not been examined. The victim's father has also been unable to tell the date of birth of the victim. Thus, it has not been proved that the victim was below 18 years of age at the time of the incident. In such a situation, the alleged offence cannot be said to be proved against the appellant. Therefore, the appeal may be allowed and the impugned judgment may be set aside and the accused may be acquitted. In support of his argument he relied upon the judgment of the Supreme Court in the matter of **Jarnail Singh vs. State of Haryana, (2013) 7 Supreme Court Cases 263.**

6. On the other hand, learned counsel for the State submits that the finding recorded by the Trial Court regarding conviction and sentence of the appellant is based on sufficient and reliable evidence, which does not require any interference. Therefore, the contention made by the counsel for the appellant is not acceptable, hence, the appeal may be dismissed.
7. We have heard learned counsel appearing for the parties

and perused the record with utmost circumspection.

Age Determination

8. The victim (PW-4) herself has stated in her Court statement that her date of birth is 05.10.1997 as per the certificate of Class 8th. It is a natural thing that any child gets to know her date of birth from the parents. The entry of date of birth in any government or non-government document is also based on the information given by the child's parents at the time of admission. In this case, the victim [PW-4] has stated her date of birth as 05.10.1997, but she has not clarified from whom she got to know about her date of birth.

9. To prove her date of birth, the original marksheet of Class 8th has been seized vide Exhibit P-11. To prove the date of birth recorded in the school records, H.K. Jaiswal (PW-3), Principal of Govt. Girls High School, Lakhanpur, has been examined. He has stated that the victim was admitted in his school in Class 9th, and her date of birth was recorded as 05.10.1997 in the dakhil kharij register (Ex.P-7c). He has stated that the victim had submitted the transfer certificate (Exhibit P/11), at the time of admission, on the basis of which the entry was made in the school register. However, PW-3 has clearly admitted in his cross-

examination that the entry in the Dakhil Kharij Register pertains to the time of admission in Class 9th. He further stated that before recording the name of the victim in Dakhil Kharij Register, he had not obtained any affidavit from her parents. He had written the victim's date of birth on the basis of date of birth recorded in Class 8th Transfer Certificate. Thus, the prosecution has failed to prove the source and basis of the date of birth recorded in Exhibit P/7c and Exhibit P/11.

10. Father of the victim (PW-1) has also stated that his daughter's age is "about 17 years" and he does not know her date of birth. He admitted that he is illiterate and gave the marksheet to police, on the basis of which age was recorded.
11. The Supreme Court in the matter of **Jarnail Singh** (Supra) has held in paragraphs 22 & 23 as under:-

"22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the 2007 Rules"). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:

"12. Procedure to be followed in determination of age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or

child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, *prima facie* on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(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;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, *inter alia*, in terms of Section 7-A, Section

64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.

12. The Supreme Court in the matter of **Manak Chand alias**

Mani v. State of Haryana, 2023 SCC Online SC 1397 has reiterated the law laid down by it in the matter of *Birad Mal Singhvi vs. Anand Purohit, 1988 (Supl.) SCC 604* and observed that the date of birth in the register of the school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth. It was further reiterated that if the date of birth is disclosed by the parents, it would have some evidentiary value but in absence the same cannot be relied upon. For sake of brevity para No. 14 & 15 of the judgment are reproduced hereunder :-

“14. This Court in *Birad Mal Singhvi v. Anand Purohit (1988) Supp SCC 604* had observed that the date of birth in the register of a school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth.

“14. ...The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value.”

15. In our opinion, the proof submitted by the prosecution with regard to the age of the prosecutrix in the form of the school register was not sufficient to arrive at a finding that the prosecutrix was less than sixteen years of age, especially when there were contradictory evidences before the Trial Court as to the age of the prosecutrix. It was neither safe nor fair to convict the accused, particularly when the age of the prosecutrix was such a crucial factor in the case.”

13. Hon’ble Supreme Court in the matter of **Alamelu and another v. State represented by Inspector of Police, (2011) 2 SCC 385** has held that:-

“the transfer certificate which is issued by a government school and is duly signed by Headmaster would be admissible in evidence u/s 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 the material on the basis of which the age was recorded. The Supreme Court held under the facts and circumstances of the case that 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.”

14. How, dakhil-kharij register is treated to be relevant came up for consideration before the Hon’ble Supreme Court in **Babloo Pasi v. State of Jharkhand and another (2008) 13 SCC 133**, wherein it has been held as under:-

“22. It is well settled that it is neither

feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.

28. It is trite that to render a document admissible under Section 35, three conditions have to be satisfied, namely: (i) entry that is relied on must be one in a public or other official book, register or record; (ii) it must be an entry stating a fact in issue or a relevant fact, and (iii) it must be made by a public servant in discharge of his official duties, or in performance of his duty especially 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. (See: *Birad Mal Singhvi v. Anand Purohit* (1997) 4 SCC 24)."

15. The Supreme Court in the matter of **Sunil v. State of Haryana (2010) 1 SCC 742** has held as under:-

"26. Bishan, PW8, the father of the prosecutrix has also not been able to give correct date of birth of the prosecutrix. In his statement he clearly stated that he is giving an approximate date without any basis or record. In a criminal case, the conviction of the appellant cannot be based on an approximate date which is not supported by

any record. It would be quite unsafe to base conviction on an approximate date.

34. On consideration of the totality of the facts and circumstances of this case, it would be unsafe to convict the appellant when there are so many infirmities, holes and lacunas in the prosecution version. The appellant is clearly entitled to benefit of doubt and consequently the appeal filed by the appellant deserves to be allowed. The appellant is directed to be released forthwith, if not required in any case.”

16. If we consider the evidence produced in the light of the above judgments, therefore, the only documents on record are Exhibit P/7c, and Exhibit P/11, Class 8th marksheet, on the basis of which DOB 05.10.1997 is claimed. In this case, the victim's mother has not been examined in Court. Her father failed to state her correct date of birth. No birth certificate or declaration regarding the date of birth has been filed, the date of birth was recorded based on Exhibit P-7c. No person capable of providing information about the correct date of birth has examined in Court. In the absence of any reliable or foundational evidence to prove the date of birth, it is not proved beyond doubt that the victim was below 18 years of age on the date of incident i.e. 12/13.04.2014.

Consenting Party

17. The victim (PW-4) herself in her examination-in-chief has stated that in April 2014 she was studying in Class 10th and was sleeping on the roof with her brother (not examined before the Trial Court) when the appellant came and committed the act. In cross-examination, she admitted that before the report was lodged, she used to come and go to the appellant's house occasionally. She further stated that at the time of incident the appellant had one leg in plaster and was walking with the help of a stick. She also stated that her younger brother used to sleep with her on the roof everyday. Thus, from PW-4's own statement there was prior acquaintance and frequent movement between the victim and the appellant prior to the date of incident. Father of the victim (PW-1) in cross-examination, has denied the suggestion that his daughter told him that the appellant did a "wrong act" with her. He further admitted that he did not know whether for the last one year his daughter and the appellant were in a love relationship.

18. Thus, from a reading of the statement of the victim [PW-4], a doubtful situation emerges. The victim has stated that at the time of the incident, the appellant's one leg was in plaster and he was walking with the help of a stick. She

has further stated that her younger brother was sleeping by her side on the roof everyday. Despite this, she has stated that the appellant climbed onto the roof, committed the act, and she did not raise any protest at that time, while her brother was sleeping next to her. It is a matter of doubt that if the appellant was physically incapacitated with a fractured leg, and if the victim's brother was sleeping beside her, she could have resisted, called out to her brother, or raised an alarm to other family members sleeping below. However, the victim has not stated that she did so at the time of the incident. The protest, if any, appears to have been made later. Further, the brother of the victim, who was allegedly sleeping beside her at the relevant time, has also not been examined before the Trial Court. In view of the above, the conduct of the victim as stated by her does not inspire confidence about the use of force. When coupled with the admission of her father (PW-1) that he did not know whether his daughter and the appellant were in a love relationship for the last one year, and his denial that his daughter told him about any "wrong act", a serious doubt is created about the prosecution version. Thus, it is clear from the statement of the victim (PW-4) that she was a consenting party.

Conclusion

19. In these circumstances, this Court finds that the prosecution has failed to prove beyond doubt that the date of birth of the victim was 05/10/1997 and at the time of the incident, she was less than 18 years of age. In this situation, when the victim was an consenting party, then the offence under Sections 450, 376 of the IPC and Section 4 of the POCSO Act is not proved. In such a situation, the impugned judgment is not sustainable.
20. In view of the aforesaid discussion and in light of the above referred judgments, the appeal is **allowed** and the impugned judgment is hereby set aside. The appellant is acquitted of the said offences.
21. It is reported that the Appellant is on bail. He need not to surrender in this case. His bail bonds shall remain in force for a period of six months in view of the provisions contained in Section 437-A of the Cr.P.C.
22. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned forthwith, for information and necessary action, if any.

Sd/-**(Sanjay K. Agrawal)**
Judge**Sd/-****(Sanjay Kumar Jaiswal)**
Judge